

CULTURE CLASH

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June 21, 2018



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

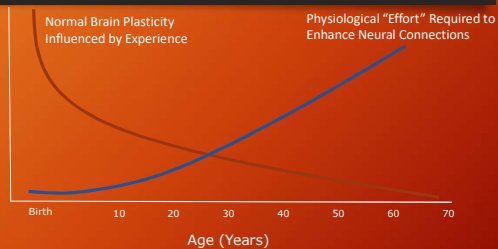
Brain Development

- 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



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

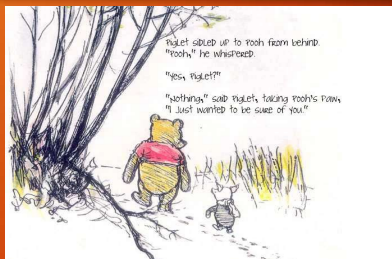
Why does attachment matter?

- 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 Ferlitti 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 Picayune

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

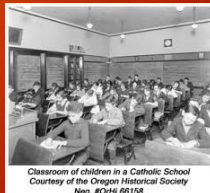
Worried about foreign influences on our children, Nebraska passed a law prohibiting the teaching of foreign languages in schools.



Compulsory Education Act of 1922

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

Can the government compel kids to go to public school?



**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

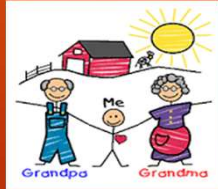
Clear and convincing evidence

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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