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Juvenile Courts: The Gault Case--New Procedural Rights for Juveniles

William Knight Zewadski

JUVENILE COURTS: THE *GAULT* CASE – NEW PROCEDURAL RIGHTS FOR JUVENILES

Application of Gault, 87 S. Ct. 1428 (1967)

The parents of Gerald Francis Gault, a fifteen-year-old boy, appealed from a judgment of the Supreme Court of Arizona[1] affirming dismissal of a petition for habeas corpus. The petition had sought his release from the state industrial school where he had been committed as a juvenile delinquent. The United States Supreme Court reversed the state court judgment and HELD, that in juvenile court proceedings due process requirements of the fourteenth amendment apply in full force. The Court stated that advance notice sufficient for preparation of defense to particularized charges is constitutionally required for protection of juvenile offenders. In addition, where there is the possibility that the minor may be deprived of his liberty, he must be advised of his right to counsel (including assigned counsel if he is indigent), to remain silent, and to confront and cross-examine witnesses. Black, White, JJ., concurring separately, Harlan, J., concurring in part and dissenting in part, Stewart, J., dissenting.

In this, the first juvenile court case decided on constitutional grounds by the United States Supreme Court,[2] the Court strikes at the informal procedures and potential for arbitrariness of the juvenile court system[3] and suggests a radical transformation in its underlying philosophy and rationale. The founders of the juvenile court system were shocked by the spectacle of the law descending with equal severity on both juvenile and hardened criminal alike.[4] They envisioned a system of individualized justice for the youthful offender directed to the child's best interests and welfare, protection, and hopeful rehabilitation, rather than to punishment according to his crime or for social retribution.[5] The juvenile was seen to have a right to care and protection that, if not furnished by his parents or guardians, would be supplied by the enlightened system of juvenile courts acting *parens patriae* and not as prosecutor or judge.[6]

On the basis of these worthy intentions, juvenile courts sought to bring the rehabilitative idea of criminal justice into full fruition for the juvenile offender. Ostensibly, great care was taken to treat the proceedings as "civil, not criminal"[7] and every aspect of the system sought to remove criminal over-

1. Application of Gault, 99 Ariz. 181, 407 P.2d 760 (1965).

2. The one other juvenile court decision handed down earlier by the Court rested on statutory grounds. Kent v. United States, 383 U.S. 541 (1966).

3. 87 S. Ct. at 1439.

4. *Id.* at 1437.

5. *See id.* at 1437-39; Commonwealth v. Fisher, 213 Pa. 48, 62 A. 198 (1905); Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 548 (1957); Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM L. REV. 281 (1967).

6. *E.g., In re* Holmes, 379 Pa. 599, 603, 109 A.2d 523, 525 (1954), *cert. denied*, 348 U.S. 973 (1955); FLA. STAT. §39.20 (1965).

7. *See, e.g., In re* T.W.P., 184 So. 2d 507 (3d D.C.A.), *cert. denied*, 188 So. 2d 813, *appeal dismissed*, 192 So. 2d 482 (Fla. 1966) (holding right to counsel not required in

tones and social stigma.[8] There was no "arrest," only detention or custody;[9] no "conviction," only an adjudication of delinquency or dependency.[10] No criminal record was established in a delinquency proceeding,[11] and statutes provided that no civil disabilities would attach.[12] Concomitant with these noble purposes went the notion that they would be best secured in a totally informal atmosphere,[13] uncluttered by technicalities, procedural rigidities, and adversary contentions.[14] As one writer has observed:[15]

> Procedural formalities which prevailed in the criminal courts — where the state's position was basically antithetical to the interests of the suspected criminal — were thought inappropriate in the new institution, which was intended to cure, rather than to restrain and deter. Instead, the juvenile court's procedures were fashioned so as to accord the judge the greatest possible opportunity to exercise a quasi-parental influence over the impressionable child.

The procedural informality was variously justified on the grounds that the proceeding was merely a "civil inquiry,"[16] "not a trial,"[17] a "civil action,"[18] an "equity action,"[19] a "summary character,"[20] an adjudication of "status,"[21] much like a "guardianship proceeding,"[22] a "special statutory proceeding,"[23]

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juvenile courts).

8. *E.g.*, Fagerstrom v. United States, 311 F.2d 717 (8th Cir. 1963); People v. Dotson, 46 Cal. 2d 891, 299 P.2d 875 (1956); *In re* Holmes, 379 Pa. 599, 604, 109 A.2d 523, 525 (1954), *cert. denied*, 348 U.S. 973 (1955). *See also* Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547, 554 (1957); Comment, *Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal*, 114 U. PA. L. REV. 1171, 1176 (1966).

9. *E.g.*, 1951-1952 FLA. ATT'Y GEN. BIENNIAL REP. 65.

10. *E.g.*, FLA. STAT. §39.10 (1965).

11. *E.g.*, Thomas v. United States, 121 F.2d 905, 909 (D.C. Cir. 1941); FLA. STAT. §§39.12 (2), (3), (4), (6) (1965).

12. *E.g.*, FLA. STAT. §39.10 (1965).

13. *E.g.*, Noeling v. State, 87 So. 2d 593, 596 (Fla. 1956); Comment, *Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal*, 114 U. PA. L. REV. 1171, 1184-85 (1966).

14. *E.g.*, *In re* Lewis, 51 Wash. 193, 316 P.2d 907 (1957); Shears, *Legal Problems Peculiar to Children's Courts*, 48 A.B.A.J. 719, 720 (1962).

15. Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM. L. REV. 281 (1967).

16. *E.g.*, Scire v. Mecum, 19 Conn. Supp. 373, 114 A.2d 385 (Super. Ct. 1955); *In re* Holmes, 379 Pa. 599, 603, 109 A.2d 523, 525 (1954), *cert. denied*, 348 U.S. 973 (1955).

17. *E.g.*, Commonwealth v. Fisher, 213 Pa. 48, 62 A. 198 (1905).

18. *E.g.*, *In re* T.W.P., 184 So. 2d 507 (3d D.C.A.), *cert. denied*, 188 So. 2d 813, *appeal dismissed*, 192 So. 2d 482 (Fla. 1966).

19. *E.g.*, *In re* Whiteshield, 124 N.W.2d 694 (N.D. 1963). *See also* FLA. STAT. §39.09 (2) (1965); Patterson, *Delinquent and Dependent Children*, FLORIDA FAMILY LAW 545, 549 (Fla. Bar Continuing Legal Educ. Practice Manual No. 7, 1967).

20. Shupe v. Bell, 127 Ind. App. 292, 141 N.E.2d 351 (1957).

21. *E.g.*, United States v. Hoston, 353 F.2d 723 (7th Cir. 1965); Kautter v. Reid, 183 F. Supp. 352 (D.D.C. 1960); White v. Reid, 126 F. Supp. 867 (D.D.C. 1954).

22. *E.g.*, *In re* Bacon, 240 Cal. App. 2d 34, 49 Cal. Rptr. 322 (1966); *In re* Schubert, 153 Cal. App. 2d 138, 313 P.2d 968 (1957); *In re* Santillanes, 47 N.M. 140, 138 P.2d 503 (1943).

23. *E.g.*, *In re* Hans, 174 Neb. 612, 119 N.W.2d 72 (1963).

sui generis,[24] or at the very worst, a "quasi-criminal" action.[25] Typically, in the case of *In re Holmes*, it was asserted "since . . . Juvenile Courts *are not criminal courts* the constitutional rights granted to persons accused of *crime* are not applicable to children brought before them . . . ."[26] On this "non-criminal" rationale the whole panoply of state and federal constitutional and statutory protections given to the accused adult were, at one time or another, denied to juveniles.[27]

In this case the Supreme Court recognized, as it did in *Kent v. United States*,[28] that the rationalizations of *parens patriae* and "civil, not criminal" have not necessarily afforded children the treatment contemplated by the founders of the juvenile court. These rationalizations are the foundation for the premise that constitutional and statutory protections do not apply. Mr. Justice Fortas, speaking for the Court, observed in *Kent*:[29]

> While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults. . . . There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children.

In the present case, again speaking for the majority, he added: "Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."[30] Accordingly, the Court implicitly abandoned the unsatisfactory "civil, not criminal" rubric.[31] It took cognizance of the fact that the delinquency proceeding had failed to live up to the hopes of its conception,[32] that an adjudication of delinquency is in fact punishment, that there is a stigma attached to being a delinquent,[33] and that commitment to a juvenile home or

24. *E.g., In re* Diaz, 211 La. 1015, 31 So. 2d 195 (1947); Ketcham, *Legal Renaissance in the Juvenile Court*, 60 NW. U.L. REV. 585, 591 (1965).

25. *E.g., In re* Owen, 170 La. 255, 127 So. 619 (1930); Monk v. State, 238 Miss. 658, 116 So. 2d 810 (1960).

26. *In re* Holmes, 379 Pa. 599, 605, 109 A.2d 523, 525 (1954), *cert. denied*, 348 U.S. 973 (1955).

27. For a discussion of the various specific rights that have been denied juveniles, *see* Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORNELL L.Q. 387 (1961); Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957); Note, *Juvenile Delinquents: The Police State Courts, and Individualized Justice*, 79 HARV. L. REV. 775 (1966); Comment, *Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal*, 114 U. PA. L. REV. 1171 (1966).

28. 383 U.S. 541 (1966).

29. *Id.* at 555-56.

30. 87 S. Ct. at 1438-39.

31. "So wide a gulf between the State's treatment of the adult and of the child requires a bridge sturdier than mere verbiage, and reasons more persuasive than cliché can provide." *Id.* at 1445.

32. *Id.* at 1443; *id.* at 1461 (Black, J. concurring).

33. *Id.* at 1441-42: "It is disconcerting, however, that this term [delinquent] has come

industrial school is indeed incarceration.[34] The Court further noted the difficulty arising when a state, supposedly charged with the responsibilities of a protective parent, is forced to become accuser, prosecutor, and judge when the protection of society becomes a paramount consideration to the child's individual needs.[35] In discarding the rationalizations formerly used to deny constitutional protections, the Court affirmed that a child is a citizen possessing equal rights,[36] among which are implied the rights "*not* to be a ward of the State, *not* to be committed to a reformatory, *not* to be deprived of his liberty, if he is innocent,"[37] and the right of his parents to his love and companionship.[38]

The precise nature of the new rationale on which the Court extended to juveniles the rights of notice, counsel, protection against self-incrimination, confrontation, and cross-examination is of crucial importance, for the rationale is essential to whatever other rights they may have extended to them besides these. It is submitted that the majority opinion laid the foundation for eventual extension of *all* criminal protections. In a separate opinion, Mr. Justice Harlan avoids any categorization of the proceedings as either civil or criminal, but would extend whatever protections are required by fundamental fairness and due process under the circumstances.[39] On the other hand, Mr. Justice Black makes it clear that in his view the specific protections granted to all criminal trials for adults should be equally available to minors under the dictates of the fifth and sixth amendments.[40] The majority

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to involve only slightly less stigma than the term 'criminal' applied to adults." *See In re* Contreras, 109 Cal. App. 2d 787, 241 P.2d 631 (1952); *In re* Holmes, 379 Pa. 599, 612, 109 A.2d 523, 529 (1954) (Musmanno, J. dissenting), *cert. denied,* 348 U.S. 973 (1955); Jones v. Commonwealth, 185 Va. 335, 38 S.E.2d 444 (1946).

34. 87 S. Ct. at 1443: "The fact of the matter is that, however euphemistic the title, a 'receiving home' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time." *See id.* at 1448, 1455. *See also* Note, *Rights and Rehabilitation in the Juvenile Courts,* 67 COLUM. L. REV. 281, 320-21 (1967).

35. 87 S. Ct. at 1448.

36. Concurring, Mr. Justice Black observed that the failure to grant the juvenile defendant all of the same constitutional safeguards as an adult "would be a plain denial of equal protection of the law — an invidious discrimination — to hold that others subject to heavier punishments could, because they are children, be denied these constitutional safeguards." *Id.* at 1461. Gault was faced with a possible six-year sentence for an offense that carries a maximum penalty of two months and a fine of $5 to $50 for an adult. *Id.* at 1434. In Florida, with the maximum jurisdictional age set at seventeen, commitment to a reformatory could mean *at least* a four-year sentence (though once jurisdiction is obtained over the child, it continues until he is twenty-one); however, the average stay is reportedly ten months. Patterson, *Delinquent and Dependent Children,* FLORIDA FAMILY LAW 545, 578 (Fla. Bar Continuing Legal Educ. Practice Manual No. 7, 1967).

37. *In re* Holmes, 379 Pa. 599, 613, 109 A.2d 523, 529 (1954) (Musmanno, J. dissenting), *cert. denied,* 348 U.S. 973 (1955). Such a right may be claimed under the ninth amendment as well as under due process. *See* Griswold v. Connecticut, 381 U.S. 479 (1965). *See also In re* Custody of a Minor, 250 F.2d 419 (D.C. Cir. 1957) (a "natural right" of the child).

38. Antieau, *Constitutional Rights in Juvenile Courts,* 46 CORNELL L.Q. 387, 409, 415 (1961). This right, too, may be claimed under the *Griswold* doctrine, note 37 *supra.*

39. 87 S. Ct. at 1463-67 (Harlan, J. concurring in part and dissenting in part). *See* Pee v. United States, 274 F.2d 556 (D.C. Cir. 1959).

40. 87 S. Ct. at 1461-62 (Black, J. concurring).

opinion is less clear as to the basis for its decision. The requirement of notice, "adequate in a civil or criminal proceeding,"[41] is based solely on due process grounds. The majority's right-to-counsel discussion focuses on the state's role as prosecutor in a delinquency hearing,[42] the severity of the possible punishment, and the practical need of an attorney to assure due process of law.[43] Here there is an implicit recognition of the essentially criminal nature of a delinquency adjudication. The analysis of the cross-examination and confrontation protections mentions the "formidable consequences"[44] of the hearing, but it seems to be grounded on due process and "rules applicable to civil cases,"[45] rather than on Black's Bill of Rights source. In the area of self-incrimination the Court comes closest to extending constitutional protections on the theory that the proceedings are "criminal." The criminal case of *Miranda v. Arizona*[46] is used as the starting point of the discussion,[47] and, in spite of some mention that the fifth amendment protection is applicable to both civil and criminal cases,[48] the Court explicitly states:[49]

> [J]uvenile proceedings to determine "delinquency," which may lead to commitment to a state institution, must be regarded as "criminal" for purposes of the privilege against self-incrimination. To hold otherwise would be to disregard substance because of the feeble enticement of the "civil" label-of-convenience which has been attached to juvenile proceedings.

Whether it is called civil or criminal, a juvenile proceeding may lead to commitment to a reform school or may lead to prosecution in adult criminal courts.[50]

In extending these new protections to juveniles the Court dealt only with the central adjudication proceeding that may find the youth a delinquent. It expressly did not consider the "intake" or questioning period before the hearing, nor did it touch on the often separate disposition hearing following a finding of delinquency. The majority's reluctance to extend all of the constitutional and statutory protections of a criminal trial immediately to the heretofore informal adjudication hearing by denominating the proceedings "criminal" is understandable from a practical standpoint. But, to be both constitutionally grounded and logically entire, an approach to the problem must spring from a coherent, conceptual foundation instead of, albeit impressive, statistical and sociological evidence. Why certain rights are here deemed

41. *Id.* at 1446-47.
42. *Id.* at 1449 n.65, 1450.
43. *Id.* at 1448.
44. *Id.* at 1458-59.
45. *Id.* at 1459.
46. 384 U.S. 436 (1966).
47. 87 S. Ct. at 1452.
48. *Id.* at 1454-55, text accompanying notes 79 and 85.
49. *Id.* at 1455. The "civil, not criminal" designation has been widely criticized. For example, it has been called "a legal fiction, presenting a challenge to credulity and doing violence to reason." *In re* Contreras, 109 Cal. App. 2d 787, 789, 241 P.2d 631, 633 (1952); *see* Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORNELL L.Q. 387, 388-89 (1961).
50. 87 S. Ct. at 1456.

essential under the dictates of due process and why others, equally raised by the facts in the case, were not required is unclear.[51] The difficulties presented by the "civil, not criminal" distinction suggest a further reformulation of the juvenile court's philosophy and a *complete* rejection of the premise that an adjudication of delinquency is not criminal. This approach takes into account the potential deprivation of liberty until the child reaches twenty-one, the very real stigma of being a "delinquent," the need for reliable factfinding (including criminal rules of evidence), and the inadequacies of present methods and facilities for child treatment. Once it is recognized that the hearing is criminal in essence, then " 'all of the procedural safeguards of the criminal law' "[52] should become available.

The wholesale application of all criminal guaranties and protections, however, should be mitigated, consistently with due process in the juvenile court context, by *balancing* them with the welfare of the child and the public interest. That is, the constitutional demands of adult procedure should be evaluated in light of the state's parental interest in the child. Some of these protections should be supplanted, where more progressive means are devised to benefit the youth,[53] so long as his affirmative rights are not denied under the guise of being "for his own good." As a result, all of the constitutional and statutory rights would become available to the child, but they would be amplified in his best interest and not necessarily transplanted intact from criminal procedure. The flexibility permitted by such balancing would allow experimentation and development in court procedures.

In other areas of the juvenile court's jurisdiction — the intake area, the adjustment procedures where the child is helped as a "person in need of supervision"[54] without being found delinquent, the dependent and neglected child, the separate disposition hearing of the child already adjudged a delinquent — unconstitutional deprivation of liberty is not threatened to the same extent as in the adjudication hearing. Such areas could, therefore, retain their paternal and individualized methodology. For example, the right to bail guaranteed to the adult defendant need not be available to the juvenile since a minor is generally released without bail as soon as possible to the custody of his parents, and adequate statutory appellate procedures for release from wrongful detention usually exist, especially habeas corpus.[55]

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51. Mr. Justice Harlan mentions the majority's insistence that a juvenile court proceeding need not meet "all of the requirements of a criminal trial." 87 S. Ct. at 1468 (concurring in part and dissenting in part). Likewise, he notes that the majority does not explicitly say such a proceeding is "essentially criminal." *Id.* The Court refused to overstep the immediate questions raised by the case in Kent v. United States, 383 U.S. 541 (1966), and similarly refuses here. 87 S. Ct. at 1436.

52. 87 S. Ct. at 1456 n.88. *See In re* Holmes, 379 Pa. 599, 629, 109 A.2d 523, 537 (1954) (Musmanno, J. dissenting), *cert. denied*, 348 U.S. 973 (1955); Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM. L. REV. 281 (1967).

53. *E.g.*, *In re* Poff, 135 F. Supp. 224, 225 (D.C. Cir. 1955).

54. See Paulsen, *Juvenile Courts, Family Courts and the Poor Man*, 54 CALIF. L. REV. 694, 709 (1966).

55. The Florida procedure is set out in Patterson, *Delinquent and Dependent Children*, FLORIDA FAMILY LAW 545, 555, 570, 572-73 (Fla. Bar Continuing Legal Educ. Practice Manual No. 7, 1967). Although the child is usually released immediately to his parents, in some

The Supreme Court's extension of these procedural protections to juveniles in a delinquency hearing will not eviscerate the distinctive nature and purpose of the juvenile courts. Hearings may become more like adversary trials, replete with technical objections, but it is submitted that such changes, impelled by the Constitution, will nevertheless lend greater effectiveness to the court. A new aura of fairness and accountability will pervade the whole proceeding.[56] The juvenile, instead of becoming resentful before a bewildering and challengeless tribunal, should have his respect for the law deepened. He should feel that both his counsel and the court are working both for his benefit and for justice according to due process — that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."[57] The child's rights as an individual will have been affirmed and the care and understanding of an enlightened social policy implemented by the juvenile court.

WILLIAM KNIGHT ZEWADSKI

jurisdictions he is held during the preparation of the social history, which may take two weeks.

56. REPORT OF THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 85 (1967); Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORNELL L.Q. 387, 392 (1961); Ketcham, *Legal Renaissance in the Juvenile Court*, 60 NW. U.L. REV. 585, 595-96 (1965); Comment, *Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal*, 114 U. PA. L. REV. 1171, 1217 (1966).

57. Application of Gault, 87 S. Ct. 1428, 1436 (1967).