CONSTITUTIONAL LAW—JUVENILE COURT PROCEEDINGS—PROOF BEYOND A REASONABLE DOUBT REQUIRED—*In re Winship*, 397 U.S. 358 (1970).

Samuel Winship, a twelve-year-old juvenile, allegedly entered a locker and stole $112 from a woman's pocketbook. The Family Court, Bronx County, requiring only a preponderance of the evidence in accordance with the statute,[1] adjudged him a delinquent and ordered his confinement in a training school for a period of up to six years.[2] The Appellate Division of the New York Supreme Court affirmed the adjudication without opinion.[3] In his argument before the New York Court of Appeals, Winship contended that due process required that a finding of delinquency be based upon proof beyond a reasonable doubt. The court rejected his contention, upheld the adjudication, and expressly ruled the statute constitutional.[4] The United States Supreme Court reversed,[5] holding that due process requires the application of the higher standard of proof—proof beyond a reasonable doubt—during adjudicatory proceedings "when a juvenile is charged with an act which would constitute a crime if committed by an adult."[6]

The dawn of this century saw the widespread establishment of juvenile courts imbued with the philosophy of rehabilitation, rather than punishment, of juvenile offenders.[7] The new concept charged the state with responsibility as *parens patriae* in aiding children through the informal juvenile court proceeding.[8] The object was to provide delinquent youths with guidance and training, while avoiding "all suggestion and taint of criminality."[9] Procedural guidelines were often

1 N.Y. FAMILY COURT ACT § 744(b) (McKinney Supp. 1970) provides in part:

Any determination at the conclusion of a fact-finding hearing that a respondent did an act or acts must be based on a preponderance of the evidence.

2 *In re* Winship, 397 U.S. 358, 360 (1970).

3 *In re* Samuel W., 30 App. Div. 2d 781, 291 N.Y.S.2d 1005 (1968).

4 W. v. Family Court, 24 N.Y.2d 196, 203, 247 N.E.2d 253, 257, 299 N.Y.S.2d 414, 420 (1969).

5 397 U.S. 358 (1970).

6 *Id.* at 359.

7 Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107 (1909). *See also* THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 2-3 (1967), which found that the rapid industrialization, immigration, and urbanization of the 19th century saw a sharp rise in juvenile delinquency. Reformers pressed for a separate judicial system as the best way to help these wayward youths. Illinois' Juvenile Court Act of 1899 was followed by others, and by 1925, juvenile courts had been established in all but two states. Today, they operate in every American jurisdiction.

8 Mack, *supra* note 7, at 109.

9 People v. Lewis, 260 N.Y. 171, 176, 183 N.E. 353, 354 (1932).

broad and ill-defined, requiring the hearing to comply with traditional safeguards,[10] to be conducted with fundamental fairness,[11] or to measure up to the essentials of due process and fair treatment.[12] Generally, social and humanitarian considerations took precedence over constitutionally required procedural safeguards in these courts.[13]

The absence of these constitutional restrictions was explained by the "civil" nature of the proceedings,[14] since the *parens patriae* doctrine held that "[t]he basic right of a juvenile is not to liberty but to custody."[15] A delinquency adjudication providing for incarceration of the youth in a training school was merely a transfer of custody, in which the state assumed the role of guardian.[16] Thus, a juvenile could suffer no loss of liberty, since he had none, and "there was neither right to nor necessity for the procedural safeguards prescribed by constitution and statute in criminal cases."[17]

Despite the reformers' well-intentioned efforts, dissatisfaction with the performance of the juvenile court system grew. In 1966, the United States Supreme Court, in *Kent v. United States*,[18] expressed disillusionment with the system, prompting speculation that the Court would soon extend to juveniles many of the constitutional safeguards then afforded adults. The Court stated:

> [T]here may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.[19]

Finally, the Supreme Court, through *In re Gault*,[20] ended the juvenile court's immunity from the reach of due process. Noting the juvenile system's deficiencies and realistically appraising the term "delinquent" as having "only slightly less stigma than the term 'criminal' applied to adults,"[21] *Gault* declared: "[N]either the Fourteenth Amendment

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10 State v. Roth, 158 Neb. 789, 794, 64 N.W.2d 799, 802 (1954).

11 Application of Johnson, 178 F. Supp. 155, 160 (D.N.J. 1957).

12 State *in re* Carlo, 48 N.J. 224, 236, 225 A.2d 110, 116 (1966).

13 *See generally* People v. Lewis, 260 N.Y. 171, 183 N.E. 353 (1932); People v. Dotson, 46 Cal. 2d 891, 299 P.2d 875 (1956).

14 *In re* Gault, 387 U.S. 1, 17 (1967).

15 Shears, *Legal Problems Peculiar to Children's Courts*, 48 A.B.A.J. 719, 720 (1962).

16 *See* State v. Dunn, 53 Ore. 304, 309, 99 P. 278, 280 (1909).

17 People v. Lewis, 260 N.Y. 171, 177, 183 N.E. 353, 355 (1932).

18 383 U.S. 541 (1966).

19 *Id.* at 556.

20 387 U.S. 1 (1967).

21 *Id.* at 23-24.

nor the Bill of Rights is for adults alone."[22] *Gault* decided that while juvenile delinquency proceedings need not conform entirely with adult criminal proceedings, they must apply "the essentials of due process and fair treatment" when the child's liberty is at stake, including: the right to counsel;[23] the privilege against self-incrimination;[24] the right of the accused to confrontation and cross-examination of the witnesses;[25] and adequate notice of the hearing and of the charges.[26] *In re Winship* may be seen as a logical extension of *Gault*, in which the Court decided that "proof beyond a reasonable doubt is among the 'essentials of due process and fair treatment'."[27]

Before *Winship*, the great majority of juvenile courts applied the standard of proof termed "by a preponderance of the evidence" or "civil" in adjudicatory proceedings.[28] This criterion enables the judge, sitting as the trier of fact, to decide the case in favor of the party presenting the more persuasive evidence.[29] With respect to the fact-finding stage of juvenile hearings, the "preponderance of the evidence" required for a delinquency adjudication might have been established if the child's delinquency appeared more probable than not.[30]

Criminal courts, on the other hand, have long employed the more rigorous standard—proof beyond a reasonable doubt. Previously, several Supreme Court decisions had acknowledged that criminal prosecution warrants this higher standard.[31]

> There is always in litigation a margin of error . . . . Where one party has at stake an interest of transcending value—as a criminal defendant his liberty—this margin of error is reduced as to him by the process of placing on the other party the burden . . . of persuading the factfinder at the conclusion of the trial of his guilt beyond a reasonable doubt.[32]

Winship dealt squarely with the constitutionality of the criminal measure:

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22 *Id.* at 13.

23 *Id.* at 41.

24 *Id.* at 55.

25 *Id.* at 56.

26 *Id.* at 33-34.

27 397 U.S. at 359.

28 *Id.* at 360 n.3; Cohen, *The Standard of Proof in Juvenile Proceedings: Gault Beyond a Reasonable Doubt*, 68 MICH. L. REV. 567, 569 (1970).

29 *See* E. MORGAN, SOME PROBLEMS OF PROOF UNDER THE ANGLO-AMERICAN SYSTEM OF LITIGATION 81-86 (1956).

30 *See generally* Morgan, *Instructing the Jury Upon Presumptions and Burden of Proof*, 47 HARV. L. REV. 59, 66-67 (1933).

31 *See* Speiser v. Randall, 357 U.S. 513 (1958); Holland v. United States, 348 U.S. 121 (1954); Leland v. Oregon, 343 U.S. 790 (1952).

32 Speiser v. Randall, 357 U.S. 513, 525-26 (1958).

> Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.[33]

The New York Court of Appeals had maintained that its preponderance of the evidence standard was constitutional and proper in juvenile proceedings, stating:

> Careful and fully explicit safeguards . . . are provided in the statute to insure that an adjudication of this kind is not a "conviction" . . . that it affects no right or privilege . . . and a cloak of protective confidentiality is thrown around all the proceedings . . . .
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> . . . There is, hence, no deprivation of due process . . . .[34]

Winship relied heavily on *Gault* in justifying the extension of the criminal standard of proof to juvenile courts. *Gault* observed: "[H]owever euphemistic the title, a 'receiving home' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated . . . ."[35] Paul Tappan, a sociologist, comments on the delinquents' plight:

> [A]t the child's level the experience of a delinquency adjudication in the juvenile court, its treatment consequences, and its effects on his reputation and his self-esteem are as severe—very often more so—as criminal conviction is to an adult.[36]

This is not hard to imagine, as the staffs of many correctional institutions lack the temperament and training for their jobs,[37] and facilities are frequently overcrowded.[38] Often, the altruistic goals of rehabilitation are forgotten as reform schools degenerate into "miniature prisons with many of the same vicious aspects."[39] Juveniles undergo the experience of forced association with more sophisticated, delinquent recidivists, or worse yet, with hardened criminals.[40] For, in almost one-half of the states, juvenile delinquents may be assigned to adult penitentiaries for convicted criminals, through either "direct

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33 397 U.S. at 364.

34 W. v. Family Court, 24 N.Y.2d at 200, 203, 247 N.E.2d at 255-56, 257, 299 N.Y.S.2d at 417-18, 420.

35 387 U.S. at 27.

36 Tappan, *Unofficial Delinquency*, 29 NEB. L. REV. 547, 548 (1950).

37 Sheridan, *Juveniles Who Commit Noncriminal Acts: Why Treat in a Correctional System*, 31 FED. PROB. 26, 28 (1967).

38 CHILDREN'S BUREAU, STATISTICAL SERIES 78, STATISTICS ON PUBLIC INSTITUTIONS FOR DELINQUENT CHILDREN: 1963 at 8-10 (1965).

39 Douglas, *Juvenile Courts and Due Process of Law*, 19 JUV. CT. JUDGES J. 9, 11 (1968).

40 Sheridan, *supra* note 37, at 27-28.

commitment" or "administrative transfer."[41] Understandably, the juvenile's confinement can have "lasting effects upon his personality and ability to cope in a socially acceptable way."[42] Thus, our juvenile system often presented the paradox of a civil adjudication based on the preponderance of the evidence standard, and a criminal deprivation of liberty. *Winship* acknowledged that although the "'civil' label-of-convenience"[43] attaches to juvenile proceedings, replete with promises of compassionate and benevolent treatment, "civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts . . . ."[44]

As for the "cloak of protective confidentiality,"[45] *Gault* had already noted that often the "claim of secrecy . . . is more rhetoric than reality."[46] No statutory restrictions govern juvenile court records in over half the states, "and presumably . . . they are public records and may be examined by anyone."[47] The stigma attaching to the rehabilitated delinquent, almost comparable to that of a convicted criminal, may handicap his employment opportunities for years to come.[48] And the suggestion of the New York Court of Appeals, that only a "tenuous difference" exists between the two standards of proof, was convincingly rebutted by the juvenile judge's admission that, while he was satisfied by a preponderance of the evidence, he was not convinced beyond a reasonable doubt that the appellant had stolen the money.[49]

The application of *Winship* is limited to the adjudicatory, or

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41 CHILDREN'S BUREAU, PUBLICATION 415, DELINQUENT CHILDREN IN PENAL INSTITUTIONS 1, 2 (1964). "Incorrigible behavior" is the most frequently cited criterion for transfer to a reformatory, penitentiary, or other facility for convicted criminals. The determination of incorrigibility is necessarily subjective, influenced by such factors as the institution's philosophy, the available programs and services, and the training and skill of the staff. "What may be deemed incorrigible by the officials in one institution may be acceptable as symptomatic, acting-out conduct in another." *Id.* at 3-8. Statutory authority affords the legal basis for transfer in most of these jurisidictions. The constitutionality of these transfers has been questioned: *Compare* Shone v. State, 237 A.2d 412 (Me. 1968), *rev'd on constitutional grounds*, 406 F.2d 844 (1st Cir. 1969) *with In re* Rich, 125 Vt. 373, 216 A.2d 266 (1966). *See also* Pirsig, *The Constitutional Validity of Confining Disruptive Delinquents in Penal Institutions*, 54 MINN. L. REV. 101 (1969).

42 Lipsitt, *Due Process as a Gateway to Rehabilitation in the Juvenile Justice System*, 49 B.U.L. REV. 62, 75 (1969).

43 *In re* Gault, 387 U.S. at 50 (1967).

44 397 U.S. at 365-66.

45 24 N.Y.2d at 200, 247 N.E.2d at 256, 299 N.Y.S.2d at 418.

46 387 U.S. at 24.

47 Ferster & Courtless, *The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender*, 22 VAND. L. REV. 567, 604 (1969).

48 Sheridan, *supra* note 37, at 28.

49 397 U.S. at 369 (concurring opinion).

fact-finding stage of juvenile delinquency proceedings, as was *Gault*.[50] The Supreme Court maintains that the application of constitutional safeguards is consistent with the "commendable principles relating to the processing and treatment of juveniles separately from adults."[51] Thus, it appears possible that in the future, through the seemingly expansive medium of due process, many pre-judicial and dispositional procedural safeguards, now afforded criminally-charged adults, will be extended to juvenile defendants as well.[52] A gradual return to traditional criminal procedures in juvenile courts, far from destroying their benevolent character, will only serve to strengthen them. For, as Justice Musmanno wrote in the dissent to *Holmes' Appeal*:[53]

> [N]o matter how trained and experienced a Juvenile Court judge may be, he cannot by any magical fishing rod draw forth the truth out of a confused sea of speculation, rumor, suspicion and hearsay. He must follow certain procedures which the wisdom of centuries has established."[54]

Winship neither impugns the charitable philosophy of the juvenile court, nor imposes upon it burdensome and rigid technicalities. Rather, it recognizes that a child's liberty is every bit as precious as an adult's. Accordingly, it decides that due process demands the same certitude of guilt—proof beyond a reasonable doubt—in both cases.

Frank T. Flannery

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50 *Id.* at 358-59.

51 *In re* Gault, 387 U.S. at 22 (1967).

52 *See also* these matters which state courts have considered: *In re* Marsh, 40 Ill. 2d 53, 237 N.E.2d 529 (1968); *In re* Ronny, 40 Misc. 2d 194, 242 N.Y.S.2d 844 (N.Y. Fam. Ct. 1963) (evidence obtained through illegal search and seizure will be excluded at a juvenile hearing); Leach v. State, 428 S.W.2d 817 (Tex. 1968) (statements made by a juvenile, without his waiver of the right to remain silent, will be excluded).

53 379 Pa. 599, 109 A.2d 523 (1954).

54 *Id.* at 614, 109 A.2d at 529.