

PART 1

The History of JUVENILE JUSTICE



If you are a young person under the age of 18 and get into trouble with the law, you will probably have your case heard in the juvenile justice system. But this was not always the case. The idea of a separate justice system for juveniles is just over one hundred years old.

ORIGINS OF THE JUVENILE JUSTICE SYSTEM

The law has long defined a line between juvenile and adult offenders, but that line has been drawn at different places, for different reasons. Early in United States history, the law was heavily influenced by the common law of England, which governed the American colonies. One of the most important English lawyers of the time was William Blackstone. Blackstone's *Commentaries on the Laws of England*, first published in the late 1760s, were widely read and admired by our nation's founders.

"Infants" and "Adults" at Common Law

In one section of his *Commentaries*, Blackstone identified people who were incapable of committing a crime. Two things were required to hold someone accountable for a crime. First, the person had to have a "vicious will" (that is, the intent to commit a crime). Second, the person had to commit an unlawful act. If either the will or the act was lacking, no crime was committed. The first group of people Blackstone identified as incapable of committing a crime were "infants." These were not infants in the modern sense of the word, but children too young to fully understand their actions.

Blackstone and his contemporaries drew the line between "infant" and "adult" at the point where one could understand one's actions. Children under the age of seven were as a rule classified as infants who could not be guilty of a felony (a felony is a serious crime such as burglary, kidnapping, or murder). Children over the age of 14 were liable to suffer as adults if found guilty of a crime.

Between the ages of seven and fourteen was a gray zone. A child in this age range would be presumed incapable of crime. If, however, it appeared that the child understood the difference between right and wrong, the child could be convicted and suffer the full consequences of the crime. These consequences could include death in a capital crime. (A capital crime is a crime for which one might be executed. For examples of children sentenced to death in Blackstone's time, see the sidebar "Malice Supplies the Age.")

MALICE SUPPLIES THE AGE

In this excerpt, 18th-century English lawyer William Blackstone describes the English common law doctrine “malice supplies the age.”

But by the law, as it now stands, . . . the capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent’s understanding and judgment. For one lad of eleven years old may have as much cunning as another of fourteen; and in these cases our maxim is, that *malitia supplet aetatem* [“malice supplies the age”]. Under seven years of age indeed an infant cannot be guilty of felony; for then a felonious discretion is almost an impossibility in nature: but at eight years old he may be guilty of felony. Also, under fourteen . . . if it appear to the court and jury, that he . . . could discern between good and evil, he may be convicted and suffer death. Thus a girl of thirteen has been burnt for killing her mistress: and one boy of ten, and another of nine years old,

who had killed their companions, have been sentenced to death, and he of ten years actually hanged; because it appeared upon their trials, that the one hid himself, and the other hid the body he had killed; which hiding manifested a consciousness of guilt, and a discretion to discern between good and evil. . . . Thus also, in very modern times, a boy of ten years old was convicted on own confession of murdering his bedfellow; there appearing in his whole behaviour plain tokens of a mischievous discretion: and, as the sparing this boy merely on account of his tender years might be of dangerous consequence to the public, by propagating a notion that children might commit such atrocious crimes with impunity, it was unanimously agreed by all the judges that he was a proper subject of capital punishment.

William Blackstone’s *Commentaries on the Laws of England*, Book IV, Chapter 2 (“Of the Persons Capable of Committing Crimes”)

A New System of Justice for Juveniles

During the nineteenth century, the treatment of juveniles in the United States started to change. Social reformers began to create special facilities for troubled juveniles, especially in large cities. In New York City, the Society for the Prevention of Juvenile Delinquency established the New York House of Refuge to house juvenile delinquents in 1825. The Chicago Reform School opened in 1855. The reformers who supported these institutions sought to protect juvenile offenders by separating them from adult offenders. They also focused on rehabilitation—trying to help young offenders avoid a future life of crime.

In 1899, the first juvenile court in the United States was established in Cook County, Illinois. The idea quickly caught on, and within twenty-five years, most states had set up juvenile court systems. The early juvenile courts shared with reform schools the same desire to rehabilitate

rather than of punish juvenile offenders. They were based on the legal doctrine of *parens patriae* (a Latin term that means “parent of the country”). The *parens patriae* doctrine gives the state the power to serve as the guardian (or parent) of those with legal disabilities, including juveniles.

In line with their “parental” role, juvenile courts tried to focus on the “best interests of the child.” They emphasized an informal, nonadversarial, and flexible approach to cases—there were few procedural rules that the courts were required to follow (see sidebar “Original Goals of the Juvenile Courts”). Cases were treated as civil (noncriminal) actions, and the ultimate goal was to guide a juvenile offender toward life as a responsible, law-abiding adult. The juvenile courts could, however, order that young offenders be removed from their homes and placed in juvenile reform institutions as part of their rehabilitation program.

ORIGINAL GOALS OF THE JUVENILE COURTS

In 1909, Judge Julian Mack, one of the first judges to preside over the nation’s first juvenile court in Cook County, Illinois, described the goals of the juvenile court:

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

Julian Mack, “The Juvenile Court,” *Harvard Law Review*, vol. 23 (1909), 120.]

QUESTIONS FOR REVIEW

1. What is the significance of the English common law doctrine, “malice supplies the age”?
2. What were the goals of the early juvenile courts?



JUVENILE JUSTICE AND DUE PROCESS OF LAW

Beginning in the 1960s, the United States Supreme Court heard a number of cases that would profoundly change proceedings in the juvenile courts. The first of these cases was *Kent v. United States*, 383 U.S. 541 (1966). Morris Kent first entered the juvenile court system at the age of 14, following several housebreakings and an attempted purse snatching. Two years later, his fingerprints were found in the apartment of a woman who had been robbed and raped. He was detained and interrogated by police and admitted to the crimes. Kent's mother hired a lawyer, who arranged for a psychiatric examination of the boy. That examination concluded that Kent suffered from "severe psychopathology" and recommended that he be placed in a psychiatric hospital for observation.

The juvenile court judge had authority to "waive jurisdiction" in Kent's case to a criminal court, where Kent would be tried as an adult. Kent's lawyer opposed the waiver and offered to prove that if Kent were given proper hospital treatment, he would be a candidate for rehabilitation. The juvenile court did not respond to the motions made by Kent's lawyer and, without a hearing, waived jurisdiction to the criminal court.

The Worst of Both Worlds?

The U.S. Supreme Court agreed to hear Kent's case and in a majority opinion authored by Justice Fortas, ruled that Kent was entitled to a hearing and to a statement of the reasons for the juvenile court's decision to waive jurisdiction. In its opinion, the majority also expressed concerns that the juvenile courts were not living up to their promise. In fact, the majority speculated "that there may be grounds for concern that the child receives the worst of both worlds [in juvenile courts]: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." A particular concern was whether juvenile courts had received the resources, personnel, and facilities they needed to adequately serve youth charged with violations of the law.

A year after the *Kent* decision, the case of Gerald Gault, a 15-year-old Arizona boy, led to a major change in the way young people's cases were processed by the juvenile courts. Gerald was accused of making an indecent phone call to a neighbor. At the time, he was also under 6-months' probation because he had been with another boy who stole a wallet from a woman's purse. When Gerald's neighbor complained of the call, police arrived at his home and took him into custody. They left no notice for Gerald's parents.

Before Gerald's hearings, neither Gerald nor his parents received notice of the specific charges against him. At the hearings, there were no sworn witnesses and no record was made of the proceedings. Not even the neighbor who had made the complaint about the phone call was present. At the end of the hearings, the judge committed Gerald to Arizona's State Industrial School until he turned 21, unless he was discharged earlier by "due process of law." This meant that Gerald might have to spend up to six years at the school. An adult convicted of

using vulgar or obscene language would have received a maximum penalty of a \$50 fine and imprisonment for no more than two months.

Gerald's parents petitioned for their son's release. They argued that he had been denied due process of the law (see sidebar "What Is Due Process?") and that his constitutional rights to a fair trial had been violated. The case eventually made its way to the Supreme Court, which ruled in favor of Gerald in *In re Gault*, 387 U.S. 1 (1967).

WHAT IS DUE PROCESS?

Due process of law means that every person who is party to a legal proceeding is entitled to certain safeguards designed to ensure that the proceeding is fair and impartial. The Bill of Rights in the U.S. Constitution defines many due process rights, including:

- The Fifth Amendment's guarantees that
 - No one can be deprived of life, liberty, or property without due process of law.
 - No one can be compelled to be a witness against herself or himself (self-incrimination) in a criminal trial.
 - No one can be tried for a serious crime unless indicted by a grand jury.
- The Sixth Amendment's rights to
 - A speedy and public trial.
 - An impartial jury.
 - Notice of the nature and cause of an accusation.
 - Confrontation of adverse witnesses (the right to cross-examine witnesses)
 - Compel witnesses in one's favor to appear in court.
 - Assistance of legal counsel for one's defense.
- The Seventh Amendment's right to trial by jury in most civil (noncriminal) cases.
- The Eighth Amendment's protections against
 - Excessive bail.
 - Cruel and unusual punishments.

Beginning in 1967, with its decision in *In re Gault*, the U.S. Supreme Court extended many, but not all, of these due process rights to young people involved in juvenile court proceedings.





Writing for the majority of the Court, Justice Fortas stated that “neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.” Juveniles subject to delinquency hearings were entitled to key elements of due process to ensure the fairness of their hearings, including:

- Notice of the charges against them.
- A right to legal counsel.
- The right against self-incrimination.
- The right to confront and cross-examine witnesses.

Blurring the Lines Between Juvenile and Criminal Justice

The Supreme Court’s decision in *In re Gault* was not unanimous. In a dissent, Justice Stewart warned that by requiring many of the same due process guarantees in juvenile cases that are required in criminal cases, the Court was converting juvenile proceedings into criminal proceedings. In doing so, he argued, the Court was missing an important distinction. The object of juvenile proceedings was the “correction of a condition.” The proceedings were not adversarial; juvenile courts functioned as public social agencies striving to find the right solution to the problem of juvenile delinquency. The object of criminal courts, in contrast, was conviction and punishment of those who commit wrongful acts.

Justice Stewart noted that in the nineteenth century, before juvenile courts were established, juveniles tried in criminal courts were given the same due process as adults. They were also subject to the harshest punishments for their crimes, including the death penalty. Juvenile courts were not perfect, Justice Stewart agreed. But by blurring the distinctions between juvenile proceedings and criminal proceedings, the Court was “invit[ing] a long step backwards into the nineteenth century.”

Three years after the *Gault* decision, the Court took another step toward making procedure in the juvenile courts more like criminal courts. *In re Winship*, 397 U.S. 358 (1970), involved a 12-year-old boy charged with stealing a \$112 from a woman’s purse. The juvenile court decided that “a preponderance of the evidence” established that the boy had committed the theft. To say that someone is guilty of a crime by a “preponderance of the evidence” means that the available evidence (for example, the testimony of witnesses) makes it more likely than not that the person committed the crime. In a standard criminal trial, however, the government has to prove “beyond a reasonable doubt” that the accused committed the crime. “Beyond a reasonable doubt” is a higher standard than “preponderance of the evidence”—it means that the available evidence leaves you firmly convinced of a defendant’s guilt.

One reason that the “beyond a reasonable doubt” standard of proof is required in criminal cases is that a person convicted of a crime can be sentenced to serve time in prison. In the *Winship* case, the boy charged with stealing from the purse faced up to six years in a juvenile training school. In defending use of the “preponderance of the evidence” standard, supporters of the juvenile court emphasized that the purpose of the training school was not to punish but to rehabilitate the boy. They also argued that it is not necessarily in the best interests of a troubled juvenile to “win” a case if the juvenile is truly in need of a court’s intervention. A majority of the Court rejected these arguments, stating that “good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts.” This was particularly true in cases where the juvenile’s loss of liberty during confinement in a juvenile training school would be comparable to the punishment of imprisonment imposed when an adult is convicted of a crime.

Chief Justice Burger dissented from the majority opinion, joined by Justice Stewart. By moving the juvenile courts closer to procedures used in the criminal trials of adults, the dissenters argued, the Court was also moving away from the original idea of juvenile courts as benevolent and less formal institutions equipped to deal flexibly with the unique needs of juvenile offenders. “I cannot regard it as a manifestation of progress,” Chief Justice Burger asserted, “to transform juvenile courts into criminal courts, which is what we are well on the way to accomplishing.”

Trial by Jury and Juvenile Justice

The trend toward extending the due process rights of adult criminal trials to juvenile court proceedings slowed in 1971, with the Supreme Court’s ruling in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971). In *McKeiver*, the Court ruled that juveniles are not entitled to trial by jury in a juvenile court proceeding.

An important factor in the Court’s decision was its refusal to fully equate a juvenile proceeding with a criminal proceeding, even if the juvenile’s case involved offenses that would be felonies or misdemeanors under the state’s criminal laws and the juvenile court ordered the youth confined to a secure rehabilitation facility. The Court acknowledged that juvenile courts had not lived up to their promise, in part because of a lack of adequate resources. But the Court was also “reluctant to disallow the States to experiment further and to seek in new and different ways the elusive answers to the problems of the young.” Trial by jury, the Court feared, would effectively abolish any significant distinction between juvenile and criminal proceedings. “If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system,” the majority opinion concluded, “there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it.”

Three justices joined a dissenting opinion in *McKeiver*. They argued that when a juvenile is tried for offenses based on violations of a state’s criminal law, and when the juvenile faces possible commitment to a state institution for delinquents, a jury trial should be required. “Where a State uses its juvenile court proceedings to prosecute a juvenile for a criminal act and to order ‘confinement’ until the child reaches 21 years of age. . . .” the dissenters stated, “then [the juvenile] is entitled to the same procedural protection as an adult.”

QUESTIONS FOR REVIEW

1. What is meant by the term “due process”?
2. Why did the Supreme Court decide not to give juveniles the right to trial by jury?
3. Why were dissenting justices concerned about the

DISCUSSION QUESTIONS FOR PART I

TAKE A STAND

Begin your discussion of the issues raised in Part I by asking participants to “take a stand” on the following statements. Designate corners of the room for participants who agree, disagree, or are not sure of their opinion. For each question, ask the participants to move to the corner of the room that reflects their opinion. After your dialogue on the Discussion Questions, you can repeat the “take a stand” activity to see if anyone’s opinions have changed.

“Take a stand” indicating whether you agree, disagree, or are not sure of your opinion on these statements:

- The juvenile justice system should emphasize rehabilitation, not punishment, of juvenile offenders.
- There is a difference between confining someone for rehabilitation and confining someone for punishment.
- A judge should have flexibility in determining how long a juvenile offender may need to be confined for rehabilitation.
- Juveniles should be entitled to a trial by jury.

DISCUSSION QUESTIONS

1. Early treatment of juvenile offenders who were deemed capable of understanding their crime emphasized punishment. The juvenile court system, in contrast, was founded on the belief that society should try to rehabilitate, not punish, juvenile offenders. In the due process cases of the 1960s and ’70s, the Supreme Court often questioned whether the juvenile courts had been successful in their efforts to address the problems of young offenders. Should rehabilitation of juvenile offenders still be considered an important goal of the juvenile justice system? Why or why not?
2. If the goal of the juvenile justice system is rehabilitation, shouldn’t a juvenile court judge have latitude to try different approaches and apply different standards to individual juveniles? Do rights to due process, in other words, put too many constraints on the ability of juvenile judges to address the unique problems and needs of individual offenders? Why or why not?
3. If you, as a juvenile, were accused of committing a criminal offense, would you rather be tried by a jury of adults from your community or have your case heard by a judge? Would your answer differ if you were tried by a jury of young people? Why or why not?
4. Is there a significant distinction between confinement of a juvenile in an institution meant to help rehabilitate juvenile offenders and confinement of convicted criminal for punishment in a prison? In other words, should we be less worried about depriving juveniles of their liberty if the focus of their confinement is rehabilitation, not punishment?