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Article  
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\*318 FAILING JUVENILE COURTS, AND WHAT LAWYERS AND JUDGES CAN DO ABOUT IT

title and author → **Emily Buss** [FNaa1]

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A small group of people sit in a courtroom. At a table in the front near the judge's bench, two apparent professionals with large stacks of folders chat loudly and jovially about last night's game, then about a mutual friend who just changed jobs and the funny memories about him they share. At some point their faces get a bit more serious, their voices drop, and they talk about "placement," "compliance," and "conditions," clearly confirming some sort of agreement, probably about the upcoming case, but it's not clear.

Next to one of them sits a teenage boy. He is slouched down in his chair, mostly looking at the floor. He is silent, unless addressed by his chatty tablemates, particularly the one sitting next to him, who occasionally turns to him with an isolated question or two. "How's school?" "Everything okay at your aunt's?"

Right behind the chatty professionals and silent teen are a couple of well-dressed women who are engaged in a conversation of their own. They occasionally break into the table chat, clearly talking about the silent teen, or "Aunt," or "Mom," or "Grandma."

In the back of the courtroom sits an elderly woman. Is this "Aunt"? "Grandma"? Probably not "Mom." This is all evident from the woman's age and presence in the courtroom. No introductions are made.

At some point, someone walks in from a side door and begins to arrange things near the bench. She is warm and friendly with the table chatters, even joining in the chat. She looks at the teen and says "Take off your hat." Without warning, she directs "All rise," and a robed man walks in and takes the bench. One of the chatters makes a few statements in an acronym-studded rapid fire, and then calls on one of the well-dressed women to share a report. She stands to do so, running through the details of school, home and mental health treatment in a cascade of words. At the end of this report, she gestures to the back, "The aunt" (ah, it's the aunt) "is here in court, your honor. Is there anything you would like to say to the judge, Miss Jones?"

The aunt always has something to say. She has taken two buses to get to court, has waited for three hours with little or nothing to do or eat, and there is something, sometimes many somethings, that need to be done, or fixed, or responded to. Most on the list won't be done, or fixed, or responded to, at least not by anyone in the courtroom, but \*319 her commitment to the slouching teen is much appreciated and the looks and comments of all the adults in the room tell her so. The aunt's statement ends with a dramatic declaration to the judge, "I'm not sure how much more of this I can take," and the young person--the source of her exasperation but in no way the person to whom she is speaking--looks back down at the floor.

The second front table chatter gets his chance for a short burst of words after which he turns to the teen sitting beside him. "Do you

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FAILING JUVENILE COURTS, AND WHAT LAWYERS AND JUDGES CAN DO ABOUT IT  
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Adolescents' experience in juvenile court disserves two primary developmental tasks of adolescence: the first task is gaining the experience required for competent decision-making and autonomous action, and the second is the development of an understanding of self, as an individual and a member of various groups and communities, that can guide those decisions and actions. After offering a brief description of these two developmental tasks and how they are accomplished, I will return to the juvenile court and how it falls short.

One of the primary developmental tasks for adolescents is learning to harness their newly acquired cognitive capacities to make "good decisions," that is, decisions that will allow them to assume responsibility for their own lives and function successfully in society. [FN10] It takes practice to become a competent decision maker who can assess short and long-term interests, develop plans to serve those interests, act on those interests, and \*323 then take responsibility for those actions. To be effective, this practice should occur in contexts in which adolescents care about the outcomes of the decisions being made. [FN11] Moreover, to ensure that adolescents have the opportunity to learn from their mistakes, it is also important that the decision making occur in contexts in which the decision-making process can be monitored and supported by caring adults. I will argue below that court hearings can offer precisely this combination: a focus on decisions that matter to young people in a context in which decisions and actions can be supervised and supported by concerned adults.

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footnote

The second crucial developmental task of adolescence is identity formation, the process through which young people sort out who they are and how they relate to the rest of the world. [FN12] This process depends on young people's interactions with others, both adults and peers. Through these interactions, we learn how others perceive us and what they expect of us. This helps us understand ourselves and how we fit into the various communities with which we interact. [FN13] Our relationships also give us opportunities to try on various identities, to explore various roles and values through both formal and informal group activities. [FN14] Through these interactions with others, we hash out our understanding of our beliefs, our values, our personalities, and our affiliations. One aspect of this identity formation that is particularly important to adolescents' experiences in court is the development of an understanding of legal actors and institutions and one's own relationship to those actors and institutions. While there is an extensive literature that considers the legal socialization process among adults, research has just begun to explore how that socialization process relates to individuals' emerging identities in adolescence. [FN15]

Decision-making competence and identity formation are distinct developmental ends, but they are often served by a common set of experiences and interactions. Contexts in which young people are given decision-making authority over matters of importance to them and in which adults engage them in a manner that is supportive and respectful allow young people to develop decision-making skills, learn and recover from \*324 their mistakes, and build on their successes. In the course of doing so, young people also learn about themselves both as individuals and as members of groups that include those adults with whom they have engaged. Where that interaction is positive, adolescents might be expected to maximize the value of the practice and experience an affiliation with the involved adults and the institutions they represent. Where negative, we should worry both that their learning may be undermined, and that they may see themselves as opposed to, or at least disconnected from, the participating adults.

Along both of these developmental dimensions, young people's experience in juvenile court runs from empty to negative. Juvenile court proceedings offer young people little to no opportunity to practice making choices and taking responsibility for those choices, despite the focus at those proceedings on their current and future plans. To be sure, hearings are peppered with conditions, warnings and consequences directed at young people, but these are tied to their obligations under plans designed by others, not by themselves. Moreover, as the introductory scenario attempts to capture, the interactions young people have with various adults, including their caseworkers, their lawyers, and the judges, fail to convey any sense of connection between the young person and those adults or the communities they represent. If anything, the message young people get about their connection to the legal system and its actors is a destructive one: the court process puts on display an intimate and powerful community of legal actors representing government authority, and it is plainly a community from which the adolescent and his family are excluded.

It is fairly easy to make the case that current court proceedings disserves adolescents' primary developmental needs, but it is less obvious that courts offer good opportunities to serve these needs better. When children grow up in their families, they develop their

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Miranda v. Arizona

Supreme Court of the United States | June 13, 1966

384 U.S. 436 | 86 S.Ct. 1602

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Superseded by Statute as Stated in U.S. v. Dickerson, 4th Cir.(Va.), February 8, 1999

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86 S.Ct. 1602
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STATE OF NEW YORK.
Carl Calvin WESTOVER, Petitioner,
v.
UNITED STATES.
STATE OF CALIFORNIA, Petitioner,
v.
Roy Allen STEWART.

Nos. 759-761, 584. | Argued Feb. 28, March 1 and 2, 1966. | Decided June 13, 1966. | Rehearing Denied No. 584 Oct. 10, 1966.

See 87 S.Ct. 11.

Criminal prosecutions. The Superior Court, Maricopa County, Arizona, rendered judgment, and the Supreme Court of Arizona, 98 Ariz. 18, 401 P.2d 721, affirmed. The Supreme Court, Kings County, New York, rendered judgment, and the Supreme Court, Appellate Division, Second Department, 21 A.D.2d 752, 252 N.Y.S.2d 19, affirmed, as did the Court of Appeals of the State of New York at 15 N.Y.2d 970, 259 N.Y.S.2d 857, 207 N.E.2d 527. The United States District Court for the Northern District of California, Northern Division, rendered judgment, and the United States Court of Appeals for the Ninth Circuit, 342 F.2d 884, affirmed. The Superior Court, Los Angeles County, California, rendered judgment and the Supreme Court of California, 62 Cal.2d 571, 43

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**Thomas More Law Center v. Obama**

United States District Court, E.D. Michigan, Southern Division. | October 07, 2010 | 720 F.Supp.2d 882 | 2010 WL 3952805 | 10-CV-11156

INSURANCE - **Health**. Congress had power under the Commerce Clause to enact **Health Care Reform** Act requiring each citizen to maintain minimum essential **health care** coverage.

... TMLC's employees receive **health care** through an employer **health care** plan sponsored and contributed to by TMLC. TMLC's **health care** plan is subject to the provisions and regulations of the **Health Care Reform** Act...

...The **Health Care Reform** Act seeks to reduce the number of uninsured Americans and the escalating costs they impose on the **health care** system....

...Congress had power under the Commerce Clause to require every United States citizen, pursuant to the **Health Care Reform** Act, to maintain "minimum essential coverage" for **health care** for each year starting in 2014, despite uninsured plaintiffs' contention that their failure to purchase insurance was mere "inactivity" not covered by the Clause; uninsured plaintiffs could not guarantee their future health and therefore could not "opt out" of the **health care** services market, but rather had decided to pay for care when it was needed, such decisions in the aggregate had a direct and substantial impact on **health**...

...In its legislative findings, Congress explains that it enacted the **Health Care Reform** Act to address a national crisis—an interstate **health care** market in which tens of millions of Americans are without insurance coverage and in which the cost of medical treatment has spiraled out of control...

**Florida ex rel. Bondi v. U.S. Dept. of Health and Human Services**

United States District Court, N.D. Florida, Pensacola Division. | January 31, 2011 | --- F.Supp.2d --- | 2011 WL 285683 | 3:10-CV-91-RV-EMT

INSURANCE - **Health**. Individual mandate provision of **health care** act was unconstitutional and nonseverable.

...See, e.g., David Welna, Analyzing Democrats' Word Shift on **Health Care**, National Public Radio, Nov. 17, 2009 (reporting that during the **health care reform** debate the Act's proponents referred to the ongoing efforts as "health insurance **reform**," which, according to the head of a nonpartisan **health care** organization, "is a much more accurate label" as the "**health care** makeover has ended up being largely about **reforming**...").

...Similarly, on March 22, 2010, also before the Act became law, Utah passed legislation declaring that the then-pending federal government proposals for **health care reform** "infringe on state powers" and "infringe on the rights of citizens of this state to provide for their own **health care**" by "requiring a person to enroll in a third party payment system" and "imposing fines on a person who chooses to pay directly for **health care** rather than use a third party payer..."

...Failure to purchase **health care** insurance for oneself or one's family was not in nature of "activity," such as Congress could regulate under the Commerce Clause by requiring, under individual mandate provision of the Patient Protection and Affordable Care Act (PPACA), that every United States citizen maintain "minimum essential coverage" for **health care**; passive failure to purchase insurance was opposite of activity, and was not made such based either on unique nature of **health care** market, involving living and breathing human beings who were always susceptible to sudden and unpredictable illness or injury and to whom hospitals were required by law to provide care, or upon theory that failure to purchase **health**...

...Small business owner who did not have **health care** insurance, business association to which she belonged, and retiree who wished to self-insure for his and his family's **health care** needs all had personal or associational standing to bring cause of action challenging, under the Commerce Clause, provision of the Patient Protection and Affordable Care Act (PPACA) requiring every United States citizen to maintain "minimum essential coverage" for **health care** starting in 2014, while small business owner and retiree would not have to actually purchase **health**...

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MI ST 550.1101 | Michigan Compiled Laws Annotated | Chapter 550. General Insurance Laws

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Chapter 550. General Insurance Laws  
Nonprofit **Health Care** Corporation **Reform** Act  
Part 1.