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## Constitutional Law: Due Process Requires Proof beyond a Reasonable Doubt for Juveniles

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CONSTITUTIONAL LAW: DUE PROCESS REQUIRES  
PROOF BEYOND A REASONABLE DOUBT  
FOR JUVENILES

In *In re Winship*,<sup>1</sup> the United States Supreme Court held that proof beyond a reasonable doubt is among the constitutional protections of the due process clause of the fourteenth amendment available to a juvenile who is charged with an act which would constitute a crime if committed by an adult.

A judge of the New York Family Court found that appellant, then twelve years old, had stolen \$112 from a woman's pocketbook taken from a locker. This finding was based on a preponderance of the evidence in accordance with the requirements of a New York Statute.<sup>2</sup> The statute provided that "[a]ny determination at the conclusion of [an adjudicatory] hearing that a [juvenile] did an act or acts must be based on a preponderance of the evidence."<sup>3</sup> Subsequently, appellant was placed in a training school for a period of eighteen months subject to annual extensions until appellant reached eighteen. Whether proof beyond a reasonable doubt is required under the fourteenth amendment was raised at the original adjudicatory proceeding by appellant's attorney.

The Appellate Division of the New York Supreme Court, First Department affirmed,<sup>4</sup> as did the New York Court of Appeals<sup>5</sup> in an opinion expressly upholding the constitutionality

<sup>1</sup> 397 U.S. 358 (1970).

<sup>2</sup> N.Y. FAMILY CT. ACT § 744(b) (McKinney 1963).

<sup>3</sup> *Id.*, quoted in *In re Winship*, 397 U.S. 358, 360 (1970).

<sup>4</sup> *In re Samuel W.*, 30 App. Div. 2d 781, N.Y.S.2d 1005 (1968) (mem.), *aff'd sub nom. Samuel W. v. N.Y. Family Ct.*, 24 N.Y.2d 196, 247 N.E.2d 253, 299 N.Y.S.2d 414 (1969), *rev'd sub nom. In re Winship*, 397 U.S. 358 (1970).

<sup>5</sup> *Samuel W. v. N.Y. Family Ct.*, 24 N.Y.2d 196, 247 N.E.2d 253, 299 N.Y.S.2d 414 (1969), *rev'd sub nom. In re Winship*, 397 U.S. 358 (1970).

ty of the New York Statute. The United States Supreme Court noted probable jurisdiction<sup>6</sup> and reversed.<sup>7</sup>

Three years earlier, in the case of *In re Gault*,<sup>8</sup> the Supreme Court determined the constitutional guaranties which are to be extended to juveniles in adjudicatory proceedings. The guaranties enumerated were: the right to adequate written notice of the charges; the right to be represented by counsel, and if indigent, the right to court appointed counsel; the right to confrontation and cross-examination of witnesses; and the privilege against self-incrimination. These guaranties are required by the due process clause of the fourteenth amendment. The Court limited the application of these constitutional guaranties to the adjudicatory phase of juvenile proceedings. Therefore, *Gault* did not affect whatever beneficial elements existed in the less stringent formality of the pre-judicial and post-adjudicative processes.<sup>9</sup>

Special standards for juvenile proceedings are based on the idea that criminal courts are too harsh for youthful defendants, and that youthful offenders are to be guided and helped rather than punished.<sup>10</sup> Thus, the state was said to act as guardian in the place of the parent,<sup>11</sup> and its juvenile proceedings were not criminal in nature.<sup>12</sup> These proceedings were supposed to be secret, and the juvenile was not considered as a person convicted of a crime.<sup>13</sup>

Dissenting in *Winship*, Mr. Chief Justice Burger, joined

<sup>6</sup> *In re Winship*, 396 U.S. 885 (1969).

<sup>7</sup> 397 U.S. 358.

<sup>8</sup> 387 U.S. 1 (1967).

<sup>9</sup> *Id.* at 21.

<sup>10</sup> *Commonwealth v. Fisher*, 213 Pa. 48, 53, 62 A. 198, 200 (1905).

<sup>11</sup> *State v. Dunn*, 53 Ore. 304, 307, 99 P. 278, 280 (1909).

<sup>12</sup> *State v. Santana*, 444 S.W.2d 614, 616 (Tex. 1969), *vacated sub nom. Santana v. Texas*, 397 U.S. 596 (1970) (*per curiam*).

<sup>13</sup> *State v. Arenas*, 453 P.2d 915, 918 (Ore. 1969).

by Mr. Justice Stewart, argued that the application of procedural restrictions to juvenile proceedings would negate the beneficial aspects of the proceedings and would "transform juvenile courts into criminal courts."<sup>14</sup> However, since the general introduction of juvenile courts from 50 to 100 years ago, beneficial changes in adult criminal proceedings and increased deficiencies in juvenile proceedings have resulted in a situation where "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."<sup>15</sup> Moreover, the argument that juvenile courts may refuse to apply constitutional guaranties on the grounds that the proceedings are benevolent was expressly rejected in *In re Gault*.<sup>16</sup>

There was no mention in *Gault* of the burden of proof standard to be applied in adjudicatory stages of juvenile proceedings. Indeed, the Supreme Court had never directly held the commonly accepted standard of proof—beyond a reasonable doubt—in criminal cases to be constitutionally required. However, it has been assumed for some time that this standard was constitutionally required in criminal cases. For instance, in *Davis v. United States*,<sup>17</sup> the Court stated:

No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them, by whomsoever adduced, is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged.

Again in *Speiser v. Randall*,<sup>18</sup> the Court said:

There is always in litigation a margin of error, rep-

<sup>14</sup> 397 U.S. at 376.

<sup>15</sup> *Kent v. United States*, 383 U.S. 541, 556 (1966) (footnote omitted).

<sup>16</sup> 387 U.S. 1, 27 (1967).

<sup>17</sup> 160 U.S. 469, 493 (1895).

<sup>18</sup> 357 U.S. 513, 525-26 (1958).

resenting error in factfinding, which both parties must take into account. 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.

Any uncertainty concerning the standard of proof required in criminal cases was finally put to rest with the holding in *Winship*.

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.<sup>19</sup>

The Court, in *Winship*, followed the traditional resolution of the issue placed before it by first deciding that proof beyond a reasonable doubt is required by the Constitution and then applying the standard to juveniles when subjected to the adjudicatory phase of proceedings against them. The extension of the reasonable-doubt standard of proof to juvenile proceedings is in accord with earlier decisions of both state and federal courts.<sup>20</sup>

In the opinions and footnotes, the justices continued their debate as to the proper interpretation of the due process clause. Mr. Justice Black, in a vigorous dissent,<sup>21</sup> would give the due process clause a strict interpretation, thus allowing any state to handle its juvenile proceedings, or for that matter other criminal proceedings, in any manner it chose as long as such proceedings did not violate the limited and specific

<sup>19</sup> 397 U.S. at 364.

<sup>20</sup> *In re Urbasek*, 38 Ill. 2d 535, 232 N.E.2d 716 (1967); *United States v. Constanzo*, 395 F.2d 441 (4th Cir. 1968); *Jones v. Commonwealth*, 185 Va. 335, 38 S.E.2d 444 (1946).

<sup>21</sup> 397 U.S. at 377.

prohibitions of the Constitution.<sup>22</sup> Mr. Justice Black made an effective argument to use a strict interpretation of the Constitution as a limit on the power of the judiciary, claiming that the legislature of each state has the power to specify the laws to be followed by that state and that the requirements of the due process clause are not violated if such laws are followed.<sup>23</sup> The majority is consistent in upholding the fairness doctrine,<sup>24</sup> holding that due process does not mean simply in accordance with the particular procedural laws of a state but rather in accordance with the "concept of ordered liberty."<sup>25</sup>

One effect of *Winship* will be to reinforce those lower courts which have been in the forefront of extending criminal procedural guaranties to juveniles,<sup>26</sup> where such guaranties have been held constitutionally required for adults by the Supreme Court.

However, neither the *Winship* nor the *Gault* decision indicates that juvenile courts, as separate and distinct bodies where youthful offenders may be specifically treated, are on their way out. Rather they are a reaffirmation of the existence of certain basic minimum rights, guaranteed by the Constitution, which cannot be taken away by any jurisdiction merely by creating a separate benevolent proceeding. Whenever the accused stands to lose his liberty or be otherwise severely restrained, his constitutional guaranties may not be infringed.

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<sup>22</sup> *Id.* at 385-86.

<sup>23</sup> *Id.* But see *Turner v. United States*, 396 U.S. 398, 430 (1970) (Black, J., dissenting) ("[C]onstitutional due process requires the Government to prove each element beyond a reasonable doubt before it can convict the accused of the crime it deliberately and clearly defined.")

<sup>24</sup> *Rochin v. California*, 342 U.S. 165, 172 (1952).

<sup>25</sup> *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

<sup>26</sup> *Leach v. State*, 428 S.W.2d 817 (Tex. Civ. App. 1968) (Johnson, J., concurring); *In re Aaron D.*, 30 App. Div. 2d 183, 290 N.Y.S.2d 935 (1968).