What Role is Neuroscience Playing in New State Raise-the-Age Laws?

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Neuroscience is continuing to alter the way we understand human behavior. One of the most crucial areas that neuroscience is helping us inform decision making is our criminal justice system. While some are using neuroscience to help justify reform measures, like raising the age at which offenders can be tried as an adult, or age of majority, the role of neuroscience in informing criminal justice policy remains contested among legal and scientific experts.

States across the country are beginning to take measures that treat young adult offenders, usually ranging from age 18-21, more like juveniles than adults. What’s often being used as a justification for this approach is the emerging neuroscientific data on young adults. Despite its usefulness, there are some enduring limitations that experts say make the neuroscientific data on young adults difficult to integrate with the US legal system.

Neuroscience is beginning to show us in more detail what sociological and behavioral research plainly tells us about young adult behavior. It shows not only that the brain often continues to develop well into a person’s 20s, but young adults are uniquely susceptible to committing crimes compared to both full-fledged adults, and juveniles in their early to mid-teens.

The age crime curve is an often-cited graph that shows offending for violent and property crime peaks around age 18, and immediately declines dramatically as people reach their mid to late-20s. 18 also happens to be the standard age at which states, some more recently than others, determine an offender responsible enough to be charged as an adult for most crimes.

The Imbalance Model of Adolescence, first put forth by Adriana Galvin, now a psychology professor at UCLA, shows how the brains of young adults are distinct from both fully mature adults, as well as juveniles in their early teens. Initial research by Galvin and BJ Casey, now a psychology researcher at Yale, suggests that because of the differing rates at which certain regions of the brain mature, there is a unique window around the age of young adulthood when this tension maximizes.

Galvin and Casey point in a 2008 study hypothesize that risk for offending cannot merely be product of the delayed maturation of the prefrontal cortex, which is involved in impulse control. If this were the case, then juveniles would commit more crime than young adults as a result of their even more-decreased capacity to control their actions. According to Galvin and Casey, the faster development of the nucleus accumbens, which is involved in processing rewards and pleasure, makes the benefits of committing a crime to young adults seem more enticing than it would a juvenile.

The MacArthur Research Network on Law and Neuroscience states, “Adolescents (age 18-21), especially in emotionally charged contexts or in the presence of peers, are more apt than adults to be impulsive, to disregard future consequences, and to take risks.”

While recent Supreme Court decisions and state legislatures have expanded protections for
juvenile offenders under the age of 18, the US has been slow to adapt in certain respects regarding how it treats juvenile offenders. For example, the UN condemned the US in 2015 as the only developed nation that still has thousands of inmates serving life without parole for crimes they committed as juveniles.

Despite this federal lag, several states in recent years have expanded protections for juvenile offenders, as well as raising the age of majority, or the age at which someone can be tried as an adult to the standard age of 18.

Citing neuroscientific evidence, New York recently passed a law that by 2019 is supposed to eliminate anyone below the age of 18 from being tried as adults. Until recently New York and North Carolina were the only states in the country who tried all 16 year olds as adults.

In 2015, San Francisco started to implement a court designed to only process 18-24 year olds. On its website, The Young Adult Court justifies its mission specifically using neuroscientific evidence, noting that “Our traditional justice system is not designed to address cases involving these individuals, who are qualitatively different in development, skills, and needs from both children and older adults.”

There are efforts in Illinois to pass a bill that would allow 18, 19 and 20-year-olds charged with misdemeanors to go through juvenile court. Rep. Laura Fine, who introduced the bill, stated in an interview with Public News Service that, “Somebody under the age of 26 might do something that they would never consider doing once their brain is fully developed.”

More juvenile reform measures have a serious chance at passing next year in both Massachusetts and Connecticut, according to Vincent Schiraldi, a juvenile justice reformer and senior research scientist at Columbia University and co-heads the Columbia Justice Lab. Schiraldi says that the CJL, which does research, policy analysis and community engagement on criminal justice reform, will be aiding the Vermont state legislature implement their new raise-the-age measure. By 2022, Vermont will treat any teen as a juvenile, except for some violent offenses.

Schiraldi says the criminal justice system in the US and many other countries treat adulthood as a black-and-white concept, contrary to what the neuro and other relevant research shows. “Right now we have this very stark system, where you go from a child to a full-fledged grown-up on your 18th birthday in most states, and that’s clearly not indicated by the research, without question,” says Schiraldi.

While neuroscience is being invoked more and more for justifying raise the age policies across states, some major hurdles remain that keep it from being more widely adopted into policy and ultimately the courtroom.

Legal experts like David Faigman, Chancellor and John F. Digardi Distinguished Professor of Law
at the University of California Hastings College of the Law, contend that law may not be able to be seriously penetrated by neuroscience for at least the near-future. Faigman points out, for example, that the increased susceptibility to peer influence and reward of young adults may not apply to crimes that are not committed in social settings, where those temptations are not as obvious.

Faigman makes a broader point that neuroscientific data in this area only speaks to populations not individuals. “In Justice Kennedy’s decision in Roper vs. Simmons, he was quite explicit in saying that on average, offenders under 18 are less mature than adults, but we cannot say whether any individual child or minor is developmentally immature compared to an adult.”

Stephen Morse, Ferdinand Wakeman Hubbell Professor of Law at the University of Pennsylvania Law School, is also skeptical about the role neuroscience can play when it comes to juvenile justice. Morse argues that while neuroscience can help inform us as to how we should treat juveniles and young adults, behavioral evidence will always be king in the legal domain.

Morse views the neuroscience that has been cited in past Supreme Court cases dealing with juvenile offenders as dictum, or in other words, supporting evidence that ultimately fell in tune with our already existing legal and moral intuitions as a society. “This is about humans, not brains,” says Morse. “Our legal system determines that once you’ve passed a certain line of competency, you’re good enough. But it’s ultimately a moral question that science can’t really answer for us.”

Jeff Wallace, an ex-inmate, or returning citizen, as he prefers to call it, is a criminal justice reformer that focuses on trauma and its effects on youth behavior. A motivational speaker, Wallace gave a Ted-Talk in 2016 describing his nightmarish experience in prison, and spends much of his time educating and reaching out to at-risk youth.

Though it is not a main focus of his approach, Wallace likes to briefly cite neuroscientific research on adolescent brain development during his talks. Wallace says, “I only mention (neuroscientific evidence) in one small part of my talks, and the majority of people, that’s what they have questions about. It goes to show that you can artistically paint something, but people want to know the numbers and the significance behind it.”

Adrian Raine, a world-renowned neuroscientist and criminologist, Richard Perry University Professor at the University of Pennsylvania, is less hesitant than other experts like Faigman and Morse to say we as a society should use neuroscience and other scientific data to determine our policy.

In Raine’s mind, the fact that the data at this point only really applies to populations is not a major problem. Raine says, “We use population data all the time in determining if people are culpable not, like with intellectual disability, for example. Why can’t you do the same thing with genetic or neurodata?”
Ultimately, neuroscience certainly seems to be playing a role in recent raise-the-age laws. However, the influence neuroscience should have remains contested in the expert legal and scientific community.

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