Youth, Rights, and the Constitution
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Does Corporate Accounting Baffle You?

If you are like the many people who never “got” Wall Street—much less corporate-accounting law—see page 28. Jim Landman’s instructional aid will help your students (and maybe you!) learn about the world of corporate finance.
The tension between liberty and order is not new. Every society has had to decide how it wants to balance freedom with the need for protecting its residents. Neither anarchy nor a police-state is desirable. The constant issue is how to strike a balance.

Sources of U.S. Liberty

Without a doubt, the most important source of liberty in the United States is the U.S. Constitution and particularly the Bill of Rights contained within it. As drafted in Philadelphia in 1787 and ratified by the states, the Constitution itself has few provisions about individual rights. The framers of the Constitution thought that they could adequately protect liberty by designing a government with limited powers and with checks and balances.

But in ratifying the new Constitution, several states insisted on adding a Bill of Rights. In the first Congress, James Madison, then a member of the House of Representatives, drafted 17 amendments; 12 were ratified by both the House and the Senate, and 10 were approved by the states.

The protections of liberty in the Bill of Rights and the Constitution apply only to the government. Private institutions do not have to comply with these provisions. For example, a student at a public school is protected by the rights in the Constitution, but a student at a private school has no such protection whatsoever; the Constitution and the Bill of Rights just don’t apply. A government employee has the protections of the Bill of Rights, but an employee of a private company is not covered by these safeguards.

Bill of Rights. The provisions of liberties in the Bill of Rights can be divided into several categories. First, many are concerned with protecting the rights of those suspected of crime. The framers of the Constitution were very distrustful of the police and prosecutors. Many aspects of the Bill of Rights are about ensuring a check on law enforcement. For example, the Fourth Amendment states that usually before a person can be searched or arrested by the police, a judge must grant a warrant and there must be probable cause—good reason to believe that the person committed a crime or has evidence of a crime. According to the Fifth Amendment, no person can be forced to incriminate himself or herself. The Fifth Amendment also states that before a person can be tried for a crime, a “grand jury” composed of fellow citizens must indict the individual and determine that there is sufficient
evidence to warrant a trial. The Sixth Amendment states that before a person can be convicted of a crime, there must be a speedy, public trial, with a right to confront one’s accusers, in front of a jury of one’s peers. The Eighth Amendment ensures that there not be cruel or unusual punishments.

Second, several provisions of the Bill of Rights seek to ensure that the government is fair in dealing with its citizens. The Fifth Amendment states that the U.S. government cannot deny any person life, liberty, or property without due process of law. (Also added to the Constitution after the Civil War, the Fourteenth Amendment says that state governments cannot deprive a person of life, liberty, or property without due process, and also that no state can deny a person equal protection of the laws.) The Fifth Amendment also requires the U.S. government to pay a person “just compensation” if it takes away the individual’s property. The Seventh Amendment creates a right to a jury trial in civil cases, which are usually lawsuits involving money or property.

Third, especially in the First Amendment, many provisions focus on freedom of conscience. The First Amendment begins by prohibiting the government from enacting any law respecting the establishment of religion and by ensuring the free exercise of religion. The framers of the Constitution were very much concerned for the federal government not to be aligned with any particular religion and indeed for it to be a secular government. The First Amendment, of course, also protects freedom of speech, freedom of the press, freedom of assembly, and the right to petition the government for a redress of grievances. Some believe that the Second Amendment protects an aspect of freedom of conscience in according a right to bear arms. But others believe that this provision was intended only to ensure that Congress did not regulate arms in a manner that kept states from adequately protecting themselves.

Fourth, two amendments in the Bill of Rights do not enumerate freedoms at all. The Ninth Amendment is a reminder that the enumeration of some rights does not deny the existence of other rights that are not listed. The framers were very concerned that they could never list all rights and that the protection of only some rights might be seen as denying others. The Tenth Amendment also is a reminder that the U.S. government has limited powers and can act only if there is authorization in the Constitution, but state and local governments can act unless the Constitution prohibits such conduct.

Other Amendments. The Bill of Rights itself does not mention a right to vote; however, many subsequent amendments have been concerned with this precious freedom. The Fifteenth Amendment states that the right to vote shall not be denied on account of race. The Nineteenth Amendment accords the right to vote to women. (Amazingly, this was not enacted until 1920.) The Twenty-Sixth Amendment accords the right to vote to citizens 18 and over.

Judicial Interpretation. Many rights have developed as a result of judicial interpretation of the Constitution. Most important, the Supreme Court has held that there is constitutional protection for fundamental rights of privacy and autonomy, such as the right to marry, the right to custody of one’s children and to control their upbringing, the right to procreate, the right to purchase and use contraceptives, and the right to abortion.

State Constitutions. In addition to the U.S. Constitution, there are other sources of liberty. Every state has its own state constitution, and these constitutions can provide more rights than the U.S. Constitution, though never less. For example, the Supreme Court held that there is no right to use privately owned property for speech purposes, such as protesting or distributing leaflets. But the California Supreme Court held that there is a right under the California state constitution to use shopping centers in that state for speech activities. This was deemed permissible because states can provide greater rights than the U.S. Constitution.

Statutes and Ordinances. Finally, federal and state statutes and ordinances provide important rights. For example, although the Constitution prohibits discrimination only by the government, many laws forbid private discrimination based on characteristics such as race or gender in employment, housing, restau-
rant or hotel services, and many other aspects of life.

**Balancing Liberty and Order**

Although the United States has provided more freedom to its residents for a longer time than any other nation in the world, it constantly struggles with how to balance liberty and order. How does it do this?

**Rights Generally Not Absolute.**

First, rights can be compromised if there are very important reasons for doing so. The First Amendment is the one constitutional provision that seems to be written in absolute language: it says that Congress shall make “no law” abridging the free exercise of religion or freedom of the speech or the press. But even this provision never has been deemed absolute. Almost a century ago, Justice Oliver Wendell Holmes explained that it surely does not protect a right to shout “Fire!” in a crowded theater. Thus, the Supreme Court has crafted an elaborate body of rules concerning when the government can regulate speech. For example, the court has ruled that there is no First Amendment protection for speech that incites violence, is obscene, or is false and injures the reputation of another.

However, the court is clear that fundamental rights can be infringed only if there is a compelling justification and there is no other way for the government to achieve its goals. The government, for instance, may discriminate on the basis of race or interfere with speech in election campaigns only if it can prove that the action is truly necessary to achieve vital need.

**Courts Create Balance.** Second, liberty and order are balanced by having courts enforce the Constitution. Often I have begun constitutional law classes by having my students read copies of the U.S. Constitution and the Stalin-era Soviet Constitution. They are often surprised to see that the latter has the far more elaborate and detailed statement of liberties. I also have students read descriptions of the horrible repression that occurred in the Soviet Union during this era. The key difference is that in the Soviet Union, no court had the power to strike down a government action. In the United States, the authority for judicial review of legislative and executive acts provides courts the power to protect individual rights.

Courts often must balance competing considerations, especially the desire for both liberty and order, in deciding particular cases. For example, in recent years, the Supreme Court has ruled that the government cannot set up roadblocks to check all cars for drugs, but it can stop cars if there is reasonable suspicion even when that comes from innocuous factors such as the type of car, its location, and the behavior of the driver.

**Some Groups’ Freedoms Limited.**

Third, some groups are accorded fewer freedoms as part of the desire for greater social order. Most obviously, prisoners are deprived of their liberty and most of their freedoms. Children have constitutional rights, but often these are different and fewer than liberties accorded to adults. For example, recently the Supreme Court upheld a school district’s policy of requiring random drug testing for any student who wants to participate in extracurricular activities. The court balanced the government’s desire to prevent drug use with the intrusion on privacy and allowed such testing.

**FOR DISCUSSION**

1. **What are the sources of Americans’ liberties?**
2. **How does the United States balance the freedoms of Americans with the need for order?**
For the most part, American lawmakers have had relatively clear images of childhood and adulthood, images that fit with our conventional notions. Several aspects of the legal regulation of childhood are based on the image that children are innocent creatures—dependent, vulnerable, and incapable of making competent decisions. When children cross the line to legal adulthood, they are assumed to be autonomous persons who are responsible for their conduct, entitled as citizens to legal rights and privileges, and no longer entitled to support or special protections.

This picture is deceptively simple. In fact, the law’s account of childhood is extremely complex. Much of the complexity can be traced ultimately to a single source—defining the boundary between childhood and adulthood. This boundary is drawn at different ages for different policy purposes.

The picture is complicated further by the fact that policy-makers have no clear image of adolescence. For many purposes, adolescents are described in legal rhetoric as though they were indistinguishable from young children. For others, teenagers are treated as fully mature adults, competent to make decisions, accountable for their choices, and entitled to no special accommodation.

Although lawmakers have occasionally recognized the distinctive transitional character of adolescence, more typically, this transitional stage is invisible, and adolescents are incorporated into the legal categories of childhood or adulthood. For example, for voting, military service, domicile, contracting, and entitlement to support there is a clearly defined age of majority (18 years of age). Age grading also occurs, such as when teenagers may drive when they are 16, but they may not drink until they are 21. In part, age grading can be explained on the basis that different functions require different levels of developmental maturity. However, it also reflects policy goals that vary in different contexts.

**Policy Concerns and Age Grading**

In general, the law’s approach of ignoring adolescence and treating adulthood and childhood as binary categories works well. It is efficient and simple and serves to promote important policy goals. The right to vote is an important symbol of full-fledged citizenship, and it has long been the defining marker of legal adulthood, with the age of majority linked to it. Like many other legal rights, it has been
withheld from minors because of crude assumptions about developmental maturity. Withholding this right from minors has generated little controversy, probably because the administrative cost of identifying mature minors “competent” to exercise their voting rights would be substantial and the cost of postponing the opportunity to exercise voting rights does not seem to be a great deprivation.

When the Twenty-sixth Amendment was enacted in 1971, lowering the voting age from 21 to 18, its passage resulted in the lowering of the age of majority for many purposes. One such change, in the area of child support, became quite problematic. Many courts interpreted the legal reform to require that non-custodial parents’ obligation to provide financial support for their minor children must end at age 18 because, by definition, recipients were no longer minors. The issue of when child support obligation should end continues to be debated, with some courts and legislatures authorizing the extension of parental child support obligation beyond 18 to provide financial support for college.

Medical treatment must be based on informed consent—otherwise, the treatment provider commits a battery on the patient. Because minors are presumed incompetent to give informed consent, parental consent is most often necessary. Developmental psychology evidence indicates that older minors are mature enough in their cognitive development to make competent medical decisions. Nonetheless, giving parents legal authority reduces uncertainty for medical service providers, who would otherwise need to assess the competence of their young patients. Exceptions are numerous and include the mature-minor doctrine, where legally valid consent can be obtained from an older competent minor for routine beneficial medical treatment or in emergencies. And many states have enacted minors-consent statutes, which treat minors as adults for the purpose of consenting to particular kinds of treatments (such as for sexually transmitted diseases, substance abuse, mental health problems, and birth control and pregnancy), at the same time benefitting them and reducing the social cost of their harmful behavior.

**Juvenile Justice Regulation**

In one context, the law’s approach of ignoring the developmental stage of adolescence has not worked well. Standard strategies of binary classification of children and adults, and of ignoring the developmental reality of adolescence, have impeded the creation of effective policies for juvenile justice regulation. Legal policy toward youth crime has undergone three periods of reform. The first began with the founding of the first juvenile court in Chicago in 1899. The Progressive reformers’ goal was to create a separate court and correctional system for young offenders that would focus on their welfare, rehabilitating rather than punishing. In the 1960s, a second wave of reform grew out of disillusionment over the perceived failure of rehabilitation as the basis of juvenile justice policy. After the U.S. Supreme Court introduced due process into delinquency proceedings in *In re Gault* (387 U.S. 1 [1967]), legislatures and law reformers struggled to introduce procedural protections and the principle of accountability without destroying the juvenile justice system’s unique character. The third period, led by modern conservative reformers, began in the 1990s, as policy-makers responded to public fear of a perceived dramatic increase in youth crime. This movement aims to subject young offenders who commit serious crimes to adult standards of punishment.

One approach to understanding the evolution of the juvenile justice system is in terms of the empirical account of adolescence that is embedded in the reform rhetoric used to shape and justify juvenile justice policy. Reformers of different periods have offered strikingly different images of young offenders and distinctive stories about their typical characteristics. The Progressive reformers described young offenders as innocent and vulnerable children, to be molded through rehabilitative interventions into productive adults. The post-Gault reformers of the 1970s and 1980s offered the more realistic view that young offenders were less culpable than adults because they lacked developmental experience and mature judgment, yet they were not blameless children. Modern reformers’ descriptions of young “superpredators” suggest that adolescent offenders are indistinguishable from adults.

One might describe the Progressive reformers as simply adopting the traditional approach to treating youths under the age of majority as legal children and thus ascribing to them the traits of innocence and vulnerability, while the modern reformers advocate shifting the boundary of childhood radically, thereby defining adolescents as adults. As we have seen, these moves are not unusual among policy-makers, although the contemporary “get-tough” advocates would count youngsters as adults at age 12 or less, when they are deemed children for virtually every other legal purpose. However, neither of these approaches works well as a basis for policy toward adolescent offenders. Simplistic dichotomous categories that ignore the developmental reality of adolescence fail as public policy because they undermine society’s interest in public protection (the flaw of the traditional court) or because they harm young offenders and diminish their prospects for productive adulthood (deficiencies
of contemporary policies). The legal response to juvenile crime presents what are perhaps unique challenges, in that successful policy must attend to adolescence as a distinct developmental stage between childhood and adulthood. Only the post-\textit{Gault} reformers adopted this approach.

The Progressive reformers’ romanticized descriptions of adolescents played an important role in reinforcing the idealistic premise that no conflict of interest pitted the state against the young offender and that the purpose of state intervention in delinquency cases, as in child welfare cases, was solely to promote the welfare of youngsters who came before the court. This was always a shaky premise, which ignored the fact that young offenders, unlike children whose parents provide inadequate care, cause social harm through their criminal conduct. On reflection, it seems clear that the failure to recognize the state’s inherent interest in protecting society in delinquency cases was a corrosive flaw in the rehabilitative model of juvenile justice. Moreover, acceptance of rehabilitation likely was always predicated on its effectiveness in reducing youth crime and protecting society. As the twentieth century progressed, the myth of the rehabilitative ideal was discredited, together with the image of the adolescent offender as an innocent child.

Responding to an increase in violent juvenile crime (particularly homicide) in the 1980s and 1990s, modern reformers advocate policies under which juveniles (at least those who commit serious crimes) are tried in adult courts and sentenced in adult prisons. The goals of modern criminal justice reform are public protection and punishment, and in service of these goals, reform rhetoric has obliterated any distinctions between youthful offenders and adults. These reformers appear to assume that there are no psychological differences between adolescent and adult offenders that are relevant to criminal responsibility.

Those who advocate treatment of juvenile offenders as adults do so primarily in pursuit of reducing the social harm of youth crime. In this regard, their reforms bear some similarity to minors-consent statutes. An obvious difference is that punitive juvenile justice reform makes no serious claim that young offenders themselves will benefit. Thus, the initiative to narrow the definition of childhood in the justice context is unique and seemingly inconsistent with the values and principles that generally shape the legal regulation of children.

Holding immature offenders to adult standards of criminal responsibility also challenges important principles that define the boundaries of criminal punishment. Under these circumstances, it is fair at a minimum to require substantial evidence that the reforms will produce the promised social benefits. In fact, even if the only goal of juvenile justice policy is to minimize the social cost of youth crime, punitive responses that treat young offenders as if they were adult criminals are unlikely to achieve that goal.

\textbf{Developmental Approach}

\textit{In re Gault} exposed the flawed foundations of the rehabilitative model of juvenile justice and shattered the myth that delinquency interventions were aimed at promoting the welfare of wayward but innocent children. In the 1970s and 1980s, the Juvenile Justice Standards Project and Twentieth-Century Fund task force on juvenile sentencing responded to \textit{Gault}'s challenge by proposing juvenile policies based on a realistic account of adolescence. However, they did not view adolescents as fully responsible adults. Rather, young offenders possessed sufficient capacity for understanding, reasoning, and moral judgment to be held accountable for their offenses (and indeed needed lessons in accountability), but they were psychologically less mature and therefore less blameworthy than adult offenders.

Several traits of adolescence were thought to mitigate the criminal culpability of young offenders. As compared to adults, minors are assumed to have less life experience, to be more impulsive, and to have less capacity for self-discipline. They also were deemed susceptible to peer pressure and concerned about peer approval, more inclined to engage in risk taking, and more likely to focus on immediate consequences. These traits were not seen as personality deficiencies in particular youths but as characteristics of adolescence itself, justifying a conclusion that young offenders should not be subject to adult standards of criminal responsibility. Moreover, these developmental traits contribute to a tendency to get involved in criminal activity during adolescence, and, predictably, many youths mature out of this tendency.

Thus, the post-\textit{Gault} reformers struggled with the challenge of creating a

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\textbf{FOR DISCUSSION}

1. \textit{What is the age of majority?} In what areas of the law has its precise application largely worked well? Where has its application worked poorly?

2. \textit{What is developmental maturity?} What harm results for young offenders and society when juvenile justice policies ignore it?
Legal Miseducation? The Bill of Rights and the School Curriculum

There is a disturbing disconnect between what schools claim to teach about the law and what most in fact teach.

by David Schimmel

A stated goal of the public schools is to teach students to become knowledgeable, active, and responsible supporters of our legal system and constitutional democracy. Unfortunately, many (perhaps most) do just the opposite through both their formal and informal curricula.

Through the formal curriculum, every student learns about our great constitutional liberties. But when nothing is taught about how the courts have applied the Bill of Rights to students in public schools and when students experience the law as a restriction on their freedom and as a source of punishment, it is not surprising that many become cynical and view constitutional rights as distant, theoretical, or irrelevant platitudes. Similarly, when the informal or “hidden” law curriculum (the way schools develop, interpret, and apply school rules) is taught in an authoritarian manner and seems to hypocritically contradict what students learn about constitutional rights in the classroom, they may feel victimized by school authorities and alienated toward law, and they are likely to become passive, nonvoting citizens.

Formal Curriculum

All students are taught about our individual rights as Americans. Every U.S. history text tells about our freedoms of religion, speech, and press, and due process, as well as a few historic Supreme Court cases. In addition, most civics and law-related education materials include more recent Supreme Court decisions that apply the Bill of Rights to adults.

The problem with this curriculum is threefold. First, teaching about great landmark cases such as Marbury v. Madison (1803), despite their historic significance, seems irrelevant to students. Second, the way most history texts teach about the First, Fourth, Fifth, and Fourteenth Amendments tends to be so broad, ambiguous, and unlimited as to seem unrealistic. Since students know that their freedoms are constantly being limited in schools, they may view constitutional rights more as rhetorical phrases than as anything relevant to their lives. Third, it is obvious that Supreme Court decisions protecting the rights of adults in their homes (e.g., the warrant requirement before a search) or in the courts (e.g., the due-process rights of the accused) don’t seem to apply to students. As a result, students often conclude (erroneously, but understandably) that the Bill of Rights does not protect them in the public schools or, if it does, that school authorities are constantly violating student rights.

“Students are often more motivated to learn history if taught backward—beginning with recent cases.”

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If society wants students to support the constitutional system, students must feel that the Bill of Rights protects their rights. They must understand why student rights differ from those of adults and why their freedoms must be limited when they conflict with the rights of others. One way this can be done is by teaching about the important Supreme Court decisions that apply the Bill of Rights to the public schools.

**Freedom of Religion.** Studying one of the school prayer cases, such as *Engel v. Vitale*, 370 U.S. 421 (1962), or the more recent graduation prayer case, *Lee v. Weisman*, 112 S.Ct. 2649 (1992), would explain how the establishment clause applies to public schools and why the wall of separation is higher in schools—because students are compelled to attend and because they are at a formative and impressionable age. Students would also learn that, as part of the government, public schools should be neutral toward religion—neither promoting nor undermining any group’s faith.

**Freedom of Expression.** Students should be taught about the Supreme Court cases that interpret this freedom in the public school context, including the landmark decision in *Tinker v. Des Moines*, 393 U.S. 503 (1968). This decision holds that the First Amendment does protect student freedom of expression but that students have more limited freedom than adults and that this freedom can be restricted if it causes substantial disruption or interferes with the rights of others.

**Due Process.** If students study the Supreme Court decision in *Goss v. Lopez*, 419 U.S. 565 (1975), they will understand that due process is not a fixed, rigid concept but varies according to the severity of the penalty. The more serious the possible penalty, the more formal the process that is due. Therefore, while students are entitled to extensive procedural rights before being expelled, the process due is much more limited and informal in cases of short suspension.

**Search and Seizure.** *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), would teach students that school officials must have “reasonable suspicion” before searching students, but that neither probable cause nor a warrant is required. If they studied *Board of Education v. Earls*, No. 01-332 (June 27, 2002), students also would learn why a majority of the justices believe that schools do not even violate the Fourth Amendment when they conduct random drug tests of students who participate in extracurricular activities.

**Equal Protection.** Students should be taught about the more complex and misunderstood rulings on affirmative action, such as *University of California v. Bakke*, 438 U.S. 265 (1978), which holds quotas unconstitutional while permitting race to be considered as a “plus factor” in university admissions. Similarly, all history texts discuss women’s suffrage but give little if any attention to cases on peer sexual harassment (which is a problem in almost every secondary school) or to Title IX decisions that have had enormous impact on equal educational opportunities for women—especially in competitive sports.

Some educators fear that a focus on current Supreme Court cases will preclude an understanding of broad constitutional concepts and their historical development. On the contrary, Supreme Court decisions usually include a discussion of historical precedents and principles. In addition, students are often more motivated to learn history if taught backward—beginning with recent cases rather than starting with decisions in the distant past.

Another reason these cases are omitted is the fear that, if students knew about their constitutional rights, they would become irresponsible “schoolhouse lawyers”—abusing their rights, threatening lawsuits, and intimidating teachers. The opposite is true. If students, parents, and teachers learned about the Supreme Court decisions discussed above, they would understand the limits as well as the scope of student freedoms. As a result, there would be less confusion and misunderstanding about students’ rights and fewer uninformed threats and unfounded lawsuits.

**Informal Curriculum**

Educators, like parents, teach as much by what they practice as by what they preach. While schools “preach” about law through their formal history and government curriculum, they “practice” law (often unconsciously) through their informal law curriculum—that is, through the way in which they develop, interpret, and implement school rules. Most schools teach their rules in a way that unintentionally contradicts the goals of citizenship education, encourages students to subvert or ignore school rules, and violates the norms of good teaching. In fact, most school codes of conduct share several characteristics that tend to undermine their legitimacy:
Negative and Unexplained. Usually, school rules are framed as “thou shalt nots” and contain little or nothing about student rights. While the penalties and procedures for enforcing the rules are often clear, there are rarely any explanations for the many petty prohibitions.

Authoritarian and Legalistic. Rules that are handed down in a dictatorial manner and are not clearly related to safety or education are seen by many students as illegitimate.

Nonparticipatory and Perceived as Unfair. There is a contradiction in our citizenship education: all students are taught about democracy, but few are permitted to practice democratic skills in their schools. Although a few student representatives may be given an opportunity to comment on their school’s code of conduct, the vast majority are not invited to participate in the development or revision of school rules and therefore have no sense of ownership. While student codes usually include procedures for hearings before students are suspended, they rarely include procedures that allow students to challenge the fairness of specific rules or their inconsistent enforcement. The issue of fairness comes up at every grade level.

The characteristics of most codes of conduct outlined above lead to several negative consequences. First, when students don’t participate in making the rules and when they view them as arbitrary, punitive, or illegitimate, they (especially adolescents) may respond to those rules as challenges to be circumvented, ignored, or subverted. Second, if students don’t willingly submit, school rules must be enforced by coercion. Even if intimidation succeeds, this may constitute an educational defeat, since many of these students then become insolent, inattentive, insubordinate, negative about school, and disrespectful of authority.

Collaborative Rule-Making Alternative

Here are the characteristics of an alternative approach that is more likely to result in willing compliance with school rules and more positive attitudes toward law:

Educational and Reasoned. While school rules should be reviewed by legal counsel, they should be developed according to the norms of good teaching. Specifically, the rules should be taught as part of the curriculum using relevant examples and interactive methods that encourage questions and suggestions and assess student understanding.

Participatory. Giving students the opportunity to participate in the development of school codes gives them a sense of being owners rather than victims of the rules. It also is an important way to prepare them to become active, responsible citizens. As one social studies framework suggests, students can demonstrate their “understanding of the basic values of American constitutional democracy” and the ways citizens can participate by “taking part in rulemaking and cooperative decision making in their classrooms.”

Fair and Responsive. If students, teachers, and administrators could agree on more objective criteria for judging rules, it could change the nature of the discussion when a student asserts that a rule or its application “isn’t fair.” Some suggested criteria for judging whether a rule is fair are that it does not discriminate; it is relevant to educational goals; it is easy to understand; it is not vague, subjective, ambiguous, or arbitrary; it does not conflict with constitutional values; it is known to the students it affects; and it has reasonable educational consequences when broken.

Too often, the formal and informal law curricula are in unconscious conflict. If, however, schools teach the Bill of Rights as it applies to students in the classroom and practice these constitutional concepts in the way they develop and implement school rules, then the formal and informal law curricula will complement and reinforce one another. In such an educational environment, students are more likely to become the responsible supporters of the constitutional democracy that schools were intended to promote.

FOR DISCUSSION

1. How will teaching students about Supreme Court cases concerning the Bill of Rights as it applies to schools help them understand their rights and limitations? Give examples.

2. How do school rules constitute an informal curriculum about the law and rights?
An Experiment with Democratic Freedoms

By Sam Chaltain and Michael Wildasin


Although these schools differ in many respects, they are united around a common mission: to uphold the democratic and public mission of schooling in America and to provide their students with an apprenticeship in freedom and responsibility.

As recipients of grants from the First Amendment Schools project, a joint initiative of the Association for Supervision and Curriculum Development (ASCD) and the First Amendment Center, these schools have affirmed their willingness to take on the difficult yet essential task of engaging their students in the public life of their schools and communities, and, by extension, of American democracy.

Over the next three years, eleven First Amendment project schools have committed to giving their students and all members of their school communities substantial opportunities to practice democracy. These communities recognize that understanding the country’s framing documents and the structure and functions of government is important, but equally important is acquiring the attitudes and skills of citizenship through participation in decision making. By practicing democracy, students confront the challenges of self-government, including the difficult task of balancing a commitment to individual rights with a concern for the common good.

At ASCD and the First Amendment Center, we believe this effort is particularly timely. Research shows that fewer Americans are participating in civic activities. According to a recent report by the Education Commission of the States, this lack of engagement is even more pronounced in our young people. And in the First Amendment Center’s most recent “State of the First Amendment” poll, nearly four in ten Americans cannot name even one of the First Amendment’s five freedoms.

Over the coming years, First Amendment project schools will work to renew the civic mission of American education by engaging their students in the complex process of becoming democratic citizens. As laboratories of democracy, these schools will provide our future citizens with opportunities to exercise leadership, negotiate differences, propose solutions to shared problems, and practice other skills essential to thoughtful and effective participation in civic life. It is our hope that these schools will serve, by their example, not only to educate their students for citizenship, but to remind the American public of the necessity of our shared commitment to the democratic mission of all our nation’s schools.

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The enterprise of public education generally requires students and teachers to focus on the tasks at hand and not express themselves in ways that substantially interfere with effective teaching and learning. At the same time, public schools are government entities subject to the limits of the U.S. Constitution, so they must respect students’ free speech rights.

Student Conduct at School

As the U.S. Supreme Court said in one of its most frequently quoted statements: “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” This means public schools may not punish students simply because they disagree with a student’s point of view or have vague fears that a student’s speech might cause disruption in the future. For example, students cannot be punished, suspended, or expelled for wearing black armbands to school as an antiwar protest or for wearing buttons in class supporting (or opposing) the teachers’ union in a strike.

To maintain an effective learning environment, however, schools may use their power to discipline students whose speech substantially disrupts the educational process, such as shouting insults at a teacher during a class discussion or passing out the answers before a test. Schools may punish students whose speech interferes with the rights of others, as when a student engages in malicious harassment of another. Courts have also ruled that schools may punish students who inflict vulgar or lewd language on a captive audience at mandatory school assemblies, both because it is disruptive and because the school seeks to educate students about the socially acceptable boundaries of public speaking.

Student Internet Speech

How do these principles apply to a student’s speech over the Internet, a technology that reaches both inside and outside the schoolhouse gate? Specifically, what happens if a student writes something on the Internet that would be a basis for punishment if it were said in the classroom? Schools have offered three rationales for punishing students for their Internet speech: the student’s speech was visible from school, was about school, or had an effect on school. All these arguments, carried to their logical conclusions, would mean that schools could punish students for virtually anything they said anywhere, whether at home, at work, at a friend’s house, or on vacation. If a student does not shed the right to free expression at the schoolhouse gate, the right must exist in even stronger form outside the gates.

Speech Accessible from School. Student Web site creators might intend, or at least reasonably anticipate, that their sites will be read by classmates on computer screens located at the school. But Internet technology is not unique in its ability to penetrate the school walls. Imagine a student who writes a letter to the editor of the local newspaper, criticizing the principal in language sufficiently vulgar to justify punishment if the letter had been read aloud at a school assembly. The school could not punish the student for expressing her views in the free press. This would be true even if the school library subscribes to the paper and the

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student knows about the subscription and tells friends where to find the issue containing the letter.

Other examples can easily be constructed with different technologies. A student might have a vulgar outgoing message on an answering machine that would be audible to anyone who used a school telephone to call the student’s home. The mere ability to access texts, sounds, or images from within a school does not transform them into on-campus speech.

**Speech About School.** Since so many of students’ waking hours are spent at school or in school-related activities, it is not surprising that a great many student Web sites are filled with talk about school. The choice of topic does not itself make the students’ speech subject to school discipline. If talk about school is treated as talk in school, there is no logical stopping point. Even discussions around the family dinner table could become the subjects of school discipline.

**Speech Affecting School.** Schools sometimes argue that a student’s Internet speech should be disciplined because it adversely affects the educational process within the school. The most common adverse effect is that the Web site becomes a favorite topic of gossip and snickering among the students, distracting them from their studies. This argument goes too far, since there are any number of off-campus activities a student might undertake that lead to gossip and distraction (getting one’s picture in the paper, winning a gold medal at the Olympics, having a nasty breakup with one’s boyfriend or girlfriend). If students are gossiping about another student’s off-campus activities instead of paying attention in class, the gossips should be disciplined, not the subject of the gossip. Students reading the Web site of a fellow student from school computers should be viewed the same way.

**Adult Use Safeguards**

A serious legal problem with school administrators punishing students for their Internet expression is its effect on the Internet as a whole. The First Amendment does not allow government agencies to reduce the adult population to reading only what is fit for children. For this reason, even legitimate laws that restrict alcohol or tobacco ads near schools can be unconstitutional if they create such a large area around the school that there is no place left for communication to adults.

When a school punishes a student for off-campus Internet speech, this will likely cause the student to remove the controversial Web site and also prevent other students from trying the experiment of online expression for fear of receiving similar punishments. This reduces the total amount of Internet activity, reducing its vibrancy as a medium for uncensored, freewheeling communication. And it teaches students that they ought not express their views to the world at large in a medium suitable for adults. This is precisely the opposite of the message most schools seek to teach their students about the value of computer literacy and the freedom of citizens in a democracy to participate in public debate.
In this edition, *Students in Action* takes you inside the U.S. justice system, the worldwide workplace, and your neighborhood video arcade to look at issues involving the rights of youths.

In “Equal Justice? Girls in the Juvenile Justice System,” Bernardine Dohrn looks back at the treatment of young girls in the justice system starting about the turn of the twentieth century, when Illinois first established a juvenile court. Since then, Dohrn reports, there are distinct differences in the types of criminal offenses with which young males and young females tend to be charged: the justice system, at least historically, has been used to “safeguard” young girls in an attempt to control their sexual behavior.

In “Child Labor: An International Challenge,” you’ll read about a report from the International Labour Organization (ILO) that details the alarming status of many young people in the world today. The ILO found that one in every eight children—about 179 million persons ages 5 to 17—is exposed to the worst forms of child labor. Read about the causes of this troubling situation as well as some solutions that may help minimize if not eliminate it.

Finally, “Should Minors Have Access to Violent Video Games?” will introduce you to a First Amendment case in which a federal judge ruled that a community has the right to prohibit young people from playing violent video games. And you will read about another court that came to the opposite conclusion. As studies link the viewing of violence in games and other forms of entertainment with increases in violent behavior, the outcome of this contradiction in the courts will affect both the rights of youths and the interests of the society in which they live.

Completing the Take Action! activities at the end of each section will help you begin to participate in and influence the public debate surrounding these issues, which your generation is encountering today and which you will encounter in the future as parents and other caretakers of the next generation of Americans. For additional activities, be sure to visit insightsmagazine.org (click “Students in Action” when you get there).
When the Illinois legislature established the first juvenile court in 1899, girls’ misbehaviors were viewed and treated differently than those of boys. Measures taken to shelter girls as the “weaker sex,” on one hand, and biases against sexually experienced (“fallen”) females, on the other, combined to make girls’ confinements both harsher and longer.

In the juvenile system, a *status offense* is a misbehavior that is not criminal for adults. Examples include truancy, running away, unruliness, and involvement in certain sexual acts or associations. By contrast, *delinquent behavior* includes what would also be crimes for adults, from larceny (shoplifting) to very serious charges like burglary, assault, and manslaughter.

In the early 1900s, state authorities used status offense categories to “protect girls.” For example, if a juvenile female forced into prostitution was brought to the authorities for safety and shelter, the juvenile court might have given her the same treatment as a juvenile convicted of theft. It would have likely removed her from the jail where she was being detained and committed her to an institution for a long time—under conditions that were often brutal.

In the juvenile court’s first eight years, almost half of girls ended up being returned to court, compared to only a fifth of boys. In 1910, 81 percent of girls were brought to juvenile court either because their “virtue” was “lost” or “in peril.” Girls were subjected to pelvic examinations to see whether they had been sexually active or carried venereal disease. The “morally contaminated” were often isolated from the “innocent,” and it was not uncommon for girls to be sexually exploited when being held in the jails and institutions that were supposed to be protecting them.

Ironically, the status offenses and delinquent behaviors of girls brought before juvenile court have always been less serious than those of boys. They have commonly involved sexually related behaviors specific to females, such as truancy because of pregnancy or family problems, dating an older male, running away to avoid sexual abuse, or prostitution. In 1995, almost 25 percent of girls’ arrests involved status offenses, compared with only 10 percent for boys. Another 25 percent of girls were charged with shoplifting. When girls in foster care or group-home placements run away, they can be classified as delinquent and incarcerated rather than being identified as foster children in care of special programs or as status offenders who cannot be incarcerated.

Race and economic status have always been factors in the treatment of girls. In 1914 and 1916 in Illinois, the first two “Mary Clubs” were opened for girls who could not return to their parents’ homes but wanted to avoid commitment to a state institution. They were for white girls only. A Mary Club for girls of color was not opened until 1921. Today, more than half the population in private facilities for girls are white.

### Take Action!

1. Talk with people involved in the juvenile justice system in your community—a probation officer or juvenile detention worker, for example—to learn more about the status of juvenile females in the system. Be prepared with specific

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*Specially adapted and reprinted from* A Century of Juvenile Justice *edited by Margaret K. Rosenheim, Franklin E. Zimring, David S. Tanenhaus, and Bernardine Dohrn* published by The University of Chicago Press. © 2002 by the University of Chicago. All rights reserved.
Ten years after launching a worldwide campaign against child labor, the International Labour Office (ILO) this year issued a landmark global study. It showed that despite “significant progress” in efforts to abolish child labor, an alarming number of children are trapped in its worst forms.

“A Future Without Child Labour,” the ILO’s most comprehensive study on the subject, found that 246 million children—one in every six children ages 5 to 17—are involved in child labor that the ILO says should be abolished. Among its startling new findings, the report says that one in every eight children in the world—some 179 million children ages 5 to 17—is still exposed to the worst forms of child labor, which endanger the child’s physical, mental, or moral well-being.

The report also says that of these 246 million children,

- About 111 million in hazardous work are under 15 and should be “immediately withdrawn from this work.”
- An additional 59 million youths ages 15 to 17 should receive urgent and immediate protection from hazards at work or else be withdrawn from such work.
- Some 8.4 million children are caught in “unconditional” worst forms of child labor. These include slavery, trafficking, debt bondage and other forms of forced labor, forced recruitment for armed conflict, prostitution, pornography, and other illicit activities.

**Analyzing the Problem**

The report describes child labor at the start of the twenty-first century as “endlessly varied and infinitely volatile.” Drawing on recent survey data, it says an estimated 352 million children ages 5 to 17 are currently engaged in economic activity of some kind. Of these, some 106 million are in types of work acceptable for children who have reached the minimum age for employment (usually fifteen years) or in light work such as household chores or work undertaken as part of a child’s education.

Child labor often assumes serious proportions in commercial agriculture associated with cocoa, coffee, cotton, rubber, sisal, tea, and other crops raised for world markets. Studies in Brazil, Kenya, and Mexico have shown that children under 15 make up between 25 and 30 percent of the total labor force in the production of such crops. The report notes that even “in many developed countries, agriculture is also the sector in which most children work” and that family farms are commonly exempt from minimum age legislation.

The informal economy, such as the part supported by subsistence farming, is that part of the economy in which workers are not recognized or legally protected. It is also by far where the most child laborers are found. According to the ILO analysis, this fact of child labor “represents one
of the principal challenges to its effective abolition.”

Some work, such as mining and deep-sea fishing, is obviously dangerous. Other work, which at first sight may appear harmless, may be similarly hazardous, especially for young, undernourished, and otherwise vulnerable children.

**Identifying Causes and Solutions**

The report lists many causes of child labor. While poverty is a major factor, there are many others. These include economic and political instability, discrimination, migration, criminal exploitation, traditional cultural practices, a lack of decent work for adults, inadequate social protection, a lack of schools, and the desire for consumer goods.

Child labor also exists because of a lack of law enforcement, the desire of some employers for a cheap and flexible workforce, and the low profitability and productivity of small-scale, family enterprises that cannot afford to pay adult workers.

In spite of the difficulty of addressing all these causes, nations of the world are trying. One such attempt is Convention No. 182—an international agreement to eliminate the worst forms of child labor. The ILO report insists that “the campaign for universal ratification of Convention No. 182 has been ratified by nearly 120 of the ILO’s 175 member states.

In addition, the ILO Minimum Age Convention No. 138, an agreement to set minimum ages for laborers, was adopted in 1973. It had been ratified by 116 member states as of April 25, 2002.

On June 12, 2002, the ILO launched an International Day Against Child Labor. Its purpose was (1) to strengthen the international momentum created in recent years to stop child labor, especially in its worst forms, (2) to reflect on the progress made so far, and (3) to pursue fresh efforts to achieve a future without child labor.

National and regional programs have also flourished under the ILO International Programme for the Elimination of Child Labor. This effort, which began with six participating countries in 1992 and with a single donor government (Germany), has expanded to include operations in seventy-five countries funded by twenty-six donors. In 2001, the ILO launched its first Time-Bound Programmes aimed at eliminating the worst forms of child labor in specific countries within five to ten years. The first programs are aimed at helping some 100,000 children in El Salvador, Nepal, and Tanzania.

According to the ILO report, real progress is being made in getting children out of damaging work and into school; in supporting them and their families to develop better, more secure livelihoods; and in preventing other children from being drawn into child labor.

“This foundation must be built upon, expanded, and sustained,” Juan Somavia, Director-General of the ILO, said. “The effective abolition of child labor is one of the most urgent challenges of our time and should be a universal goal.”

**Source:** “ILO Global Report on Child Labour cites ‘alarming’ extent of its worst forms,” Monday 6 May 2002 (ILO/02/19).

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**Take Action!**

1. **Survey classmates to find out how many work, where they work, how much they work, and what kinds of jobs they have.** Have any ever sought protection from employer practices? If so, why? What agencies assisted them? What laws protected them?

2. **Use the Internet to find out more about federal child labor laws and those of your state.** How do these laws protect juveniles? How do they limit juveniles’ ability to earn income? Some people argue that developing countries need child labor. Do you agree? If so, what kinds of child labor should be allowed? Prohibited?

3. **Contact the ILO (www.ilo.org) to find out how you can support the international effort to stop abusive child labor and to order posters calling for its end. Display the posters in your community (get permission first).**
In a First Amendment case closely watched by the video game industry, a federal judge has upheld a St. Louis County, Mo., ordinance that restricts minors’ access to violent video games. According to the judge, video games are not a form of protected speech.

What Is Protected Speech?
The First Amendment guarantees freedom of speech, among other rights. The courts have interpreted speech to include many forms of communication and expression. For example, conversations, speeches, letters, books, posters, movies, videos, sports, games, Web sites, and e-mail are all forms of speech under the law.

Legislators sometimes pass laws prohibiting certain kinds of speech (in the case of children, laws often ban access to pornography, for example). Parties who disagree with such a law may test its constitutionality in court. They may claim that the prohibited form of speech is protected by the First Amendment and so may not be banned after all.

The St. Louis County ordinance attempts to shield children by restricting their access to violent video games. Video game businesses and associations involved in the case viewed these games as protected under the First Amendment and sued to have the ordinance struck down as unconstitutional. The judge disagreed.

What Are This Case’s Issues?
The case demonstrates the difference between the rights of minors and adults in the U.S. legal system. The St. Louis County ordinance restricts only the access of minors to violent video games, not adults. It requires arcade owners to segregate violent video games that are deemed harmful to minors into “Restricted-17” areas. It also prohibits the sale or rental of such games to minors unless they have a parent’s or guardian’s consent.

In passing the ordinance, county legislators said that “exposure of children to graphic and lifelike violence contained in some video games has been correlated to violent behavior.”

The Interactive Digital Software Association (IDSA) led a group of companies and game-related associations in the First Amendment challenge to the ordinance. Arguing that the ordinance restricted free expression rights, they maintained that this new wave of interactive video games should be entitled to First Amendment protection just as movies and plays are.

After examining “Resident Evil,” “Mortal Kombat,” “Doom,” and “Fear Effect,” Senior U.S. District Judge Stephen N. Limbaugh wrote: “This court reviewed four different video games and found no conveyance of ideas, expression, or anything else that could possibly amount to speech. The court finds that video games have more in common with board games and sports than they do with motion pictures.”

In his opinion, Limbaugh held that, even if video games merited some First Amendment protection, the ordinance would still be constitutional. That is because it served the government’s compelling interest in protecting the physical and emotional health of children. “The court finds that the county council can rely on society’s accepted view that violence is harmful to children, especially when plaintiffs have admitted that intense violence may not be suitable for those younger than 17 years of age,” Limbaugh wrote.

Limbaugh’s decision conflicts with a decision by the Chicago-based 7th U.S. Circuit Court of Appeals, which struck down a similar ordinance in Indianapolis. In that decision, Judge Richard Posner wrote: “To shield children right up to the age of 18 from exposure to violent descriptions and images would not only be quixotic, but deforming; it would leave them unequipped to cope with the world as we know it.”
The case is expected to be appealed to the 8th Circuit Court of Appeals, which has jurisdiction over Missouri.


**Take Action!**


2. Imagine that a new federal law is being proposed to legally prohibit video-game violence. The Congress has asked you to define violence in this context. What definition would you propose? Be specific, offering features of video games you know about.

3. On the Internet, research studies about the relationship between young people’s behavior and their exposure to violence in media. Do the findings agree? Do they differ? How? When you are an adult, what position will you support with regard to young people’s access to violent video games? How can you make yourself heard?

Questions such as What are common offenses among young girls? Teenage girls? How might the offenses and sentences differ? What types of institutions house young females who are removed from their homes?

2. If you have a youth court in your community, find out how the cases of male and female students compare in terms of the offenses and the outcomes. What, if any, differences are there between the two groups? If there are differences, think of some reasons why they might exist. Would you recommend any related reform of your local youth court system?

3. Visit the MacArthur Foundation (www.mac-adoldev-juvjustice.org/page26.html) to find out about organizations you can help in their work to improve the conditions of children in the juvenile justice system today.
Learning Gateways

By John Paul Ryan

See Strategies Here

This teaching strategy complements and extends students’ understanding of their rights and limitations under the U.S. legal system. By focusing on a recent and topical U.S. Supreme Court decision, students will learn about the people behind court cases, community disputes, and the types of legal reasoning used by the Supreme Court. To extend this lesson, follow up with additional activities and strategies at www.insightsmagazine.org. You will find additional tools to help support your instructional goals in this subject area, including
- Wanda J. Routier’s “Youth Rights: Terms, Concepts, and Change”
- Stephen A. Rose’s “Using Compelling State Interests as a Rationale for School and Classroom Rules”
- Margaret Fisher’s “Student Rights in Cyberspace”

Lesson Overview

Objectives
As a result of this lesson, students will
- Understand that rights, including those protected by the Fourth Amendment, are not absolute but are subject to limitations such as those based on age or venue (school setting).
- Learn the basic structure of Supreme Court decisions, including background and key facts, the court’s ruling, and the court’s legal reasoning.
- Recognize that the Supreme Court uses precedent (prior cases) to make decisions in new cases.

Target Group: Secondary students
Time Needed: 1 to 2 class meetings
Materials Needed: Copies of Student Handout

Procedures
2. Distribute the Student Handout, which includes key excerpts from the majority and dissenting opinions in the Supreme Court’s June 2002 decision in Board of Education v. Earls.
3. Lead the class in a discussion of the key elements of the Earls case. Using the Student Handout, focus on three elements: (1) What are the key facts in the case? (2) What is the Supreme Court’s ruling? (3) What are the court’s stated reasons for reaching its decision? Which reasons are the most persuasive for students? The least persuasive?
4. Use the dissenting opinions in the case as an opportunity to discuss different perspectives. On what issues do the majority and dissenting justices disagree?
5. This case focuses upon student participation in extracurricular activities. Ask students to analyze whether such activities are a “right” or a “privilege.” Do students agree or disagree with dissenting Justice Ginsburg’s contention that students who participate in extracurricular activities are less likely to develop substance abuse problems?
6. Have students write an essay or journal entry on the possible impact of Board of Education v. Earls on high schools, including their own. Ask students to consider such questions as Will school administrators be required or empowered to establish new procedures or rules as a result of this decision? Will students’ privacy rights be limited? How? Will more students be deterred from drug use as a result of random drug testing?

John Paul Ryan is president of The Education, Public Policy, and Marketing Group, Inc., in Bannockburn, Ill. He formerly served as director of school programs for the ABA Division for Public Education and as director of research at the American Judicature Society.

Online Supreme Court Resources
To find the full opinion in Board of Education v. Earls, visit www.findlaw.com (click “US Sup Ct” and search “2002 Decisions”).
Find briefs filed in this case by the U.S. solicitor general and various organizations including the National School Boards Association and the Washington Legal Foundation at supreme.lp.findlaw.com/supreme_court/briefs/index.html
For a case summary and “real audio” of the oral argument for this decision, visit oyez.nwu.edu
Summary of Majority Opinion Written by Justice Clarence Thomas. The Student Activities Drug Testing Policy implemented by the Board of Education requires all students who participate in competitive extracurricular activities to submit to drug testing. Students are required to take a drug test before participating, must submit to random drug testing while participating, and must agree to be tested at any time upon reasonable suspicion. The urinalysis tests are designed to detect only the use of illegal drugs, not medical conditions or prescription medications.

The respondents, who attended Tecumseh High School, alleged that the Policy violates the Fourth Amendment. They also argued that the school district failed to identify a special need for testing students, and that the Policy neither addresses a proven problem nor promises to bring any benefit to students. While school children do not shed their constitutional rights when they enter the schoolhouse (see Tinker v. Des Moines, 1969), Fourth Amendment rights are different in public schools than elsewhere. Our inquiry cannot disregard the school’s custodial and tutelary responsibility for children. In Vernonia (1995), this Court held that the suspicionless drug testing of high-school student athletes was constitutional; applying the principles of Vernonia to the somewhat different facts of this case, we conclude that Tecumseh’s Policy is also constitutional.

A student’s privacy interest is limited in a public school, where the State is responsible for maintaining discipline, health, and safety. Students who participate in competitive extracurricular activities voluntarily subject themselves to many of the same intrusions on their privacy as do athletes. Under the Policy, a faculty monitor waits outside the closed restroom stall for the student to produce a urine sample. The Policy clearly requires that the test results be kept in confidential files separate from a student’s other educational records and released to school personnel only on a need-to-know basis. Moreover, the test results are not turned over to any law enforcement authority. Therefore, we conclude that the invasion of student’s privacy is not significant.

Given the nationwide epidemic of drug use, and the evidence of increased drug use in Tecumseh schools, we hold that the Tecumseh policy is a reasonable means of furthering the school district’s important interest in preventing and deterring drug use among its school children.

Summary of Dissenting Opinion Written by Justice Ruth Bader Ginsburg. The Vernonia school district had two good reasons for testing athletes; sports team members faced special health risks and they were leaders of the drug culture. No similar justification explains Tecumseh’s decision to target for testing all participants in every extracurricular activity. Nationwide, students who participate in extracurricular activities are significantly less likely to develop substance abuse problems than their less-involved peers. Enrollment in a public school and election to participate in school activities do not justify intrusive, suspicionless searches.

Teaching Standard Supported by This Lesson

National Standards for Civics and Government
Grades 9–12 Content Standards

(III.B.1) How does the government established by the Constitution embody the purposes, values, and principles of American democracy?

The institutions of the national government. To achieve this standard, students should be able to describe the purposes, organization, and functions of the three branches of the national government [see judicial, including the Supreme Court of the United States and the federal court system].

To see the national standards supported by this edition of Insights, visit insightsmagazine.org (click “Learning Gateways”).
On the Docket

Cruel and Unusual Punishment? A California law (Cal. Penal Code § 667(e) (West 1999)) provides for a “25 years to life” prison term for qualifying defendants with a third criminal conviction. The question is whether the law violates the Eighth Amendment’s prohibition against cruel and unusual punishment — especially when applied to defendants whose “third-strike” convictions were for relatively minor offenses. Under state law, the last, “triggering” offense must be a felony, but it doesn’t have to be a serious or violent crime.

The statute is being challenged as cruel and unusual punishment in two separate cases being argued Nov. 5: Ewing v. California, No. 01-6978, and Lockyer v. Andrade, No. 01-1127.

The triggering offense in Ewing v. California was walking out of an El Segundo, Calif., shop with three golf clubs (worth $399 each) concealed in one’s trouser leg. The punishment: 25 years to life. The triggering offenses in Lockyer v. Andrade, No. 01-1127, were shoplifting $84.70 in videotapes (Free Willy 2, Cinderella, Santa Claus, and Little Women) from one K-Mart store in Ontario, Calif., and $68.84 in videotapes (Snow White, Casper, The Fox and the Hound, The Pebble and the Penguin, and Batman Forever) from another. The punishment: 50 years to life.

Sex Offender Registries. To help parents protect their children from sex offenders, many states now post sex-offender registry information on the Internet. In Connecticut Dept. of Public Safety v. Doe, John, et al., No. 01-1231, an offender now asks the Supreme Court whether the due-process clause of the Fourteenth Amendment prevents Connecticut from listing him in a publicly disseminated sex offender registry without first affording him an individualized hearing on his current dangerousness.

Meanwhile, in Alaska, the offenders in Godfrey and Botelho v. John Doe I, et al., No. 01-729, contend that when their state’s Registration Act is applied to sex offenders whose crimes were committed before the registration law’s enactment, it is imposing “punishment” in violation of the Constitution’s ex post facto clause. In this regard, they note that the clause, U.S. Const., art. I, § 10, cl. 1, forbids states from passing a law that would increase the punishment for a criminal act that was committed before the law’s passage.

Fair Housing. In Meyer et al. v. Holley et al., No. 01-1120, the 9th Circuit Court of Appeals affirmed that employees of Triad Realty in Twenty-Nine Palms, Calif., had violated the Fair Housing Act, 42 U.S.C. § 3601 (1968), by discriminating against an African-American home buyer on the basis of her race. These subordinate employees may have been acting as rogue agents in violation of company policy. Nevertheless, the appellate court held that the owners and officers of this realty business could also be held liable even if they did not know about or authorize the discriminatory acts that occurred. The 9th Circuit said that it recognized that “holding a corporation and its officers responsible even though the acts of subordinate employees were neither directed nor authorized seems harsh punishment of an otherwise innocent employer,” but that it believed that result was “preferable to leaving the burden on the innocent victim who felt the direct harm of the discrimination.”

Cross Burning. In Virginia v. Black, No. 01-1107, the Virginia Supreme Court concluded that a Virginia cross-burning statute was analytically indistinguishable from an ordinance found unconstitutional by the Supreme Court in R.A.V. v. City of St. Paul, 505 U.S. 377 (1992). The St. Paul ordinance forbade cross burning when one “knows or has reasonable grounds to know” the act will arouse “anger, alarm or resentment in others on the basis of race, color, creed, religion or gender. …” In striking that Minnesota ordinance down, the Supreme Court ruled that “[T]he First Amendment generally prevents government from proscribing speech, or even

Charles F. Williams is editor of Preview of U.S. Supreme Court Cases, a publication of the ABA Division for Public Education in Chicago.
expressive conduct, because of disapproval of the ideas expressed.”

Now the state of Virginia seeks to defend its own cross-burning law on the basis that, unlike the St. Paul ordinance, its statute is “content neutral” because it applies equally to “anyone who burns a cross for the purpose of intimidating anyone.” The Virginia Supreme Court disagreed and concluded that in reality the statute was enacted for the constitutionally impermissible purpose of suppressing the bigoted ideas expressed by the act of cross burning.

Jury Selection. Miller-El v. Cockrell, Dir., Texas Dept. of Criminal Justice, No. 01-7662, revisits the standard by which courts must assess the “genuineness” of a prosecutor’s race-neutral reasons for exercising a peremptory challenge to strike a potential juror. When selecting a jury in a criminal trial, attorneys for both the state and the defendant question the potential jurors in the jury pool. They then can “strike” (remove) any number of them “for cause”—that is, for a good legal reason, such as evidence that the juror would be biased against their client. Moreover, in many states, including Texas, an attorney also has the opportunity to strike a fixed number of additional jurors without having to provide any reason for doing so. The Constitution places some limitations on these so-called peremptory strikes, however, and forbids using them to remove jurors on the basis of their race or gender.

In this case, Thomas Jo Miller-El was sentenced to death for the execution-style murder of a Dallas motel employee in the course of a robbery. At his trial, the state used peremptory challenges to remove 14 jurors in addition to those it had already struck for cause. Miller-El is African American, as were 10 of the 14 jurors the state removed. Only one African American ended up serving on the jury.

Affirmative Action. Two important cases challenging affirmative action might come before the Supreme Court this term. Both involve the University of Michigan. One case, Gratz v. Bollinger, challenges the university’s use of race in the admissions process for its College of Literature, Science and the Arts. A second case, Grutter v. Bollinger, challenges the university’s use of race in its admissions process at its law school.

In Regents of the University of California v. Bakke, 438 U.S. 265 (1978), a badly fractured Supreme Court ruled 5 to 4 that the Constitution forbade the University of California Medical School at Davis from “setting aside” spaces for which only minority applicants could compete. Justice Powell’s controlling opinion also provided that universities could, however, treat membership in a minority race as a “plus factor” in the admissions criteria.

On May 14, 2002, the Court of Appeals for the 6th Circuit ruled 5 to 4 that the University of Michigan Law School’s admissions policy is constitutional under the rules laid out by Bakke, but the plaintiffs have petitioned the Supreme Court for a writ of certiorari, and some observers think it likely that the Supreme Court will review one or both cases this term.

More Notable Cases

Abortion Protests. Scheidler et al. v. National Organization for Women, Inc., et al., No. 01-1118, and Operation Rescue v. National Organization for Women, Inc., et al., No. 01-1119, ask whether abortion protesters who conduct sit-ins and demonstrations at abortion clinics can be subjected to either the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c), which is a law that was enacted to combat organized crime, or the Hobbs Act, 18 U.S.C. § 1951(b)(2), which makes it a crime to obstruct, delay, or affect interstate commerce by robbery or “extortion.”

Copyrights and the Public Domain.

The Constitution’s copyright and patent clause, U.S. Const., art. I, § 8, cl. 8, gives Congress the power “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” In Eldred v. Ashcroft, No. 01-618, publishers who specialize in republishing books and music for which copyright protection has expired have asked the Supreme Court to strike down the twenty-year extension of the terms of all copyrights that is set forth in the Copyright Term Extension Act of 1998, Pub. L. No. 105-298, Title I, 112 Stat. 2827 (1998). The plaintiffs (including Eric Eldred, who distributes free electronic versions of books in the public domain over the Internet) argue that the twenty-year extension violates both the copyright clause and the First Amendment.

Research Tool

For updates, more information, and additional resources about these and other Supreme Court cases, visit insightsmagazine.org (click “Supreme Court Roundup”).
Enacted Legislation

Iraq Resolution. On October 10, Congress passed a resolution, H.J. Res. 114, which President Bush later signed, authorizing the president to use the armed forces of the United States against Iraq to defend the country against the continuing threat posed by Iraq’s Saddam Hussein and continuing debate on how the Department of Homeland Security would be structured. Federal lawmakers also struggled to jump-start the sluggish economy and restore investor confidence in the stock market. Another important issue Congress faced would ultimately affect the balance of power in the two congressional chambers: the November midterm elections.


Corporate Accountability. On July 30, President Bush signed H.R. 3763, which seeks to restore confidence in corporate accounting. The law establishes a new five-member board to oversee and police the action of accounting firms in conjunction with the Securities and Exchange Commission (SEC). The board will have the authority to set auditing, independence, and ethical standards for accountants and to impose heavy fines upon or ban auditors who break the rules. The board’s oversight activity also extends to “persons associated” with accounting firms, including lawyers. Another provision requires the SEC to adopt a sweeping set of new ethical standards for corporate lawyers practicing before the agency and requires lawyers to report misconduct to their company’s management.

Proposed Legislation

Pledge of Allegiance. On October 8, Congress approved a bill, S. 2690, reaffirming the reference to “one Nation under God” as an official part of the Pledge of Allegiance. The bill was passed in response to an earlier 9th Circuit Court of Appeals ruling that held that the use of the reference “under God” was unconstitutional according to the establishment clause of the First Amendment to the Constitution. The bill also reaffirms that the national motto of the United States is “In God we trust.”

Social Security Protection. The House passed legislation to protect Social Security beneficiaries from fraud committed by “representative payees” designated by the Social Security Administration to receive and manage benefits for the nearly 7 million beneficiaries who are unable to handle their financial affairs. H.R. 4070 would direct the Social Security commissioner to fully reimburse beneficiaries for any part of their benefits that were misused by representative payees. The bill also would require that all nongovernmental agencies designated as representative payees be bonded and licensed in the states where they provide services.

Department of Justice Authorization Bill. On September 26, the House approved H.R. 2215, a comprehensive Department of Justice authorization bill that includes provisions ranging from new federal judgeships to reauthorization of the Juvenile Justice and Delinquency Prevention Act. The bill would create eight new permanent fed-
eral judgeships along with temporary judgeships in several legislative districts. The conference report includes provisions to amend the Judicial Conduct and Disability Act of 1980 to streamline procedures for handling complaints against federal judges and magistrates. The conference report would also reauthorize the Juvenile Justice and Delinquency Prevention Act and maintain four core mandates that provide protection for juveniles: deinstitutionalization of status offenders, the separation of juveniles from adults in institutions, the removal of juveniles from jails and adult facilities, and the reduction of the disproportionate representation of minorities in contact with the juvenile justice system.

**Elder Justice.** Bipartisan legislation was introduced for the first time at the federal level to address the substantial problem of elder abuse, which can be physical, sexual, psychological, or financial in nature. S. 2933 addresses elder abuse, neglect, and exploitation and would provide seniors with a set of fundamental protections. The legislation also would fund research on elder abuse, which has been virtually nonexistent from the national research agenda.

**Women’s Rights.** On July 30, the Senate Foreign Relations Committee voted to approve the UN Convention on the Elimination of All Forms of Discrimination Against Women, or CEDAW. Aimed at providing a universal standard for the rights of women, the treaty promotes their fair treatment in areas such as education, employment, health care, marriage, politics, and law. CEDAW was adopted by the UN General Assembly in 1979 and signed by President Jimmy Carter in 1980. Although it has been ratified by more than 170 countries to date, the U.S. Senate has yet to approve CEDAW.

**Activities**

1. Have students devise a survey and poll fellow students, family, and members of their community to determine public sentiment about H.J. Res. 114, authorizing the president to use the armed forces of the United States against Iraq. Ask students to find out how the representative from their district and the senators from their state voted on the resolution. Encourage students to write, e-mail, or call their representative and senators to express their views about this vote.

2. Ask students to research the history of the Pledge of Allegiance, what the original version was, and how the phrase “one Nation under God” came to be inserted. Discuss whether they agree or disagree with the ruling by the 9th Circuit Court of Appeals and/or bill S. 2690. Ask how they personally feel about saying the Pledge of Allegiance at school.

3. Encourage interested students to track the course of the hearings on the organization and authority of the Department of Homeland Security and report to the class on a biweekly basis.

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**Learn More About Proposed Bills**

Students and teachers can review an annotated inventory of selected congressional bills proposed during this congressional session by visiting insightsmagazine.org (click “News from Capitol Hill”). Grouped by subject such as “Election Law” and “Health Law,” these bills have been chosen because of their probable interest and usefulness in educational settings. To research any congressional bill by bill name or number, visit www.thomas.loc.gov

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**Child Protocols Approved**

On June 18, the Senate approved two optional protocols to the Convention on the Rights of the Child (CRC) that will protect children from exploitation and enforced or involuntary military service. The protocols—the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflict—entered into force earlier this year on January 18 and February 12, respectively. Any country can become a party to both protocols without ratifying the CRC, which has been in force since 1990 without U.S. ratification.

The Sale of Children Protocol addresses the modern-day slavery and exploitation of children. The Protocol on Armed Conflict sets a minimum age of 18 for direct participation in armed conflict and forced recruitment and one of 16 for voluntary recruitment. According to the Coalition to Stop the Use of Child Soldiers, approximately 300,000 children in more than forty countries are engaged in military conflict, and another 500,000 are recruited into paramilitary organizations, guerrilla groups, and civil militias in more than eighty-five countries.
What’s the Law?
A corporation is a legal entity established for the primary purpose of maximizing profit for its shareholders, the corporation’s owners. Current corporate scandals have focused on publicly held corporations, those whose shares are owned by a wide range of individual and institutional investors and are publicly traded in various securities markets, such as the New York Stock Exchange or the NASDAQ.

Much of the current law governing publicly held corporations derives from two pieces of landmark legislation that responded to the greatest economic crisis the United States has experienced—the stock market crash of 1929 and the ensuing Great Depression. The stock market bubble that burst in 1929 was driven by widespread speculation in stocks unprecedented in U.S. history. At the time, there were few controls on the quality of information available to investors. In the wake of the crisis of confidence in the markets resulting from the crash, the federal government enacted the Securities Act of 1933 and the Securities Exchange Act of 1934. Together, these acts established the Securities and Exchange Commission (SEC), mandated the disclosure of key information to investors when a corporation initially offers shares to the public, and established periodic disclosure requirements for most publicly held corporations.

Subsequent legislation and rules promulgated by the SEC have maintained this focus on ensuring that all investors have access to key information that may affect their investment decisions. One of the more important of these rules is Rule 10b-5, a broadly worded antifraud provision adopted in 1942 that has supported numerous SEC actions. Rule 10b-5 violations are cited in many of the current allegations against accused corporate wrongdoers.

Who’s Responsible?
Who is responsible for the accuracy of the information reported to investors? Within a corporation, the chief burden of responsibility is divided primarily between the corporation’s senior officers and its directors. The senior officers, including the chief executive officer (CEO) and chief financial officer (CFO), are individuals who have been hired to oversee the day-to-day management of the corporation. The directors are individuals elected by the shareholders to oversee the management work of the officers and represent the shareholders’ interests.

Because of their control positions within the corporation, both officers and directors owe fiduciary duties to the corporation’s shareholders. These duties include a duty of care in the management of corporate affairs and a duty of loyalty, which precludes officers and directors from—among other things—pursuing transactions that would involve personal benefit if the terms are less than favorable to the corporation and its shareholders. Junior officers and other employees also owe fiduciary duties to the corporation, but these duties are proportionate to the scope of their position and the degree of control they have in managing corporate affairs. As a practical matter, courts give broad latitude to the judgment of senior officers and directors in the absence of apparent malfeasance or self-dealing.

Beyond the corporation, responsibility can extend to independent auditors and outside legal counsel. Independent...
auditors typically represent large accounting firms, and their role is to investigate and certify the fidelity of the corporation’s financial reports to generally accepted accounting principles. They, as well as a corporation’s legal advisers, can be charged as primary violators of securities laws if they actively assist in perpetrating misleading or false statements in corporate disclosures. Even if they do not actively participate in a fraudulent disclosure, auditors and lawyers may be liable if they fail to take steps to avoid the disclosure of information they know or suspect to be false by, for example, notifying the corporation’s management or directors or refusing to certify an audit or issue a legal opinion.

Finally, corporate “insiders” can be held liable under Rule 10b-5 for “insider trading”—taking advantage of information not readily available to other investors in the sale or purchase of a corporation’s stock. “Insider” status, of course, includes the corporation’s employees, directors, accountants, and lawyers, but it can also extend to acquaintances or relatives of these individuals and others positioned to receive material information about a corporation’s affairs who know that the information is not generally available.

What Reforms Are Needed?
A number of high-profile and high-stakes corporate scandals—including Enron, Tyco International, WorldCom, and ImClone—have shaken faith in the ability of existing laws to protect investors. Questions have been raised regarding

- The independence of accounting and corporate law firms who receive millions of dollars from the public-company clients they audit and advise.
- The role of executive officers’ stock-option compensation plans in focusing management attention on short-term profits over long-term corporate well-being.
- The ability of a resource-limited SEC to adequately investigate suspected cases of corporate fraud.
- The general state of business ethics in a corporate climate that, in the words of Federal Reserve Board Chairman Alan Greenspan, has grown increasingly susceptible to “infectious greed.”

In the wake of these scandals, Congress passed the Sarbanes-Oxley Act of 2002 in July. Like earlier federal securities acts, it seeks to protect investors with additional measures designed to promote full and accurate disclosure of important corporate information. It establishes a new board to oversee the work of independent auditing firms, requires that key executive officers certify the accuracy of reports required by the federal securities laws, and mandates the development of new rules requiring that independent auditors and attorneys report evidence of suspected corporate wrongdoing to executive officers and corporate directors. It also authorizes new appropriations to fund the SEC’s work, adds new sanctions for violations of the act, and toughens existing criminal penalties for various forms of corporate—or “white collar”—crime.

The Sarbanes-Oxley Act does not address all the factors that have been cited as causes for the current spate of corporate scandals; executive compensation issues are perhaps the most noteworthy omission from the act. The adequacy of the reforms that have been enacted, and the vigor with which they will be pursued, remain to be seen. In the meantime, continuing investigations and actions against those implicated in the past year’s scandals are sure to keep issues of corporate responsibility and reform in the news.

Teaching Resources

- The SEC (www.sec.gov) offers an overview of its history and summaries of the key legislation it enforces, and includes an information page for teachers and students.
- The Staff to the Senate Committee on Governmental Affairs recently released “Financial Oversight of Enron: The SEC and Private-Sector Watchdogs.” Available online (news.findlaw.com/hdocs/docs/enron/senenron100702rpt.pdf), this report outlines the legal obligations of the SEC and private-sector entities that act as monitors of publicly held companies’ financial activities, and it offers recommendations on how oversight of corporate affairs might be improved.
- The National Council on Economic Education’s “EconomicsAmerica Online” (www.economicsamerica.org) provides online lesson plans, an interactive personal finance site for teens, and information on national and state content standards in economics.
Here's a Useful Tool …

We hope you will find this department useful, whether you are a student researching the issue's theme, a teacher preparing a lesson, or a library media specialist assisting students or teachers in tracking down additional resources for their course work. Library media specialists might also find the column helpful as a selection tool for collection development purposes. Each print edition offers, among other resources, annotated Web sites with primary documents that students may need to locate and annotated booklists that relate to the issue's topic. The Web site features full bibliographic information as well as Web links to additional research and instructional support. Your feedback is always appreciated. Visit www.insightsmagazine.org.

Primary Documents for Students

Convention on the Rights of the Child (CRC)  
www.unicef.org/crc/crc.htm

Contains full text of the CRC, the first legally binding international human rights instrument. Also explains its history, the continuing ratification process, and other convention facts and processes, including additional “protocols” about the rights of children with respect to armed conflict and the sale of children, and child prostitution and pornography.

A Future Without Child Labour  

Third follow-up report to the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. Traces the ILO's involvement in child labor abolition and the progress that has been made, provides statistics on the current state of the movement against child labor, and outlines steps that might be taken in the future. Also includes discussion of the causes of and contributing factors that sustain child labor.

ILO Convention No. 138  
www.hompages.iprolink.ch/~fitbb/TRADE_UNION_RIGHTS/ILO_Convention_138.html

From the International Labour Organization (ILO), an international agreement to set minimum ages for laborers; adopted in 1973. As of April 25, 2002, Convention No. 138 had been ratified by 116 of the ILO's member states.

ILO Convention No. 182  
www.hompages.iprolink.ch/~fitbb/TRADE_UNION_RIGHTS/ILO_Convention_182.html

From the ILO, an international agreement to eliminate the worst forms of child labor. Since its unanimous adoption by the International Labour Conference in 1999, Convention No. 182 has been ratified by nearly 120 of the ILO's 175 member states.

Laws of the Fifty States, District of Columbia and Puerto Rico Governing the Emancipation of Minors  
www.law.cornell.edu/topics/Table_Emancipation.htm

Legal Information Institute (Cornell University) page linking to the laws of the states dealing with “emancipation,” the conditions under which youths become adults for legal purposes.

Books


An important recent scholarly work on the Bill of Rights. Focuses on its “creation” during the founding period and its modern “reconstruction” during the post–Civil War era.


A book for juvenile readers about the history of teen privacy rights, reasons for privacy, and how it has evolved as a public policy concern.


Provides an overview of student rights, a chronology of select legislation, Supreme Court cases, constitutional amendments, and excerpts from landmark Supreme Court cases. Includes reference list of print and video resources.


Accessible resource organized by amendment.


Designed for use by teachers, this book covers important Supreme Court cases dealing with controversial issues such as censorship, drug testing, hate speech, and privacy.


A reference guide about court decisions in school cases and the legal issues. Topics include employment practices, school operations, and academic practices.

Universal Declaration of Human Rights  
www.yale.edu/lawweb/avalon/un/unrights.htm

Adopted by the United Nations in 1948, the declaration setting inalienable rights and fundamental freedoms as a standard of achievement for all peoples and nations.

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modern juvenile justice system that recognized public safety and retribution as legitimate policy goals but that also acknowledged young offenders’ immaturity. Juvenile dispositions were to be based on the seriousness of the offense rather than on the offenders’ needs. Because young offenders were less blameworthy than their adult counterparts, their dispositions would be categorically of shorter duration. Furthermore, separate dispositional programs were justified as a means to preserve their future life prospects.

These reform efforts influenced legislative change in the 1970s and 1980s. Many states enacted statutes that explicitly rejected the traditional notion that rehabilitation is the only purpose of juvenile justice intervention and recognized the importance of retribution and public protection. Modern statutory sentencing provisions focus on the seriousness of the offense and the offender’s prior record as key considerations. Until recently, these statutory reforms also reflected the belief that was central to the post-Gault initiatives—that because of their developmental immaturity, most juveniles should be dealt with more leniently than adult offenders in separate courts and correctional facilities.

Policies that fail to acknowledge the reality that young offenders are neither innocent children nor mature adults are unlikely to serve the interests of the public or of the youths themselves. The empirical evidence from developmental psychology supports the position that juveniles should be held to a standard of diminished criminal responsibility because their decisions about involvement in criminal activity reflect immaturity of understanding and judgment. It also suggests that many adolescents are inclined to engage in criminal activity but that they desist with maturity. Thus, policy-makers focused on utilitarian goals must calculate not only the direct costs of the harm caused by young offenders, but also the long-term costs of punitive sanctions.

The influences on adolescent decision making—peer influence, risk perception and preference, and time perspective—together contribute to immature judgment, which may lead adolescents to make choices harmful to themselves or others. It seems likely that these developmental factors distinguish adolescent decision making involving in crime from that of adults. However, adolescent immaturity should not excuse young offenders from criminal responsibility. Rather, the scientific evidence supports the argument of the post-Gault reformers that a presumptive diminished responsibility standard should be applied to juvenile offenders, holding them accountable yet at the same time acknowledging their choices as less blameworthy than those of adults.

Since most youthful delinquent behavior is “adolescence-limited,” typical young offenders predictably mature into productive (or at least not criminal) citizens if they survive this stage without destroying their life chances. Whether these individuals will assume conventional adult roles is likely to depend in part on the system’s response to their adolescent criminal conduct. A policy of categorically imposing adult criminal penalties on young offenders may increase the probability that they will become career criminals, or it may delay desistance. At a minimum, criminal sentences undermine the future educational and employment prospects and general social productivity of those offenders whose criminal conduct is adolescent limited.

Developmental analysis suggests that modern reformers have failed to include in their calculus some important social costs of punitive policies. Predictions about the effectiveness of these policies are based on one of two assumptions, and perhaps on both. Either the reformers believe that most young offenders are simply young career criminals (and thus we need not concern ourselves about their future life prospects), or they believe that those offenders who predictably would otherwise outgrow their inclination to engage in criminal conduct will not be seriously harmed by adult criminal punishment. The psychological evidence indicates that the first assumption is simply inaccurate; the second seems implausible.

Policy Directions

What would be the features of a juvenile justice policy based on a realistic account of adolescence? First, such a policy would incorporate principles of accountability, through the adoption of a diminished responsibility standard. This is important for several reasons. First, accountability is important for purposes of public acceptance and moral legitimacy. Moreover, lessons in accountability are important; adolescents need to learn from their bad choices so that they can successfully assume adult roles. Second, juvenile justice policy conceptualized in a developmental framework would seek to protect rather than damage adolescents’ prospects for a productive future. Procedural protections that limit the stigma and lasting impact of delinquency status are worthwhile (for example, the right to a closed hearing). Also, dispositional programs that emphasize education and job skills are needed to prepare young offenders for adult roles.

Finally, it seems important to maintain a separate system of adjudication and disposition for juveniles. In a volatile political environment, programs designed for young offenders and sentencing distinctions between juveniles and adults are more likely to be maintained in a separate juvenile justice system.
Here’s Important News for You …

2003 Law Day Theme Announced


Student Photo Entries Welcome!

Open to students ages 12–18, the annual Images of Freedom Student Photo Competition asks entrants to submit original photos on the Law Day theme (see above for 2003). Prizes include a $1,000 cash prize and a trip to Washington, D.C. For a brochure, call (312) 988-5735 or e-mail abapubed@abanet.org. For entry forms/rules, visit www.abanet.org/publiced/imagescontest.

National Online Youth Summit Scheduled

Feb.–March 2003, 1,000 students will participate in the Online Youth Summit “Access Denied: Should Youth Access to the Internet Be Restricted?” For more information about this annual program, visit www.abanet.org/publiced/noys, call 312/988-5735, or e-mail parrinim@staff.abanet.org.