

CULTURE CLASH

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Culture Clash

Bringing the Perspective
 of Child Development to
 Social Services and
 Family Court

Perspective



**Why can't judges
 decide cases based on
 science?**

Charles H. Zeanah, Jr., M.D.,
 Executive Director of the
 Institute of Infant and Early
 Childhood Mental Health

Brain Development

- Brains:
 - constructed over time
 - experiences have powerful effects on structure and function
 - inadequate input and excessive/unwanted input are disruptive

Brain Development

- Relationships are the “active ingredients” of early experiences
- Relationship-based interventions (e.g., foster care) provide opportunities for prevention and treatment of distress and disability.

Brain's ability to change decreases over time

The graph plots two variables against Age (Years) from Birth to 70. The x-axis is labeled 'Age (Years)' with markers at Birth, 10, 20, 30, 40, 50, 60, and 70. The y-axis is unlabeled. A blue curve, labeled 'Normal Brain Plasticity Influenced by Experience', starts at a high point at Birth and decreases steadily, reaching a low point at 70. A red curve, labeled 'Physiological Effort Required to Enhance Neural Connections', starts at a low point at Birth and increases steadily, reaching a high point at 70. The two curves intersect at approximately age 30.

Source: Levitt (2009)

What is attachment?

- Seek comfort
- Nurturance
- Protection
- Selectively from at least one adult caregiver



Human infants are biologically predisposed to form attachments to caregivers.

Attachment

- Infants are strongly *biologically predisposed to form attachments to caregiving adults*
- Adults are strongly *biologically predisposed to respond to infants*
- Attachment in young children *develops gradually over the first several years of life*, based upon relationship experiences with caregivers
- Under usual rearing conditions, infants develop “focused” or “preferred” attachments in the *second half of the first year of life (7-9 months of age)*.
 - *Separation protest*
 - *Stranger wariness*

Why does attachment matter?

- An Infant develops expectations about availability and dependability of others in intimate relationships
- Infant’s **quality of attachment** to primary caregiver is one of strongest predictors of psychological and social outcomes in middle childhood and adolescence

How attachment forms...

- Only through *repeated experiences* of attachment activation, followed by reasonably consistent provision of comfort, support, nurturance, protection.
 - This requires *substantial amounts of contact*
- Infants and young children *cannot sustain attachments over time and space.*
 - Older children and adults can sustain attachments in the absence of contact

PUT MORE SIMPLY:



ADVERSE CHILDHOOD EXPERIENCES

There is a strong, graded relationship between the breathe of exposure to abuse or household dysfunction during childhood and multiple adult health risk factors that lead to death

• Dr. Vincent Felitti and Dr. Robert Anda

TRAUMA- toxic stress

- **The Children of Central City**
- details how repeated exposure to violence alters a child's brain development and other systems in the body.



NOLA.COM/Times Plcayune

Culture Clash:

THE LEGAL FRAMEWORK

THE ROLE OF THE COURTS

DUTIES AND RIGHTS DUE PROCESS

LIMITATIONS ON THE POWER OF THE GOVERNMENT

EVIDENCE AND PROOF



Duties and Limitations of the Government

FOSTER CARE IS A GOVERNMENT INTERVENTION INTO THE PRIVACY OF FAMILIES

EARLY PARENTAL RIGHTS CASES

Meyer v. Nebraska: 1923

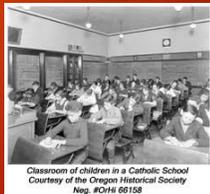
Worried about foreign influences on our children, Nebraska passed a law prohibiting the teaching of foreign languages in schools.



Compulsory Education Act of 1922

• *Pierce v. The Society of Sisters: 1925*

Can the government compel kids to go to public school?



Classroom of children in a Catholic School
Courtesy of the Oregon Historical Society
Neg. #OHHS 65158

Prince v. Commonwealth of Massachusetts
1944

Can the government pass a law prohibiting children from selling newspapers with their parents?

Religious newspapers?



Due Process Clause 14th Amendment

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law

Constitutional question

Is the right to raise your children a “liberty” protected by the 14th amendment?

United States Supreme Court

•YES – but it is not an unlimited right

The due process clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government.



Prince v. Commonwealth:

OPINION OF THE COURT

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. Commonwealth:

CONTINUING...

“It is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.”

BUT...

- the family itself is not beyond regulation in the public interest, as against a claim of religious liberty...
- And neither rights of religion nor rights of parenthood are beyond limitation.
- Acting to guard the general interest in youth's wellbeing, the state, as *parens patriae*, may restrict the parent's control in certain instances ...

The Holding:

- the power of the state to control the conduct of children reaches beyond the scope of its authority over adults, as is true in the case of other freedoms,
- and the rightful boundary of its power has not been crossed in this case.

Wisconsin v. Yoder,
406 U.S. 205 (1972)

• *The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.*

TERMINATION OF PARENTAL RIGHTS
Santosky v. Kramer, 455 U.S. 745 (1982)

• New York Law: State may terminate, over parental objection, the rights of parents in their natural child upon a finding that the child is "permanently neglected."

• WHAT IS THE BURDEN OF PROOF?



What is the burden of proof?



A preponderance standard does not fairly allocate the risk of an erroneous factfinding between the State and the natural parents.

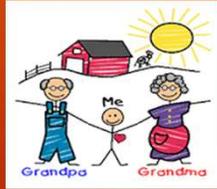
Minimum standard

Clear and convincing evidence

Opinion of the Court

VISITATION RIGHTS OF GRANDPARENTS
Troxel v Granville

• "[t]he liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court."



THE CHALLENGES IN CHILD WELFARE ...

Knowing where the lines are;
working within them to lift up
parents and their children;
BUT more importantly...

Bridging the clash of cultures

- Knowing and understanding the science of child development
 - Attachment science
 - The science of trauma
- Presenting this information to the court in a way the courts can understand
 - Evidence
 - Proof

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Thank you very much for caring about kids

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