



EVOLUTION OF THE JUVENILE COURT

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OBJECTIVES

- Provide a brief history of the treatment of children by the government leading up to the first juvenile court in 1889.
- Describe the evolution of the juvenile court from 1889 to the passage of the Child Abuse and Prevention Act in 1974.
- Discuss how this history affects our attitudes, resources and roles as juvenile judges today.

AT THE CENTER OF IT ALL: FAMILY FAMILY FAMILY

- One of the principal tasks of a democratic society is to nurture its children to a successful, productive adult life. In the United States we rely primarily upon the family to provide to children most of what they need.



OR AS THE SUPREME COURT SAYS:

- The rights to conceive and to raise one's children have been deemed "essential," *Meyer v. Nebraska*, 262 U. S. 390, 399 (1923), "basic civil rights of man," *Skinner v. Oklahoma*, 316 U. S. 535, 541 (1942), and "[r]ights far more precious . . . than property rights," *May v. Anderson*, 345 U. S. 528, 533 (1953).
- "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince v. Massachusetts*, 321 U. S. 158, 166 (1944)
- *Stanley v. Illinois*, 405 U.S. 645,651(1972).

LITTLE PROTECTION FOR CHILDREN UNTIL THE 20TH CENTURY

The history of childhood is a nightmare from which we have only recently begun to awake. The further back in history one goes, the lower the level of child care and the more likely children are to be killed, abandoned, beaten, terrorized and abused.

Lloyd De Mause The History of Childhood 1974



GOVERNMENT'S AUTHORITY OVER (POOR) CHILDREN

- 17th century: Poor Law Policy derived from England
- 19th century: Refuge/Reform Movements
- Late 19th century: Child Saving Movement as part of Progressive Era

DUAL SYSTEM FOR RICH AND POOR

- Colonial America inherited from 17th C. England a dual system when it came to children.
- For the children of the rich hands-off (except inheritance laws to protect wealth)
- For the children of the poor the notion of the government as *parens patriae* described subsequently by the US Supreme court as follows:
 - *"The phrase was taken from chancery practice, where * * it was used to describe the power of the state to act in loco parentis for the purpose of protecting the property interests and the person of the child. In re GAULT, 387 US 1,16 (1967).*
 - The government used its *parens patriae* authority to remove poor children from parents and force them into apprenticeships.

FAMILY AUTONOMY PARAMOUNT

- ◉ Massachusetts Stubborn Child Law of 1646: parents could bring rebellious son before the court to be put to death.
- ◉ As in England, state apprenticed poor children for the common good.
- ◉ In *Johnson v. State*, 1840, court reversed parents' criminal conviction for the brutal treatment of daughter holding that parents' right to control and discipline their "refractory and disobedient children" so "necessary to the government of families and to the good order of society that no moralist or lawgiver has ever thought of interfering with its existence * * *."

THE HOUSE REFUGE MOVEMENT: ROUNDING UP THE VAGRANTS

- In 1820's, the House Refuge Movement was launched.
- Movement has been called "the first great event in child welfare."
- Refuge movement not to protect abused children from their caretakers.
- Goal was to eliminate vagrancy through confinement by rounding up poor children off the streets.
- Houses of Refuge opened in major cities: 16 such by 1860.



1839 *EX PARTE CROUSE*: THE STATE KNOWS BEST

- ◉ Child sent to House of Refuge for being beyond parental control and father brought habeas petition due to her unconstitutional confinement w/o trial.
- ◉ Court held confinement reformation not punishment.
- ◉ State has right to be coercive: “[M]ay not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae*, or common guardian of the community? . . . That parents are ordinarily entrusted with it because it can seldom be put into better hands; but where they are incompetent or corrupt, what is there to prevent the public from withdrawing their faculties, held as they obviously are, at its sufferance? **The right of parental control is a natural, but not unalienable one.**”

CHILDREN HAVE NO RIGHT TO LIBERTY

- "The basic right of a juvenile is not to liberty but to custody. He has the right to have someone take care of him, and if his parents do not afford him this custodial privilege, the law must do so." *In Re Gault* 387 US 1, 17 n. 21(1967) (Citing 1839 and 1882 cases.)

MID-LATE CENTURY REFORM

- ◉ Initiated by a number of influential individuals who believed the House of Refuge system had not slowed the rate of delinquency.
- ◉ Supposed to be progressive where youth would be reformed by his/her surrogate parent.
- ◉ Reformatories tended to be coercive, labor intensive incarceration.



POOR LAWS LEGACY IN 19TH CENTURY REFUGE/REFORM

- ◉ OK to intervene in the families of the poor.
- ◉ Poor parent rights not unalienable.
- ◉ Government as the ultimate parent.
- ◉ Children have no right to liberty.
- ◉ Children can be sent to work for own good.
- ◉ Children can be apprenticed out.
- ◉ 19th century twist: Sent to rural areas and on trains west.
- ◉ Little or no protection from abuse or neglect from parents/caretakers.

THE LIGHT DAWNS: 1874 CASE OF MARY ELLEN AND FIRST “SPCC”

- 1874 Mary Ellen whipped daily, locked in bedroom, stabbed with scissors. “Mama” convicted of assault.
- New York Society for Prevention of Cruelty to Children (NYSPCC) founded.
- Its founder, Elbridge Gerry, recognized the void in the Refuge system for abused and neglected children and that law enforcement not typically involved in “family matters.”
- Eventually, the NYSPCC acquired police power and controlled the welfare of many of New York's abused and neglected children. By 1900, 161 similar “cruelty” societies existed in the United States.

THE FIRST JUVENILE COURTS

- ◉ Emergence of a philosophical belief that the state owes children protection from harm and behavioral support for the chance at rehabilitation



CHILD SAVING: 1889 JUVENILE COURT FIRST ESTABLISHED

- ◉ 1889 in Cook County Illinois: “An Act to Regulate the Treatment and Control of Dependent, Neglected and Delinquent Children.”
- ◉ Identify children who are without family structure necessary to assist them in formative years and children who have violated the criminal law
- ◉ Product of a Progressive Era movement called Child Saving.

1909 VIEW OF THE ROLE OF THE COOK COUNTY JUVENILE COURT JUDGE

- “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 solicitude. 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 child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.”
- Judge Julian Mack, “The Juvenile Court,” *Harvard Law Review*, vol. 23 (1909).

BUT IN EARLY JUVENILE COURTS MUCH STAYED THE SAME

- ◉ *Crouse* still prevailed as theory to deny children rights.
- ◉ Delinquency and Dependency comingled.
- ◉ Families remained largely autonomous
- ◉ Poverty still de facto prerequisite for court intervention
- ◉ Children --other than of poor-- left alone.

STATE OF JUVENILE JUDGES NOT SO LONG AGO

Of 2,987 juvenile judges listed in 1964 only 213 are full-time, half have no undergraduate degree, a fifth have no college education at all, a fifth are not members of the bar, and three-quarters devote less than one-quarter of their time to juvenile matters. In re Gault supra at 15, n.14.

SUPREME COURT RECOUNTS VIEWS OF JUVENILE JUDGE 1937-1953

- ◉ "The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts . . ." 1937 Dean Pound
- ◉ The system must not degenerate into a star chamber proceeding with the judge imposing his own particular brand of culture and morals on indigent people. 1944 Judge Woodward
- ◉ The judge as amateur psychologist, experimenting upon the unfortunate children who must appear before him, is neither an attractive nor a convincing figure. 1953 Chief Justice of the Supreme Court of New Jersey.
- ◉ *In re Gualt*, supra at 18-19, n.25

IMPACT OF IN RE GAULT 387 U.S. 1 (1967)

- ◉ Gault did not dismantle or even touch the parens patriae authority of the dependency court.
- ◉ Application of due process reforms
- ◉ New roles for judges
- ◉ State code development separating the courts from agency / conflicts of authority over placement and planning
- ◉ Trend to behavioral model reinforced by application of criminal justice model for delinquency cases in response to Gault

LEADING UP TO CAPTA

- 1912 Congress created the United States Children's Bureau.
- *1944 US Supreme Court confirmed state's authority to intervene in family relationships to protect children. Prince v. Mass. 321 US 158 (1944).*
- *1962 Dr. C. Henry Kempe published The Battered Child Syndrome in the Journal of the American Medical Association.*
- *1962 Children's Bureau held symposium on child abuse and recommended model reporting law.*
- *By 1967 44 states had mandatory reporting.*

FEDERAL RESPONSE TO CHILD MALTREATMENT



January 31, 1974
President Nixon signs CAPTA



CAPTA CREATES NATIONAL DEFINITION OF CHILD MALTREATMENT

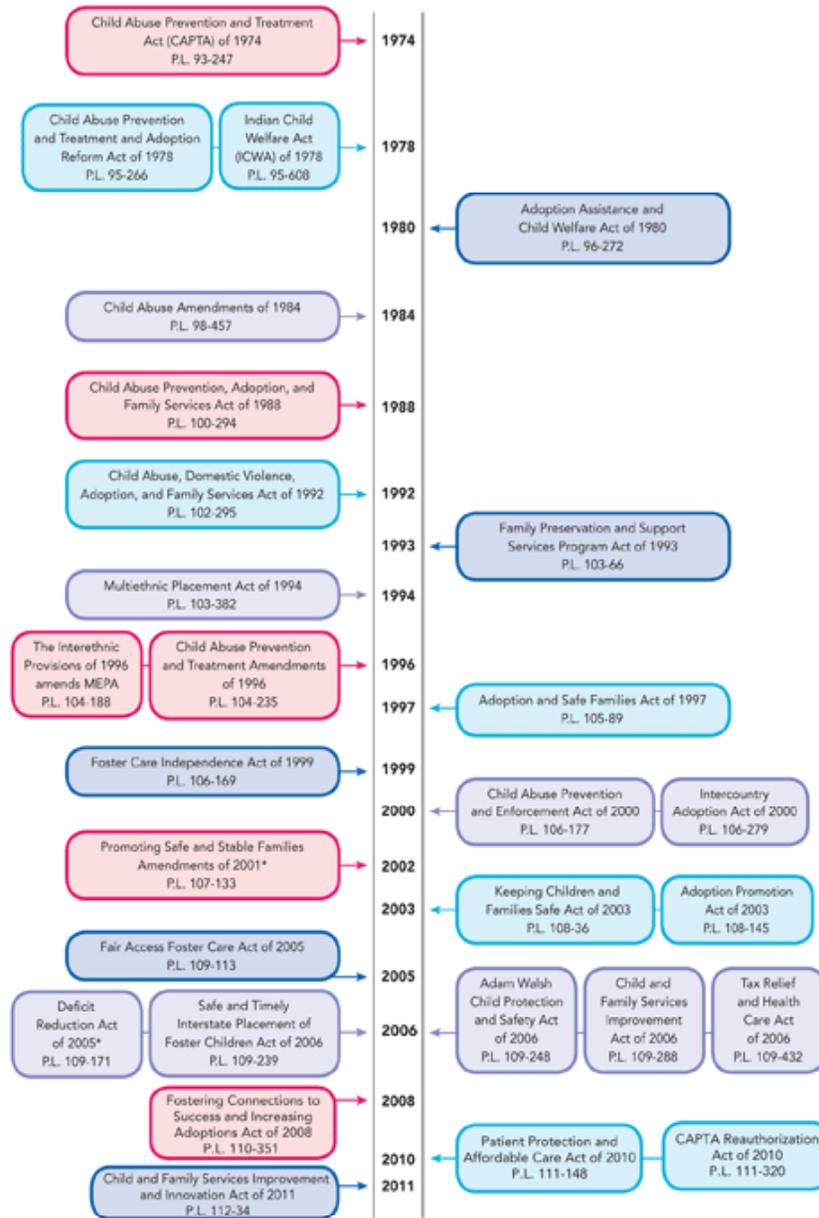
- ◉ CAPTA established a minimum standard definition of child maltreatment and guidelines for the development of state child protective systems.
- ◉ Before its passage, there was an intense national debate about the parameters of maltreating behavior to be included in the national definition of child maltreatment.
- ◉ There was strong opposition to the inclusion of emotional and physical neglect in the definition based on the belief that the government should intrude in family privacy only when there was an issue of demonstrable harm to the child.
- ◉ Despite the opposition, emotional and physical neglect were included.
- ◉ Source: Dubowitz H. *Neglected Children: Research, Policy and Practice*. (1999)



AND BOOM..... 1974 TO 2011



Child Abuse Prevention, Child Welfare, and Adoption



*Some acts were enacted the year following their introduction in Congress.

Photo Courtesy of Child Welfare Information Gateway <http://childwelfare.gov>

The 21st century dependency court is very different from the "vagrancy" dependency court which began 20th century.

Child abuse and neglect cases, once unrecognized, dominate the court calendar.

Intervening for children while preserving parents' constitutional right to be parents has been a difficult challenge of dependency law from the beginning. The balancing of interests in a democratic society is tricky business.

No longer either/or but a balancing of both interests: Family preservation and reunification along with protection of the children's best interests. *This policy recognizes that children thrive in their own families, but that efforts to continue that ideal cannot take place at the expense of children.*

ECHOES OF THE PAST IN THE DEEP SUBTEXT OF WHAT WE DO?

- ◉ Expectations of others based on the way it used to be done not so long ago?
- ◉ Lack of resources for juvenile courts.
- ◉ Poverty as de facto prerequisite?
- ◉ Attitudes of judges e.g. frustration with complexity.
- ◉ Attitudes towards juvenile judges/courts.
- ◉ Physical set up of court.
- ◉ Lack of formality in a (now) complex system.
- ◉ High-handed amateur psychologists???

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- ◉ NCJFCJ and Hon. Stephen M. Rubin (Arizona, ret.).
- ◉ MARVIN VENTRELL "*Evolution of the Dependency Component of the Juvenile Court*" *Juvenile and Family Court Journal*, Fall 1998, Volume 49, Number 4.
- ◉ *<http://childwelfare.gov>*