

## 100 YEARS OF JUVENILE COURT IN MINNESOTA—A HISTORICAL OVERVIEW AND PERSPECTIVE

Wright S. Walling, Esq.<sup>†</sup> and Stacia Walling Driver, Esq.<sup>††</sup>

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### I. INTRODUCTION

Any understanding or review of the current juvenile court in Minnesota must begin with a basic discussion of the manner in which society has viewed children and families. More specifically, in order to understand the “juvenile court philosophy,” it is critical

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<sup>†</sup> Wright S. Walling is a 1972 graduate of the University of Minnesota Law School. He is a founding member of the law firm of Walling, Berg & Debele, P.A. He is the immediate Past President of the American Academy of Adoption Attorneys and focuses his practice in all areas of juvenile and family law.

<sup>††</sup> Stacia Walling Driver is a 2003 graduate of William Mitchell College of Law. She is on the Board of Directors of Gift of Adoption Fund and is the co-chair of the Hennepin County Bar Association Juvenile Law Section. Her practice focuses on juvenile and family law issues.

for the reader to be aware that juvenile court, and in particular, juvenile court jurisdiction, includes a potpourri of issues dealing with children and families which do not otherwise fit neatly within the confines of other court processes. Children's issues do not fit well within the purview of the financially-oriented family court; nor do they fit within the purview of probate court. Historically, no processes or laws conveyed jurisdiction or authority to the court to allow it to deal with and assist children suffering from abuse or neglect, or children who committed acts which—if committed by an adult—would be viewed as criminal.

Throughout the course of the last 100 years, society's attitude, as reflected in the "juvenile court philosophy," shifted toward rehabilitation assistance and away from punitive actions directed at children.<sup>1</sup> That philosophy is apparent now that the juvenile court is responsible for a variety of juvenile and family issues such as: disintegration of the family through termination of parental rights; rehabilitation of families involved in neglect, dependency, and Child in Need of Protection Services (CHIPS) cases; creation of families through adoption and foster care placement; and financial assistance to families through various programs like adoption assistance and foster care payments directed at specific needs of families and children.

Separation of criminal laws from laws controlling dependent and neglected children was not particularly clear during the early stages of the "juvenile court philosophy." The result has been, in some ways, a continuing struggle within the juvenile court itself to deal with all aspects of family structure, creation, disintegration, and assistance.

This Article looks at some of the historical developments that have led to the current procedures and status of the juvenile courts in Minnesota.<sup>2</sup> In addition, it briefly reviews the development of procedural due process within the juvenile court, and its impact on the substantive issues that these courts are forced to deal with on a day-to-day basis.<sup>3</sup> Finally, this Article argues that the issues dealt with by the juvenile court in Minnesota are some of the most important dealt with by any court system and they deserve a substantial influx of commitment, time, money, and expertise.<sup>4</sup>

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1. See *infra* Part II.
  2. See *infra* Parts II-VI.
  3. See *infra* Parts VII-VIII.
  4. See *infra* Part IX.

## II. THE HISTORICAL BACKGROUND OF THE “JUVENILE COURT PHILOSOPHY”

It is easy to ignore the historical background of society's view of children and families when looking at the current situation in juvenile court. Nonetheless, it is helpful to remember that the current approaches to children and families developed over hundreds of years preceding the formal creation of juvenile courts and statutes in Minnesota and other states.<sup>5</sup> As noted by French historian Philip Aries in *Centuries of Childhood: A Social History of Family Life*, significant trends in both medieval and early modern Europe later filtered into American society and dramatically affected how children were treated within the American court system.<sup>6</sup>

It is clear that in medieval times, the concepts of family and childhood as we know them today did not actually exist.<sup>7</sup> Rather, during the Middle Ages, and for significant periods of time after that, nothing in the behavior, activities, or other social involvement of children distinguished them from adults.<sup>8</sup> By the age of five, children were expected to join adults in household chores, work in family fields and shops, and participate in other adult activities.<sup>9</sup> Very few programs existed to assist troubled children or troubled families, or to help children escape from either their own behavior or the consequences of being abused or neglected.<sup>10</sup>

During the late seventeenth century, as Christianity focused more on living a moral and good life, an underlying transformation began. This transformation included the notions that morality and proper behavior had to be taught to children, and that abused children should be removed from what might be viewed as the corrupt world of adults.<sup>11</sup> As a result, many middle class children began to have more and more extended schooling, and this new

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5. See generally PHILIPPE ARIÈS, *CENTURIES OF CHILDHOOD: A SOCIAL HISTORY OF FAMILY LIFE* (Robert Baldick trans., 1962) (chronicling the concept of childhood and the development of the family from the Middle Ages through the twentieth century).

6. *Id.* at 9-11.

7. *Id.* at 128.

8. See *id.* at 50, 71.

9. *Id.* at 329.

10. See, e.g., Wright S. Walling & Gary A. Debele, *Private CHIPS Petition in Minnesota: The Historical and Contemporary Treatment of Children in Need of Protection or Services*, 20 WM. MITCHELL L. REV. 781, 783-84 (1994).

11. See ARIÈS, *supra* note 5, at 369.

focus on educating children was accompanied by a heightened interest in their well-being.<sup>12</sup> Parents began to watch over their children rather than incorporate them into the work model of assisting the family with its chores.<sup>13</sup> Parents began to promote their children's health and safety, and tried to prevent momentarily abandoning them to the care of another family.<sup>14</sup> By the eighteenth century, the child became the center of the middle class family.<sup>15</sup>

In this context, in early America, including colonial America, the nuclear family eventually replaced the extended family as the fundamental unit, enhancing the relationship between children and parents.<sup>16</sup> Children's needs and futures became the focus of family life.<sup>17</sup>

Most families were initially tied to small communities, causing family structure to become quite patriarchal; similar historical trends can be seen throughout colonial America.<sup>18</sup> As with all historical developments, the birth of children and subsequent marriage of offspring were often driven by economic and social conditions more than emotional factors.<sup>19</sup> However, the distinctive shift to the focus on children was remarkable. As a direct outgrowth of this attitude, and particularly the background of closely knit families and communities, the Puritans of colonial Massachusetts enacted the first laws anywhere in the world to address what they called "unnatural severity" to children.<sup>20</sup> This continued to reflect the family's role as a primary unit in the social control of the colony.<sup>21</sup>

Officials were often quick to intervene when the welfare of children seemed imperiled by the conduct of their parents.<sup>22</sup> This

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12. *Id.* at 369-71.

13. *Id.* at 369.

14. *Id.*

15. *Id.*

16. *Id.* at 398-400.

17. *Id.* at 403.

18. PHILIP J. GREVEN, JR., *FOUR GENERATIONS: POPULATION, LAND, AND FAMILY IN COLONIAL ANDOVER, MASSACHUSETTS* 73 (1970).

19. *Id.* at 74.

20. ELIZABETH PLECK, *DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT* 4 (1987).

21. *Id.* at 17.

22. See JOHN DEMOS, *PAST, PRESENT AND PERSONAL: THE FAMILY AND THE LIFE COURSE IN AMERICAN HISTORY* 29 (1986). *But see* Mason P. Thomas Jr., *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C. L. REV. 293, 300 (1972) (noting that throughout the seventeenth and eighteenth

often resulted in an attempt by governments to protect innocent children and to punish parents, causing children to be separated from their parents by institutionalization or apprenticeship.<sup>23</sup> Institutionalized children were often mixed with the homeless, mentally ill, mentally retarded, and other persons deemed unable to adequately care for themselves.<sup>24</sup> Apprenticeships brought an economic component to this philosophy by providing inexpensive sources of labor in society, as well as a means for teaching children skills for use as adults.<sup>25</sup>

Throughout the eighteenth and nineteenth centuries, these attitudes began to shift. The impact of the westward expansion of the colonies, and the increasingly diverse ethnic and religious backgrounds of new immigrants, had a significant influence on the attitudes of government and society in both secular and religious practices, making attitudes more diverse and society less homogeneous.<sup>26</sup> The church began to play an increasingly smaller role in “punishing” those viewed as moral offenders.<sup>27</sup> At the same time, however, the expansion of secularism and individual rights tended to undermine the State’s authority to intervene in private matters.<sup>28</sup> The transformative social factors of the late eighteenth and early nineteenth centuries gave rise to the so called “republican family.”<sup>29</sup> The family became smaller in size and more of the family’s attention and resources focused on child rearing.<sup>30</sup>

Society began to recognize the nurturing role families could play by surrounding children with love and providing examples of proper behavior and values.<sup>31</sup> Expanding upon the philosophies of John Locke, a growing humanitarian sentiment popularized the idea of “Christian Nurture.”<sup>32</sup> Nurturing, rather than hard work, became not only the hallmark of the middle class childhood, but

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centuries, courts rarely intervened against harsh discipline).

23. Thomas, *supra* note 22, at 299.

24. *Id.* at 301.

25. *Id.*

26. See PLECK, *supra* note 20, at 31-32.

27. *Id.* at 31.

28. *Id.* at 31-33.

29. MICHAEL GROSSBERG, GOVERNING THE HEARTH: LAW AND THE FAMILY IN NINETEENTH-CENTURY AMERICA 4-9 (G. Edward White ed., 1985).

30. *Id.* at 6-8.

31. *Id.* at 111.

32. WALTER I. TRATTNER, FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA 111 (6th ed. 1999).

also the sought after model.<sup>33</sup> Public interest in nurturing and protecting children became the focal point during the last three decades of the nineteenth century, a period of American history known as the Progressive Era.<sup>34</sup>

The Progressive Era saw the emergence of wealthy urban elite who were “fearful of social disorder and dismayed by the poverty, disease, and lawlessness of urban life.”<sup>35</sup> During the nineteenth century, public interest focused on child abuse and neglect, as the progressives of that time attempted to establish numerous innovative institutions to address the needs of what they considered “neglected, destitute, abandoned, and vagrant children.”<sup>36</sup> By the last quarter of the nineteenth century, organizations such as the New York Society for the Prevention of Cruelty to Children (NYSPCC) attempted to respond to these conditions on behalf of neglected and abused children and specifically sought to locate and rescue them from their situations.<sup>37</sup>

Eventually, the NYSPCC acquired specific police powers and heavy influence over the removal of children from their parents’ control.<sup>38</sup> In fact, legislation authorized the NYSPCC to “file complaints for the violation of any laws affecting children” and “required law enforcement and court officials to aid agents of the [NYSPCC] in the enforcement of these laws.”<sup>39</sup> They also investigated and advised judges regarding the disposition and placement of children who were poor, neglected, or involved in delinquent acts.<sup>40</sup>

During this period of time, the line between a child’s own actions and his parents’ actions became blurred. Agents of private societies were authorized to arrest “anyone found violating statutes regarding children, or obstructing or interfering with the work of the society’s [sic] agents.”<sup>41</sup> Between 1875 and 1900, many cities created similar cruelty prevention groups in an attempt to remove children from the poverty and abuse seen as restricting their ability

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33. *Id.* at 110-11.

34. *Id.*

35. PLECK, *supra* note 20, at 70.

36. Thomas, *supra* note 22, at 306.

37. *Id.* at 310.

38. *Id.* at 310-11.

39. *Id.* at 310. For statutory authority see 1881 N.Y. Laws 69-72, ch. 676, § 293, *reprinted in* 2 CHILDREN AND YOUTH IN AMERICA: A DOCUMENTARY HISTORY 193-95 (Robert H. Bremner ed., 1971).

40. Thomas, *supra* note 22, at 310.

41. PLECK, *supra* note 20, at 81.

to become productive members of society in general.<sup>42</sup> During this time, progressives believed that “[b]y providing the child[ren] with a healthy, moral, and secure home environment, adequate schooling, and humane working conditions . . . a future American society largely untroubled by vice, crime . . . poverty . . . [c]lass antagonisms, ethnic divisions, and racial tensions would [emerge].”<sup>43</sup> This world view prompted compulsory education laws, new schools and vocational institutions, restructured curricula, and restrictions on child labor. It also led to the establishment of the federal Children’s Bureau and, of particular significance, the creation of the first juvenile court in the United States.<sup>44</sup>

### III. JUVENILE COURTS CREATED

The creation of the first juvenile court in Chicago, Illinois, in 1899 is viewed as a seminal development in the field of child welfare.<sup>45</sup> Of significant importance is the potpourri of issues within juvenile court jurisdiction. Even at that time, both neglected children and child offenders were subject to dispositions, entrustment, and often committal to the same institution, regardless of how they came to be before the court.<sup>46</sup> This raised significant questions regarding the constitutional validity of juvenile proceedings, as did the general lack of procedure and due process.<sup>47</sup>

As the progressive view of family and children continued to become focused, “[t]he juvenile court movement in the United States gathered momentum in the final years of the nineteenth century.”<sup>48</sup> In April of 1899, Illinois passed the first juvenile court

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42. See SUSAN TIFFIN, IN WHOSE BEST INTEREST? CHILD WELFARE REFORM IN THE PROGRESSIVE ERA 78 (1982) (explaining that proponents of institutions argued that “in New York, Chicago, and other cities throughout the country, thousands of children owed their livelihood and happiness to the educational and training facilities of [institutions]”).

43. *Id.* at 7-8.

44. *Id.* at 8.

45. Thomas, *supra* note 22, at 323.

46. *Id.* at 315.

47. *Id.*; see *infra* Part IV. “The 1899 juvenile court law continued the blurring of distinctions between neglected, dependent, and delinquent children and the practice of mixing these children in the same institutions—sometimes under repressive and punitive conditions.” *Id.* at 324.

48. MONRAD G. PAULSEN & CHARLES H. WHITEBREAD, JUVENILE LAW AND PROCEDURE 1 (N. Corinne Smith ed., 1974).

act.<sup>49</sup> The act was spearheaded by reformers who were deeply interested in a variety of social causes, including prison reform, employment issues, women's suffrage, and poverty law. The passionate conviction of these reformers to protect children from the disadvantages of a criminal conviction also propelled the enactment of the juvenile court law.<sup>50</sup>

Of additional significance, the new court was designed to operate with great procedural informality—in the absence of a jury trial, public trial, and constitutionally guaranteed rights of any kind.<sup>51</sup> In particular, it was noted that charges were not filed against a child but rather a petition was filed “in his interest.”<sup>52</sup> The original Illinois Act provided that “the court shall proceed to hear and dispose of the case in a summary manner.”<sup>53</sup> The goal of the court was to find out why a child had misbehaved and to offer treatment to help him. As noted by one of the great early Illinois judges, Julian Mack:

The problem for determination by the judge is not, Has this boy or girl committed a specific wrong, but What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.<sup>54</sup>

In 1927, Herbert Lou noted that “[t]he juvenile court is conspicuously a response to the modern spirit of social justice.”<sup>55</sup> In many ways, a review of the current status of juvenile court reflects a continuing commitment to the “spirit of social justice.”<sup>56</sup> While the issues of neglected, dependent, and abused children remained high in the minds of the social reformers, statutes tended to focus on dealing with children charged with committing acts that would otherwise be criminal. The creators of the juvenile court strongly believed that criminal statutes, which for hundreds of years had essentially viewed children as adults by the age of seven, were a total failure in deterring the criminal behavior of

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49. Thomas, *supra* note 22, at 324.

50. *Id.*

51. PAULSEN & WHITEBREAD, *supra* note 48, at 2.

52. *Id.*

53. *See id.* (quoting 1899 Ill. Laws 131-37).

54. Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119-20 (1909).

55. HERBERT H. LOU, *JUVENILE COURTS IN THE UNITED STATES* 2 (1927).

56. *See id.* (explaining that through the advent of juvenile courts “we have now socially-minded judges, who hear and adjust cases according not to rigid rules of law but to what the interests of society and the interests of the child or good conscience demand”).

children.<sup>57</sup> Because crime was not suppressed, these reformers believed that the criminal law actually operated to harm children.<sup>58</sup> “The conviction . . . stigmatized the child for life”<sup>59</sup> and offered no hope or opportunity for the child.<sup>60</sup> A lengthy prison sentence, or even capital punishment, given to a child older than seven years of age had no deterrent effect, offered no assistance to the child, and therefore was deemed repugnant.<sup>61</sup> Even children who managed to avoid imprisonment were failed by the system. In the early 1900s, one commentator writing about delinquent children noted:

The significant fact which must not be overlooked is that, even if [the child was] ‘let off’ by the justice or pardoned by the mayor, no constructive work was done in the child’s behalf . . . . [W]hatever was done in the case was necessarily done with little or no relation to the child’s history or surroundings.<sup>62</sup>

Therefore, it was necessary to restructure all of the criminal law in order to recognize that children themselves had no “free will” and therefore were not responsible for their misbehavior—in contrast to adults, who could in fact be rehabilitated through treatment.<sup>63</sup>

As attitudes toward “criminal” behavior changed, so did the manner of dealing with children coming out of abusive, neglected, and dependent situations. Initially there was a gray area in the development of various jurisdictional bases including truancy, incurability, and absenteeism from the home.<sup>64</sup> All of these activities carried “criminal” penalties in delinquency proceedings, although they constituted lawful activities for adults.<sup>65</sup>

The rehabilitative model became the standard approach for dealing with children. This approach responded to the failures of criminal law and is reflected in the “juvenile court philosophy.”<sup>66</sup> Miriam Van Walters, a referee in the juvenile court in California in

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57. PAULSEN & WHITEBREAD, *supra* note 48, at 1.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. Julia C. Lathrop, *Introduction* to SOPHONISBA P. BRECKINRIDGE & EDITH ABBOTT, *THE DELINQUENT CHILD AND THE HOME* 4 (Richard C. Wade ed., 1970) (1912).

63. PAULSEN & WHITEBREAD, *supra* note 48, at 2.

64. *Id.*

65. *Id.* at 2.

66. *Id.* at 1.

1923, noted, “the juvenile court is conceived in the spirit of the clinic.”<sup>67</sup> The founders of juvenile courts specifically believed that “the behavioral sciences and the medical arts offered a body of scientific information which, if applied to an erring child, could work beneficial change in him.”<sup>68</sup>

In both delinquency and child protection matters, the goal of “[t]he court was to meet the child’s needs, to serve his best interest[,]” and rehabilitate him, rather than punish him.<sup>69</sup> Treatment was to be offered to meet the needs of the child and not adjusted as a means of imposing punishment based on the seriousness of the child’s act.<sup>70</sup> The probation officer or social worker was at the heart of the entire juvenile justice system, acting as a counselor to the child and providing consistent contact between the court and the youth.<sup>71</sup> The fundamental principle of the juvenile court was that

[c]hildren are to be dealt with separately from adults. Their cases are to be heard at a different time and, preferably, in a different place; They are detained in separate buildings, and, if institutional guidance is necessary, they are to be committed to institutions for children through its probation officers which the court can keep in constant touch with the children who have appeared before it. Taking children from their parents is, when possible, to be avoided; on the other hand, parental obligations are to be enforced. The procedure of the court must be as informal as possible. Its purpose is not to punish but to save. It is to deal with children not as criminals but as persons in whose guidance and welfare of the State is particularly interested. Save in the cases of adults, its jurisdiction is equitable, not, criminal in nature.<sup>72</sup>

Further, juvenile courts integrate the science of human behavior to address juvenile delinquency. On the topic of integrating the science of human behavior into the juvenile court

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67. Miriam Van Waters, *The Socialization of Juvenile Court Procedure*, in CRIME, ABNORMAL MINDS, & THE LAW 158 (Ernest B. Hoag & Edward H. Williams eds., Da Capo Press 1981) (1923).

68. PAULSEN & WHITEBREAD, *supra* note 48, at 2.

69. *Id.*

70. *Id.*

71. *Id.* at 3.

72. BERNARD FLEXNER & REUBEN OPPENHEIMER, *THE LEGAL ASPECT OF THE JUVENILE COURT* 8 (1922).

systems, Herbert Lou wrote:

It is perhaps the first legal tribunal where law and science, especially the science of medicine and those sciences which deal with human behavior, such as biology, sociology, and psychology, work side by side. It recognizes the fact that the law unaided is incompetent to decide what is adequate treatment of delinquency and crime. It undertakes to define and readjust social situations without the sentiment of prejudice. Its approach to the problem which the child presents is scientific, objective, and dispassionate. The methods which it uses are those of social case work, in which every child is studied and treated as an individual.<sup>73</sup>

Thus, the great social experiment of the juvenile court was under way—examining the results and promoting the involvement of the secular state within the lives of individual families—until the development of healthy families and rehabilitation could be achieved. It swept the country, and by the early 1900s, every state in the union had passed some form of the juvenile court law.<sup>74</sup> From there, the spigot was opened to drop all aspects of children's lives into the unending sponge of juvenile court jurisdiction.

#### IV. *PARENS PATRIAE* TAKES ON DUE PROCESS

Almost immediately after the creation of juvenile courts, concern arose over the paternalistic position of the courts, and the limitations on what many viewed as constitutional requirements for courts' involvement in the lives of individuals. It is clear that the founders of juvenile court were quite aware of the enormous power of this court.<sup>75</sup> The power of the court to interfere with children and their parents, and in some cases to take children away and place them in disciplinary institutions, was clear.<sup>76</sup> More specifically:

The fact that the juvenile court exercised the power to take children from their parents and to commit children to state training schools by procedures that did not involve a jury or a public trial, the right to remain silent, the right to counsel and the rest, raised serious questions

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73. LOU, *supra* note 55, at 2.

74. Thomas, *supra* note 22, at 327.

75. *Id.*

76. *Id.*

of constitutional law. The power of the juvenile court to operate in this informal fashion was almost universally sustained in state courts by characterizing the proceedings as civil rather than criminal—an exercise of *parens patriae* power.<sup>77</sup>

Many people characterized this power as punitive and indistinguishable from criminal dispositions.<sup>78</sup> However, the court harkened back to early English law's recognition of the residual power of the crown to protect children and what was referred to and continued to be referred to as the power of *parens patriae*.<sup>79</sup> The courts were unable to ignore these imperatives. Using this power to protect children against the horrors of the criminal law, juvenile court dispositions provided a basis for a "civil proceeding" in which criminal sentences would be inapplicable.<sup>80</sup>

Early cases invoked the doctrine of *parens patriae* as an effort to "protect children" from their own misbehavior and from adult wrongdoers. The court opinions appear reluctant to force the legal analysis of juvenile courts into the framework of constitutional law, thus prohibiting or avoiding application of constitutional principles to these cases.<sup>81</sup> As early as 1905, the Pennsylvania court stated:

To save a child from becoming a criminal, or from continuing in a career of crime, to end in maturer [sic] years in public punishment and disgrace, the Legislature surely may provide for the salvation of such a child, if its parents or guardian be unable or unwilling to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection. . . .

[T]he act is not for the trial of a child charged with a crime, but is mercifully to save it from such an ordeal, with the prison or penitentiary in its wake, if the child's own good and the best interest of the state justify such salvation. Whether the child deserves to be saved by the state is no more a question for a jury than whether than the father, if able to save it, ought to save it. . . . The act is but an exercise by the state of its supreme power over the welfare of children, a power under which it can take a

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77. *Id.*

78. *Id.*

79. *Id.* at 5.

80. FLEXNER & OPPENHEIMER, *supra* note 72, at 8-9.

81. PAULSEN & WHITEBREAD, *supra* note 48, at 5.

child from its father and let it go where it will, without committing it to any guardianship or any institution, if the welfare of the child, taking its age into consideration, can be thus best promoted. . . .

The design is not punishment, nor the restraint imprisonment, any more than is the wholesome restraint which a parent exercises over his child.<sup>82</sup>

This sentiment was echoed by the Idaho Supreme Court in 1908:

[The juvenile court's] object is to confer a benefit both upon the child and the community in the way of surrounding the child with better and more elevating influences, and of educating and training him in the direction of good citizenship and thereby saving him to society and adding a good and useful citizen to the community. . . . It would be carrying the protection of "inalienable rights," guaranteed by the Constitution, a long ways [sic] to say that the guaranty extends to a free and unlimited exercise of the whims, caprices, or proclivities of either a child or its parents or guardians for idleness, ignorance, crime, indigence, or any kindred dispositions or inclinations.<sup>83</sup>

This philosophy, or *parens patriae*, which led to significant abuses, continued to be the order of the day in all aspects of juvenile law for almost seventy years, from the passing of the 1899 Illinois statute until the Supreme Court decision in *In re Gault*.<sup>84</sup> Under the guise of the beneficent, the juvenile court judge sat at a table or desk, rather than on a bench.<sup>85</sup> From the table, the judge dispensed justice to the needy children of society. This became the norm, and was the basis for excluding essentially all constitutional rights or other due process protections for the child, as well as the family of a juvenile appearing before the court. For approximately seventy-five percent of the existence of juvenile courts nationally, and Minnesota courts as well, this model was used with the overwhelming belief that it assisted both children and families. However, in reality, it promoted uninhibited interference—albeit oftentimes necessary intervention—in a child or family's life, free

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82. Commonwealth v. Fisher, 62 A. 198, 200-01 (Pa. 1905).

83. *Ex parte Sharp*, 96 P. 563, 564-65 (Idaho 1908).

84. 387 U.S. 1, 30-31 (1967); *see also infra* notes 152-69 and accompanying text.

85. *See, e.g., Mack, supra* note 54, at 120.

from the perceived encumbrances of due process. Given such a system, abuse could not be far behind.

#### V. THE EARLY MINNESOTA EXPERIENCE

The first Minnesota juvenile court statute, enacted in 1905, reflected, as did most states, the social movements occurring at the national level, as originally exemplified by the 1899 Illinois statute.<sup>86</sup> Early on, Minnesota began to address the needs of both its “delinquent children and its dependent and neglected children.”<sup>87</sup>

The original juvenile court statutes reflected the same broad and sweeping power found in other states at the turn of the twentieth century.<sup>88</sup> Even prior to that, however, the Minnesota courts had dealt with state involvement in family life, under earlier statutes. As early as 1892, the Minnesota Supreme Court, in *State ex rel. Olson v. Brown*, ruled on various 1878 statutes and amendments thereto.<sup>89</sup> In *Brown*, an appeal of a lower court writ of habeas corpus directed at the Superintendent State Reform School, the Minnesota Supreme Court dealt with the question of whether a child had been unlawfully restrained at the school.<sup>90</sup> The case itself involved relatively technical issues of jurisdiction and a charge of “incorrigibly vicious conduct” where the child was “committed to the guardianship of the board of managers of the reform school.”<sup>91</sup> In dealing with the jurisdictional issues, the court also indicated that it was

obliged to consider the relator’s contention that the legislation of this state, whereby justices are authorized and empowered to commit infants to the care and guardianship of the board of managers of the reform school in consequence of incorrigibly vicious conduct, and for a time exceeding three months, is not a valid exercise of legislative power, under the constitution of this state.<sup>92</sup>

In specifically dealing with that question, the court noted:

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86. See TIFFIN, *supra* note 42, at 7-8.

87. 1905 Minn. Laws 418.

88. Thomas, *supra* note 22, at 313-14.

89. 50 Minn. 353, 357-59, 52 N.W. 935, 936 (1892).

90. *Id.* at 356, 52 N.W. at 935.

91. *Id.*, 52 N.W. at 935.

92. *Id.* at 357, 52 N.W. at 936.

The questions raised by the first of these propositions have often been discussed by the judicial tribunals of this country. Legislation which, brushing aside and disregarding the views, wishes, or supposed rights of natural guardians, has had for its object the future welfare of the minor children of incapable and unworthy parents, or the care, custody, and proper training of incorrigible and vicious youth by the state, has occasionally been denounced with great vigor by the courts. A notable example of this species of denunciation may be found in the opinion in *People v. Turner*, 55 Ill. 281, written by Mr. Justice Thornton. But legislation of this character has been adopted in nearly all of the northern states, and its validity has often been upheld. We do not propose to add to the very many pages which, in the Reports and text-books, have been devoted to the support of the position, now taken almost universally by the courts, that a *person committed to the care and custody of a board in charge of an institution of the character of the Minnesota state reform school is not "punished," nor is he "imprisoned," in the ordinary meaning of those words. Hence the constitutional provision which regulates and limits the jurisdiction of justices of the peace in criminal matters has no application.*<sup>93</sup>

More specifically, in quoting from the Wisconsin case of *Milwaukee Industrial School v. Supervisors of Milwaukee County*,<sup>94</sup> the *Brown* court repeated:

And, in the first place, we cannot understand that the detention of the child at one of these schools should be considered as imprisonment, any more than its detention in the poorhouse,—any more than the detention of any child at any boarding school, standing, for the time, in loco parentis to the child. Parental authority implies restraint, not imprisonment. And every school must necessarily exercise some measure of parental power of restraint over children committed to it. And when the state, as *parens patriae*, is compelled, by the misfortune of a child, to assume for it parental duty, and to charge itself with its nurture, it is compelled also to assume parental authority over it. . . . And, in exercising a wholesome parental restraint over the child, it *can be properly said to imprison the child no more than the tenderest parent exercising*

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93. *Id.*, 52 N.W. at 936 (emphasis added).

94. 40 Wis. 328, 337 (1876).

*like power of restraint over children.* This seems too plain to need authority; but the cases cited for the respondent and others amply sustain our view.<sup>95</sup>

Thus, even prior to the codification of the 1899 statute in Illinois, Minnesota courts supported the ability of the justice of the peace and the municipal courts to remove children from their homes for active “incurability” or other acts resulting from being an abused, neglected, or dependent child. Constitutional objections were swiftly set aside and disregarded. Nevertheless, the early statute did reflect some debate over whether it was the responsibility of the State or the family to protect and punish dependent and neglected children in particular. The 1905 statute was designated as “an act as to regulate the treatment and control of dependent, and neglected and delinquent children.”<sup>96</sup> One commentator has noted:

While recognizing the authority and control of the state through its courts, the 1905 statutes specifically allowed *any reputable person* to file a petition alleging that a child was neglected or dependent as long as that person resided in the county and knew of the child who appeared to be neglected or dependent.<sup>97</sup>

Thus, the State recognized implicit gray areas when courts are required to evaluate cases related to children, whether resulting from abuse and neglect or from their own criminal or incorrigible behavior.

Such protective statutes clearly drew on the courts’ long history—extending back to the colonial era—of providing any interested person in the community the ability to alert authorities to family problems.<sup>98</sup> The statutes allowed a combination of state response and private action in dealing with families and their children’s “best interest.” Again, however, the early stages of the statutes provided few, if any, procedural protections for children.<sup>99</sup> Although early statutes recognized the relationship between the court’s authority and the family’s responsibilities, provisions such as

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95. *Brown*, 50 Minn. at 358, 52 N.W. at 936 (emphasis added).

96. 1905 Minn. Laws 418.

97. Walling & Debele, *supra* note 10, at 803; *see also* 1905 Minn. Laws 418, 419-20.

98. *See* Walling & Debele, *supra* note 10, at 785-802 (providing a more detailed historical discussion of the U.S. government’s approach to child protection).

99. MINN. STAT. § 44 (1878).

those allowing any “reputable person” to bring a matter before the court highlighted the controversy over whether society or the family was most responsible, and best fit, to address the needs of a particular dependent or neglected child.<sup>100</sup>

In 1912, Governor Burnquist appointed a twelve-person group called the “Minnesota Child Welfare Commission” to recommend revisions of all state laws, including the juvenile laws affecting children.<sup>101</sup> Other proposals included midwife regulation laws, educational scheme improvements, child labor law evaluation, provisions for state guardianship of illegitimate children, and paternity establishment laws to hold fathers responsible for their children.<sup>102</sup> The commission also proposed some modifications of the delinquency laws.<sup>103</sup>

The jurisdictional basis for involvement of children in the juvenile court continued to be amended and discussed. In 1913, “habitual truant” appeared for the first time in the juvenile court statutes, but only in the definition of the “delinquent” child and not in the definition of “neglected” or dependent child.<sup>104</sup> Apparently, the law continued to be unable to distinguish between a child’s actions and treatment for victimization of that child.

Significant change occurred during the 1917 legislative session. An early law review article in this area, written by Judge Edward F. Waite of the Hennepin County Juvenile Court, discussed the imposition of these new laws.<sup>105</sup> Judge Waite stated that “[w]e live in what has been aptly termed ‘the century of the child.’ Never before have the obligations of society to its more helpless members been so generally recognized; and of all forms of helplessness that of childhood makes the strongest and most universal appeal.”<sup>106</sup> In addition, in listing what he viewed as impressive accomplishments by the State of Minnesota in addressing these needs of children, he included the creation of a reform school for young offenders, schools for the deaf and blind, the juvenile courts in 1905, a state

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100. See *id.*; 1905 Minn. Laws 418, 419-20; Thomas, *supra* note 22, at 315.

101. Edward F. Waite, *New Laws for Minnesota Children*, 1 MINN. L. REV. 48, 51-52 (1917).

102. *Id.* at 53-56.

103. *Id.*

104. 1913 Minn. Laws 356, 357.

105. Waite, *supra* note 101, at 48 (discussing the importance in revising the Minnesota laws concerning child welfare). Judge Waite was the chairman of the Minnesota Child Welfare Commission, “appointed by the Governor to revise and codify the laws of Minnesota relating to children.” *Id.* at 62 n.1.

106. *Id.* at 48.

hospital for crippled children in 1907, and “mothers’ pensions” in 1913.<sup>107</sup> These programs largely reflect the developments occurring in other states during the Progressive Era.

Viewing the juvenile court from a modern social work approach rather than an institutional approach, Judge Waite clearly supported the Minnesota legislature’s effort to modernize the State’s treatment of neglected, dependent, delinquent, and abused children. Minnesota was clearly one of the most progressive states, certainly in the vanguard of the reform trends of the early 1900s.<sup>108</sup> Nevertheless, despite these high ideals and lofty goals, the questions of due process and the right of the State and the courts to intervene in the lives of children and families continue to be raised in the court system.

In 1922, the Minnesota Supreme Court, once again dealing with a petition for a writ of habeas corpus, struggled with its view of the constitutional issues.<sup>109</sup> In that case, fifteen-year-old Alice Peterson was adjudged a “delinquent child” in the Hennepin County Juvenile Court and committed to the County Home School for Girls.<sup>110</sup> More specifically, she was charged with “willfully, unlawfully, and wrongfully” refusing to attend school despite being enrolled in the public school.<sup>111</sup> Based on Ms. Peterson’s refusal to attend school, she was brought before the court.<sup>112</sup> As a result of her truancy disposition, she was detained at the County Home School for Girls, and subsequently a writ of habeas corpus was issued on the petition of the mother.<sup>113</sup>

Based on previous case law and its application to “dependent and neglected children,” the Appellant conceded that the act and the ability to hold the child in such circumstances and for such purposes was constitutional.<sup>114</sup> However, the Appellant argued that delinquent children are claimed to be in another class . . . [and] when children commit crime the state cannot lay hold of them, except by due process of law, as usually administered by criminal courts under our Constitutions, state and federal; for a child may no more than an adult

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107. *Id.* at 48-49.

108. *See id.* at 48.

109. *Ex parte Peterson*, 151 Minn. 467, 468, 187 N.W. 226, 226 (1922).

110. *Id.*, 187 N.W. at 226.

111. *Id.*, 187 N.W. at 226.

112. *Id.*, 187 N.W. at 226.

113. *Id.*, 187 N.W. at 226.

114. *Id.* at 469, 187 N.W. at 226.

be deprived of liberty or punished for crime without a trial in the ordinary way by jury.<sup>115</sup>

In rejecting that argument, the court once again blurred the lines between children being victims of abuse and neglect and being responsible for their own actions.<sup>116</sup> The court also blurred the line between what was “criminal law” in nature and what was delinquent, which includes actions taken by the child which would not be a crime if taken by an adult.<sup>117</sup> More specifically, the court reasoned:

The principle is now rather firmly established that, for its protection and the good of the child, the state may, through its courts, place the child in charge of some person or institution for proper training and support. It matters little whether the danger to the child and society comes because of the fault of others or that of the child. The right of the state to step in and save the child is the same. In that view the restraint put upon the child cannot be regarded as punishment for crime . . . when it is necessary for state to step in and perform the parental duty the liberty of the child may circumscribed. *In this case the petition under which the juvenile court acted did not charge Alice with a crime. Indeed, definition of delinquency in the act includes matters other than crimes.*<sup>118</sup>

In reaffirming the law from earlier cases, the court stated that “adjudging a child delinquent and committing it to the custody of a state appointed guardian was not an imprisonment or punishment for crime.”<sup>119</sup> Reflecting on its early decision, the court noted that “*the procedure which permitted a child to be committed to the reform school without a jury trial was also held not repugnant to constitutional guaranties.*”<sup>120</sup>

Once again reflecting the view of the statutes and the social movement from the late 1900s, the court noted that the tenor of the act indicates the sole purpose is the welfare of the delinquent as well as a dependent or neglected child.<sup>121</sup> That is, the treatment

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115. *Id.*, 187 N.W. at 226.

116. *See id.*, 187 N.W. at 226.

117. *Id.*, 187 N.W. at 226.

118. *Id.*, 187 N.W. at 226. (emphasis added).

119. *Id.*, 187 N.W. at 226-27.

120. *Id.*, 187 N.W. at 227 (discussing *State ex rel. Olson v. Brown*, 50 Minn. 353, 52 N.W. 935 (1892) (emphasis added)).

121. *Id.* at 470, 187 N.W. at 227.

is, and should be, essentially the same.<sup>122</sup> In supporting the broad discretion of the juvenile court to deal with children as it saw fit, the court concluded: “[w]e considered chapter 397, L.1917 designed to secure the welfare of delinquent children, and not to punish them, and the restraint put on them to secure that end is not imprisonment, but parental control by the state in cases where parents have failed.”<sup>123</sup> Thus, the *parens patriae* magnificent view of the State, in contravention of all procedural and constitutional due process, won the day. This philosophy of dealing with the children’s “best interest” regardless of the reason that brought them before the juvenile court continued essentially unabated and unfettered for the next fifty years until the U.S. Supreme Court, in reviewing the abuses of such a system, decided that perhaps children should have some constitutional due process rights.<sup>124</sup>

## VI. THE CONSTITUTION AND DUE PROCESS REAR THEIR UGLY HEADS IN CONTRAVENTION OF FULL UNFETTERED DISCRETION BY THE JUVENILE COURT

### A. *Historical Application of Due Process Rights in Juvenile Court*

As with other issues in society, it took many years for the conflict between *parens patriae* and due process to percolate up to the U.S. Supreme Court.<sup>125</sup> In reviewing the timing on the significant changes that have impacted the juvenile court during the most recent twenty-five percent of its existence, it is important to note that, in the criminal law context, the Supreme Court did not create or articulate many of the rights associated with due process and limitation of government intervention in citizens’ lives until the late 1960s. In particular, the first eight amendments to the Constitution—including the portion of the Bill of Rights reflecting criminal procedure requirements—were only applied directly through the Fourteenth Amendment and due process to the states in 1961 in *Mapp v. Ohio*.<sup>126</sup> The Supreme Court has

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122. *Id.*, 187 N.W. at 227.

123. *Id.*, 187 N.W. at 227.

124. *Parham v. J.R.*, 442 U.S. 584, 602 (1979). “Fit parents act in their children’s best interests and there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents’ ability to make the best decisions regarding their children.” *Id.*

125. PAULSEN & WHITEBREAD, *supra* note 48, at 4-5, 134.

126. 367 U.S. 643, 656-57 (1961).

applied the Fourteenth Amendment limitations on the power of the states to the right against self-incrimination,<sup>127</sup> the right to counsel,<sup>128</sup> the right to speedy trial,<sup>129</sup> the right to public trial,<sup>130</sup> the right to confront opposing witnesses,<sup>131</sup> compulsory process for obtaining witnesses,<sup>132</sup> the right to trial by jury,<sup>133</sup> and the right to be free from double jeopardy.<sup>134</sup> Thus, the application of these otherwise basic constitutional rights in state proceedings and basic criminal law was firmly established by the late 1960s. It is not particularly unusual then, that the coming of due process in one form or another to the juvenile court was delayed even further beyond its application to adults. Having decided that the Fourteenth Amendment requires full application of due process to state proceedings, the Supreme Court then began to turn to the separate and otherwise independent juvenile court system.

For almost seventy years “young persons were adjudicated delinquent, dependent, and neglected [during] informal proceedings less protective of [their] individual rights than those available to an adult criminal.”<sup>135</sup> Then, in 1966, the Supreme Court reviewed the first of several juvenile court cases on the issue of due process in *Kent v. United States*.<sup>136</sup> In *Kent*, Morris Kent became involved in the juvenile court in the District of Columbia at the young age of fourteen.<sup>137</sup> He was apprehended because of several house breakings and attempted purse snatching.<sup>138</sup> While on probation from earlier offenses, sixteen-year-old Kent was charged with new allegations and, under the District of Columbia statute, “waived” from the juvenile court jurisdiction into the adult court jurisdiction, thus making possible an adult criminal trial and criminal sentencing.<sup>139</sup> The judge, in accordance with the statute and the approved practice in the district “held no hearing, made

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127. *Malloy v. Hogan*, 378 U.S. 1, 3-4 (1964).

128. *Gideon v. Wainwright*, 372 U.S. 335, 342-43 (1963).

129. *Klopfer v. North Carolina*, 386 U.S. 213, 222-23 (1967).

130. *In re Oliver*, 333 U.S. 257, 273 (1948).

131. *Pointer v. Texas*, 380 U.S. 400, 403 (1965).

132. *Washington v. Texas*, 388 U.S. 14, 17-18, 23 (1967).

133. *Duncan v. Louisiana*, 391 U.S. 145, 147-48 (1968).

134. *Benton v. Maryland*, 395 U.S. 784, 787 (1969).

135. PAULSEN & WHITEBREAD, *supra* note 48, at 12.

136. 383 U.S. 541, 543 (1966).

137. *Id.*

138. *Id.*

139. *Id.* at 546. Rather than ruling on the motions, the juvenile court judge rendered an order declaring jurisdiction of the petitioner to be waived. *Id.*

no findings and gave no reasons [whatsoever] for his action.”<sup>140</sup> His ruling was exclusively based on his personal estimate of Morris Kent’s “amenability to treatment under the facilities” of the juvenile court.<sup>141</sup> Waived from juvenile court, Kent was tried by a jury and found not guilty by reason of insanity as to a rape charge, but guilty on six counts of house breaking.<sup>142</sup> The Supreme Court vacated the conviction based on the “waiver proceeding” in the juvenile court.<sup>143</sup>

In the first case of its kind involving a child, the Supreme Court in *Kent* established a standard of due process, taken from the Fourteenth Amendment, and applied it to juvenile proceedings.<sup>144</sup> As history has shown, and perhaps not surprisingly given the fact that juvenile courts are and were by that point agencies of the government, some juvenile court judges continued to argue that due process had no place whatsoever in a court for children.<sup>145</sup> *Kent* settled the point and Mr. Justice Fortis speaking for the Supreme Court stated, “[W]e . . . hold that the hearing must measure up to the essentials of due process and fair treatment.”<sup>146</sup>

*B. Due Process Rights and Requirements Begin to Assault the Historical Juvenile Court Philosophy*

During the next five or six years, the U.S. Supreme Court began to take its most active role in juvenile court proceedings to date. All measures of requests for applications of “due process” rights to juvenile proceedings were brought before the courts, and in general, the majority of “criminal rights” were also applied to juvenile respondents in delinquency proceedings. While *Kent* was technically an opinion regarding statutes in the District of Columbia, there is little doubt that it was a predecessor and the beginning of later endorsements of various due process rights including such things as a right to counsel.<sup>147</sup> More specifically, in support of later analysis, the *Kent* Court stated:

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140. PAULSEN & WHITEBREAD, *supra* note 48, at 13.

141. *Id.*

142. *Kent*, 383 U.S. at 550.

143. *Id.* at 564-65. The Court remanded the case to the district court to conduct a hearing de novo regarding the propriety of the waiver order. *Id.* at 565.

144. *Id.* at 557.

145. PAULSEN & WHITEBREAD, *supra* note 48, at 13.

146. *Kent*, 383 U.S. at 562.

147. PAULSEN & WHITEBREAD, *supra* note 48, at 13-14.

In these circumstances, considering particularly that decision as to waiver of jurisdiction and transfer of the matter to the District Court was potentially as important to petitioner as the difference between five years' confinement and a death sentence, we conclude that, as a condition to a valid waiver order, petitioner as entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court's decision. We believe that this result is required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel.<sup>148</sup>

Thus, *Kent* was based on an interpretation of statutes of the District of Columbia and did not specifically rest on constitutional grounds. It nonetheless provided a fresh breath of air on the due process arguments leading to several subsequent decisions.

In 1967, the Supreme Court held that the fact finding or adjudicatory hearing was to be measured by due process standards.<sup>149</sup> In such cases, it held that those standards require adequate, timely, written notice of the allegations against the juvenile respondent.<sup>150</sup> The Court also held that in all cases where juveniles were faced with the possible danger of loss of liberty because of commitment, due process requires that the juvenile have the right to counsel,<sup>151</sup> the privilege against self incrimination,<sup>152</sup> and the right to confront and cross-examine opposing witnesses under oath.<sup>153</sup>

This particular case arose from an allegation in the juvenile court in Arizona where neither Gerald Gault, then fifteen years old, nor his mother were given adequate notice of the charge against him.<sup>154</sup> The charge was for allegedly making obscene phone calls to a neighbor.<sup>155</sup> Neither the child nor his mother were informed of his right to counsel, his privilege against self incrimination, or his right to confrontation.<sup>156</sup> Nevertheless, Gerald Gault was

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148. *Kent*, 383 U.S. at 557.

149. *In re Gault*, 387 U.S. 1, 30-31 (1967).

150. *Id.* at 33-34.

151. *Id.* at 41.

152. *Id.* at 55.

153. *Id.* at 56.

154. *Id.* at 33.

155. *Id.* at 4.

156. *Id.* at 34, 42.

adjudicated delinquent and the Arizona Supreme Court affirmed the appeal.<sup>157</sup>

In reversing the Arizona conviction, the U.S. Supreme Court reaffirmed its position with respect to due process as stated in *Kent*.<sup>158</sup> On the specific issue, as noted, the *Gault* opinion holds that the respondent in the juvenile court and his parents are entitled to written notice of the specific charge and the factual allegation to be considered at the hearing.<sup>159</sup> Because the child's adjudication as a delinquent rested on an admission by him at the juvenile court hearing and he was not advised of his right against self incrimination, that he did not need to testify,<sup>160</sup> or that he had a right to counsel,<sup>161</sup> the conviction was reversed.<sup>162</sup> In referring to the *Kent* decision, the *Gault* Court stated that "the assistance of counsel is essential for purposes of waiver proceedings, so we now hold that it is equally essential for the determination of delinquency, carrying with it the awesome prospect of incarceration in a state institution until the juvenile reaches the age of [twenty-one]."<sup>163</sup> With respect to self incrimination, the Court stated that "[i]t would indeed be surprising if the privileging of self-incrimination were available to hardened criminals but not to children."<sup>164</sup>

Despite the *Gault* decision, not everyone was in agreement. In his dissenting opinion, Justice Stewart noted that the Court had invited a "long step backwards into the nineteenth century,"<sup>165</sup> denying that juvenile court proceedings were a criminal trial. Further, there were in fact reasons why the elementary issue of specific notice of a hearing was disregarded by the Arizona courts. Justice Stewart further noted in his dissent that "a juvenile proceeding's whole purpose and mission is the very opposite of the mission and purpose of a prosecution in a criminal court. The object of one is a correction of a condition. The object of the other is conviction and punishment for a criminal act."<sup>166</sup>

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157. *Id.* at 9-10.

158. *Id.* at 30-31.

159. *Id.* at 33.

160. *Id.* at 55-56.

161. *Id.* at 42.

162. *Id.* at 59.

163. *Id.* at 36-37.

164. *Id.* at 47.

165. *Id.* at 79-80 (Stewart, J., dissenting).

166. *Id.* at 79.

It was the opinion of many juvenile court judges at that time that notice in advance of the proceeding would “serve to stigmatize the child before trial.”<sup>167</sup> They believed that the notifying document would “find its way into court records and may be read by many persons, thus affecting the child’s reputation.”<sup>168</sup> The motive of the judges was in fact a beneficent one with respect to the children. However, the main point of *Gault* is that the stated purpose to help and benefit or protect a child, while failing to provide reasons for any decision, is not a basis to deny the safeguards available to adult offenders. The issues of the stigmatization and resulting confidentiality of proceedings, charges, and records, while beyond the scope of this Article, do in fact raise significant constitutional, legal and ethical, and procedural and philosophical issues, as society’s view of that issue has changed dramatically in all aspects of juvenile court.

In reviewing the *Gault* and *Kent* decisions, it is important to note that both of them signify great skepticism as to whether or not the often restated juvenile court goals of rehabilitation and child rescue were in fact close to or being realized in any situation. As Paulsen and Whitebread have stated:

The *Gault* and *Kent* opinions both embrace the view that the juvenile court’s aim of rehabilitative treatment has fallen short of accomplishment either because resources have not been made available to the court’s program or because the goals of the juvenile court movement are beyond the present ability of society to achieve. *Gault* and *Kent* deny that important rehabilitative values are undercut by requiring constitutional procedures.<sup>169</sup>

Thus, instead of defining the issue as a conflict between due process and *parens patriae*, the *Gault* and *Kent* courts, both opinions written by Justice Fortis, state the position that both can exist simultaneously to provide the best of both worlds on behalf of children.

In expressing this general view and hope, Justice Fortis nevertheless had strong words for the system. Specifically, he stated, “[t]here is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous

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167. PAULSEN & WHITEBREAD, *supra* note 48, at 15.

168. *Id.*

169. *Id.* at 18.

care and regenerative treatment postulated for children.”<sup>170</sup>

In even stronger terms, in the *Gault* opinion Justice Fortis speaks of the gulf between the State’s treatment of the adult and of the child.<sup>171</sup> He stated:

Under our Constitution, the condition of being a boy does not justify a kangaroo court. The traditional ideas of Juvenile Court procedure, indeed, contemplated that time would be available and care would be used to establish precisely what the juvenile did and why he did it—was it a prank of adolescence or a brutal act threatening serious consequences to himself or society unless corrected? Under traditional notions, one would assume that in a case like that of Gerald Gault, where the juvenile appears to have a home, a working mother and father, and an older brother, the Juvenile Judge would have made a careful inquiry and judgment as to the possibility that the boy could be disciplined and dealt with at home, despite his previous transgressions. Indeed, so far as appears in the record before us, except for some conversation with Gerald about his school work and his “wanting to go to . . . Grand Canyon with his father,” the points to which the judge directed his attention were little different from those that would be involved in determining any charge of violation of a penal statute. The essential difference between Gerald’s case and a normal criminal case is that safeguards available to adults were discarded in Gerald’s case. The summary procedure as well as the long commitment was possible because Gerald was [fifteen] years of age instead of over [eighteen].<sup>172</sup>

Also as noted, despite the efforts of the juvenile court to eliminate the stigmatization effect of delinquency adjudications, in most cases the stigma attaches in a serious way.<sup>173</sup> Records of delinquency, when revealed to the government, the armed forces, and sometimes even private employers, could seriously impact a child’s future.

The Court in *Gault* discussed studies invalidating the conception of the juvenile court judge as a wise father figure.<sup>174</sup> The studies demonstrated that the essentials of due process would

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170. *Kent v. United States*, 383 U.S. 541, 556 (1966).

171. *Gault*, 387 U.S. at 29-30.

172. *Id.* at 28-29 (internal citations omitted).

173. *Id.* at 23-24.

174. *Id.* at 25-26.

contribute more to the realization of a therapy possibility than the antiquated notion of a gentle judge with a *parens patriae* attitude.<sup>175</sup> As such studies surfaced, it became clear that due process should be inserted into the juvenile court system.

After *Gault*, however, the court was not finished considering the application of due process rights. In 1970, almost eighty years after the first juvenile court statute in Illinois, the Supreme Court held that in some delinquency proceedings juveniles, like adults, were entitled to a standard of proof beyond a reasonable doubt.<sup>176</sup> As with the other cases, *Winship* was limited to the adjudicatory stage of proceeding and did not expressly speak to the dispositional stage.<sup>177</sup> It is unclear what types of cases were affected by the decision. In addition, in limiting its application, Justice Brennan expressly stated that “we intimate no view concerning the constitutionality of the New York procedures governing children ‘in need of supervision.’”<sup>178</sup>

Nevertheless, the application of *Kent*, *Gault*, and *Winship* dramatically shifted the approach in juvenile proceedings and the philosophical view of the courts that continued to place issues of due process potentially in conflict with the *parens patriae* best interests standard expressed by the early founders of the juvenile court system. Despite the potential conflict, it was clear that the Supreme Court held the view that the accommodation to fundamentals and principals of due process would not stand in the way of any legitimate goal of the courts to consider the children’s best interests.<sup>179</sup>

As a final matter, in 1971 the Supreme Court decided that despite the previous decisions, juveniles were not necessarily entitled to all constitutional rights assured adults, but that the Court in *Gault* and *Winship* had “attempted to strike a judicious balance.”<sup>180</sup> In *McKeiver*, the Court decided that a juvenile was not constitutionally entitled to a jury trial.<sup>181</sup> The plurality’s opinion in part rests on the concern that if jury trials were required in delinquency proceedings, then such proceedings would be

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175. *Id.*

176. *See In re Winship*, 397 U.S. 358, 368 (1970).

177. *Id.* at 359.

178. *Id.* at 359 n.1.

179. *Id.* at 366-67.

180. *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971) (plurality opinion) (quoting *Commonwealth v. Johnson*, 234 A.2d 9, 15 (Pa. 1967)).

181. *Id.* at 545.

indistinguishable from adult trials.<sup>182</sup> In addition, Justice Blackmun stated that a jury trial “will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.”<sup>183</sup> While recognizing that the juvenile court system had its deficiencies and failures, the plurality did not believe a jury trial would address any of these, nor that a jury trial would necessarily lead to better fact finding.<sup>184</sup> The *McKeiver* opinion reflects the Court’s ultimate unwillingness to throw out the philosophical backbone of the juvenile court process and demonstrates that there is much good to be found in the traditional, informal proceedings.

Thus, nearly seventy years after its inception, the “juvenile court philosophy” had undergone a revolution recognizing that in some circumstances children are entitled to due process rights and to some rights of their own, separate from the State and separate from their parents. Later case law reaffirms many of these changes and further clarifies what the philosophical shift entails, as noted particularly in Minnesota.<sup>185</sup> The definitions of rights, procedures, responsibilities and philosophy, however, are more clearly implemented and reflected in the initial consideration and development of procedural rules attempting to apply the constitutional protections afforded by various cases.

#### VII. MINNESOTA DUE PROCESS—PROCEDURAL RULES COME TO THE JUVENILE COURT

In the late 1960s and early 1970s, Minnesota courts began responding to the development of case law throughout the country and, in particular, to U.S. Supreme Court decisions looking at juvenile court procedures. This response included evaluating the need for uniform procedures in delinquency cases.<sup>186</sup> These initial procedural rules attempted to balance the child-centered juvenile court *parens patriae* view with the procedural due process requirements and constitutionally imposed rights in an effort to

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182. *Id.*

183. *Id.*

184. *Id.* at 547.

185. *See infra* Part VII.

186. *See, e.g.*, *State v. Loyd*, 297 Minn. 442, 449-52, 212 N.W.2d 671, 677-78 (1973) (harmonizing Minnesota statutory and case law regarding juvenile court procedures with federal and state case law and an Arizona statute).

continue the overall juvenile court philosophy in dealing with children.<sup>187</sup> The desire for judges to continue to be well versed in law as well as psychology, sociology, and child development was considered throughout the development of procedural rules.

To understand the development of procedural rules and the subsequent impact on procedural and substantive due process, it is important to be aware that in the late 1960s the Minnesota juvenile court structure was determined statutorily by individual counties.<sup>188</sup> At that time, district courts were deemed to be the higher level trial courts, with municipal and county courts continuing to be viewed as lower level trial courts. By statute in Hennepin and Ramsey counties—the two counties in Minnesota with the largest populations and the vast majority of juvenile delinquency cases—the juvenile courts were a division of the district court.<sup>189</sup> Each of these courts was effectively run and controlled by an individual judge.<sup>190</sup> In each court, the judge had been the only juvenile court judge presiding there for many years prior to that time.<sup>191</sup> These judges suggested that the juvenile courts had specific procedural rules that incorporated due process and equal protection rights.<sup>192</sup> Juvenile court judges in most other Minnesota counties, however, played a far less specialized role because the probate court also served as the juvenile court and may have had jurisdiction over other minor offenses.<sup>193</sup>

Interestingly enough, the statutes concerning the juvenile court system gave no specific statutory authority to the judges to create any specific rules applicable to juvenile court proceedings.<sup>194</sup>

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187. See, e.g., *id.* at 444-51, 212 N.W.2d at 674-77 (analyzing how to protect constitutional rights when a juvenile confesses while in the juvenile court system but may later be tried as an adult); *Loyd v. Youth Conservation Comm'n*, 287 Minn. 12, 17-19, 177 N.W.2d 555, 558-59 (1970) (explaining that a juvenile adjudicated a delinquent is not entitled to the same procedural due process standards as a juvenile convicted of a felony or gross misdemeanor).

188. MINN. STAT. § 260.021, subd. 1 (1965) (repealed 1978).

189. *Id.* § 260.021, subds. 2-3.

190. *Id.* Subdivisions 2 and 3 established special district court positions for members of the bench in Ramsey, St. Louis, and Hennepin counties and required these judges to devote themselves primarily to the juvenile court duties. *Id.*

191. Walling & Debele, *supra* note 10, at 817.

192. See generally *id.*

193. MINN. STAT. § 260.021, subd. 4. This particular juvenile court program for smaller counties was originally established by law in 1961, and the 1965 amendment simply raised the minimum population. MINN. STAT. § 260.021, subd. 4 (1961).

194. See MINN. STAT. §§ 260.011-260.56 (1961).

The probate court, on the other hand, did have such enabling statutes, and in 1969 the Minnesota Probate Court Judges Association, made up of all judges hearing juvenile court cases in the eighty-five greater Minnesota counties, reviewed, drafted, passed, and approved juvenile court procedural rules.<sup>195</sup> These judges agreed to abide by the rules, known as the *Rules of Procedure for Juvenile Court Proceedings in Minnesota Probate-Juvenile Courts*,<sup>196</sup> whenever exercising jurisdiction as juvenile court judges.<sup>197</sup>

Nevertheless, judges in Hennepin and Ramsey counties failed to approve or abide by these rules.<sup>198</sup> There were many reasons for this, including the fact that the metropolitan area saw a high volume of juvenile cases.<sup>199</sup> These judges created their own set of procedural rules for application within the Hennepin and Ramsey county courts.<sup>200</sup> The rules and versions of the juvenile court rules of procedure for Hennepin and Ramsey counties were contained, respectively, in the *Hennepin County Minnesota Juvenile Court Bench Book*<sup>201</sup> and the *Ramsey County Juvenile Court Bench Book*.<sup>202</sup>

As a result of these two different approaches from 1969-1983, the procedural rules applicable to juvenile court proceedings varied from county to county and between the metropolitan area and rural areas. The rights of juveniles or adults in dependency or neglect proceedings were established by the county of the case's venue because the different procedural rights granted to juveniles often had significant impact on primary substantive rights. The critical issue, however, was that while these two sets of rules purportedly were for procedural reasons, the reality is that they did grant and/or interpret significant substantive rights. For example,

[T]he rules in Greater Minnesota specifically delineated certain rights including the right to counsel, the right to remain silent, and other basic rights. The Hennepin and Ramsey County rules incorporated some specific guarantees within other rules, but they did not

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195. MINN. JUVENILE JUDGES ASS'N, RULES OF PROCEDURE FOR JUVENILE COURT PROCEEDINGS IN MINNESOTA PROBATE-JUVENILE COURTS (1969).

196. *Id.*

197. *Id.* at v.

198. See Walling & Debele, *supra* note 10, at 818.

199. *Id.*

200. See *infra* notes 204-05.

201. HENNEPIN COUNTY MINNESOTA JUVENILE COURT BENCH BOOK: DISTRICT COURT—JUVENILE DIVISION (4th ed. 1977).

202. EDWARD J. CLEARY & KATHLEEN R. GEARIN, RAMSEY COUNTY JUVENILE COURT BENCH BOOK (1982).

contain a separate division for rights of the children. Thus, substantive rights, such as right to counsel and the right to remain silent, were much more explicitly spelled out in the Greater Minnesota probate and juvenile court rules.

At the same time, the Hennepin County rules specifically addressed discovery issues. The procedural rules used by the counties of Greater Minnesota did not address discovery issues and did not interrelate with the procedural rules from other courts.<sup>203</sup>

Thus, for almost fifteen years the procedural rules, and therefore the substantive rights of children and adults in delinquency and neglect (now CHIPS) proceedings, were in fact determined by the location within the state where the respondent found himself.<sup>204</sup>

Finally, in 1980 the Minnesota Legislature authorized the creation of procedural rules that would apply to all juvenile court proceedings within the state.<sup>205</sup> Effectively, the Minnesota Supreme Court adopted the first uniform rules of juvenile procedure for the state in 1983.<sup>206</sup> These rules, though amended and delineated in many ways, continue in one way or another to rule juvenile court procedures to this day.

#### VIII. FINALLY UNIFORMITY AND A CONTINUAL BALANCING ACT

The committee that created the juvenile court rules divided them into “delinquency rules” and “juvenile protection rules” to emphasize the two separate objectives.<sup>207</sup> The latter set of rules broadened the categories of protections to cases involving “all dependency, neglect, neglected and in foster care, termination of parental rights and review of out of home placement matters.”<sup>208</sup> This expansion marked the initial establishment of procedural rules applicable to all juvenile court cases since the legislative

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203. Walling & Debele, *supra* note 10, at 818-19 (citations omitted).

204. WRIGHT S. WALLING, *THE JUVENILE COURT HANDBOOK: A PRACTITIONER'S GUIDE TO JUVENILE COURT PRACTICE IN MINNESOTA* 1 (1984).

205. See MINN. STAT. § 480.0595 (1982) (requiring the Minnesota Supreme Court to promulgate rules of procedure for the juvenile court); ROBERT SCOTT & JOHN O. SONSTENG, *MINNESOTA PRACTICE SERIES: JUVENILE LAW AND PRACTICE* 12, at ix (3d ed. 2002).

206. MINN. R. JUV. P.; see also SCOTT & SONSTENG, *supra* note 205, at ix.

207. SCOTT & SONSTENG, *MINNESOTA supra* note 205, 13, at 1.

208. MINN. R. JUV. PROT. P. 37.01.

creation of the terms “dependant” and “neglected” children nearly eighty years before.<sup>209</sup>

The framers of the new juvenile court rules created two set of rules because they wanted to distinguish delinquency cases where, because of the criminal nature of the delinquent acts, both the procedural and substantive rights were critical from the juvenile protection matters where other doctrines and philosophies come into play.<sup>210</sup> In creating these categories, the framers struggled to balance conflicting issues. On one side of the debate were the constitutional rights to due process, equal protection, and right to counsel; on the other side was the philosophical concept based on “juvenile court philosophy,” including the need for swift proceedings responding to emergency situations and the incorporation of long held notion of *parens patriae*.<sup>211</sup> In struggling to achieve the balance, the framers attempted to develop a system which would reflect all of those things. In doing so, a procedural system unlike any other within the court system of Minnesota was created.

As an example of the sometimes subtle distinction between the rules of civil and criminal procedure and the rules of juvenile court procedure, rather than being a party to an action, a person or entity has a “right to participate.” Instead of applying the civil discovery rules or the criminal discovery rules, a different set of rules applying to pretrial discovery was created. At the same time, in an effort to move matters along, time limits were set within all of the rules to recognize that decisions in children’s lives need to be made quickly.<sup>212</sup>

Since the original 1983 statutes, Minnesota has enacted numerous statutory and rule changes. “Dependency” and “Neglect” have been replaced by CHIPS;<sup>213</sup> the rules themselves have been amended;<sup>214</sup> and the statutes have been amended to

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209. See 1905 Minn. Laws 418 (defining the terms “dependent child” and “neglected child”).

210. This distinction is illustrated by comparing MINN. R. JUV. PROT. P. 1-35 (involving matters where a minor child had violated state or local law) with Rules 37-65 (applying to matters not involving criminal juvenile misconduct).

211. Walling & Debele, *supra* note 10, at 820-21.

212. *Id.* at 821.

213. MINN. STAT. § 260C.007, subd. 6 (2004).

214. MINN. R. JUV. DEL. P. (last amended July 11, 2005); MINN. R. JUV. PROT. P. (last amended Jan. 1, 2004).

reflect more openness and to make more matters public.<sup>215</sup> All juvenile CHIPS proceedings and termination proceedings have, unless otherwise ordered by the court, been deemed to be opened to the public.<sup>216</sup> All records in those proceedings other than those sealed by the court have also been opened.<sup>217</sup>

Further delineation has been taken and created in the rules under the headings of the “Delinquency Proceedings” and the “Juvenile Protection Matters”; and a substantial struggle has continued in an attempt to define the amount of involvement that the State should have in those “status offenses,” which are actions deemed to be wrong by children but not deemed to be criminal by adults. The continuing tension between the rights of the individuals involved, the theoretical view of *parens patriae*, and action by the State, all continue to cause conflict, disagreement, and discrepancy. At the same time, the Minnesota Supreme Court continues to work with its appointed task forces on developing, refining, and honing procedural rules to apply to all aspects of juvenile court.

As recently as January 2005, Minnesota became the first state in the country to have procedural rules which apply specifically to adoption cases.<sup>218</sup> Although adoptions have been part of the juvenile court milieu for many years, the connection and interrelationship between other aspects of juvenile court and in fact family court have not always been clear. This is particularly true with respect to procedural rules.

The advent, however, of time limits and the development of permanency placement requirements and options in the juvenile court have further highlighted the reality that families and children are difficult to place within a specific category of the court system.<sup>219</sup> The issues do not lend themselves to easy categorizing or solutions. For example, the permanency option of permanent

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215. See, e.g., MINN. STAT. §§ 260B.163, 260B.171, 260C.163, 260C.171.

216. MINN. R. JUV. PROT. P. 8.04 (denying public access to the records except for video or audio tapes describing neglect, reports of abuse or neglect, and HIV test results).

217. *Id.* advisory committee cmt. (“Hearings or portions of hearings may be closed by the presiding judge only in exceptional circumstances.”).

218. See MINN. R. ADOPTION P.; see also MINN. SUPREME COURT JUVENILE PROT. RULES COMM., FINAL REPORT AND PROPOSED RULES OF ADOPTION PROCEDURE 3 (2004) (“[T]he Subcommittee contacted other states to solicit copies of their Adoption Rules, but learned that no such rules exist.”) (on file with the William Mitchell Law Review).

219. See MINN. STAT. § 260C.201 (2004).

legal and physical custody to a relative<sup>220</sup> bridged the jurisdiction of family law statutes under Minnesota Statutes chapter 518 and of adoption law statutes in Minnesota Statutes section 259.23.<sup>221</sup> These issues make it clear that delinquency cases, CHIPS cases, and children's best interests all transcend jurisdictional definition, such as the distinction between family law and adoption law, and that the interconnections between them are extremely important, and still evolving.

As a result of the evolution of and importance of adoption law, as well as the continuing interest in and litigation around various adoption questions, Minnesota recognized the need for uniform adoption rules. Hence the new adoption rules, which attempt to define both what they apply to and when they apply.<sup>222</sup> Of note, and for further discussion in other articles, is the fact that the adoption rules take more of a civil discovery perspective than the juvenile protection rules or the juvenile delinquency rules.<sup>223</sup> Exactly how all of these will be interpreted remains to be seen.

Nevertheless, it is impossible to avoid the conclusion that the basis for decisions on responsibilities, charging, dispositions, notice, right to counsel, etc., are all directly impacted and often controlled by uniform procedural rules. The rights of respondents in the juvenile court system have changed dramatically as a result. Minnesota once again, as it did in the initial stages of the juvenile court, is leading the way in the development of procedural rules that impact substantive rights in all aspects of the jurisdictional basis in juvenile court.

## IX. CONCLUSION

Some one-hundred years after the first juvenile court statute formally created the juvenile court jurisdiction in Minnesota, the issues that surround society's decisions on dealing with children, families, and the creation and destruction of those families from the legal perspective remain largely the same. While it took eighty years to recognize that children should have certain constitutional rights when they are being removed from the home, during the last twenty-five years the courts and society have struggled just as

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220. *Id.* § 260C.201, subd. 1.

221. *Id.* § 260C.101 (dealing with jurisdiction in juvenile matters).

222. MINN. R. ADOPTION P.

223. *Compare* MINN. R. ADOPTION P., *with* MINN. R. JUV. PROT. P., *and* MINN. R. JUV. DEL. P.

diligently to balance the rights of the individual with the needs of families and children. It is impossible to overstate the impact of the last twenty-five or thirty years on the philosophical issues raised one-hundred or one-hundred-fifty years ago by the creators of the “juvenile court philosophy.” The reality is that regardless of the procedures applied, the substantive rights involved, or the power of the State, the goal is and should continue to be to first define and then implement what is in the individual “best interests” of the child appearing before the juvenile court. While the procedures have continued to evolve, so too has the juvenile court’s impact on the individual child, family, and the whole of society. The goals of the juvenile court remain vitally important and critical to society’s view of dealing with its children.