A CALIFORNIA JUVENILE'S RIGHT TO TRIAL BY JURY: AN ISSUE NOW OVERRIPE FOR CONSIDERATION

Nearly ten years ago California's Chief Justice observed "[t]he time is drawing inevitably closer when this court must confront, in light of the developing changes in the function of the juvenile court system, whether the immunity of that system from all of the protections of the criminal courts can withstand constitutional scrutiny."[1] This Comment submits that the time that was drawing inevitably closer has now arrived. The issue of a juvenile's right to trial by jury is not "just ripe for Supreme Court reconsideration," or timely legislative intervention, "it is overripe."[2]

INTRODUCTION

The California juvenile justice system has changed dramatically since its inception in 1903. Unlike earlier juvenile justice practice, there is no longer uniform treatment of dependent, delinquent, and neglected children. Over the past eighty-five years there has been movement away from the state's acting as a "benevolent father" during juvenile delinquency proceedings, to the state's adopting more criminal-like procedures.

During this eighty-five year period, the United States Supreme Court and the California Supreme Court have afforded juvenile delinquents many of the procedural due process protections available in adult criminal proceedings. Although California now provides many protections, one essential due process right remains unavailable to juveniles: the right to a jury trial. This Comment argues that the rationale for the original denial of this right is suspect, and that con-

1. *In re* Mitchell P., 22 Cal. 3d 946, 962 n.14, 587 P.2d 1114, 1155, 151 Cal. Rptr. 330, 341 (1978) (Bird, C.J., dissenting).

2. *In re* Javier A., 159 Cal. 3d 913, 968, 206 Cal. Rptr. 386, 424 (1984).

tinued denial of the right is inappropriate and patently unfair.

This Comment traces the origin and development of the juvenile justice system. In essence, a *quid pro quo* system was established where a minor's due process rights were exchanged for the protection and rehabilitative efforts of the juvenile court. The Comment notes the failure of juvenile courts to effect this purpose and then analyzes United States Supreme Court case law which extends procedural due process rights to minors. Following a critical examination of California case law, the Comment addresses the trend toward the "criminalization" of California juvenile delinquency proceedings. The Comment delineates the strong public policy benefits of granting juveniles the right to a jury trial and suggests that the continued denial of this important right can no longer be justified. The Comment concludes that timely legislative intervention is necessary to secure this right.

THE DEVELOPMENT OF THE JUVENILE COURT SYSTEM

A separate and distinct court system arose for juveniles in the United States in the early ninteenth century.[3] Urban centers were experiencing rapid expansion attributable to industralization and immigration.[4] Along with the burgeoning cities came the concomitant problems of overcrowding, poverty, and crime. Consequently, the family unit — which had traditionally provided for home education, discipline, and overall structure and unity — seemed threatened.[5] The child welfare movement developed in response to these conditions and concerns.[6]

Social reformers who pioneered this movement were primarily upper and middle class women.[7] They thought children were susceptible to the influences of immorality, and might be attracted to crime.[8] The child welfare movement was based on the concept that juveniles could be treated individually by combining early intervention with utilization of enlightened social theories and scientific methods.[9] As

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3. *See generally* A. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY (1969); S. SCHLOSSMAN, LOVE AND THE AMERICAN DELINQUENT: THE THEORY AND PRACTICE OF "PROGRESSIVE" JUVENILE JUSTICE, 1825-1920 (1977).

4. P. PARSLOE, JUVENILE JUSTICE IN BRITAIN AND THE UNITED STATES 27 (1978).

5. A. PLATT, *supra* note 3, at 98.

6. *See generally* P. HAHN, THE JUVENILE OFFENDER AND THE LAW (3d ed. 1984); L. EMPEY, THE SOCIAL CONSTRUCTION OF CHILDHOOD DELINQUENCY AND SOCIAL REFORM OF THE JUVENILE SYSTEM 44-47 (1976); Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970); A. PLATT, *supra* note 3.

7. UNITED STATES DEP'T OF JUSTICE, PROSECUTION IN THE JUVENILE COURTS: GUIDELINES FOR THE FUTURE 4 (1973).

8. M. PAULSEN, THE PROBLEMS OF JUVENILE COURTS AND THE RIGHTS OF CHILDREN 4 (1975).

9. *See generally* Fox, *supra* note 6, at 1231-39.

the traditional role of family was diminishing, the state was seen as having an obligation to provide for its needy youth.[10] The social reformers advocated progressive reliance on the state, utilizing government as the vector to rectify social problems.[11]

The first juvenile court system was founded in Illinois in 1899,[12] and other states quickly adopted various juvenile court acts.[13] These statutes were based on the doctrine of *parens patriae*.[14] The state, in effect, assumed the function of a surrogate parent by providing for the supervision of minors whose parents were either unwilling or unable to perform their parental duties.[15] The state, as the "ultimate parent," exercised authority for the care, protection and guidance of juveniles when public intervention was deemed necessary.[16]

The jurisdiction of early juvenile courts included abandoned and neglected children as well as delinquent youth.[17] Juvenile courts were established in order to protect minors from the harshness of the criminal law system. A juvenile court's focus was not on the act that brought the minor before the court;[18] rather, it was concerned with the child's underlying problems and needs.[19] Once these were ascertained, the court decided what intervention was necessary to save the child from a "downward career."[20] Thus, the juvenile court made no

10. P. PARSLOE, *supra* note 4, at 48.

11. *See* S. HAYS, THE RESPONSE TO INDUSTRIALISM 1885-1914 (1957).

12. "This act shall be liberally construed, to the end that its purposes may be carried out, to wit: that the care, trust, custody, and discipline of a child shall approximate as nearly as may be that which should be given by its parents." Act of Apr. 21, 1899, 1899 Ill. Laws § 21.

13. CHILDREN'S BUREAU, UNITED STATES DEP'T OF HEALTH, EDUCATION AND WELFARE, REPORT TO THE CONGRESS ON JUVENILE DELINQUENCY 7 (1960).

14. *Parens patriae*, literally "parent of the country," refers traditionally to the role of the state as sovereign and guardian of persons under legal disability. *Parens patriae* originates from the English common law where the king had a royal prerogative to act as guardian to persons with legal disabilities such as infants, idiots and lunatics. In the United States, the *parens patriae* function belongs with the states. BLACK'S LAW DICTIONARY 1003 (5th ed. 1979).

15. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909); E. RYERSON, BETWEEN JUSTICE AND COMPASSION: THE RISE AND FALL OF THE JUVENILE COURT 10-12 (1970).

16. Mack, *supra* note 15, at 109.

17. P. HAHN, *supra* note 4, at 5-6; GAULT: WHAT NOW FOR THE JUVENILE COURT? 9 (V. Nordin ed. 1968) (one of the old-fashioned terms for "delinquency" is incorrigibility; this term is still utilized in some state statutes).

18. Mack, *supra* note 15, at 119. *See also* E. ELDEFONSO, LAW ENFORCEMENT AND THE YOUTHFUL OFFENDER: DELINQUENCY AND JUVENILE JUSTICE (1983) (immaturity exempts juveniles from moral responsibility for their illegal behavior).

19. F. MCCARTHY & J. CARR, JUVENILE LAW AND ITS PROCESSES 53-70 (1980); Mack, *supra* note 15, at 120.

20. Mack, *supra* note 15, at 120.

distinction between delinquent and dependent youth. A murderer and a loiterer were equally in need of individual rehabilitative treatment to become morally upright, productive adults.[21]

The primary purpose of the juvenile justice system was the successful reformation of errant youth. Therefore, the court's focus was directed at rehabilitation rather than punishment.[22] In order for judges to function in this newly created system, it was essential that they obtain a great deal of freedom and discretionary power.[23] Judges needed the ability to assess each youth as an individual. They then sought enough discretionary power to determine the best sociological treatment, and the freedom to implement a flexible treatment plan.[24]

The early California juvenile justice system was also based on the *parens patriae* concept.[25] In 1903, California became the seventh state to enact a juvenile court act.[26] This act provided for separate court jurisdiction for children under the age of sixteen. In 1909, a juvenile court law was enacted, raising the age limit to eighteen and providing for separate juvenile courts.[27]

California, like other states with emerging juvenile justice systems, fashioned informal courtroom proceedings.[28] The formal procedural and structural trappings of the adult courtroom were to be replaced with a cooperative atmosphere. In this nonadversarial setting, the judge would spend time with each child, gaining the youth's confidence and trust. Through the cooperative efforts of the minor and the juvenile justice system, the youth's underlying problems could be determined and a proper disposition made.[29] Because the emphasis

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21. P. HAHN, *supra* note 6, at 6.

22. P. PARSLOE, *supra* note 4, at 49.

23. [The juvenile court judge] must be a student of and deeply interested in the problems of philanthropy and child life as well as a lover of children. He must be able to understand the boys' point of view and ideas of justice; he must be willing and patient enough to search out the underlying cause of the trouble and to formulate the plan by which, through the cooperation, offtimes, of many agencies, the cure may be effected.

Mack, *supra* note 15, at 119.

24. *See* P. PARSLOE, *supra* note 6, at 59.

25. *See generally In re* Daedler, 194 Cal. 320, 228 P. 467 (1924).

26. 1903 Cal. Stat. 44.

27. 1909 Cal. Stat. 213.

28. "A characteristic of California's juvenile courts is the pronounced absence of uniformity of court procedures." CALIFORNIA GOVERNOR'S SPECIAL STUDY COMM'N ON JUVENILE JUSTICE 29 (1960). *See also* M. PAULSEN, *supra* note 8, at 5, 12 (1975).

29. Mack, *supra* note 15, at 120. The following account of Judge Mack depicts how the juvenile court was to operate:

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 solitude. The ordinary trappings of the court-room 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

of the juvenile court was not on punishment or sanctions, due process safeguards were deemed unnecessary.[30] Thus, the well-intentioned flexibility and informality of California's juvenile court system ultimately led to the subversion of the juvenile's procedural due process rights.

THE SUPREME COURT RECOGNIZES JUVENILE DUE PROCESS RIGHTS

Before 1966, most states upheld constitutional challenges against the validity of juvenile court proceedings.[31] However, it was becoming evident that the juvenile justice system was not living up to the idealistic standards that originally had been envisioned.[32] Sixty-seven years after the Illinois Act of 1899, the United States Supreme Court began to determine the constitutionality of juvenile justice proceedings.

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child at his side, where he can on occasion put his arm around his shoulders and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.

Id.

30. P. PARSLOE, *supra* note 4, at 48.

31. California courts' continued denial of due process protection was based on sentiments similar to the holding in Commonwealth v. Fisher, 213 Pa. 48, 62 A. 198 (1905), which stated:

> The natural parent needs no process to temporarily deprive his child of its liberty by confining it in his home, to save it and to shield it from the consequences of persistence in a career of waywardness, nor is the state, when compelled as parens patriae, to take the place of the father for the same purpose, required to adopt any process as a means of placing its hands upon the child to lead it into one of its courts . . . . [T]he court . . . determines [the child's salvation, and not its punishment].

Id. at 53, 62 A. at 200.

32. *See* McKeiver v. Pennsylvania, 403 U.S. 528, 543-44 (1971). "We must recognize . . . that the fond and idealistic hopes of the juvenile court proponents and early reformers . . . have not been realized." *Id.* at 543-44; *In re* Winship, 397 U.S. 358, 376 (1970) (there is a lack of qualified personnel, and the juvenile court staff and facilities tend to be inadequate).

A 1976 study, by the National Advisory Committee on Criminal Justice Standards and Goals, reveals that:

> [L]ess than 10 percent of the 7685 juvenile court judges in the nation were full-time juvenile court judges. In addition, half of these judges had no undergraduate degree, one-fifth were not members of the bar, and three-fourths devoted less than one-fourth of their time to juvenile matters. About one-third of all judges had no probation and social work staff, and between 80-90 percent had no psychologists.

E. ELDEFONSO, *supra* note 18, at 127. A further indication of the juvenile courts' failure is the increase in juvenile crime, violence and recidivism. The President's Commission on Crime reports that in 1966, approximately 66% of 16 and 17-year-old juveniles before the court, had been before the court previously. *In re* Gault, 387 U.S. 1, 22 (1967).

The Supreme Court's first decision on this issue was in *Kent v. United States*.[33] The Arizona juvenile court had waived jurisdiction over a sixteen-year-old youth charged with robbery and rape. The waiver allowed the minor to be tried as an adult in the district court.[34] The judge of the juvenile court stated that he made the transfer decision only after completing a "full investigation." However, in making his determination, the judge did not consult the juvenile, his parents, or his counsel.[35] In fact, the judge made his determination without any hearing. The minor appealed the constitutionality of this procedure.

The Supreme Court reversed the lower court's decision, holding that the procedural due process rights to a fair hearing and effective assistance of counsel must be afforded to a juvenile before jurisdiction is relinquished.[36] These due process rights included allowing the defendant access to probation reports and social study reports, as well as providing a statement of the reasons for the court's decision.[37] The Court was critical of the then-current state of the juvenile justice system. Although its purposes were laudable, there was a marked disparity between the theory and the actual practice of the juvenile court.[38] The difference between the ideal and the reality of the system resulted in the minor obtaining the "worst of both worlds: He gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[39] Justice Fortas, writing for the majority, remarked that the application of the *parens patriae* philosophy "is not an invitation to procedural arbitrariness."[40] The Supreme Court went on to state that a continued denial of due process rights could no longer be justified.[41]

The holding in *Kent* did not extend all procedural due process rights to juveniles. Rather, the Supreme Court stated that juvenile

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33. 383 U.S. 541 (1966).

34. This procedure is similar to a "fitness hearing" in California juvenile courts. Before a juvenile is transferred to adult court there must be a determination that he is not "amenable to the care, treatment, and training program . . . of the juvenile court." CAL. WELF. & INST. CODE § 707(a) (West 1987).

35. *Kent*, 383 U.S. at 546.

36. *Id.* at 554.

37. *Id.* at 557.

38. *Id.* at 555 (footnote omitted). Justice Fortas, writing for the majority, noted:

> While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guarantees applicable to adults.

Id.

39. *Id.* at 556. For an explanation of why juveniles are not receiving the care and treatment postulated by the original juvenile justice system, see *supra* note 32.

40. *Kent*, 383 U.S. at 555.

41. *See generally id.*

proceedings must "measure up to the essentials of due process and fair treatment."[42] Juvenile justice systems thus received notice that arbitrary actions would not be tolerated, and a fundamental fairness analysis would be applied to juvenile proceedings.

The landmark decision of *In re Gault*[43] followed one year later. Fifteen-year-old Gerald Gault was charged with making lewd telephone calls. The hearing was held in an Arizona juvenile court, without procedural formality. The court determined that Gault was a delinquent and made him a ward of the court.[44] The dispositional order stated that he was to be committed to an industrial school until his twenty-first birthday.[45]

On appeal, the Supreme Court addressed the issue of whether the requirements of due process applied in the adjudicatory phase of delinquency proceedings where incarceration may result. The Court's review focused on the constitutionality of the informal nature of the delinquency hearing. Gault had not been provided with adequate notice of the charges against him.[46] The juvenile court did not advise the minor, or his parents, of his right to counsel. In fact, no counsel was present on behalf of the minor at any stage of the delinquency proceeding.[47] The minor was not advised that he did not have to testify, or that an incriminating statement could result in a delinquency commitment.[48] The complaining witness, who allegedly received the obscene calls, was not present in court.[49] Thus, she could not testify or be cross-examined. In affirming the fundamental fairness analysis of *Kent*, the Supreme Court held the Arizona proceeding unconstitutional.[50]

The Court in *Gault* stated that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."[51] The Court rejected the argument that constitutional protections were unnecessary in a system based on *parens patriae*. "[T]he constitutional and theoreti-

42. *Id.* at 562 (quoting Pee v. United States, 274 F.2d 556, 559 (1959)).
43. 387 U.S. 1 (1967).
44. *See id.*
45. *Id.* at 31. A petition was filed stating simply that Gerald Gault was a delinquent minor and that a court order was necessary for his welfare.
46. *Id.*
47. *Id.* at 35. The Supreme Court rejected the Arizona court's assertion that representation by counsel was at the discretion of the juvenile courts.
48. *Id.* at 44.
49. *Id.* at 7. The complaining witness was never present in court. The single contact with the witness consisted of a telephone conversation with the probation officer.
50. *Id.* at 57.
51. *Id.* at 13.

cal basis for this peculiar system is . . . debatable."[52] Therefore, juvenile proceedings resulting in the deprivation of liberty require due process protections. These include: the right to adequate notice to prepare for court proceedings;[53] the right to be represented by counsel;[54] the privilege against self-incrimination;[55] and the rights of confrontation and cross-examination.[56] The Court noted that the observance of due process protections was not inconsistent with the rehabilitative objectives of the juvenile court.[57]

The constitutional protections that the Supreme Court applied in *Gault* were expanded in *In re Winship*.[58] Juvenile cases, because of their civil nature, used the "preponderance of evidence" standard of proof. The Court in *Winship* held that a New York juvenile statute establishing this standard violated the due process clause of the fourteenth amendment.[59]

The Court held that minors on trial in a juvenile delinquency proceeding are entitled to be tried according to the criminal law standard of proof — beyond a reasonable doubt.[60] The majority opinion

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52. *Id.* at 17.

53. *See generally id.* at 31-34. "Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it 'must set forth the alleged misconduct with particularity.'" *Id.* at 33.

54. *See generally id.* at 34-42. The Court quoted the Standards for Juvenile and Family Courts published by the Children's Bureau of the United States Deptartment of Health, Education and Welfare: "As a component part of a fair hearing required by due process guaranteed under the 14th amendment, notice of the right to counsel should be required at all hearings and counsel provided upon request when the family is financially unable to employ counsel." *Id.* at 39. The Court went on to hold that the assistance of counsel is "essential for the determination of delinquency." *Id.* at 36. This due process right has become essential because of the increased formality and adversary nature of juvenile delinquency proceedings:

> The significance of this right cannot be sufficiently emphasized. Without counsel, neither the juvenile nor his parents can deal with the overwhelming complexities of the juvenile court. They will be unable to prepare a forceful and cogent defense. Moreover, they may not appreciate the significance of those rights that they may have inadvertently waived, such as the privilege against self incrimination and the right to confront and cross-examine witnesses.

F. BAILEY, HANDLING JUVENILE DELINQUENCY CASES § 10.2 (1982).

55. *See generally Gault*, 387 U.S. at 44-56. The fifth amendment privilege refers only to criminal cases, however, the *Gault* Court stated that juvenile delinquency cases "must be regarded as 'criminal' for purposes of the privilege against self-incrimination." *Id.* at 49.

56. *See generally id.* at 56-57. "[A]bsent a valid confession, a determination of delinquency . . . cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements." *Id.* at 57.

57. *Id.* at 21. "[T]he observance of due process standards, intelligently and not ruthlessly administered, will not compel the states to abandon or displace any of the substantive benefits of the juvenile process." *Id.*

58. 397 U.S. 358 (1970).

59. *Id.* at 369.

60. *Id.* at 368.

stated that this standard was required as one of the "essentials of due process and fair treatment."[61] This due process protection was extended over the dissent's concern that the "difference between juvenile courts and traditional criminal courts" would be eroded.[62] The majority's rationale was that a change in the quantum of proof would not necessarily destroy the unique benefits of the juvenile court.[63]

Although juvenile due process rights were extended, the Supreme Court did not make a finding that the juvenile process was punitive. This obviated the necessity of affording minors all the protections inherent in adult criminal proceedings. Although the *Gault* and *Winship* Courts made it clear that some constitutional protections apply, the extent of the required protections was not decided.

In the plurality opinion of *McKeiver v. Pennsylvania*,[64] the Court held that a delinquency proceeding is not a criminal prosecution within the meaning and reach of the sixth amendment.[65] Therefore, a jury trial was not mandated by the Constitution. The Court reiterated the fundamental fairness standard established by *Kent*, and stated that this standard emphasized factfinding procedures.[66] The Court concluded, however, that a jury was not an indispensable element for accurate factfinding, and therefore was not deemed necessary.[67] The majority's concern was that a right to a jury trial would "remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal, protective proceeding."[68]

The *Gault* and *Winship* opinions expressly noted the disparity between the idealistic theories of the juvenile justice system and the reality of juvenile court practice.[69] Although the *McKeiver* Court

61. *Id.* at 358.
62. *Id.* at 376. Justice Stewart joined Chief Justice Burger in the dissenting opinion; Justice Black wrote a separate dissent.
63. *Id.* at 366.
64. 403 U.S. 528 (1971).
65. *Id.* at 558.
66. *Id.* at 543; *see also Winship*, 397 U.S. at 366.
67. *McKeiver*, 403 U.S. at 543. "The requirements of notice, counsel, confrontation, cross-examination, and standard of proof naturally flowed from this emphasis. But one cannot say that in our legal system the jury is a necessary component of accurate factfinding." *Id.*
68. *Id.* at 545.
69. *Gault*, 387 U.S. at 29-30. "So wide a gulf between the State's treatment of the adult and of the child requires a bridge sturdier than mere verbiage and reasons more persuasive than cliché can provide." *Id. See also Winship*, 397 U.S. at 365-66.

discussed some of the system's shortcomings,[70] it focused on "benevolent" theories rather than the actual state of the juvenile justice system. The *McKeiver* Court listed the rights afforded by *Gault* and *Winship* to support the factfinding emphasis.[71] However, the privilege against self-incrimination was left conspicuously unmentioned.[72] The absence of this fifth amendment protection in the *McKeiver* opinion was likely not an oversight. The privilege against self-incrimination is not essential for accurate factfinding, and the policies that underlie this privilege are in direct opposition to much of the *McKeiver* analysis. In fact, this privilege may hinder the factfinder's role.[73] Fifth amendment protection reflects society's "preference for an accusatorial rather than [an] inquisitorial system."[74] The *McKeiver* Court attempted to emphasize the nonadversarial element of the juvenile court. However, even though the juvenile court is under a civil rubric, there is a definite adversarial element that cannot be denied.[75]

The dissent in *McKeiver* seems more consistent with the *Gault/Winship* analysis. Justice Douglas noted that the focus should not be on whether the case is civil or nonpunitive. Rather, if a juvenile is prosecuted for a criminal act and faces lengthy incarceration, he should be "entitled to the same procedural protection as an adult."[76] The dissent asserted that the guarantees of the Bill of Rights required a right to a jury trial in this type of delinquency proceeding.[77]

The *McKeiver* Court gave great deference to the states regarding the experimentation and implementation of appropriate juvenile proceedings. The majority viewed the establishment of a right to a jury trial as disrupting the juvenile process and impeding the experimentation of the states.[78] Although the Supreme Court did not afford a jury trial right to all juvenile proceedings, it urged the states to "go

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70. *McKeiver*, 403 U.S. at 544-45.

71. *Id.* at 544.

> [T]he applicable due process standard in juvenile proceedings, as developed by *Gault* and *Winship*, is fundamental fairness. As that standard was applied in those two cases, we have an emphasis on factfinding procedures. The requirements of notice, counsel, confrontation, cross-examination, and standard of proof naturally flow from this emphasis. But one cannot say that in our legal system the jury is a necessary component of accurate factfinding.

Id.

72. *Id.*

73. "The privilege, [against self-incrimination] while sometimes 'a shelter to the guilty,' is often 'a protection to the innocent.' " Murphy v. Waterfront Comm'n, 378 U.S. 52, 55 (1969).

74. *Id.* at 55.

75. To strengthen the adversarial focus of the fifth amendment, the Supreme Court in Breed v. Jones, 421 U.S. 519 (1975), stated that the double jeopardy clause extended to juvenile proceedings.

76. *McKeiver*, 403 U.S. at 559 (Douglas, J., dissenting).

77. *Id.*

78. *McKeiver*, 403 U.S. at 547.

forward" with jury right implementation.[79] A state may embrace the feature of a jury right for juveniles in all cases or in certain types of cases that it deems appropriate.

THE HISTORY OF A JUVENILE'S RIGHT TO A JURY TRIAL IN CALIFORNIA

Before California established a separate juvenile court system, there were two cases that dealt with the issue of whether juveniles were entitled to a right to trial by jury. The first California case, *Ex parte Ah Peen*,[80] involved a homeless sixteen-year-old boy with no known parents.[81] The trial court intervened to provide care and guidance for the youth, and ordered him committed to an industrial school.[82] The minor appealed this order, contending that the proceeding violated his constitutional right to a jury trial.[83] The California Supreme Court held that the action of the magistrate did not amount to a criminal prosecution and, therefore, the juvenile was not entitled to a jury trial.[84]

It is noteworthy that this case did not involve a criminal act by the minor. Rather, *Ah Peen* would be classified as a dependency case under modern juvenile court proceedings.[85] The court was simply providing living accommodations, guidance, and care for a youth with no apparent home and family.[86] This situation is markedly different from a delinquency proceeding.[87] In the latter situation, the

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79. *Id.*

80. 51 Cal. 280 (1876).

81. Ah Peen was "leading an idle and dissolute life in said city . . . and not subject to any parental control whatever - his parents being unknown . . . ." *Id.* at 280.

82. *Id.*

83. *Id.*; *see also* CAL. CONST. art. I, § 16 (formerly art. I, § 3 in the CAL. CONST. of 1849) (the right of trial by jury shall be secured to all); CAL. CONST. art. I, § 15 (formerly art. I, § 8 in the CAL. CONST. of 1848) (no person shall be deprived of liberty without due process of law).

84. *Ah Peen*, 51 Cal. at 280.

85. CAL. WELF. & INST. CODE § 300 (West 1987). Any person under the age of eighteen in California may be adjudged a dependent child of the court:

(a) Who is in need of proper and effective parental care or control and has no parent or guardian . . . .

(b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode.

Id.

86. *Ah Peen*, 51 Cal. at 281. "Having been abandoned by his parents, the State, as *parens patriae*, has succeeded to his control, and stands in *loco parentis* to him." *Id.*

87. "Any person who is under the age of 18 years when he violates any law of this state . . . is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court." CAL. WELF. & INST. CODE § 602 (West 1987).

court determines whether a juvenile committed a criminal act, and whether the child should be removed from his home and placed in a state juvenile facility as a result. In a delinquency proceeding there are often contested issues of fact which require due process protections, including the protections inherent in a jury trial.

In *Ex parte Becknell*,[88] the California Supreme Court held that a statute[89] providing for the commitment of juveniles to Whittier State School was unconstitutional. *Becknell* dealt with a juvenile who allegedly committed a criminal act.[90] Jonie Becknell, a thirteen-year-old boy, was indicted by a grand jury for burglary. The grand jury found that the charge was supported by sufficient evidence, and that Jonie was a suitable candidate for the Whittier reform school. Solely upon the recommendation of the grand jury, the Superior Court committed Jonie until the age of his majority. Jonie was not given a trial, and his parents were not notified of the proceeding.[91]

On appeal, the California Supreme Court unanimously held that this type of proceeding was unconstitutional. The court expressly stated that a "boy cannot be imprisoned as a criminal without a trial by jury."[92] The *Becknell* court did not cite any specific authority for its holding. However, it did note that "all the cases cited by counsel are consistent with, and several of them sustain, these views."[93]

Ah Peen and *Becknell* highlighted the differences between criminal and custodial proceedings related to juveniles. If a juvenile was charged with a criminal act, he could not be convicted, and consequently have his liberty restrained, without the benefit and protection of a jury trial.[94] However, if the matter before the court concerned the proper custody and care of the juvenile, the court could adjudge the minor a ward of the court without empaneling a jury.[95] Therefore, prior to the adoption of the juvenile court system in California in 1903, it is apparent that juveniles had a right to a jury trial

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88. 119 Cal. 496, 51 P. 692 (1897).

89. 1893 Cal. Stat. 332. The statute provided:

> If any accusation of the commission of any crime shall be made against any minor, under the age of eighteen years, before any grand jury, and the charge appears to be supported by evidence sufficient to put the accused upon trial, the grand jury may, in their discretion, instead of finding an indictment against the accused, return to the superior court that it appears to them that the accused is a suitable person to be committed to the care and guardianship of said institution. The court may thereupon order such commitment, if satisfied from the evidence that such commitment ought to be made, which examination may be waived by the parent or guardian of such minor.

Id.

90. *Becknell* at 497, 51 P. at 693.

91. *Id.*

92. *Id.* at 498, 51 P. at 693.

93. *Id.*

94. *Id.*

95. *See generally id.* at 496, 51 P. 692 (1897); *Ah Peen*, 51 Cal. at 280.

in delinquency-type proceedings.

In re Daedler[96] was the first case since the Juvenile Court Act of 1903 to involve a juvenile's right to a jury trial. Paul Daedler, a fourteen-year-old youth, was charged with murder. The trial court found that Daedler "did willfully and with malice aforethought . . . murder . . . a human being."[97] Daedler was made a ward of the court and was committed to the Preston School of Industry until he attained the age of twenty-one.[98]

Daedler appealed the decision, arguing that denial of his right to a jury trial was unconstitutional.[99] However, the California Supreme Court affirmed the lower court's decision, holding that the California Constitution did not require a jury trial when a minor was tried for a crime. The court stated that the juvenile justice system was the "creation of a modern philanthropic endeavor,"[100] and its laws were not "penal in character."[101] The laws were designed to rehabilitate, and the minor "had no inherent right to a trial by jury."[102]

The *Daedler* court relied on *Ah Peen* as the controlling California authority.[103] The court did not distinguish between the criminal nature of the proceeding it was reviewing and the custodial determination involved in *Ah Peen*.[104] The *Daedler* holding presented a clear conflict with the court's earlier holding in *Becknell*, which recognized that a minor had a right to a jury trial if he was charged with a criminal offense.[105] In both cases, the court had to determine

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96. 194 Cal. 320, 228 P. 467 (1924).

97. *Id.* at 322, 228 P. at 468.

98. *Id.* at 323, 228 P. at 468.

99. *Id.* at 324, 228 P. at 468-69.

> The particular sections of the constitution upon which the petitioner and counsel rely in making this contention are section 7 of article I of the state constitution, which reads, in part, as follows: "The right of trail by jury shall be secure to all and remain inviolate. . . ." He also relies upon the provisions of section 13, article I, of the constitution which reads, in part, as follows: "In criminal prosecutions in any court whatever the party accused shall have the right to a speedy and public trial. . . . No person shall be twice put in jeopardy for the same offense; nor be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law."

Id.

100. *Id.* at 327, 228 P. at 470.

101. *Id.* at 332, 228 P. at 472. "The processes of the Juvenile Court law are . . . not penal in character, and hence said minor has no inherent right to a trial by jury in the course of the application of their beneficial and merciful provisions to this case." *Id.*

102. *Id.*

103. *Id.* at 325, 228 P. at 469.

104. *Ah Peen*, 51 Cal. 280 (1876); *see also supra* notes 80-87 and accompanying text.

105. *Becknell*, 119 Cal. 496, 51 P. 692 (1897). *See also supra* notes 88-93 and

whether a felony had been committed, and then, whether custody of the child must be taken from the parents and given to the state. However, the *Daedler* court summarily dismissed *Becknell* as brief and unsupported, and therefore not controlling.[106] Except for its inappropriate application of *Ah Peen*, the *Daedler* opinion did not cite any other California cases to support its denial of a juvenile's right to a jury trial.[107] Sixty-seven years later, *Daedler* remains the law in California; however, the continued validity of that holding is questionable.

A comprehensive analysis of the right to a jury trial under California law was set out in *People v. One 1941 Chevrolet Coupe.*[108] The case involved a determination of whether there was a right to a jury trial in a proceeding for forfeiture of a vehicle used to transport narcotics.[109] The California Supreme Court clearly delineated a test to determine whether a right to a jury trial is afforded under the California Constitution.[110]

The court in *Chevrolet Coupe* stated that English common law defined and determined the jury trial right.[111] A right to a jury trial is the right as it existed at common law at the time the California Constitution was adopted.[112] The right to a jury trial in California is a "purely historical question, a fact which is to be ascertained like any other social, political or legal fact."[113] In passing the state constitution, the legislature could not grant courts the power solely to try cases that had previously been tried by judge and jury. The legislature could not change such a fundamental common law right simply by giving juvenile delinquency proceedings a civil or equitable label.[114] However, this is exactly what the court seems to have done in the case of California juveniles.

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accompanying text.

106. *Daedler*, 194 Cal. at 327, 228 P. at 470.

107. The *Daedler* court cited the nonbinding authority of six out-of-state cases. The three California cases cited were not on point regarding the right to trial by jury. *In re* Maginnis, 162 Cal. 200, 121 P. 723 (1912) (upholding an act concerning dependent and delinquent minor children providing for their care, custody and maintenance); Moore v. Williams, 19 Cal. App. 600, 127 P. 509 (1912) (juvenile courts provide a means to restrain and reform wayward persons); Nicholl v. Koster, 157 Cal. 416, 108 P. 302 (1910) (the purpose of the juvenile court act is to train minors in "good habits and correct principles").

108. 37 Cal. 2d 283, 231 P.2d 832 (1951) [hereinafter *Chevrolet Coupe*].

109. *Id.* at 300, 231 P.2d at 843.

110. *Id.*

111. *Id.* at 287, 231 P.2d at 835.

112. People v. Richardson, 138 Cal. App. 404, 408, 32 P.2d 433, 435 (1934).

113. *Chevrolet Coupe*, 37 Cal. 2d at 287, 231 P.2d at 835.

114. *Id.* at 286-87, 231 P.2d at 835.

THE *Daedler* COURT MISAPPLIED ENGLISH COMMON LAW

The *Daedler* court's denial of a juvenile's right to a jury trial was based on the erroneous assumption that minors at English common law did not have this right.[115] The court incorrectly noted that in 1660, the English court of chancery, in the capacity of *parens patriae*, assumed jurisdiction over all minors in the kingdom.[116] The purpose of this court of equity involved the "care, protection, discipline, and reform" of juveniles.[117] The *Daedler* court readily acknowledged that the same type of jurisdiction held by the English courts of equity passed to the California courts when those courts were established.[118] Therefore, because juveniles were under equity jurisdiction, they were not afforded the rights attending criminal proceedings.

The *Daedler* court's analysis of English common law is cursory at best. Further, the support of the court's findings is minimal and incomplete. The court neglected to note a very important historical fact: the right to a jury trial *was* afforded to English minors if they were tried for an alleged criminal act.[119]

English common law divided the age of minority[120] into three stages.[121] A minor up to the age of ten and one-half was considered "under the age of discretion,"[122] and could not be punished for the commission of a criminal act. From the age of ten and one-half to fourteen, a minor could be punished if he was found capable of the requisite understanding and criminal intent.[123] After the age of four-

115. *Daedler*, 194 Cal. at 324-25, 228 P. at 469.
116. *Id.*
117. *Id.* at 325, 228 P. at 467.
118. *Id.*
119. 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *22-23.
120. Minority was termed "infancy" at English common law. Infancy was considered a defect of the understanding. Other species of this defect of will included: idiocy, lunacy, and intoxication. *Id.* at 21-22.
121. *Id.* at 22. At civil law, a minor was defined as a person "under twenty-five years old." Minority was divided into 3 stages:
1) *Infantia*: from birth until age seven.
2) *Puberitia*: from age seven to fourteen.
a) *Aetas infantiae proxima*: seven to ten and a half.
b) *Aetas pubertati proxima*: ten and a half to fourteen.
3) *Pubertas*: from age fourteen to twenty-five.
Id.
122. *Id.*
123. *Id.* "During the other half stage of childhood, approaching to puberty, from ten and an half to fourteen, they were indeed punishable, if found to be *doli capaces*, or capable of mischief; but with many mitigations, and not with the utmost rigor of the law." *Id.*

teen, a minor could be punished for any criminal act he committed. If a minor was found able to stand trial, he was tried and convicted in the identical manner as an adult who had committed the same act. A juvenile at this stage of minority was even subject to capital punishment.[124] In order to sustain a conviction, the "judge and jury"[125] had to establish two essential facts: the trier of fact had to find that the minor in fact had committed a criminal act,[126] and that the minor was capable of discerning right from wrong.[127]

Once a minor was convicted of a criminal offense, the judge, without a jury, could invoke the jurisdiction of the courts of equity.[128] If the judge determined that it was in the minor's best interest, the state, acting as *parens patriae*, would assume control over the minor and determine an appropriate disposition.[129] Therefore, state authority to determine wardship was conditioned by the fact that a minor already had the benefit of a jury trial.

Because *Daedler* misapplied the common law, the court established a procedure authorizing wardship over a juvenile when the juvenile merely was accused of a criminal offense. The court then determined the truth of the accusation without providing the protections of a jury trial.

Several other cases following *Daedler* addressed the same issue of whether juveniles are entitled to a right to trial by jury. None of the opinions appeared to reanalyze the issue. Rather, each case simply noted that *Daedler* was controlling and dismissed the action.[130] *In re Javier A.*[131] is the first California case since *Daedler* that squarely confronts the juvenile's right to a jury trial. The Superior Court of Los Angeles, in a juvenile delinquency proceeding, found that Javier A. had committed three counts of attempted murder, and that he had used a firearm. Javier requested a jury trial, but the request was denied.[132]

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124. *Id.*

125. *Id.* at 23.

126. The English courts required a determination that the minor in fact had committed a crime. *Id.* at 23.

127. If the minor "could discern between good and evil, he may be convicted . . . ." *Id.*

128. *See generally In re* Javier A., 159 Cal. 3d 913, 206 Cal. Rptr. 386 (1984).

129. *Id.* "[I]n 1850 England the decision whether a minor had committed a crime first had to be made, through a trial by jury in the law courts. Only then could the equity courts determine whether he should be made a ward of the court." *Id.* at 933, 206 Cal. Rptr. at 398.

130. *See, e.g., In re* Paul A., 111 Cal. App. 3d 928, 168 Cal. Rptr. 891 (1980); People v. Superior Court, 15 Cal. 3d 271, 539 P.2d 807, 124 Cal. Rptr. 47 (1975); *In re* Clarence B., 37 Cal. App. 3d 676, 112 Cal. Rptr. 474 (1974); Richard M. v. Superior Court, 4 Cal. 3d 370, 482 P.2d 664, 93 Cal. Rptr. 752 (1971); *In re* T.R.S., 1 Cal. App. 3d 178, 81 Cal. Rptr. 574 (1969).

131. 159 Cal. App. 3d 913, 206 Cal. Rptr. 386 (1984).

132. *Id.* at 920, 206 Cal. Rptr. at 390.

In its review of the trial court's ruling, the Second District Court of Appeal undertook an exhaustive study of the California juvenile's right to a jury trial.[133] The *Javier* court determined that juveniles had been denied a jury right based on incorrect historical analysis. This misinterpretation of English common law resulted in the erroneous precedent set by the California Supreme Court in *Daedler*. In disputing the *Daedler* holding, the *Javier* court examined the documents filed in that case. It did not appear that the *Daedler* court had before it the historical data that was considered by *Javier*.[134] Applying the test set out by *Chevrolet Coupe*, the *Javier* court concluded that a juvenile's right to a jury trial was guaranteed by the California Constitution.[135] The court stated that a juvenile should not be adjudicated a ward of the court in a delinquency proceeding without being afforded a right to a jury trial. However, the lower court felt bound by *stare decisis* and upheld the sixty-year-old precedent denying a jury right to juveniles.[136]

Although the *Javier* court followed *Daedler*, it stated: "the issue of right to jury trial in juvenile delinquency proceedings is not just

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133. *Id.*

134. The *Daedler* opinion does not mention — and presumably the court did not have before it — any of the historical information discussed in this opinion. *Daedler* does not even touch upon the Infant Felons Act of 1840 which required trial by jury before a juvenile offender could be declared a ward of the court in England. Nor does the opinion mention Parliament's rejection of the juvenile offender bill of 1850 which sought to allow juveniles to be committed to reform school for several years without trial by jury. It does not discuss the 1840 Youthful Offender bill which was defeated or the successful 1847 act which limited the denial of jury trial to youngsters charged with trivial crimes and deprived of liberty for less than three months. Indeed the California Supreme Court in 1924 may not have had available to it the research materials needed to uncover the true historical facts on this issue.

Id. at 953, 206 Cal. Rptr. at 414 (footnotes omitted). *See also id.* at 932-48, 206 Cal. Rptr. at 397-409 (an in-depth discussion of a jury right for juveniles at English common law).

135. *Id.* at 954, 206 Cal. Rptr. at 415. "Were it within our power, we would reverse the judgment against [Javier A.] and remand the case for trial by jury consistent with the guarantee of article I, section 16 of the California Constitution." *Id.*

136. *Id.* at 954, 206 Cal. Rptr. at 414 (citing Auto Equity Sales v. Superior Court, 57 Cal. 2d 450, 455, 369 P.2d 937, 20 Cal. Rptr. 321 (1962)).

> Under the doctrine of *stare decisis*, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction . . . . The decisions of this court are binding upon and must be followed by all the state courts of California . . . . Courts exercising inferior jurisdiction must accept the law declared by superior jurisdiction. It is not their function to overrule decisions of a higher court.

Id.

ripe for Supreme Court reconsideration, it is overripe."[137] The appellate court laid out a clear, well-reasoned opinion as to why the California Supreme Court should overrule *Daedler* and afford California juveniles a jury trial right. The California Supreme Court refused to review the issue.[138]

THE MODERN TREND TOWARD CRIMINALIZATION OF JUVENILE COURTS IN CALIFORNIA

The *Daedler* holding was based in part on the philosophy of the emerging California juvenile courts. The main purpose of the Juvenile Court Act of 1903 was to provide proper care, guidance, and education for wayward youths, whether or not they were charged with a criminal violation.[139] Because the Act treated delinquent and dependent children alike, the *Daedler* court did not deem it necessary to afford procedural due process rights to juveniles charged with a criminal act. Affording juveniles the "constitutional rights of those charged with crime" was seen as inconsistent with "the more enlightened view" of the California juvenile courts.[140]

The court envisioned itself as a surrogate parent, and constitutional protections seemed out of place in this "parent-child" relationship. The function of the juvenile court was to perform "parental duties at a time when the child is not entitled either by the laws of nature or of the state to absolute freedom, but is subjected to the restraint and custody of a natural or legally constituted guardian to whom it owes obedience and subjection."[141] The *Daedler* court further stated that " '[n]o constitutional right is violated but one of the most important duties which organized society owes to its helpless members is performed in just the measure that the law is framed with wisdom and is carefully administered.' "[142] The court in *Daedler* did not seem to think that the status of a minor was deserving of due process protections. Further, the Juvenile Court Act did not mandate extention of these protections to minors.

The *Daedler* court supported its holding by citing the rationale contained in *Commonwealth v. Fisher*[143] — a factually similar case

137. *Javier A.*, 159 Cal. App. 3d at 967, 206 Cal. Rptr. at 424.

138. *Id.* at 976, 206 Cal. Rptr. at 386.

139. *In re* Maginnis, 162 Cal. 200, 204, 121 P. 723, 725-26 (1912). The Juvenile Court Act of 1903 was aimed "at the proper custody and education of children who lack the care and control deemed essential to their right development, whether or not their situation be such as to be likely to lead them to actual crime." *Id.*

140. *Daedler*, 194 Cal. at 323, 228 P. at 469.

141. *Id.* at 329, 228 P. at 471 (quoting Von Walters v. Board, 132 Ind. 569, 32 N.E. 568 (1892)).

142. *Daedler*, 194 Cal. at 330, 228 P. at 471 (quoting Commonwealth v. Fisher, 213 Pa. 48, 57, 62 A. 198, 201 (1905)).

143. 213 Pa. 48, 62 A. 198 (1905).

decided by the Pennsylvania Supreme Court. The *Fisher* court denied Pennsylvania juveniles the right to a jury trial.[144] However, the *Fisher* court went on to state that the provisions of the Pennsylvania Juvenile Court Act would not be valid if the juvenile was subjected to a trial. The purpose of the act was to prevent a trial. However, if it was determined that the public welfare required the minor to be tried, a jury trial was not precluded.[145] The *Daedler* court fully adopted the *Fisher* court rationale.[146]

Although *Daedler* remains the law in California, the past sixty-five years have brought about a substantial and dramatic change in California juvenile proceedings. The first significant change occurred in the early 1960s. The California Law Revision Commission was authorized to perform an in-depth study of the juvenile system. The Commission's report advocated a clear division of jurisdictional categories: delinquency and dependency. The purpose was to publicly distinguish "the delinquent [minor] and the juvenile who is innocent of any wrongdoing."[147] The rationale for the distinction was to prevent the misconception that all minors associated with the juvenile court system committed wrongful acts.

The Commission's recommendation highlights a subtle shift in juvenile law. The early juvenile court system focused on the misguided child, rather than on the act committed.[148] However, in delinquency proceedings, the focus is now directed toward the act committed, not simply what intervention would be in the child's best interest. This initially imperceptible change in focus began the criminalizing process in the treatment of delinquency adjudications.[149]

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144. *Id.* at 53-54, 62 A. at 200.

145. *Id.*

146. *Daedler*, 194 Cal. at 330, 228 P. at 471.

147. *Gault*, 387 U.S. at 15-16 (footnote omitted). *See* CALIFORNIA LAW REVISION COMMISSION, Vol. 3 (Oct. 1960).

148. The child . . . was to be made "to feel that he is the object of [the state's] care and solicitude," not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be "clinical" rather than punitive.

Id.

149. The Legislature also codified other juvenile law including: CAL. WELF. & INST. CODE §§ 660 (notice and hearing), 627.5 (Miranda applies), 700 (continuance to prepare a defense), 700.5 (continuance to secure witnesses), 701 (proof beyond a reasonable doubt), 702.5 (privilege against self-incrimination and the right to confront witnesses), 702 (upon a finding that the minor has committed an offense which would be

After the United States Supreme Court holding in *Gault*, the California courts and legislature responded by recognizing the adversary nature of delinquency proceedings. Although California courts have followed the lead set by *Gault* and its progeny, the California Legislature has been the primary force behind the criminalization process. The original purpose of the juvenile court as codified was to provide for the "spiritual, emotional, mental and physical welfare of the minor."[150] This section was amended in 1975 to include not only the interests of the minor, but also the protection of the public.[151] The statute specifically stated that juvenile judges, peace officers, and other court personnel must take public protection into account when making a delinquency determination. Two years later, this entire code section was repealed[152] and codified in Welfare and Institutions Code section 202. This section emphasized protection of the public. It stated that an additional function of the court was to "impose a sense of responsibility on a minor for his own acts."[153]

These major legislative changes highlight the establishment of a juvenile justice system with a dual focus. There is often tension between the policy of protecting the public from juvenile delinquents and the policy of rehabilitating, as much as possible, juvenile delinquents. Imposing a sense of responsibility for acts committed has a punitive dimension. In 1984, the legislature made further inroads toward the criminalization of the juvenile justice system. The new proposal allows the issue of punishment to be taken into consideration in a delinquency adjudication.[154] Although the punishment must be consistent with other rehabilitative objectives,[155] it is punishment nonetheless. The concept of punishment was not part of the original underpinnings of the juvenile justice system. Therefore, the criminalization process undercuts the original philosophy that juvenile courts are only rehabilitative in nature.[156] It is important to note that these changes, along with the discussion to follow, deal strictly with delin-

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punished alternately as a felony or misdemeanor in adult court, the juvenile court must declare the offense to be a misdemeanor or felony) (West 1987).

150. 1961 Cal. Stat. 3460.

151. 1975 Cal. Stat. 1872 (amending CAL. WELF. & INST. CODE § 502).

152. 1977 Cal. Stat. 2783.

153. CAL. WELF. & INST. CODE § 202(a) (West 1984 & Supp. 1987).

154. *Id.* § 202 (amended in 1984).

155. *Id.*

156. One California appellate court observed: "While the juvenile court law provides that adjudication of a minor to be a ward of the court shall not be deemed to be a conviction of a crime, nevertheless, for all practical purposes this is a legal fiction, presenting a challenge to credulity and doing violence to reason." *In re* Contreras, 109 Cal. App. 2d 787, 789, 241 P.2d 631, 633 (1952). California juvenile courts also have stated that delinquency proceedings are "in reality criminal proceedings." The claim that they are "solely for the protection of the minor is pure fiction." *In re* Jerald C., 26 Cal. 3d 1, 8 n.4, 678 P.2d 917, 921, 201 Cal. Rptr. 342, 346 (1984) (quoting *In re* Gregory K., 106 Cal. App. 3d 164, 168, 165 Cal. Rptr. 35, 37 (1980).

quency proceedings. Much of the original intent of the early juvenile courts is still present in the dependency aspect of California law.

To further the public protection policy, the legislature mandated that a public prosecutor appear on behalf of the people.[157] The prosecuting attorney's presence is mandated only when a juvenile has violated a law.[158] Prior to this revised statute, the district attorney's role was strictly limited to assisting the court.[159] The newly required appearance, for the protection of the public, clearly establishes juvenile delinquency proceedings as adversarial.

The proposal by the Law Revision Commission recommended that all juvenile proceedings be conducted nonadversarially. However, the legislature changed the proposed statute by adding an exception when issues of fact or law are contested.[160] This change was intended "to tip [the] balance in the direction of the minor's due process rights and away from [the] informality" traditionally associated with juvenile proceedings.[161] The inference drawn from the legislature's action is that proceedings are to be conducted in an adversarial manner in contested delinquency hearings.

The court must prove that the juvenile committed the specific act charged.[162] This must be accomplished by proof beyond a reasonable doubt, using the same evidentiary standards as used in adult criminal proceedings.[163] Once convicted, the minor may not be physically confined for periods in excess of the maximum prison term received by an adult convicted of the same offense.[164] Therefore, a juvenile sentence directly relates to the specific act committed — not what is determined to be the best interest of each minor. The length of incarceration is determined by the time periods established in adult criminal proceedings.[165] It is noteworthy that an average juvenile

157. CAL. WELF. & INST. CODE § 681(a) (West 1984 & Supp. 1987).

158. *Id.* § 602. The legislature did not enact this change in truancy to dependency cases. *Id.* § 601.

159. Prior to its amendment in 1976, see CAL. WELF. & INST. CODE § 681 (West 1974).

160. *Id.* § 680 (West 1984 & Supp. 1987).

161. People v. Superior Court, 15 Cal. 3d 271, 279, 539 P.2d 807, 812, 124 Cal. Rptr. 47, 52 (1975).

162. *In re* Robert G., 31 Cal. 3d 437, 440, 644 P.2d 837, 838, 182 Cal. Rptr. 644, 645 (1982).

163. 1971 Cal. Stat. 1833. Initially, "all relevant and material" information regarding the circumstances that brought a juvenile before the court was admissible as evidence. 1961 Cal. Stat. 3482.

164. CAL. WELF. & INST. CODE § 726 (West 1984).

165. The term used to determine the length of confinement is the "maximum" term used in adult proceedings. *Id.* The sentencing in adult courts is broken into three

sentence is longer than a sentence for an adult convicted of the same offense.[166]

Many explanations for the early juvenile court system are no longer considered valid in California. The lack of due process protection and procedural informality formerly were considered counterbalanced by other benefits that juveniles received. These benefits were used as a rationale for the denial of a right to a jury trial. One reason was that a juvenile could avoid the stigma of a criminal conviction. Initially, when there was no distinction between dependent and delinquent youth, this may have been a valid assumption. However, the label of "delinquent" in modern society connotes the idea of criminal conduct. This label "in the eyes of neighbors, family members, and peers, [may make it difficult for a minor] to resume conventional activities."[167] The stigma of delinquency is arguably as detrimental as the criminal label the system tried to avoid.[168]

Another reason used to deny juveniles a right to a jury trial was that the juvenile proceedings needed to remain private and confidential.[169] In 1961, with limited exceptions, the public was not admitted to juvenile court hearings.[170] The legislature opened the doors to the juvenile courts in 1980. If a juvenile is charged with one of eighteen enumerated serious offenses,[171] public access to the proceedings is permitted. The public and press are permitted entry "on the same basis as they may be admitted to trials in a court of criminal jurisdiction."[172] Four years later, the legislature further eroded a juvenile's right to privacy. The media is no longer mandated to omit a juvenile's name from publication if he is charged with one of the eighteen specified felonies.[173]

Originally, juvenile records were to be sealed so that transgressions due to youthful indiscretion would not follow the juvenile into his adult life. The decision to have the records sealed was based on the presumption that the acts committed were not criminal; therefore, no punishment should be involved. In 1981, the legislature

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time periods. The maximum term is equivalent to the upper limit, or the aggravated term found in the Penal Code. CAL. PENAL CODE § 1170(a)(2) (West Supp. 1987).

166. *See supra* note 165.

167. GAULT: WHAT NOW FOR THE JUVENILE COURT?, *supra* note 17, at 47 (quoting G. WHEELER & L. COTTWELL, JUVENILE DELINQUENCY — ITS PREVENTION AND CONTROL (1965).

168. "A juvenile delinquent is viewed as a junior criminal hardly less threatening to peace and order than his more mature counterpart." Fox, *supra* note 6, at 1231.

169. *Kent*, 383 U.S. at 556.

170. The judge could admit "such persons as he deems to have a direct or legitimate interest in the particular case or the work of the court." 1961 Cal. Stat. 3480.

171. CAL. WELF. & INST. CODE § 676 (West 1987).

172. 1980 Cal. Stat. 662.

173. 1984 Cal. Stat. 1747. "The name of the minor found to have committed one of the offenses listed . . . shall not be confidential, unless the court for good cause so orders." *Id.*

amended Penal Code section 1203.[174] The amendment allows information contained in a juvenile's record to be considered if there is a law violation after the age of majority. This information can be used either to deny an adult probation or to enhance punishment.[175] Many juvenile courts routinely furnish government agencies, the military, and even private employers information contained in juvenile files.[176]

THE BENEFITS OF PROVIDING A JUVENILE THE RIGHT TO A JURY TRIAL

In denying a right to a jury trial, the Supreme Court in *McKeiver* focused only on the jury as a factfinder, and neglected to note the other important protections that a jury provides.[177] A right to a jury trial has always been regarded as essential for the impartial administration of justice.[178] This right helps prevent oppression by government and arbitrary judicial decisionmaking. The jury trial provisions reflect "a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge."[179] In juvenile court, a judge will often see the same juvenile on numerous occasions. Increased contact may make it more likely that a judge will develop prejudicial attitudes against the minor. Therefore, a right to a jury trial may be a particularly important safeguard in the juvenile court setting.

The theory persists that juveniles are vulnerable, needing the protection of the court, and therefore must be shielded from a trial. However, in reality, California juveniles are now subjected to a veritable trial.[180] As Justice Brennan notes, large government agencies,

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174. CAL. PENAL CODE § 1203(b) (West 1987) (the 1986 amendment inserted the third sentence in subdivision (b)).

175. *Id.*

176. *Gault*, 387 U.S. at 24.

177. *McKeiver*, 403 U.S. at 528.

178. *See* 3 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *379 (1780). Blackstone equated the right to trial by jury to the cornerstone of civil society. The jury system was instituted because of the English awareness that a select few judges are not always attentive to the interests of many.

179. *Gault*, 387 U.S. at 20. "Due Process of the law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise." *Id.*

180. *See Gault*, 387 U.S. at 39 n.65 (quoting REPORT OF THE PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 86-87 (1967). The Supreme Court has recognized that increased formality in the juvenile justice system is desirable:

> Fears have been expressed that lawyers would make juvenile court proceedings adversary. No doubt this is partly true, but it is partly desirable. Informality is often abused. The juvenile courts . . . deal with many cases involving conduct

acting in the capacity of *parens patriae*, never can actually function in a parental role for youth.[181] Therefore, to protect vulnerable youth, increased protections should be instituted in delinquency proceedings.

The right to a jury trial is not afforded in California delinquency proceedings as it is in the criminal courts. It is argued that the use of the jury trial in juvenile court would result in increased formality and publicity, both of which would have negative effects on the system's rehabilitative focus.[182] As this Comment has previously noted, the California courts and legislature have substantially criminalized juvenile delinquency proceedings to the extent that they are already formalized[183] and often public. Therefore, the rationale for the continued denial of a right to a jury trial is no longer valid.

Increased procedural safeguards in juvenile delinquency proceedings should include the right to a jury trial.[184] Juveniles have a clear sense of fairness. If a juvenile perceives he is protected from potential arbitrary judicial decision making, this may actually encourage the courts' rehabilitative efforts.[185] If a right to a jury trial were instituted, it would not affect individualized dispositional orders.[186] Therefore, this right would afford juveniles due process protection while still allowing for an individualized, rehabilitative focus.

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that can lead to incarceration or close supervision for long periods, and therefore juveniles often need the same safeguards that are granted to adults.

Gault, 387 U.S. at 39 n.65.

181. *See generally* Parham v. J.R., 442 U.S. 584, 627-28 (1979) (Brennan, J., concurring in part and dissenting in part).

182. *See supra* note 169 and accompanying text.

183. *See* People v. Superior Court, 15 Cal. 3d at 284-85, 539 P.2d at 815, 124 Cal. Rptr. at 56.

> [I]n light of the broad areas of factual and legal dispute, which necessarily would have to be resolved in an adversary setting — and also in light of the loss of confidentiality which had already occurred — any benefits normally attendant upon an informal proceedings had been rendered speculative.

Id.

184. "Increased procedural safeguards including the right to a jury trial in delinquency cases are advocated." IJA-ABA JOINT COMM'N ON JUVENILE JUSTICE STANDARDS, STANDARDS FOR JUVENILE JUSTICE: A SUMMARY AND ANALYSIS 22 (1977).

185. Kalven, *The Supreme Court 1970 Term*, 85 HARV. L. REV. 3, 118 (1971).

> [A]n important function of the jury is its capacity to enhance the youthful offender's perception of the juvenile process. . . . In these circumstances [of overcrowded dockets, understaffing of trained personnel], jury trial is essential to the appearance of fairness, impartiality, and orderliness to the juvenile and the general public.

Id.

186. *Winship*, 397 U.S. at 366-67.

> [T]he opportunity during the post-adjudicatory or dispositional hearing for a wide-ranging review of the child's social history and for his individualized treatment will remain unimpaired. Similarly, there will be no effect on the procedures distinctive to juvenile proceedings that are employed prior to the adjudicatory hearing.

Id.

CONCLUSION

Assuming that the *Daedler* holding was valid in 1927, the basis for the holding is not applicable to modern California juvenile delinquency proceedings. *Daedler's* rationale for denial of constitutional protections was based on the fact that juveniles could not be subjected to a trial. Unlike the treatment of juveniles at the time of *Daedler*, there is now a clear distinction between dependency and delinquency proceedings. Therefore, the denial of a jury right can no longer be based on the contention that juvenile delinquents are not subjected to an adversarial proceeding. Modern delinquency adjudications are very much a trial.

The California juvenile justice system has gone through a metamorphosis since the *Daedler* holding. Both the legislature and the California Supreme Court have criminalized delinquency proceedings. In fact, the legislature has criminalized delinquency proceedings to the extent that it is difficult to distinguish them from an adult criminal trial.

The California Supreme Court has declined to readdress the issue of a juvenile's right to a jury trial. Because of the present state of California juvenile delinquency proceedings, the denial of a right to a jury trial can no longer be justified. Therefore, the legislature should intervene and afford California juveniles this essential right.

Because the California Supreme Court declined to grant a hearing in *Javier*, it does not appear likely that this situation will be rectified by the judiciary. The inconsistency between *Daedler* and the status of a juvenile's right to jury trial at common law, and the uncertainty of future judicial action, places the legislature in the best position to address this issue. Legislative intervention is also preferable due to the timeliness and clarity with which the legislature can act. Accordingly, the California Legislature is urged to amend the Welfare and Institutions Code in order to resolve this overripe issue.

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