CHAPTER 1

History of the Rights of Minors

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“The policy of the juvenile law was to hide youthful errors from full gaze of the public and bury them in the graveyard of forgotten past.”
—State v. Guerrero (1942)

1 State v. Guerrero, 58 Ariz. 421, 120 P.2d 798 (1942).
I. INTRODUCTION

A brief history and comment on the creation of the first juvenile court in Illinois is set forth below. Suffice it to say that, since 1899, the wheels of justice regarding juveniles have turned slowly. However, the reformers and child savers of the nineteenth and twentieth centuries led to judicial recognition that minors are individuals, protected by the Constitution and the Bill of Rights. Almost seven decades elapsed between the codification of the first Juvenile Court Act in Illinois in 1899 and the Supreme Court decision in the *Gault* case in 1967 (described in Section II.A).

The twentieth century witnessed cases dealing with juveniles and the consequences of being adjudicated delinquent. Transfer to adult court, preadjudication detention, and capital punishment for minors have all been considered by the Supreme Court, with rulings applicable today. Civil litigation has led to decisions affecting minors in school and at home, prayer at school, corporal punishment, and patriotism (flag salute). A parent’s duty to educate his or her child and make decisions regarding religious upbringing have passed constitutional muster. All of these issues have been subjected to the scrutiny of law reviews, some of which are presented herein.

The nation’s founders and the early Juvenile Court Act could not foresee a digital age where communication is instantaneous and consequences far reaching. However, everyone lives with the benefits of Internet speech as well as the dark side of online bullying. Adults, teens, and children are involved with the cyberbullying phenomenon in one way or another: as bully, victim, family member, friend, or bystander. It is essential to understand the interplay between cyberbullying and family, civil, criminal, juvenile, and school laws. *Cyberbullying Law* captures the essence of this new area of practice and provides a foundation for practitioners, judges, litigants, and law students.

Illinois has the distinction of passing the country’s first juvenile court act with an emphasis on treatment and rehabilitation of minors. Before this, children were tried, convicted, and sentenced in the same manner as adults. The Illinois reformers emphasized consideration of the minor’s special circumstances and needs.

The Juvenile Court Act of 1899 established juvenile delinquency as a legal concept—one separate from an adult accused of the same offense. The Act created a separate court for alleged delinquents and neglected children. Proceedings were confidential and civil in nature. Procedures were put into place regarding

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2 1899 Illinois Laws 13; Within a few years, other states followed Illinois with their own juvenile justice system. See Colorado’s enactment in 1903, *Colorado Juvenile Court History: The First Hundred Years*, Laoise King. 32-Apr Co Law 63 (2003).
the adjudication of juvenile cases, and minors were kept separate from their adult counterparts in the system. The concept of probation was also introduced for adjudicated minors.

Sixty years before this Act, courts recognized that the state may act in the place of a parent. “The right of parental control is a natural, but not an unalienable one. . . . The object of (reform school) is reformation, by training its inmates to industry; by imbuing their minds with principles of morality and religion; by furnishing them with means to earn a living; and, above all, by separating them from the corrupting influence of improper associates. To this end, may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the parens patriae, or common guardian of the community?”

The Juvenile Court Act set the stage for the juvenile justice system in America. You will see in the cases that follow that judicial philosophies differ. For the most part, however, emphasis on the best interests of the child dominates. The trend has shifted in recent decades away from punishment, including transfer to adult court, back to rehabilitation of delinquent and incorrigible youth. An early reformer summed up the purpose of a juvenile court as “not to punish but to save.”

The options used today not only save the minor from self-destruction but protect the community, and include detention, intensive probation, commitment to a juvenile corrections institution, or as a last resort, waiver to adult court where appropriate.

II. CASES

A. Criminal Cases

1. Application of Gault (Arizona 1967)—Criminal Rights Apply to Juveniles

The turning point in juvenile justice came in 1967 when the due process rights granted adults the year before in *Miranda v. Arizona* were extended to juveniles. Gerald Gault was fifteen years old when he and a friend were arrested after a neighbor complained about receiving obscene phone calls. His parents were not notified, nor was Gault informed of any rights. He was taken before a judge and, without counsel or the presence of the alleged victim, was found guilty and sent to the state reform school.

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3  Ex Parte Crouse, 4 Wharton 9, 1839 WL 3700 (Pa. 1839).
5  Application of Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).
Gault applied the principles announced in Miranda to juveniles. It held that “Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.” Furthermore, “The greatest care must be taken to assure that the admission [of a juvenile] is voluntary, in the sense not only that it has not been coerced or suggested, but also that it is not the product of ignorance of rights or of adolescent fantasy, fright, or despair.” The Supreme Court reversed his conviction and sentence, ruling that his due process rights had been violated. The Court held that a juvenile in the adjudicatory stage of a delinquency hearing has a right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to the privilege against self-incrimination.

Before Gault’s case was heard by the Supreme Court, a lower appellate court commented on the purpose of juvenile courts: “Juvenile courts do not exist to punish children for their transgressions against society. The aim of the court is to provide individualized justice for children. Whatever the formulation, the purpose is to provide authoritative treatment for those who are no longer responding to the normal restraints the child should receive at the hands of his parents. The delinquent is the child of, rather than the enemy of society and their interests coincide.”

2. Kent v. United States\(^8\) (Washington, D.C. 1966)—Juveniles May Be Tried as Adults

Morris Kent lived in Washington, D.C. At age fourteen, he was placed on probation for burglary and theft. When he was sixteen, he was charged with additional property crimes and two counts of rape. The prosecution pursued a waiver to adult court based on his record. Without a hearing, the judge remanded Kent to adult court where he was convicted and sentenced to thirty to ninety years in prison.

On appeal, the Supreme Court examined the juvenile court system for the first time. It looked at due process and fair treatment of juveniles before transfer to adult court. The Court determined that waiving a minor into adult court was a “critically important” issue that required a thorough investigation and careful consideration. State laws spell out the factors courts need to consider, including the nature and seriousness of the crime, the juvenile’s age, maturity, lifestyle, criminal background, and mental state. Community safety is also a factor, as well as the likelihood of rehabilitation in the juvenile justice system.

Since none of these factors were considered in Kent’s case, the Court remanded it to the trial court to determine if waiver was appropriate. Eventually, the transfer

\(^7\) In re Gault, 99 Ariz. 181, 407 P.2d 760 (1965).

decision was reversed in the lower court and Kent was hospitalized under civil commitment laws.

“The State is parens patriae rather than prosecuting attorney and judge. But the admonition to function in a ‘parental’ relationship is not an invitation to procedural arbitrariness.”

—Kent, 383 U.S. at 554


Gregory Martin was arrested and charged with first-degree robbery, assault, and possession of a weapon. Allegedly, he and two others hit another kid on the head with a loaded gun and stole his jacket and shoes. This happened close to midnight and Martin had possession of the gun when he was arrested. Under state law and because Martin was fourteen years old, this came under the jurisdiction of the Family Court.

The judge ordered Martin be detained pending further hearings. He was adjudicated delinquent of robbery and the weapons charge and was placed on two years’ probation. He had been detained for a total of fifteen days.

In upholding the constitutionality of pretrial detention for alleged delinquents, the Supreme Court attempted to strike a balance. It sought to respect the informality and flexibility that characterize juvenile proceedings, and yet ensure that such proceedings comply with the fundamental fairness demanded by the Due Process Clause. The Court held that preventive detention served a legitimate state objective and that the procedural safeguards provided (notice, a hearing, counsel, and a statement of reasons) satisfied due process requirements.

“We have stressed before that crime prevention is ‘a weighty social objective’ (citation omitted), and this interest persists undiluted in the juvenile context.”

—Schall, 467 U.S. at 264


Christopher Simmons was seventeen when he developed a plan to rob and kill someone. He talked two teen friends into joining him. The three boys met late one night, but one left before the others proceeded to the victim’s home. They broke in, tied the victim up, and took her to a nearby park. After placing a towel

over her head and wrapping it in duct tape, they threw her off a bridge where she drowned in the water below.

Simmons was arrested at school the next day and confessed to the murder. He was tried as an adult, convicted, and sentenced to death. He appealed seeking protection under the Eighth Amendment’s prohibition against cruel and unusual punishment.

The Court found that historically the law recognized that children and adults have different rights and responsibilities. The Court considered adult versus juvenile behavior and said that less experience, education, and maturity make teenagers less able to evaluate the consequences of their conduct. “The character of a juvenile is not as well formed as that of an adult” and their crimes are not as morally unacceptable as those of adults.

The Court concluded that when a juvenile commits a heinous crime, the state can deprive the juvenile of basic liberties but cannot extinguish his or her life and potential to obtain a mature understanding of his or her own humanity. “The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death penalty eligibility ought to rest,” wrote the Court.

“[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.” This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.

—Roper, 543 U.S. at 569

B. Civil Cases

1. Meyer v. Nebraska11 (1923)—The Right and Duty of Parents to Educate Their Children

Ten-year-old Raymond Parpart attended Zion Parochial School in Nebraska. His teacher, Robert T. Meyer, taught a Bible study class for a half hour each day. The class was taught in German, the native language of most of the community. Raymond spoke English as a first language. Although students were not required to attend Meyer’s class, it was full. The purpose of the class was to teach students German and familiarize them with Bible stories.

A 1919 Nebraska law forbade teaching anyone in a foreign language, unless that person had finished eighth grade. The law was intended to encourage people

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to speak in the English language, so it would become the mother tongue of the state of Nebraska. Raymond’s parents, however, wanted their son to learn a second language while he was young.

Mr. Meyer was charged with breaking the law. He was found guilty and sentenced to a fine or thirty days in jail. He appealed the conviction and the U.S. Supreme Court accepted the case. They ruled in Meyer’s favor and stated that parents have a say in their children’s education. A state law that interferes with such a right is invalid.

The Court held that “Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life . . . The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue.” The Court also spoke of a student’s right to acquire knowledge, a teacher’s right to teach, and the parents’ power to control their children’s education.

The conviction and penalty were vacated by the Court.

“It is well known that proficiency in a foreign language seldom comes to one not instructed at an early age, and experience shows that this is not injurious to the health, morals or understanding of the ordinary child.”

—Meyer, 262 U.S. at 403

2. *West Virginia State Board of Education v. Barnette*¹² (1943)—A Mandatory Flag Salute in Public Schools Violates the First Amendment

In 1942, The West Virginia Board of Education adopted a resolution ordering that the salute to the flag become a regular part of the program of activities in public schools. All teachers and students were required to participate in the salute honoring the nation represented by the flag. Refusal to salute the flag constituted insubordination, which could result in expulsion. Readmission was contingent upon compliance.

Walter Barnette and others filed suit against the Board of Education seeking an injunction to restrain enforcement of the regulation. A federal district court enjoined the enforcement of the regulation and the Supreme Court affirmed. The Court commented that the freedom to differ is not limited, under the Constitution, to things that do not matter much, but the test of its substance is the right to differ as to things which touch the heart of the existing order.

The Court went on to say “If there is any fixed star in our constitutional con-
stellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.”

“We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.”

—Barnette, 319 U.S. at 642

3. *Prince v. Massachusetts*\(^\text{13}\) (1944)—Parental Authority Regarding Religious Upbringing

Sarah Prince was convicted of violating the state’s child labor laws. She claimed protection under the First Amendment’s freedom of religion guaranty. Prince was the aunt and guardian of nine-year-old Betty Simmons. As a practicing Jehovah’s Witness, she took Betty with her to a street corner where she and the child engaged “in the preaching work” of selling copies of the *Watch Tower*.

The court recognized the challenge of balancing parental rights against the state’s power to regulate certain activities. This case pitted child labor laws against religious freedom of parents. “The state has a wide range of power for limiting parental freedom and authority in things affecting the child’s welfare; and that this includes, to some extent, matters of conscious and religious conviction.” (321 U.S. at 167) Yet the court further stated that, “It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” (321 U.S. at 166)

The Court reasoned that “The state’s authority over children’s activities is broader than over like actions of adults. This is peculiarly true of public activities and in matters of employment. A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers, within a broad range of selection. Among evils most appropriate for such action are the crippling effects of child employment, more especially in public places, and the possible harms arising from other activities subject to all the diverse influences of the street.” (321 U.S. at 168)

\(^\text{13}\) Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944).
The conviction and sentence were affirmed, the Court concluding as follows: “We think that with reference to the public proclaiming of religion, upon the streets and in other similar public places, the power of the state to control the conduct of children reaches beyond the scope of its authority over adults, as is true in the case of other freedoms, and the rightful boundary of its power has not been crossed in this case.” (321 U.S. at 170)

The oft-quoted comment about parents being martyrs stems from this case. It reads:

“Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.”

—Prince, 321 U.S. at 170

4. Engel v. Vitale—Required Prayer in Public Schools Violates the Establishment Clause

The Board of Education of a school district in New York, acting in its official capacity under state law, directed the School District’s principal to cause the following prayer, composed by state officials, to be said aloud by each class in the presence of a teacher at the beginning of each school day: “Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.”

“It is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America.” (370 U.S. at 425)

Shortly after the practice of reciting the prayer was adopted by the school district, the parents of ten pupils brought suit insisting that use of this official prayer in the public schools was contrary to the beliefs, religions, or religious practices of both themselves and their children. The parents challenged the constitutionality of both the state law authorizing the school district to direct the use of prayer in public schools and the school district’s regulation ordering the recitation of this particular prayer on the ground that these actions of official governmental agencies violate that part of the First Amendment which commands that “Congress shall make no law respecting an establishment of religion.”

The parents prevailed with the Court finding the daily prayer a “religious activity,” wholly inconsistent with the Establishment Clause, even though students were not required to participate.

“The Establishment Clause thus stands as an expression of principle on the part of the Founders of our Constitution that religion is too personal, too sacred, too holy, to permit its ‘unhallowed perversion’ by a civil magistrate.”

—370 U.S. at 431

5. Ingraham v. Wright15 (Florida 1977)—Corporal Punishment in Public Schools Does Not Violate the Eighth Amendment

James Ingraham was fourteen years old and in the eighth grade in Florida. While in the school auditorium with his friends, a teacher told him to leave since he was being disruptive. His slow response caused him to be taken to the principal’s office where he would be given five swats with a paddle. He refused to be paddled claiming he did nothing wrong. He was held down and given twenty swats. He suffered some bruising and required medical attention. He missed the next ten days of school.

James and his mother sued the principal and other school officials asserting a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment. They also claimed a violation of his due process rights since the school did not conduct a hearing or notify him of the twenty swats before being disciplined.

The Supreme Court reviewed the history of the Eighth Amendment and determined it did not apply to discipline in public schools. The Court ruled that the Eighth Amendment was designed to protect convicted criminals only. They refused to extend its protection to situations beyond the criminal process. “The use of corporal punishment in this country as a means of disciplining school children dates back to the colonial period.” (430 U.S. at 660)

The Court took the opportunity to comment on the administration of physical discipline in the schools. They cautioned restraint and recommended that school officials consider the following before resorting to paddling or the like: the seriousness of the offense, the student’s attitude and past behavior, the nature and severity of the punishment, the age and physical condition of the student, and the availability of a less severe but equally effective means of discipline.

The Court rejected James’ due process argument since public schools are open to the community and students are sufficiently protected against abuse. They passed on ordering a full hearing before disciplining a student. However, they agreed that due process should apply to suspensions and expulsions. See Goss v. Lopez (1975) in Chapter 2.

“Because it is rooted in history, the child’s liberty interest in avoiding corporal punishment while in the care of public school

authorities is subject to historical limitations. . . . Thus, there could be no recovery against a teacher who gave only ‘moderate correction’ to a child. To the extent that the force used was reasonable in light of its purpose, it was not wrongful, but rather ‘justifiable or lawful.’”

—Ingraham, 430 U.S. at 675

III. LAW REVIEWS AND OTHER RESOURCES

Judges’ Role in Correcting the Overrepresentation of Minority Youth in the Juvenile Justice System, Megan Mason. 28 Georgetown J. Legal Ethics 719 (Summer 2015).
The Juvenile Court at 100, Steven A. Drizin. 83 Judicature 8 (July/August 1999).