Chapter 20

The Rights of Juvenile Defendants

In his great work of political philosophy, Leviathan, published in 1651, Thomas Hobbes characterized life in the state of nature as "solitary, poor, nasty, brutish, and short." This description was distressingly true for chil dren even after societies formed. Throughout most of Western history, childhood lasted from birth until six or eight years of age. In fact, the idea of childhood as a time set aside for gradual maturation into adulthood was a foreign concept. Labor came quickly in a young person's life, with many children, on farms and in towns alike, put to work for lengthy periods each day. Schooling was a luxury reserved for wealthy families or, at times, exceptionally gifted children who attracted the attention of a patron. Early death was not uncommon, with as many as one-third to a half of all children failing to reach the age of twenty.

This miserable experience began to change, albeit slowly, during the sixteenth and seventeenth centuries. New wealth and the beginnings of industrialization made life less difficult for an increasing number of people. It also made it possible for England's emerging middle class to develop a sense of childhood that was markedly different from older notions. State- or church-supported schooling became more common, at least through the early years, because commerce required basic literacy. The poorest children still worked at a young age, but it became more frequent to speak of childhood as separate from the adult world.

The legal separation between children and adults was still hazy at the time of American independence, especially in criminal law. One central issue concerned the age when children formed consciences sufficient to hold them responsible for their actions. The common law presumed that a child younger than seven years of age lacked criminal capacity, or the capability to act with intent to cause harm. Children older than seven who were accused of crimes were tried in adult courts, and if convicted, could be sentenced to an adult prison or, in capital cases, condemned to die. In some states, children as young as twelve were executed for murder. Criminal juries faced difficult choices: try youthful offenders as adults and sentence them to jail with hardened criminals or refuse to convict them even for minor offenses.

To avoid such stark alternatives, nineteenth-century reformers developed new institutions, known as houses of refuge, to separate children from adults in matters of criminal punishment. They believed that most criminals were capable of reform if put in the proper environment, which for adults was the penitentiary, a place designed for repentance, and for young offenders, it was the reformatory. The separate juvenile facility also reflected a new view of children. No longer were they seen as young adults, but as vulnerable, corruptible innocents who required special attention to protect them from the wider society while molding them for success as adults. By the end of the century, this sense of children as

different from adults led to the division of childhood into three phases—infants, children, and adolescents or juveniles. It also spurred child-centered reforms, such as prohibition of child labor, compulsory school attendance, and social welfare, all aimed at helping parents rear children capable of creating a more just and humane world.

Chief among these reforms was the juvenile court. Reformers (or "child-savers," as they were called) wanted to separate young offenders from the adult criminal justice system and to use the state as a surrogate parent in order to supervise, treat, and reform them. The reformers relied on a legal doctrine known as parens patriae (from Latin, "parent of his country"), an old concept that refers to the state as guardian of minors and incompetent people. This idea assumed that the state was helping the child, so the juvenile courts used informal procedures and a different vocabulary to avoid any suggestion that the child was being punished. The age of criminal responsibility was set at sixteen years, and these juvenile courts conducted civil, not criminal, proceedings. Objectionable behaviors were known as "status" offenses, not crimes, a term that conveyed the status of the offender, thus tagging the action as one characteristic of children. Offending children were "delinquent," not guilty; they were given "dispositions," not sentences. There were no lawyers and no juries, and the courts followed none of the procedures used in criminal courts to assure due process. Juvenile judges alone were responsible for deciding how to rehabilitate offenders, and they exercised wide discretion by supervising all youthful conduct, including smoking, sexual behavior, and skipping school (truancy), for example. The goal was to act in the "best interests" of each individual child, and there were few limits on what judges could do to achieve this end.

The reality of juvenile justice, however, never approached its ambitious goal of providing a nurturing environment in which young offenders could reform their lives. Juvenile institutions rarely functioned as centers of rehabilitation but were primarily custodial and punitive. Most juvenile judges and probation officers were poorly trained individuals who lacked the expertise and resources to assist young people. Delinquents often left state care with few skills and bitter memories, ill-prepared for adult life.

After World War II, public trust in this system of juvenile justice eroded. A rise in crimes committed by youth, often associated with urban poverty, led to calls for stronger measures to protect the public. The civil rights movement challenged the juvenile system's segregation of youthful offenders by race and the often harsher dispositions received by black teenagers. Distrust of professionals and government fairness also grew, especially in the late 1950s and 1960s, and led to calls for change across broad areas of American life, including juvenile justice.

Supreme Court decisions reflected these concerns, and nowhere were shifts in law more apparent than in criminal justice. Bill of Rights protections for the accused, now defined as part of due process guaranteed by Fourteenth Amendment, applied to state as well as federal criminal justice. Courts at all levels placed greater emphasis on ensuring meaningful due process to defendants. At first, the new requirements applied only to adult offenders, but by the mid-1960s, concern about the lack of accountability in the juvenile justice system led to questions about whether youthful offenders could claim the protections of the Bill of Rights. In 1967, the justices said yes, and in the process they dramatically reshaped the nation's practice of juvenile justice.

Paul and Marjorie Gault lived with their two teenaged sons, Louis and Gerald, in a new mobile home park in Globe, Arizona, a once-prosperous mining town about seventy-five miles from Phoenix.To make ends meet, Paul worked out of town, while Marjorie worked as a baby-sitter. Louis and Gerald were often on their own during the day, not unlike teenagers in many American families where both parents work.

In 1962, Gerald had his first run-in with the Gila County Juvenile Court when another boy accused him of stealing a baseball glove. Two years later, he was before the court again for being in the company of another boy who allegedly had stolen a woman's wallet. The judge placed Gerald on six months' probation and warned him to stay out of trouble. Two months before his probation ended, he was in court once more. This time a woman had accused him of making an obscene phone call to her.

Arizona's juvenile justice system was typical: it granted juveniles a right to special treatment and protected them from criminal proceedings. It also acted on the principle that juveniles possessed a right to protective custody, not liberty. The purpose of the court hearing was to determine what type of custody—parental or state—was in the best interest of the child. The hearing was informal, with no records kept and no attorneys present. The judge listened to the parties, asked questions, and made a decision about whether the state needed to take corrective action, and if so, what was required to help the child become a responsible citizen. Sometimes, the court consulted psychologists or behavioral specialists; sometimes, it acted on its knowledge or intuition.

Gerald Gault's case was handled routinely. After taking the statement of the woman who reported the obscene call, an officer took Gerald into custody and signed him into the juvenile detention center. The sheriff failed to notify his parents, but Marjorie Gault eventually learned about a hearing scheduled for the following day. She was present to hear the officer ask the judge to declare her son delinquent and place him in protective custody. Three days later, there was a second hearing with both parents in attendance; they had been informed by a handwritten note. Gerald admitted dialing the number but claimed that "a friend had done the talking." The woman who had accused him was not present. No one gave sworn testimony. No one kept a record at either hearing, nor were Gerald or his parents informed of their rights. They were not even informed of what part of the juvenile code he was charged with violating. Although not acceptable in adult trials, this informal process was usual for the juvenile court. So, too, was the result. The judge found Gerald to be a "child in need of supervision" because he had been "habitually involved in immoral matters" and committed him to the Arizona Industrial School at Fort Grant for an indeterminate period, not to exceed six years. If Gerald Gault had been an adult convicted of the same misdemeanor, he would have faced a maximum sentence of two months in jail or a fine of fifty dollars.

Arizona law did not allow an appeal in juvenile proceedings, so the Gaults, with the help of an attorney, filed a writ of habeas corpus. This writ, guaranteed by both federal and state constitutions, commands any person who detains another person to bring the individual to court so a judge can determine whether the detention is legal. The judge who heard the habeas petition dismissed it and sent Gerald back to Fort Grant. But unlike the original hearing, the Gaults could appeal the denial of habeas corpus to the Arizona Supreme Court, which they did, with the support of the American Civil Liberties Union. They claimed the

system violated their due process rights as parents; it arbitrarily and unfairly deprived them of custody. When the Arizona high court rejected this argument, the Gaults appealed to the U.S. Supreme Court. This time, however, they chose not to focus on the custody rights of parents, but on the right of Gerald Gault to have the protection of due process.

When the Supreme Court agreed to hear *In re Gault* ("in the matter of Gault"), the justices were halfway through a series of decisions extending Bill of Rights protections to persons accused under state criminal law. Now they would consider whether these due process rights extended to juveniles as well: did the Fourteenth Amendment's guarantee of due process require states to ensure youthful defendants the same rights to counsel, notice of the charge against them, the right to confront their accusers, and other protections of the Bill of Rights? Five months after oral arguments, the justices decided, 8 to 1, that juvenile court proceedings fell within the protections of the Fourteenth Amendment.

Writing for the majority, Justice Abe Fortas, who had joined the Court only two years earlier, concluded that "unbridled discretion [in the judge], however benevolently motivated" and "departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness." The lack of procedure undermined justice and resulted in resistance, not rehabilitation. Juvenile courts often operated on inaccurate and incomplete information, which proper procedure could correct, and their decisions frequently alienated the youthful offender they were supposed to serve. More important, delinquency proceedings could result in involuntary confinement, which meant that the juvenile's right to liberty was at stake. Delinquency hearings, therefore, must "measure up to the essentials of due process and fair treatment." Due process embodied the rule of law, which was the "primary and indispensable foundation of individual freedom." The fact that the accused are not adults, Fortas declared, "does not justify a kangaroo court." The Bill of Rights, in sum, protects youth as well as adults.

In defining due process for juvenile courts, the justices did not include all the rights of the accused contained in the Bill of Rights. They focused instead on the rights to counsel, confrontation of one's accusers, cross-examination of witnesses, and the privilege against self-incrimination. Juvenile defendants had the protection of these rights, just as adult defendants did. In later cases, the Court clarified the limits of juvenile due process. It required that the juvenile court determine a youth's involvement beyond a reasonable doubt before ordering assignment to a detention facility, but it also decided that a jury trial was not an essential part of due process for juvenile proceedings. Even though young people were entitled to constitutional protections, the systems of justice for adults and juveniles served separate purposes, so the rights of the accused were not identical.

The purpose of *In re Gault* and later decisions was to make juvenile proceedings fairer, but it also made them more adversarial. They now resembled criminal trials rather than the benevolent civil proceedings initially envisioned by progressive reformers in the late nineteenth and early twentieth centuries. This result, most observers believe, was an unintended consequence of the Supreme Court's decision. Although many participants in the system welcomed the changes, state legislatures, pressured by voters to control juvenile crime, enacted so-called "just deserts" laws. These measures allowed the transfer of

serious cases from juvenile to criminal court and required juvenile judges to impose more severe sentences for certain crimes, all in an attempt to "fit the punishment to the crime." Other changes were more advantageous to at-risk youth, especially so-called diversion programs that allowed cases of relatively minor misbehavior to be handled outside of a formal court process.

Cases involving the rights of youth have been important in extending definitions of our constitutional rights. Mary Beth Tinker, an eighth-grade student in Des Moines, Iowa, won recognition for the right to protest an unpopular war as a freedom protected by the First Amendment guarantee of free speech. Twelve-year-old Lillian Gobitas claimed a right to free exercise of religion that expanded our definition of this important liberty when she refused, on religious grounds, to salute the American flag at school. Our view of cruel and unusual punishment, outlawed by the Eighth Amendment, changed when the Supreme Court decided that executing anyone under the age of eighteen was unconstitutional. Federal and state courts have also found consistently that other protections of the Bill of Rights, such as the right to privacy or the guarantee against illegal search and seizure, apply with certain exceptions to young people.

The rights of youth, however, are not as complete as those enjoyed by adults because the courts recognize the different expectations we as a society have of these different groups. Young people are in the process of developing into adults, and we trust parents, schools, and community organizations, among others, to guide and protect them as they mature. We expect young people to learn how to make decisions and accept responsibility so that they can enjoy the full set of rights and privileges as adults in a free society, but until they are able to accept full responsibility, the rights they enjoy will be more limited. For most states, this age of accountability is eighteen, although it comes earlier if a person marries or enters the military before that age.

We form our understanding of freedom from the past, but we apply it with an eye to the future. Our concern for the rights that protect freedom is not simply for our own sake but also for new generations of Americans. Each generation entrusts freedom to the next generation to preserve. Through acknowledging the rights of youth, adult members of society affirm the belief that young people also share the nation's heritage of liberty.

A Substitute for Parental Authority

Early in the twentieth century, states began to establish separate juvenile courts to safeguard the welfare of young people accused of crimes. Reformers made changes to the justice system to assert state responsibility for the lives of its young offenders before crime became a way of life for them. The juvenile justice system exercised its authority within a "parens patriae" (state as parent or guardian) role. The following decision in a 1905 Pennsylvania case reveals the thinking behind the development of a separate system of juvenile justice.

The act is not for the trial of a child charged with a crime, but is mercifully to save it from such an ordeal, with the prison or penitentiary in its wake, if the child's own good and the best interests of the state justify such salvation. . . . The act is but an exercise by the state of its supreme power over the welfare of its children. . . .

The design is not punishment, nor the restraint imprisonment, any more than is the wholesome restraint which a parent exercises over his child. . . . There is no probability, in the proper administration of the law, of the child's liberty being unduly invaded. Every statute which is designed to give protection, care, and training to children, as a needed substitute for parental authority and performance of parental duty, is but a recognition of the duty of the state, as the legitimate guardian and protector of children where other guardianship fails. No constitutional right is violated.

In 1909, the Harvard Law Review published an article by Judge Julian Mack entitled "The Juvenile Court." Later appointed as a U.S. circuit judge at large, Mack was an appellate judge in Illinois when he wrote this article, which suggests that a judge should assume the role of comforting parent in administering juvenile justice.

The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the courtroom are out of place in such hearings. The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.

The Death Penalty Is Unconstitutional for Juveniles

In 2005, the Supreme Court ruled in Roper v. Simmons that executing juveniles for crimes they committed while under the age of eighteen violated the Eight Amendment's ban on "cruel and unusual punishments," as applied to the states through the Fourteenth Amendment. This decision reversed the Court's conclusion in 1989 that the practice was constitutional. Writing for the majority, Justice Anthony Kennedy pointed to three general differences between juveniles and adults as one reason to treat juvenile offenders differently. He also noted that no state had reinstated the death penalty for juveniles since the 1989 decision, and he observed that the United States stood alone among the nations of the world in condoning execution of youths under eighteen. This case reveals how the meaning of the Constitution changes in response to new conditions.

This case requires us to address, for the second time in a decade and a half, whether it is permissible under the Eighth and Fourteenth Amendments to the Constitution of the United States to execute a juvenile offender who was older than 15 but younger than 18 when he committed a capital crime. In *Stanford v. Kentucky* (1989), a divided Court rejected the proposition that the Constitution bars capital punishment for juvenile offenders in this age group.We reconsider the question. . . .

Since *Stanford*, no State that previously prohibited capital punishment for juveniles has reinstated it. This fact, coupled with the trend toward abolition of the juvenile death penalty, carries special force in light of the general popularity of anticrime legislation.. . and in light of the particular trend in recent years toward cracking down on juvenile crime in other respects. . . .

Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First, as any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young.". . .

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. . . .

The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. . . .

These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means "their irresponsible conduct is not as morally reprehensible as that of an adult.". . . Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. . . . The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. . . .

Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty. This reality does not become controlling, for the task of interpreting the Eighth Amendment remains our responsibility. . . .

As respondent and a number of *amici* emphasize, Article 37 of the United Nations Convention on the Rights of the Child, which every country in the world has ratified save for the United States and Somalia, contains an express prohibition on capital

punishment for crimes committed by juveniles under 18. . . .

[O]nly seven countries other than the United States have executed juvenile offenders since 1990: Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of Congo, and China. Since then each of these countries has either abolished capital punishment for juveniles or made public disavowal of the practice. . . . In sum, it is fair to say that the United States now stands alone in a world that has turned its face against the juvenile death penalty.

Over time, from one generation to the next, the Constitution has come to earn the high respect and even, as Madison dared to hope, the veneration of the American people. . . . The document sets forth, and rests upon, innovative principles original to the American experience, such as federalism; a proven balance in political mechanisms through separation of powers; specific guarantees for the accused in criminal cases; and broad provisions to secure individual freedom and preserve human dignity. These doctrines and guarantees are central to the American experience and remain essential to our present-day self-definition and national identity. Not the least of the reasons we honor the Constitution, then, is because we know it to be our own. It does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.