YOUTH NO BAR TO SENDING GEIDEL TO THE ELECTRIC CHAIR

Under the Law, a Child of Eight May Suffer Capital Punishment---The Law Concerning Murder.

THE arrest of seventeen-year-old Paul Geidel for the brutal murder of William Jackson in the Hotel Iroquois has caused many people to ask, "What can they do with him? They can't send a boy of seventeen to the electric chair, can they?"

These people would be surprised to know that under the law of this and of many other States a child of eight may suffer capital punishment. It should be added, however, that it is extremely doubtful if this extreme penalty would be exacted from a child of such tender years, though the records of England contain a number of cases where children of eight and nine years of age were hanged, and in this country children of ten and eleven have been condemned to the gallows.

The present uncertainty in the public mind as to the criminal responsibility of children has undoubtedly arisen from an amendment to the penal laws, known as the juvenile delinquency act, which has been enacted in many of the States.

The juvenile delinquency act in this State, which is typical of those in other States, is as follows. "When a male person between the ages of sixteen and twenty-one years is convicted of a felony, or where the term of imprisonment of a male convict for a felony is fixed by the trial court at one year or less, the court may direct the convict to be imprisoned in a county penitentiary, instead of a State prison, or in the county jail. A child of more than seven or less than sixteen years of age, who shall commit any act or omission which if committed by an adult would be a crime not punishable by death or life imprisonment, shall not be deemed guilty of any crime, but of juvenile delinquency only."

It can be seen at a glance that this act does not relieve children of the criminal responsibility of murder even though they be but eight years old. Their responsibility, however, is not the same as that of adults.

The time of infancy or minority is usually divided into three distinct periods, during each of which a different presumption prevails.

The first period is up to the age of seven years, during which the infant is conclusively presumed to be incapable of understanding the nature of crime and can in no event be held responsible for it. Some States have enacted statutes extending this period. In Texas it extends to nine years of age, in Georgia and Illinois to ten, in Arkansas to twelve. In this State it remains, as the common law established it, at the age of seven.

The second period, as laid down by the common law, is that between the ages of seven and fourteen years. Under the statutes of some States the ages comprised in the second period are slightly different. In Arkansas it is from twelve to fourteen years; Georgia and Illinois, ten to fourteen; Texas, nine to thirteen; New York, seven to twelve. An infant between these ages is presumed to be incapable of committing a crime, but this presumption may be rebutted by the proof that the infant possessed sufficient discretion to be aware of the nature of the act, and in such cases the infant may be held responsible and punished.

In the case of an infant between those ages the burden of proving capacity is upon the prosecution, and a conviction cannot be had unless it is affirmatively shown that the prisoner was at the time of the crime of sufficient maturity of mind to understand and appreciate what he did. The question of the prisoner's mental capacity for crime is for the jury.

The third period extends from the age of fourteen (unless it has been made less by statutory enactment) to the age of majority. During this period a minor is presumed to be responsible for a criminal act just as though he were an adult, and is tried and punished accordingly. Of course, youth is always apt to have its influence with the jury, and also with the Judge in meting out sentence. This is the only factor that may save Geidel from the electric chair.

The interesting period, from a legal point of view, is what Blackstone calls the "dubious age of discretion," when the prisoner is over seven and less than fourteen years of age. "In very modern times," says Blackstone, "a boy of ten years was convicted on his own confession of murdering his bed-fellow, there appearing in his whole behavior plain tokens of a mischievous discretion, and as sparing this boy merely on account of his tender years might be of dangerous consequence to the public by propagating a notion that children might commit such atrocious crimes with impunity, it was unanimously agreed by the Judges that he was a proper subject of capital punishment."

In the early part of the last century a negro slave boy, aged ten years, threw a child into a well. He was present when the body was removed from the well, and a short time later confessed.

In passing sentence of "guilty" in this case the Judge said:

"It is perfectly settled also that between the age of seven and the age of fourteen years the infant shall be presumed to be incapable of committing crime upon the principle that he lacks discernment, the presumption being very strong at seven and decreasing with the progress of his years; but then this presumption, in this case, may be encountered with proof; and if it shall appear by strong and irresistible evidence that he had sufficient discernment to distinguish good from evil, to comprehend the nature and consequences of his acts, he may be convicted and have judgment of death. But then, in cases of this kind, Sir Matthew Hale tells us the evidence ought to be strong and pregnant to make it appear he understood what he did, and especially if the accused be under the age of twelve years."

The evidence that may be introduced to show that an infant should be held responsible for crime is thus described in a Texas case: "Indirect and positive testimony. In most instances circumstances of education, habits of life, general character, moral and religious instructions, and oftentimes the circumstances connected with the offense charged will be sufficient to satisfy the jury that the defendant had the discretion required to render him responsible for the crime."

A careful rule regarding the capacity of an infant is stated in the case of Godfrey, who was tried in Alabama some years ago. In that case the prisoner, who was a slave of about the age of eleven, was accused of killing a child four years old whom he nursed.

The evidence showed that the child had been cut on the head with a sharp instrument and its body dragged some distance to a hogshead of water, where it was found lying in a wet condition. A hatchet, which had been washed, but on which there were still some traces of blood, was found. The prisoner was bloody and his clothes were wet.

He had, according to one witness, threatened in a fit of anger on the day before the child was murdered to kill the child, and on the day of the killing, according to another witness, he had said that he had killed the child, although he stated to still another witness that an Indian had committed the deed. The prisoner appeared to be a smart, intelligent boy.

A verdict of guilty was returned by the jury, whereon the trial court reserved its decision for the opinion of the Supreme Court on the correctness of the charge to the jury.

The charge showed that the jury was distinctly instructed that the defendant being between seven and fourteen years of age was prima facie incapable of committing a crime; that to overturn the intendment in favor of his incapacity to commit the crime the jury must be convinced from the evidence beyond a reasonable doubt after allowing due consideration to the fact that the accused was a negro and a slave, that he knew fully the nature of the act done and its consequences, and that he showed plainly intelligent design and malice in the execution of the act.

The Supreme Court approved of the charge and said: "An infant, above seven, but under fourteen years of age, is presumed not to have such knowledge and discretion as would make him accountable for a felony committed during that period. But, if that presumption is met by evidence clearly proving the existence of that knowledge and discretion deemed requisite to a legal accountability, the reason for allowing an immunity from punishment ceases, and with it, the rule which grants such immunity ceases." The accused was found "guilty as charged in the indictment," the reviewing court affirmed the judgment of the trial court and ordered that sentence be executed.

In a case tried in Iowa a thirteen-year-old boy was tried on the charge of drowning a boy of ten. The evidence that was held to have established the legal responsibility of the accused was that after the drowning he offered to give $5 to another boy and "treat every time he had money, and would let no one in the hollow hit him if he would not tell."

In 1828, James Guild, twelve years old, was put on trial in New Jersey, charged with the murder of Catharine Beakes in September of the previous year. McCoy, a neighbor, had gone to the house of Miss Beakes and found her lying on the hearth with her head battered in. A bloody neck-yoke lay on the ground outside the door.

When the constable arrived he arrested young Guild, who had been at work alone in a cornfield on the opposite side of the road. For a time he denied any knowledge of the crime. But the next day he confessed that he went to the house of the deceased for the purpose of borrowing a gun. He said that Miss Beakes refused him the gun and accused him of having done mischief to her pig and pigeons. She was stooping over blowing the fire at the time.

When she refused his request he went out and saw the neck-yoke lying by the door. He went back and struck her on the head with it four times.

Guild was sent to the gallows.

Nine years ago Squazza, a twelve-year-old Italian boy, was put on trial in this city charged with manslaughter in the second degree. He had thrown from a roof a brick which killed a child by the name of Ambrose Kerrigan who was playing in the street.

Evidence was introduced to show that the mother of Kerrigan had warned the prisoner on several occasions not to throw any pebbles. Squazza was discharged, the Judge holding that there was no affirmative proof that Squazza had capacity to understand the act and know that it was wrong.

The law puts the burden of proof as to age upon an infant who tries to shield himself from responsibility for crime.

In the case of Broadnax, a child of eleven years, who was put on trial in Georgia for the murder of another child four and one-half years old, the verdict of guilty was affirmed because there was no evidence showing the age of the accused or that on account of his tender years he was mentally incapable of committing a crime.

The reports of American cases contain many instances of children under the age of fourteen being put on trial for murder. But for the drastic application of the common-law rule we must go back to the old records of England.

Dalton in his "Justices," published in 1746, says that an infant eight years of age may commit homicide and shall be hanged for it.

Sir Matthew Hale in his history of the Pleas of the Crown tells us of a case tried before Spigurnel where an infant of ten years who had killed his companion and hid himself, "was presently hanged, for it appeared by the hiding that he could discern between good and evil."

In 1338 Alice de Walborough, a girl of thirteen, was "burned to judgment," because while she was a servant to a woman she killed her mistress.

Hale also tells of an infant nine years of age that confessed the killing of another of like age, "and upon examination it was found he hid the blood and body; the Justices held that he ought to be hanged."

A celebrated case was tried at Bury Summer assizes in 1748, wherein William York, aged ten years, was charged with the murder of his playmate, a girl of five years. The body was mangled in a most barbarous manner and then buried in a rubbish heap.

York, when accused of the crime, at first "stiffly denied" having committed it; but when taken before the Coroner's Jury he made a full confession, which he repeated to the Magistrate, and again upon the trial, usually adding "that the devil had put him upon committing the act."

The facts that he had concealed the body and then washed himself clean were held sufficient to establish his responsibility. The case was carried to a higher court. "In justice to the public" and that "this boy's punishment may be a means of deterring other children from the like offenses" it was adjudged that "the law take its course."

All the Judges concurred in the general principle, but two or three of them, out of tenderness and caution, advised the Chief Justice to send a reprieve for the prisoner.

One or two more reprieves were granted, and before the expiration of the last, execution was respited until further order, and, finally, in 1757, the accused "had the benefit of his Majesty's pardon, upon consideration of his entering immediately into the sea service."

In 1835, in the county of Derby, England, William Wild, a few months under the age of fourteen years, was accused of the murder of a girl three years old by drowning in a pond. The prisoner confessed that he pushed the girl with his toe, but claimed it was an accident from stumbling and without malice or revenge. He was sentenced to suffer death. The case was appealed. The conviction was affirmed, but the prisoner's life was saved, and he was transported for life.

The law, as applied in Scotland, contains many instances of youthful offenders being punished. On Jan. 11, 1822, Charles Maclaren, Thomas Grierson, and James Macewan, convicted of theft by housebreaking, were sentenced to death, though Macewan declared he was fourteen, and Grierson thirteen years of age.

Alison, in his "Criminal Law of Scotland," which was published in 1832, says: "In cases innumerable transportation has been inflicted on minors just turned fourteen. Thus, on Dec. 21, 1818, Gunn and Chisholm, two boys of fourteen years of age, were transported fourteen years, as was Robert Thompson, Glasgow, April 14, 1821, though aged only thirteen years."

The same salutary principle of our law, in transporting juvenile delinquents, has been rigorously applied of late years to boys and girls of much younger years if either from their conduct or appearance they seemed capable of understanding the nature of a crime.

"It has not been unusual to transport children of eleven and twelve years, where their character seemed hardened, and to imprison them where they did not appear so completely depraved. Thus at Glasgow, Spring, 1818, Robert Turnbull, a boy of ten, and Boyd Hay, a boy of nine, were convicted of theft by housebreaking and sentenced to twelve months' confinement in Bridewell. In the High Court, Nov. 6, 1827, William Campbell, aged nine years, was sentenced to eighteen months' hard labor in Bridewell; and at Glasgow, April, 1828, Mary Macleish and Elizabeth Stewart, aged respectively thirteen and eleven years, received the same punishment.

"But, in cases of more hardened delinquency, transportation is constantly inflicted on children of this tender age. Thus, Alexander Livingston, 1749, a boy of twelve years of age, convicted of stabbing another boy so as to occasion his death, was held to be responsible for his crime and transported for life. On Nov. 13, 1493, at Lauder, Thomas Gothraston, a boy eight years old, charged with murder, was sharply scourged. And, in the years of Maxwell, Jan. 11, 1805, who was eight years of age, and William Menzies, Perth, May 10, 1800, who was also eight years old, the plea that they were too young to be responsible for their acts was proposed and repelled."

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