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The 20th century might well be considered the age when children acquired the right to exist. To some, the rights and privileges of children have developed so rapidly that they would categorize our culture to be child-centered and our future to be youth-directed. For the undeniable betterment of mankind, within the past 50 years, we have come to be aware of the inner life and intrinsic worth of the child as an independent being. Much of what we consider to be permissive, uncontrolled child behavior is a result of the recent recognition of the individual worth of the child. Perhaps society has gone too far in permitting self-direction by children, but there can be no turning back to the inhumane, barbaric past that dehumanized children.

Throughout history the child was considered chattel and even in Roman Law, "The Law of the Twelve Tables" granted the father the right to sell his child. During the Middle Ages the lot of the child was harsh with numerous children being abandoned as newborns or at an early age. The child's position in the family came after the father, cattle and mother—in that order. A note found in an early writing indicated that five to six thousand abandoned children, mostly in Paris, were brought yearly to the house founded by Vincent DePaul.[1] Because of the value placed on children and the lack of insight into their needs, child psychiatry, as a discipline, could not have existed before the 20th century.[2] It was not until the end of the 18th century that laws were instituted for the prevention of crimes against children—in particular, the destruction of the newborn, easily practiced in the absence of compulsory registration of births. In France, the edict of 1556 instituted severe penalties for infanticide but with little effect, and infanticide progressively increased, reaching a peak in the 18th century.[3] Prussian law existing in 1230 included the statement:

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1. LOUISE DESPERET, THE EMOTIONALLY DISTURBED CHILD THEN AND NOW at 15-64 (1965).
2. *Id.*; L. Karner, *Origin and Growth of Child Psychiatry*, AMERICAN JOURNAL OF PSYCHIATRY 100 at 139 (1944).
3. *Supra* note 1.

> Be a man laden with sick women, children, brothers, sisters or domestics, or be he sick himself, then let them be where they lie, and we praise him too if he would burn himself or the feeble person.[4]

The child was a common victim of witchcraft, and the Children's Crusades resulted in mass death marches of children caught up in a state of religious hysteria, neither controlled nor protected by their parents or society. The Renaissance saw bright spots in Italy, France and England where enlightened families placed wives and mothers in prominent roles, educated their children, condemned corporal punishment and controlled children with love rather than fear. These techniques, however, were limited to a very small elite class with the major portion of society utilizing a most dismal barbarism in dealing with children. The practice of nourrices (foundling homes) resulted in the death sentence to children in France. From 1776 to 1790, one hundred thousand children were received in a foundling hospital. Of these only 15 thousand children survived.[5] An unpaid nursing fee left a child to his own fortunes, and often to die from the neglect. The outcry of Rousseau led to a greater interest in children and the cruel practices came to be more fully noticed.[6]

Between 1881 and 1890, 142 out of every one thousand English children died within their first 12 months. In the six years from 1870-1877 the school board had removed from the streets of London 8,508 homeless, lawless and destitute children. In 1816, three thousand children were imprisoned in various London jails, half under 17 years. Child labor was the general rule, and a certain factory employer reported before a House of Lords Committee in 1817 that he did not employ children under ten years of age—and he was more enlightened than most.

In colonial America, the lot of children was difficult but the child did not suffer the degradation and abuse of his European counterpart. Colonial puritanism required absolute respect, and the child was made to assume heavy responsibilities at a very early age. He was considered a small adult and at 14 or 16 years of age was expected to assume an adult role. The American child benefited from the closeness of the pioneer family and his economic value was high. European reports in the early 1800's criticized the early emancipation of children, which

4. *Supra* note 1; G. ZILLBOWY AND G.W. HENRY, A HISTORY OF MEDICAL PSYCHIATRY.
5. *Supra* note 1, translating works of the French writer, Bonzon.
6. E. WORTHINGTON, transl. CONCERNING EDUCATION (1888).

developed from the closer unity of family life, and the American approach was considered revolutionary. This is not to say that there were no dark areas in American child treatment, but the 19th century did see a great upheaval in the attitude toward children in American society.[7]

Since colonial times there has been a steady change in approach to Child Welfare problems but most of the change has occurred within the past 100 years, paralleling in part and resulting from metropolitan urbanization. Cities existed over five thousand years ago but the metropolis is a concept involving many more complicated and intricate relationships than the cities of the past. The metropolis is highly structured and organized, having high population density. The families are small and nuclear with limited self-reliance in comparison to the pioneer family. The urban family has few resources to cope with any form of disability and resources have been continually expanding in private and governmental sectors of society to provide the help needed when breakdown threatens. The urban family is completely dependent upon income derived from wage employment, and since families do better when they have more income, the premium on employment of the wife and mother is high. Indeed, to the growing number of Woman's Lib Advocates, remaining in the home provides decreasing status. The traditional development of child welfare programs reflected the needs of particular times and, in many instances, is now inadequate and irrelevant to the times.

In the limited sense, child welfare services are those preventive and therapeutic services ordinarily provided by child welfare agencies to fill the gap created by social or financial distress. Historically, these services were designed as a substitute for the child's own family. As of March 31, 1965, 697,300 children were receiving services from public and voluntary child welfare agencies and institutions in the United States. Thirty percent were receiving foster care, 16 percent were in institutions, 10 percent were in adoptive homes, 42 percent lived with parents and relatives, and two percent had other kinds of living arrangements. There are over 70 million children in this country, with 14.8 million children under current definitions considered to be living in poverty.[8] From these figures it is apparent that we are not meeting

7. *Supra* note 1.
8. MEYER, THE IMPACT OF URBANIZATION ON CHILD WELFARE.

the needs of many children, and it is realistic to say that any community has only as many dependent and neglected children as there exist resources to care for them.

The primary service offered to deprived, abused or neglected children is the foster home. While institutional care is rapidly declining and foster care increasing, new methods to resolve the massive needs of urban child welfare problems are needed. There is much questioning about the validity of the foster home program to meet the needs of the urban society as well as the effect it may have on the children it purports to serve.[9] Adoption as a mass solution to the child welfare problem cannot succeed since it is at best a highly selective process for highly selected children. Negro and poor white children born out of wedlock find few adoptive parents. As medical knowledge increases in resolving problems of sterility and the ego satisfaction of rearing children lessens with newer concepts of conjugal life, the less adoption becomes available as a child welfare alternative. Group care is becoming a more realistic alternative to foster home care through the inherent capability of reaching larger numbers as well as alleviating the problem of dual family identification. With recent isolation of the "abused child" as a special concern for child welfare and court authorities, protective services have rapidly expanded to shelter the child as well as other children in the family. The parent is to be treated as the situation requires. Since abuse and neglect may be the social disease of urban civilization, protective services will provide an ever-increasing, more flexible preventive system in the child welfare approach to urban problems. Casework, homemaker services and day care services are also tools to be utilized in an extensive, broad-based attack on the problems at their source, particularly those relating to illegitimacy and poverty. The latter impinges dramatically on the total effectiveness of the courts, lawyers and social workers in adequately servicing dependency or neglect cases. The President's Crime Commission clearly points out that most cases of neglected and delinquent children occur in large, poor families.

> It appears that many and perhaps a majority of the teen-agers who bear out-of-wedlock children in metropolitan areas are out-of-wedlock daughters of welfare mothers, with resultant generation to generation neglect, misery and deprivation.[10]

9. Lewis, *Foster-Family Care: Has it Fulfilled Its Promise?* 355 THE ANNALS 31 (1964).
10. *The Challenge of Crime in Free Society*, 1967.

Legal proceedings to limit procreations by finding neglect after two or three out-of-wedlock pregnancies have not met with success.[11] The net effect of the A.D.C. program (originated in the 1930's as protection to orphaned children and widows) as currently administered, facilitates and encourages the rearing of children in fatherless homes. Recent studies show that the children of work welfare mothers show less psychological impairment than those of non-working welfare mothers. From the standpoint of purely physical needs, supervised group care can assure proper nutrition, playspace, fresh air, etc., which the welfare mother, living under marginal economic circumstances, may neglect to supply on a continuous basis. The government program, Work Incentive Training (WIN), may be an answer out of the dilemma. Giving priority to the teenage girl who has an out-of-wedlock child would be most practical. A recent study shows that girls who have an out-of-wedlock child before the age of 16 are likely to have three more such babies before the age of 20. Concentrating on the teenage mother will serve to help her become redirected before she is overwhelmed with offspring.[12] With the advent of the Women's Liberation Movement there is greater agitation to give more consideration to women not in a conjugal situation, such as the single, divorced and widowed. There is even the suggestion that the conjugal family is outmoded, but there is no serious suggestion that child-rearing be made a public rather than a private responsibility. But with the trend toward the public sector assuming greater responsibility in education, recreation, health, etc., assistance recommended by W.I.N. should not be rejected.[13] However, while the cry is going up for day care centers and group homes, the danger of unthinking implementation of these facilities on massive scale is being voiced. It has been pointed out that it is dangerous to give the responsibility of rearing children to public agencies or state-directed persons and that day care centers should adopt the positive attributes of the family rather than replace the family.[14]

Another special problem in dependent-neglect cases involves the children of the ghetto areas.

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11. See, *In re* Raya, 255 Cal. App.2d 260, 63 Cal. Rptr. 252, (1967); King v. Smith 392 U.S. 309 (1968); *In re* Cage et al, 251 Md. 473, 248 A.2d 384 (1968).
12. Hon. N. Dembitz, *Incentives to Welfare Mothers to Limit Children*, 4 FAMILY L.Q. June 1970.
13. S. Clavan, *Women's Liberation and the Family*, 19 FAMILY COORDINATOR at 320-321 (1970).
14. J. Hogan and P. Whitten, *Day Care Can Be Dangerous*, PSYCHOLOGY TODAY at p. 39 (1970).

> It has long been noted that Casework as a method has failed in being unable to eradicate or substantially reduce poverty, crime, delinquency and kindred ills in America. (President's Crime Commission.)

Essentially, the dilemma is that the attainment of social work's purpose calls for the induction of basic changes in social systems and institutions, but its professional skill is almost entirely in the area of individual change. Since casework service is the method most familiar to social workers, the method is usually applied to solve a particular social problem.[15] Seeking ways to overcome these stinging rebukes and to perform the function, which is the *sine qua non* of the social work profession, some social workers have begun to break out of the institutionalized, self-limiting middle class strictures. In Pittsburgh, the Family and Children's Service undertook an out-reach project which deliberately sought out clientele from the most deprived area of the Hill District section of the city. In adopting a more flexible technique and by accommodating methodology to the needs and sensitivities of the clients (over a four-year period), the agency achieved success which was unattainable with more traditional methods.[16]

Aside from the philosophic rubric and availability of child welfare services, the legal ramifications generate considerable controversy when child welfare protective services are indicated and the parents are resistive of such care. The minimum standard of care expected of the family and the criteria for intervention are established by the agency empowered to provide the service. As a rule, the standard is less than necessary to sustain an adjudication of neglect. Dependency presents a lesser problem than neglect since the basis of intervention is the need of the *child*—there is no imputation of moral or willful failure on the part of a parent. Neglect, as a concept, permits no degree of certainty, and protection from vagueness must be found in the wisdom of judges rather than in the detail of statute. Even when attempts are made to articulate judicial standards of persuasion or "tests" for adjudicating neglect, vagueness and confusion are ubiquitous. Should the burden of proof required be that of the "reasonably prudent man" or "fair preponderance of evidence" tests from civil and negligence law, or should it be the "clear, precise and indubitable" standard of equity, or the "clear and satisfactory" proof of divorce proceedings? Should one

15. B.M. Beck, *Casework as a Method*, Social Work Practice at 39-63, 55-73 (1964).
16. Freeman, Hoffman, Smith and Prutny, *Can A Family Agency Be Relevant to the Inner Urban Scene*, 51 Social Casework (1970).

standard apply at all times, or should the burden of persuasion vary according to the degree of intervention (with the most stringent standard applicable to termination of parental rights and lesser standards applicable when less drastic measures are appropriate)? The latter would appear to be most consistent given the complexity of the matters involved and the need for a high degree of flexibility in resolving such issues. In presenting proof, the degree to which hearsay evidence should be admitted or considered is always in issue. Caseworkers are prone to incorporate in their reports and consideration material from numerous sources which are unavailable to the court or from persons unwilling to be involved. They are also impatient with legal requirements of proof and are inclined to make their case for agency or judicial intervention in a narrative summarization of their knowledge of the situation. When tested by lawyers in an adversary proceeding, the reaction is one of affront and personal injury and they tend to become polarized in the belief that they are protectors of the child against legal charlatanism. With at least 34 exceptions to the hearsay rule and a current tendency to admit all relevant evidence whether or not hearsay is involved, the admission of hearsay is not necessarily harmful so long as the caseworker or agency representatives present sufficiently valid evidence on the whole, to sustain their position. The real danger is that if presentations are not adequate or the court, in the absence of counsel for the agency, does not to some degree assist or direct the caseworker in obtaining and presenting the available evidence, the agency and community programs designed to protect children can be seriously demoralized and limited to offering service only when the client is willing to accept it. This does not mean that the court may relegate to the social worker the ultimate determination of what is neglect, but neither should the social worker be frustrated to the point of "practicing law" in order to fulfill his duties.

Social work as a profession does not provide any clearer criteria of what constitutes neglect than does the law. There is disagreement as to whether intervention should come early to prevent social, physical and psychological deterioration of children, or late because of the uncertainty of psychiatric knowledge. Legislators usually have thought of neglect in physical terms, but recently the psychological deprivation of a child is considered just as damaging to his adjustment in society as is impaired physical development. It has been adequately demonstrated that an affectionate relationship between the child and parent and the

continuity of this relationship are very critical to the development of a stable, integrated personality in the child. Bringing the question full circle, although neglect may be defined in terms of health and psychosocial dimensions, legal neglect is essentially a policy issue which requires a judicial determination as to when the state ought to intervene.[17] "The best interest of the child" test, which is commonly stated as a legal criterion, fails for this reason since what may be in the best interest of the child is often unattainable at a given place or at a given time in society. Also, it may be contrary to the rights of the parents who are providing *acceptable* care although better care is available. The best interest of the child satisfies the need for a standard when two parents are involved in a custody dispute, but when the parent and an agency or the state are disputants, neglect must be proven regardless of what appears to be in the best interest of the child.[18] It is in this area that the most serious point of conflict arises between the practitioners of law and of social work—the distinction must never be overlooked by the court in deciding neglect cases. In reality, however, perhaps the standard most generally followed is, as Monrad Paulsen suggests, the minimum quality of care which the community will tolerate.

Parents appearing in court on neglect petitions are not offered counsel. In some jurisdictions (e.g. New York), the legal guardians represent the children but not the responding parents. One cannot too strongly emphasize the need for lawyers in these cases. A neglect petition raises questions concerning the well-being and safety of a child, but it also raises questions relating to the happiness of respondent parents.[19]

Of equal concern is the lack of legal representation for the agency or the child, especially when the parent is represented by counsel as is frequently the case in Allegheny County. When legal representation is available to only one side of a proceeding, which is by nature adversary, then the judge is drawn into the controversy, often unwillingly, to assure that substantial justice is done. By sharpening the issues, making proof more certain and assuring the fullest examination of the adjudication and disposition of this type of case, lawyers can bring their skills into play to assist the court in making a proper decision. Unquestionably, the caseworker and child care agencies will feel set-upon and

17. Cheney, *Safeguarding Legal Rights in Providing Protective Service*, 13 CHILDREN 8 (1966).
18. See, Rose Child Dependency Case, 161 Pa. Super. 204, 54 A.2d 297 (1947), *The Custody Question And Child Neglect Hearings*, 35 U. CHI. L.R. 478 (1968).
19. Paulsen, *Family Courts And the Poor Man*, 54 CAL. L.R. 702 (1966).

victimized in their efforts to assist and protect the child, unless legal assistance is available to them. While practicing lawyers and social workers are both "helping professions" dealing with conflict resolution, there are fundamental differences in their objectives and methodology. One appeals as a representative of the client to the adversary system of conflict resolution; the other establishes and uses a professional relationship with the client to effect change in the client and/or his environment as a basic problem-solving method.[20] Practicing lawyers manifest great distrust of social workers and other "do-gooders," but unless the law and social work come to terms, lawyers are likely to function only in the minority of cases—those in which the income exceeds $5,000, as 40 to 60 percent of all indigent cases involve family problems, as do most neglect and delinquency cases. Lawyers must come to be aware that the psychology of normal and abnormal child development is the only adequate source of a viable concept of legal neglect that can be sustained in court. Law students who have been exposed to a law-psychiatry approach usually show a greater awareness of this concept than do experienced lawyers.[21] It is noted that lawyers in family cases frequently become emotionally involved in the case, thereby coloring their reactions. To the degree they are unaware of their personal interaction they are ineffective counselors or courtroom lawyers. This appears to be an even greater danger to the socially-motivated lawyer who practices with Neighborhood Legal Services in that they sometimes adopt the clients' view of the oppressed poor being abused by the establishment while ignoring quite obvious serious neglect and abuse suffered by the child. Social workers suffer in some manner by this complex but are usually more constantly aware of the danger.

A preliminary analysis of data obtained by the American Bar Foundation indicates that problems between social workers and lawyers occur on two levels. One level represents those problems that result from fundamental differences in objectives and methodology, as indicated above. The second and more superficial level encompasses conflicts arising out of the specific setting or organizational framework in which lawyers and social workers are expected to coordinate their services. The conflict on the socond level may be easier to resolve than the first since it relates to the primary service object and goal. If the goal

20. Isaac, *The National Conference of Lawyers and Social Workers*, 1 FAMILY L.Q. 1967.
21. B.J. George, *The Team Approach to Family Law Teaching*, 1 FAMILY L.Q. 65, (1967).

is to provide legal service to the poor or any client, then social work is a tool or adjunct to the legal service. If the objective is to provide a social service to an individual, then legal service is utilized to assure the best presentation of the social service need.[22] This may mean that two agencies will confront each other in court, the one primarily concerned with the legal rights of one or more of the parties, the other concerned with the social-psychological health needs of one or more of the parties. Under these circumstances, the proceeding must follow more or less traditional legal forms.

The conflicts have been well recognized, and the National Conference of Lawyers and Social Workers has worked to delineate areas of practice and function. However, it is considered improbable that any impact can be made in resolution of this conflict unless it is accomplished at the community level.[23]

The final question has to do with the means by which agency intervention becomes essential and the manner in which the court becomes involved and deals with the problem. We must assume that whenever, in a free society, any person's liberty is involved, the general proposition of procedural due process applies, requiring a hearing in which some authorized tribunal passes on the state's right to intervene. It would appear suited to the needs of the community and society that the service be offered when an apparent need is present. If, after an offer of service, there was no voluntary acceptance within a reasonable time or if, after an acceptance, there was a withdrawal before the need was resolved, then in accordance with clear agency and court standards, petition to the court should follow. Under the abuse laws, immediate protective care and removal might be necessary but this, too, is accomplished within the two-phase voluntary-judicial process. Should the agency not respond to demands for relinquishment of control of persons not covered by court orders, the person or next friend has the right to petition the court for an immediate hearing on the issue of control or custody.

Since the *Gault* decision (1967) the juvenile court has rapidly assumed the status of a full-fledged judicial tribunal in relation to delinquency cases and the overlap into dependent-neglect cases is now being felt. There have been few appellate decisions in dependency and neglect cases and, undoubtedly, broad appellate decisions are needed

22. Audrey D. Smith and Barbara Curran, *A Study of the Lawyer-Social Worker Professional Relationship*, AMERICAN BAR FOUNDATION #6 (1968).
23. *Supra* note 20.

and forthcoming in this area of law. However, procedural safeguards are at best illusory when it comes to the work affecting the changes necessary to fulfill the state's duty to its dependent and neglected children. *Gault* assured procedural due process, but when shall we achieve substantive due process in the dispositional phase of the work of the Family and Juvenile Court? Should all the standards applicable under *Gault* be imposed on the neglect hearings, little progress will have been made. The failure of the Allegheny County Juvenile Court has been less due to its inadequate procedures than to the unavailability of resources and services necessary to the resolution of problems presented to it.

Justine Wise Polier, Judge, New York State Family Court, states:

> While welcoming the new interest in recruiting and training personnel for services to children in the community, juvenile court judges are also aware of a comparable need for trained personnel in the public and private agencies who are given custody of children removed from their own homes. They know that the supply of such personnel will be short for many years, and that the assumption that children once placed in agencies will receive such care as their changing needs require, is unrealistic. . . . They have observed the selective intake policies that have excluded children who are not "good risks" and that have discriminated against children of minority groups. They have had to live with legislative mandates for services to ever larger numbers of children reduced to a hollow gesture by the withholding of necessary funds, personnel, and facilities.[24]

Equal justice through procedural safeguards that does not require substantive justice for each individual is not enough. While the conflict of lawyers and social workers in the arena of social welfare may be an irritant to all who must function therein, it will eventually mean a better deal for the many unfortunate people who must look to these services.

24. Hon. J.W. Polier (Judge, N.Y. State Family Court), *In the Gault Case: Its Practical Impact on the Philosophy and Objectives of the Juvenile Court*, 1 FAMILY L.Q. 1967.