

Spring 2017

Exploring the Parameters of a Child's Right to Redemption: Some Thoughts

Katherine Hunt Federle

The Ohio State University Moritz College of Law

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Criminal Law Commons](#), [Criminal Procedure Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Federle, Katherine Hunt (2017) "Exploring the Parameters of a Child's Right to Redemption: Some Thoughts," *South Carolina Law Review*. Vol. 68 : Iss. 3 , Article 8.

Available at: <https://scholarcommons.sc.edu/sclr/vol68/iss3/8>

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact dillarda@mailbox.sc.edu.

EXPLORING THE PARAMETERS OF A CHILD’S RIGHT TO REDEMPTION: SOME
THOUGHTS

Katherine Hunt Federle*

I. INTRODUCTION.....487

II. THE RIGHT TO REDEMPTION.....488

III. CONCLUSION.....497

I. INTRODUCTION

The Supreme Court, in a series of cases, has held that children are different. For the purposes of criminal sentencing, this has meant that it is constitutionally impermissible to sentence a juvenile to death,¹ or to impose a mandatory sentence of life without the possibility of parole (LWOP) for non-homicide offenses committed when the juvenile was under the age of eighteen.² While the Eighth Amendment prohibits the imposition of sentences like these on minors who are tried and convicted in criminal court, the Court rejected a categorical rule barring the imposition of a life sentence in homicide cases, stating that a juvenile may not be sentenced to LWOP in the absence of an individualized—but “uncommon”—determination that such punishment is warranted.³ Some state courts also have begun to strike down their own sentencing schemes in light of the Supreme Court’s holdings.⁴

* Joseph S. Platt—Porter Wright Morris and Arthur Professor of Law and Director, Center for Interdisciplinary Law & Policy Studies, The Ohio State University Michael E. Moritz College of Law. This Article draws on an earlier piece. See Katherine Hunt Federle, *The Right to Redemption: Juvenile Dispositions and Sentences*, 77 LA. L. REV. 47 (2016).

1. *Roper v. Simmons*, 543 U.S. 551, 568 (2005).

2. *Graham v. Florida*, 560 U.S. 48, 82 (2010).

3. *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012).

4. *See, e.g., State v. Lyle*, 854 N.W.2d 378, 381 (Iowa 2014) (rejecting mandatory minimum adult sentences imposed on juveniles); *Diatchenko v. Dist. Atty for Suffolk Dist.*, 466 Mass. 655, 673, 1 N.E.3d 270, 286 (2013) (abolishing life without parole sentences for juveniles); *State v. Aalim*, No. 2015-0677, 2016 WL 7449237, 2016-Ohio-8278, ¶ 25 (Dec. 22, 2016) (holding mandatory transfer provisions violate the Ohio Constitution’s due process clause).

It is less than clear to what extent these rules apply to juvenile court proceedings. The parameters of the Eighth Amendment suggest that it may have limited applicability—or utility—when children are tried in a system specially designated for them. Moreover, because the construct of “child” is mutable and contextual, it is not entirely clear when one is no longer a “child.” The Court seems to suggest that the construct of child is ascertainable, but whether that is the result of state law distinctions or of some other method of line drawing is unclear. The difference, however, is an important one in a rights discourse in which capacity is a prerequisite to having and exercising rights and where children generally are categorically excluded from the class of rights holders.

The absence of a coherent theoretical framework in which to account for children’s rights makes resolution of some of these difficulties challenging. If, however, we begin to think about rights in terms of powerlessness rather than capacity, we can accommodate children as rights holders. From this perspective, rights flow to the less powerful; rights accord respect for the powerless and demand the attention of powerful elites. In the specific context of sentencing and disposition, articulating a child’s right to redemption is possible within a framework of powerlessness. This Article explores the contours of a right to redemption and suggests some of its ramifications in the juvenile justice system.

II. THE RIGHT TO REDEMPTION

The concept of redemption is a familiar one in international law. The United Nations Convention on the Rights of the Child (“CRC”) recognizes that when a child is charged with or convicted of violating a State Party’s penal law, the child has the right to be “treated in a manner consistent with the promotion of the child’s sense of dignity and worth.”⁵ In so recognizing the child’s right, a State Party must take into account the “child’s age, the desirability of promoting the child’s reintegration into society, and the child’s assumption of a constructive role in society.”⁶ Article 40(3) mandates the use of specialized procedures for juveniles accused of violating the law and encourages the use of nonjudicial proceedings whenever “appropriate and desirable.”⁷ As an alternative to punishment, Article 40(4) requires

5. United Nations Convention on the Rights of the Child, art. 40(1), Nov. 20, 1989, 28 I.L.M. 1448, 1577 U.N.T.S. 3 [hereinafter CRC].

6. *Id.*

7. *Id.* at art. 40(3).

States Parties to provide a “variety of dispositions . . . appropriate to their well-being and proportionate both to their circumstances and the offence.”⁸

The United States Supreme Court has found the provisions of the CRC instructive in the Eighth Amendment context, despite the fact that the United States is the only country that has not ratified the CRC. In *Roper v. Simmons*, for example, the Court noted that Article 37 of the CRC expressly prohibits the capital punishment of offenders who committed their crimes when they were under 18 in reaching its conclusion that the Constitution also bars the imposition of death on minor offenders.⁹ In *Graham v. Florida*, the Court held that the Constitution categorically bars the imposition of life without the possibility of parole for non-homicide offenses committed by juveniles, again citing to Article 37, which also prohibits “life imprisonment without the possibility of release . . . for offences [sic] committed by persons below eighteen years of age.”¹⁰ As the Court bluntly stated, “the United States now stands alone in a world that has turned its face against” these penalties for children.¹¹

But a concept of redemption also girds the Court’s Eighth Amendment jurisprudence involving juvenile offenders. The Court’s language suggests that minors are not beyond redemption. In *Roper*, for example, the Court contended that “juveniles have a greater claim than adults to be *forgiven* for failing to escape negative influences in their whole environment”¹² and that “[f]rom a *moral* standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be *reformed*.”¹³ The Court also rejected the claim that juveniles are “*irretrievably depraved*” in *Roper*,¹⁴ *Graham*,¹⁵ and *Miller v. Alabama*,¹⁶ noting that penalties of death and life without the possibility of parole are a “denial of *hope*.”¹⁷ As the Court declared, “juvenile[s] should

8. *Id.* at art. 40(4).

9. *Roper v. Simmons*, 543 U.S. 551, 575–76 (2005).

10. *Graham v. Florida*, 560 U.S. 48, 81 (2010) (quoting Convention on the Rights of the Child, art. 37, Nov. 20, 1989, 1577 U.N.T.S. 3).

11. *Roper*, 543 U.S. at 577.

12. *Id.* at 570 (emphasis added).

13. *Id.* (emphasis added).

14. *Id.* (emphasis added).

15. *Graham*, 560 U.S. at 68 (emphasis added) (quoting *Roper*, 543 U.S. at 570).

16. *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012) (emphasis added) (quoting *Roper*, 543 U.S. at 570).

17. *Graham*, 560 U.S. at 70 (emphasis added) (quoting *Naovarath v. State*, 779 P.2d 944, 944 (Nev. 1989)).

not be deprived of the *opportunity* to achieve maturity of judgment and self-recognition of human worth and potential.”¹⁸

The Court’s acknowledgment that “children are constitutionally different from adults”¹⁹ is significant to the construction of rights. Juveniles are not simply “miniature adults”²⁰ but unique constitutional persons to whom special principles must apply. “[Y]outh matters,”²¹ the Court declared, because children lack maturity and are impulsive. Youth matters because children are subject to negative influences and peer pressure, and have less control over their environments. Youth matters because children are less developed and therefore capable of change. Thus, the law often makes special accommodations for juveniles: “[i]ndeed, it is the odd legal rule that does *not* have some form of exception for children.”²²

It is their difference and the promise that their difference holds that requires the special treatment of children at sentencing. For the Court, these differences mean that the justifications for punishment apply with less force to juveniles. For example, retributivist justifications for punishment are not as great because children are less morally culpable due to their immaturity and diminished sense of responsibility.²³ It also is less likely that juveniles can (or will) engage in a cost-benefit analysis before offending, given their impetuosity.²⁴ Similarly, the incapacitation of children divorced from a consideration of their potential for change as they gradually mature is unjustifiable.²⁵

Clearly, these cases have direct applicability to juvenile transfer schemes. The Court rejected any claim that the discretion exercised when making the decision to transfer a juvenile to criminal court for trial is the constitutional equivalent of the discretion that must be exercised at sentencing. Certainly, when waiver is mandatory, no discretion is ever

18. *Id.* at 79.

19. *Miller*, 132 S. Ct. at 2464. *See also* *Montgomery v. Louisiana*, 136 S. Ct. 718, 732 (2016) (confirming that the Court was announcing a constitutional rule when the Court held that the rule articulated in *Miller* was a new substantive constitutional rule retroactive in cases on state collateral review).

20. *Miller*, 132 S. Ct. at 2470 (citing *J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011)).

21. *Miller*, 132 S. Ct. at 2465.

22. *Id.* at 2470.

23. *See id.* at 2465 (explaining that because of youth’s distinctive attributes, retributivist justifications for imposing harsh sentences are not as strong for youth as for adults) (citing *Graham v. Florida*, 560 U.S. 48, 71 (2010); *Roper v. Simmons*, 543 U.S. 551, 571 (2005)).

24. *Id.* (citing *Graham*, 560 U.S. at 72).

25. *See id.* (explaining that a life-without-parole sentence is at odds with a child’s capacity for change) (citing *Graham*, 560 U.S. at 74).

exercised.²⁶ The discretion exercised by a prosecutor also is constitutionally inadequate in the absence of judicial evaluation or review.²⁷ But even the decision to transfer by a juvenile court judge is insufficient because of the lack of information generally available to the juvenile court when the judge orders the child waived²⁸ and the real possibility that the judge feels the minor warrants more punishment than the juvenile justice system can impose.²⁹

The Supreme Court's approach does pose some challenges when thinking about rights. The first is contextual. The cases involve the application of criminal sentencing schemes to children who had been tried as adults and who had received the harshest penalties allowed in the criminal justice system—death or a mandatory life sentence without the possibility of parole.³⁰ The Court approached the question within the framework of the Eighth Amendment, a right applicable to all constitutional persons.³¹ Thus it was the offender's status as a child that barred the imposition of certain punishments, just as the status of mental disability would, but the child-as-offender seemingly presents no categorical constitutional bar to the imposition of a life sentence if an individualized determination that passes constitutional muster is made.³²

Second, the Court's analysis raises directly the question whether children have children's rights or whether they simply have rights as criminal offenders.³³ The distinction is an important one when thinking through a jurisprudential framework that encompasses children as rights holders. Whether children have rights remains hotly contested in the United States, in no small part because there is no framing document, like the CRC, to establish that children are rights holders.³⁴ Rather, any consensus about children's rights largely has developed as a result of their involvement in the juvenile and criminal justice systems. That is, children have rights not because they are children but because they are accused of committing crimes.

26. *See id.* at 2474 (noting that in States with mandatory transfer systems “[a] juvenile of a certain age who has committed a specified offense will be tried in adult court, regardless of any individualized circumstances”).

27. *Id.* at 2474.

28. *Id.*

29. *Id.* at 2475.

30. *Id.* at 2460; *Graham*, 560 U.S. at 48; *Roper v. Simmons*, 543 U.S. 551, 556 (2005).

31. *Id.*

32. *Id.*

33. *See Roper*, 543 U.S. at 623 (discussing CRC).

34. *Id.*

For rights discourse, this is an interesting puzzle. At least within Anglo-American traditions, competence is a prerequisite to having and exercising rights largely because of notions surrounding social compact theory.³⁵ Of course, this construct of competence has made formulating rights for children quite difficult. In the United States, this idea of capacity, or rather incapacity, has created a legal framework within which children can be simultaneously characterized as incompetent (to vote, for instance) and competent (to stand trial and be convicted or adjudicated delinquent).³⁶ The determinations of capacity often are simply bright lines legislatively drawn based on age³⁷ (although the Court has made it clear that such rules may be unconstitutional under the Eighth Amendment, at least where a juvenile is sentenced as an adult offender).

The Court's language about a child's "difference" thus directly highlights the challenge posed by a rights theory premised on capacity. On the one hand, the offender's special status as a child may warrant differential treatment at sentencing, but does not necessarily preclude the imposition of a significant sentence under the proper circumstances. Remember, too, that the Court differentiates the category of "child" from that of "adult" without ever really grappling with the fact that those categories are mutable and may be determined simply based on legislative line-drawing; thus children are no longer children when the legislature decides they are adults for certain (often punitive) purposes.³⁸ Certainly, we now have enough neuroscientific evidence to know that full maturity for most individuals does not occur until around the age of 25,³⁹ far later than the age of adulthood set by American penal codes. Even then, it remains unclear whether the Court's holdings have any application to the quasi-criminal proceedings within the juvenile court itself, a system that is designed only for children and that ostensibly provides a more rehabilitative and therapeutic approach.

Approaching the problem from a different theoretical framework is central to articulating a more coherent rights account for children. When capacity is a prerequisite to having and exercising rights, children inevitably are excluded from the class of rights holders.⁴⁰ Even in those instances in

35. Katherine Hunt Federle, *On the Road to Reconceiving Rights for Children: A Postfeminist Analysis of the Capacity Principle*, 42 DEPAUL L. REV. 983, 987 (1993).

36. *Id.* at 1021.

37. *Id.* at 997.

38. See *Miller v. Alabama*, 132 S. Ct. 2455, 2480 (2012); *Graham v. Florida*, 560 U.S. 48, 49–50 (2010); *Roper*, 543 U.S. at 588–90 (reasoning that children are different from adults without referencing arbitrary line-drawing by legislators).

39. *Young Adult Development Project*, THE MIT WORKLIFE CTR. (July 2008), <http://hrweb.mit.edu/worklife/youngadult/brain.html>.

40. Federle, *supra* note 35, at 987.

which juveniles are accorded rights, little attention is paid to the contextual application of those rights. Thus, as I have argued elsewhere, grounding rights in understandings about power shifts the focus from capacity to the essential powerlessness of the rights claimant.⁴¹ Mutable categories, like “child” or “adult,” constructed by powerful elites are not relevant to determining who has a right; rather, rights flow to the powerless.⁴² Thus, children, as powerless beings, and not simply because they are children, would have rights claims against the more powerful.⁴³

The child's claim of a right to redemption thus serves as a check on the state's exercise of power. That rights claim is more expansive than simply the right against cruel and unusual punishment embedded in the Eighth Amendment.⁴⁴ The right to redemption looks beyond punishment and envisions the reintegration of the child into society as a fully functioning citizen. This right thus imposes on the state a correlative duty to provide the means by which the child may have that future. Framing the right in this way changes the narrative from what the state has the power to do to the child to one in which the child may claim state-created opportunities for rehabilitation and reform.

A right to redemption is necessary even in a system ostensibly designed to accommodate children's difference. One consequence of the Court's approach may be that the mechanisms for transferring children to criminal court are unconstitutional. The Ohio Supreme Court, for example, recently held that the state's mandatory transfer provisions violate the state's due process clause.⁴⁵ Embracing the U.S. Supreme Court's holding that children are constitutionally different from adults,⁴⁶ the Ohio Supreme Court found that juvenile procedures also must take into account these differences.⁴⁷ The Ohio statutory provisions requiring transfer in the absence of any individualized determination violate due process because they fail to accommodate children's “special status.”⁴⁸

Nevertheless, the right to redemption is meaningless if it might be circumvented by discretionary judicial processes that simply penalize children. The Ohio Supreme Court left intact the state's discretionary waiver

41. For a more complete discussion of the empowerment perspective, see Katherine Hunt Federle, *Rights Flow Downhill*, 2 INT'L. J. CHILD. RTS. 343, 343 (1994).

42. *Id.* at 344.

43. *Id.*

44. *Id.* at 366.

45. *State v. Aalim*, No. 2015-0677, 2016 WL 7449237, 2016-Ohio-8278, ¶ 31 (Dec. 22, 2016).

46. *Id.* at ¶ 22.

47. *Id.* at ¶ 25.

48. *Id.* at ¶¶ 25–26.

provisions, finding that they were fundamentally fair because they took into account the differences between children and adults by requiring a juvenile court judge to determine the child's amenability to treatment in the juvenile justice system prior to ordering the child's transfer to criminal court.⁴⁹ However, the amenability determination may be grounded in the availability and cost of treatment modalities, a factor that many state waiver provisions list when a judicial transfer decision is to be made.⁵⁰ Discretionary transfer thus may continue to funnel children into the criminal system, without fully accounting for their impulsivity and immaturity. A meaningful right to redemption would directly challenge the state's power to punish children by claiming that the state has failed to respect the child's capacity for change.

Juvenile justice systems also disable and disadvantage the very children they process. Despite significant declines in the number of cases and offenders handled by juvenile courts, youth of color experience court involvement differently than white youth.⁵¹ In 2013, black youth comprised 35% of all delinquency cases and were more than twice as likely to be referred to the juvenile court as white youth, although blacks constituted only 16% of the youth population in the United States.⁵² Moreover, disproportionality becomes more pronounced and has more serious consequences as cases involving black youth proceed through the juvenile system.⁵³ For example, the rate at which referred cases were formally processed was 20% greater for black youth than for white, and blacks comprised 42% of all person offense cases in juvenile courts.⁵⁴ While white youth were more likely to receive a disposition of probation, black youth, in contrast, were ordered into residential placement after adjudication at a rate that was 20% greater than for white youth.⁵⁵

Court involvement may actually make things worse. Most juveniles age out of criminal offending as they mature.⁵⁶ But by impeding the

49. *Id.* at ¶ 28.

50. Katherine Hunt Federle, *Emancipation and Execution: Transferring Children to Criminal Court in Capital Cases*, 3 WIS. L. REV. 447, 453–54 (1996).

51. JULIE FURDELLA & CHARLES PUZZANCHERA, U.S. DEP'T OF JUSTICE, DELINQUENCY CASES IN JUVENILE COURT, at 1–2 (2015).

52. *Id.* at 2.

53. *Id.*

54. *Id.*

55. *Id.*

56. LAURENCE STEINBERG, ELIZABETH CAUFFMAN & KATHRYN C. MONAHAN, U.S. DEP'T OF JUSTICE, PSYCHOSOCIAL MATURITY AND DESISTANCE FROM CRIME IN A SAMPLE OF SERIOUS JUVENILE OFFENDERS, at 9 (2015). The researchers studied 1,300 juvenile offenders for seven years after conviction. Involvement in delinquent and criminal behavior increased through adolescence, peaking at about age 16 or 17. Although a small number

development of a prosocial lifestyle, institutionalization may delay maturation;⁵⁷ juveniles are exposed to more anti-social peers,⁵⁸ exhibit more aggressive behavior,⁵⁹ and may have less contact with family members and their community.⁶⁰ Incarcerated youth may experience physical and sexual victimization by other juveniles and staff,⁶¹ which may increase their risk for suicide or suicidal ideation.⁶² Juveniles experience educational disruption because juvenile facilities tend to provide an inferior educational experience for youth,⁶³ and their physical health may suffer because of risks associated with violence, sexual activity, substance abuse, or the more sedentary lifestyle experienced while institutionalized.⁶⁴

Conditions of confinement in juvenile facilities also underscore the punitive approach taken by juvenile justice systems. The public facilities in which most juvenile offenders are held⁶⁵ often have fences or walls with razor wire, internal security doors, or secure sleeping rooms.⁶⁶ The staff in training schools, reception, and detention centers use mechanical restraints, like handcuffs, restraining chairs, strait jackets, leg cuffs, or leather straps to restrain youth in custody, and will lock juveniles in their rooms.⁶⁷ One in five juvenile facilities experiences overcrowding,⁶⁸ and suicide was the most common cause of death among held youth.⁶⁹

continued to offend, the vast majority stopped engaging in criminal behavior as they became more psychosocially mature. *Id.* at 2.

57. Ian Lambie & Isabel Randell, *The Impact of Incarceration on Juvenile Offenders*, 33 CLINICAL PSYCHOL. REV. 448, 454–55 (2013).

58. *Id.* at 451.

59. *Id.* at 452.

60. *Id.* at 454.

61. *Id.* at 452–53.

62. *Id.* at 453–54.

63. *Id.* at 454.

64. *Id.*

65. SARAH HOCKENBERRY, MELISSA SICKMUND & ANTHONY SLADKY, U.S. DEP'T OF JUSTICE, JUVENILE RESIDENTIAL FACILITY CENSUS, 2012: SELECTED FINDINGS, at 3 (2015).

66. *Id.* at 4.

67. *Id.* at 12 (indicating 58% of training schools used mechanical restraints and 47% of training schools locked youth in their rooms for four or more hours; 46% of reception centers and 40% of detention centers used mechanical restraints while 44% of detention centers and 32% of reception centers locked youth in their rooms).

68. *Id.* at 10 (indicating facilities holding between 1 and 10 residents reported the highest rate of overcrowding at 24%, followed by facilities with 21–50 residents at 23%).

69. *Id.* at 13 (indicating that fourteen youth died in juvenile facilities in the one-year reporting period between October 1, 2011 and September 30, 2012. Five deaths were due to suicide, 4 were attributable to illness or natural causes, 3 were the result of accidents, and 2 were due to homicide. The death rate was higher for private facilities. Most deaths occurred at detention facilities).

The collateral consequences of juvenile adjudications are extensive and may impact the juvenile well into his adult life. For example, juvenile records may be made available to prospective employers who then may be unwilling to hire a youth with delinquency adjudications.⁷⁰ A child may be required to reveal his prior juvenile court involvement on college and graduate school applications or when applying for a professional license, which could result in denial of the application.⁷¹ Sex offender registration laws may require the youth to register well into adulthood, and may trigger community notification requirements that may affect the juvenile's ability to remain in a neighborhood.⁷² Both sex offender status and drug-related convictions may result in the eviction of a juvenile and his entire family from public housing, even if other family members were not at fault.⁷³ A youth may even be unable to enlist in the military, could lose driving privileges,⁷⁴ or may even be barred from obtaining federal financial aid for college.⁷⁵

American juvenile justice is deeply punitive. The paradox is that justice system involvement may actually result in more and deeper offending. Although there is evidence that most youth will grow up and out of their offending, prolonged exposure to juvenile justice system mechanisms may delay or impede their maturation. In fact, juvenile court involvement may

70. Riya Saha Shah & Jean Stout, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records*, JUV. L. CTR. 6, 11 (Feb. 2016), <http://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf> (one study found that black youth were more likely to be denied employment than white youth).

71. *Id.* at 10; Christopher Gowen, Lisa Thureau, & Meghan Wood, *The ABA's Approach to Juvenile Justice Reform: Education, Eviction, and Employment: The Collateral Consequences of Juvenile Adjudication*, 3 DUKE FORUM FOR L. & SOC. CHANGE 187, 194–96 (2011).

72. *See, e.g.*, KATHERINE HUNT FEDERLE, CHILDREN AND THE LAW: AN INTERDISCIPLINARY APPROACH WITH CASES, MATERIALS, AND COMMENTS 357 (2013) (explaining that two federal measures, Megan's Law and Adam's Law, are based on an assumption that sex offenders cannot be cured and that they will pose a risk to society throughout their lives).

73. Wendy J. Kaplan & David Rossman, *Called "Out" at Home: The One Strike Eviction Policy and Juvenile Court*, 3 DUKE FORUM FOR L. & SOC. CHANGE 109, 112 (2011).

74. Shah & Stout, *supra* note 70, at 9.

75. *Id.* at 11; *see also* Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, 103d Cong. (1994) (Pell Grant funding will be denied to anyone incarcerated in any federal or state penal institution).

have iatrogenic effects.⁷⁶ Juvenile court involvement thus exposes children to consequences that may last a lifetime.

III. CONCLUSION

What would a right to redemption add to the juvenile justice system? As a rights claim, juveniles would have the power to require the state to recognize that their differences be respected and accommodated. Thus, the state must provide children with a future, one in which children may assume productive roles in society. Rather than focusing on retribution and punishment, the right to redemption requires the state to provide opportunities for salvation through rehabilitation and treatment. And the very processes by which the juvenile justice system handles children would recognize their unique vulnerabilities and powerlessness.

76. Lambie & Randell, *supra* note 57, at 452 (stating that peer contagion could explain this effect; that is, youths' confinement with other, more antisocial youths might result in their further criminalization).

*