

SYMPOSIUM INTRODUCTORY SPEECH

YOUTH, VOICE AND POWER: A MULTI-DISCIPLINARY PERSPECTIVE

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Good evening and welcome to Tucson, Arizona. I am pleased to be attending this provocative symposium and to address you this Friday evening. I want to extend my thanks to the law school and more specifically, to Dean Massaro and Professors Atwood and Bennett for promoting and organizing the symposium. Our thanks should also be extended to the law school for creating the Child Advocacy Clinic and finding Professor Bennett to lead it.

Throughout this event we will consider multi-disciplinary perspectives as we share our understanding of youth and childhood. While sharing these perspectives, we will simultaneously consider the policy implications of our understanding and studies. We hope to reduce the cacophony of our disciplines caused by a lack of communication among us and to emerge with enhanced communication, understanding, and eventual coordinated collaboration in the development of informed policy and practices.

I. INFORMING POLICY DECISIONS

We have convened as psychologists, sociologists, legal beagles and academicians, sociologists, philosophers, and anthropologists. To an anthropologist, children can be a window to understand the family structure of a culture. To a sociologist, youth can be the basis for understanding the dynamics of gang subculture. To a psychologist, youth marks a formative period in the development of personality and intellect. To a philosopher, the demarcation between children and adults can provoke a vantage point from which to view the topics of causation, individual responsibility, autonomy, and the relationship of the individual to the state. To a judge, youth evokes thoughts much the same as how

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judges view the topic of law: "Youth is, as I have said before, youth is youth."¹ We hope to better understand our unique positions and our concerned positions.

As a judge, and an occasional policy maker, I appreciate the opportunity to convene with you to better understand your perspectives and visions. All too often our views are myopic. This broad symposium allows us to view and understand children much as my glasses allow my vision to be enhanced through progressive lenses. Here, we have the opportunity to select different vantage points to get a unique and focused view of children through our respective disciplines.

II. YOUTH IN THE STATE OF ARIZONA

First, I'll speak a little about our venue, the State of Arizona. To give you context on the status of children in our State, I would like to refer to some national measures. According to the Annie E. Casey Foundation Annual Kids Count, Arizona is historically associated with extremely poor outcomes for children, as measured by infant mortality rates, birth weights, suicides, teen pregnancies, high school graduation rates, and several other factors.² This past year, Arizona ranked forty-fifth among the states in the national composite that evaluates such factors.³ My hope is that one day, in the not too distant future, we will look to New Hampshire and Minnesota as our cohorts, and we will abandon the company of Mississippi, Alabama, and New Mexico as our equals in relation to these composite rankings.⁴ Our State knows better than what it does to children through its policies. We have a great opportunity in this State to measure improvement in the lives of children through informed policy initiatives.

I have had many occasions in my career to rely on psychologists, but fewer occasions to consult sociologists, though I still recall the teachings of my sociology professor on Juvenile Delinquency, the late and great Professor Erickson from the University of Arizona. I have had even fewer occasions to consider the views of anthropologists, and sadly, though our law is structured on constructs of individual responsibility, causation, and similar concepts, we never overtly refer to philosophy. We should embrace this symposium as a chance to chip away at the Tower of Babel that separates practice and policy from research, science, and knowledge.

1. WYNSTAN HUGH AUDEN, *Law Like Love*, in *SELECTED POETRY OF W.H. AUDEN* 62 (1958). The poem in its entirety is reprinted *infra* at text accompanying note 25.

2. ANNIE E. CASEY FOUND., *KIDS COUNT DATA BOOK 62-63* (2002), available at <http://www.aecf.org/kidscount/databook/> (last visited Aug. 9, 2003). Other factors include child death rates, truancy rates, and the proportion of children living in poverty.

3. *Id.*

4. *Id.* Minnesota and New Hampshire rank first and second; Mississippi, Alabama and New Mexico rank at the bottom of the list, in the high-forties.

III. YOUTH, POLICY, AND OUR NATIONAL HISTORY WITH CHILDREN

The law initially objectified children as chattels or the property of parents.⁵ The Society for the Prevention of Cruelty to Animals spurred the creation of orphanages, shelters, and protective societies for children.⁶ Soon thereafter, others in our society sought out protective measures for youth.

Government followed shortly after. In 1899, Illinois created the nation's first Juvenile Court, which provided specialized intervention and treatment.⁷ The law and government began to consider children as victims, and believed that children were easily molded into proper shape and rehabilitated. Courts and government embraced the notion of *parens patriae*, which embodied the idea that courts would become the protective agent of children.⁸ Government recognized its obligation to remove children from their families for their protection and to enhance their lives.

This paternalistic posture motivated the federal government's policy for Indian children and boarding schools.⁹ As a result of this policy, native children were removed from their families and reservations in order to educate and assimilate them within our dominant culture.¹⁰ In accordance with this notion of assimilation, throughout our nation's history, some languages have been "verboten." For example, "English Only" is now the law and mandate in Arizona and many other states.¹¹ Many critics regard this policy as more specifically prohibiting the use of Spanish, and impacting our children's prospects for being

5. See generally MARY ANN MASON, FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: THE HISTORY OF CHILD CUSTODY IN THE UNITED STATES (1994). Some scholars see vestiges of this heritage in modern American family law. See, e.g., Barbara Bennett Woodhouse, *Who Owns the Child? Meyer, Pierce, and the Child as Property*, 33 WM. & MARY L. REV. 995 (1992).

6. See LELA B. COSTIN ET AL., THE POLITICS OF CHILD ABUSE IN AMERICA 51-67 (1996); Mason P. Thomas, *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix and Social Perspectives*, 50 N.C. L. REV. 293, 308 (1973).

7. 1899 Ill. Laws 131. For an early description of the juvenile court and its promise, see THE CHILD, THE CLINIC, AND THE COURT; A GROUP OF PAPERS (Johnson Reprint Corp. 1970) (1925).

8. See generally DOUGLAS E. ABRAMS & SARAH H. RAMSEY, CHILDREN AND THE LAW IN A NUTSHELL 7-9 (2001).

9. See VINE DELORIA, JR. & CLIFFORD M. LYTLE, AMERICAN INDIANS, AMERICAN JUSTICE 241 (1983).

10. See generally *Indian Child Welfare Act of 1978, Hearings Before the Subcomm. on Indian Affairs of the House Comm. on Interior & Insular Affairs*, 95th Cong. (1978).

11. See ARIZ. CONST. art. 28, §§ 1-4 (approved by Prop. 106 through popular vote in 1988); ARIZ. REV. STAT. §§ 15-752, 15-753 (West Supp. 2002-03) (requiring education in English and providing waiver system for students wishing to receive bilingual education) (approved by Prop. 203 through popular vote Nov. 7, 2000).

educated.¹² Both when I was a child and now, many children are discouraged or forbidden from speaking their native languages at their schools.

The government's paternalistic attitude toward children also led to the development of foster care, a nice sounding phrase for a relatively new state institution that replaced orphanages. Many commentators believe that many foster children are being raised in the functional equivalent of orphanages that are now called "group homes." In response to concerns about the foster care system, Congress enacted the 1980 Adoption Assistance and Child Welfare Act,¹³ which is based on the premise that if government intervenes in family life by removing children for their protection, it must make efforts to put family back together. The emphasis of this enactment was on the preservation of the family.

More recently, Congress enacted the Adoption & Safe Families Act (ASFA),¹⁴ which promotes permanency in lives of children according to the developmental model of the needs of children. The Act imposes a finite time limit on family rehabilitation.¹⁵ If parents cannot conquer their addictions or afflictions in one year's time, government is directed to bring permanency to the child by finding a new permanent family within which the child is to be raised.¹⁶

The government's protection of children has even extended to fluoridation of the water supply.¹⁷ We still engage in the debate over the government's role in preventing children's dental decay in 2002. Similarly, the government's paternalism led to development of an immunization policy for children.¹⁸ Again, much public controversy and debate exists concerning the government's role.

The debate rages over the death penalty for children. This measure is alive in Arizona for children who commit adult crimes.¹⁹ Our own Pima County

12. See, e.g., Arizona Language Educ. Council, *English Only Initiative Targets Bilingual Education*, ALEC VOICES (Spring 2000), available at <http://www.nmabe.net/legislation/ALECvoices.html> (last visited Aug. 9, 2003).

13. Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified in part at 42 U.S.C. § 625(a)(1)(c) (providing that one purpose of child welfare services is to prevent family break-up and to avoid unnecessary removals of children from their homes)).

14. Pub. L. No. 105-89, 111 Stat. 2115 (1997).

15. *Id.* at § 103.

16. *Id.*

17. See, e.g., Ctr. for Disease Control, *Engineering and Administrative Recommendations for Water Fluoridation, 1995*, 44(RR-13) MORBIDITY & MORTALITY WEEKLY REPORT 1-40 (Sept. 29, 1995), available at <http://www.cdc.gov/epo/mmwr/preview/mmwrhtml/00039178.htm> (last visited Aug. 9, 2003).

18. See, e.g., Ctr. for Health & Health Care in Sch., *Defending U.S. Immunization Policy – the Pros and Cons of Vaccinating Children*, 2 HEALTH AND HEALTH CARE IN SCH. (Feb. 2002), available at http://www.healthinschools.org/ejournal/feb02_1.htm (last visited Aug. 9, 2003).

19. See, e.g., *State v. Jackson*, 918 P.2d 1038, 1043 (Ariz. 1996) (holding that imposing a death sentence on a 16-year-old defendant was constitutional).

has the highest per capita rate in Arizona of people on death row who committed their capital offense while still children.²⁰

Regarding the government's drug policy, we have an anomaly in Arizona. We incarcerate children who commit delinquent offenses involving simple possession of drugs in Arizona, while adults are forbidden from receiving jail terms for equivalent crimes.²¹ In drug courts, however, we see the manifestation of therapeutic jurisprudence—nicer, kinder, gentler courts.

We debate the emancipation of children and ask ourselves: How does it occur? By marriage? By committing an adult crime? A national trend started in the nineties to transfer youth to adult court. There has been an explosion in the numbers of such transfers,²² with dubious benefit to society or communities.

Adoptions are a relatively new legal construct that sometimes erupt in controversy. For instance, consider the present debate in Arizona's legislature over whether children should be adopted by gay parents, or the national debate regarding trans-racial or multi-ethnic placements of children.²³

Restorative justice is a theory of intervention developed in juvenile justice that involves the community and the victim in the deliberation of appropriate sanctions for delinquent youth.²⁴ More recent trends reflect multidisciplinary involvement in treatment of delinquent youth.

IV. CONCLUSIONS

The list of intersections between public policy and children is endless. We need informed public policy, not politically reactive public policy. Youth and youth policy are like law, which permits my segue to a favorite poem.

Professor Bennett's directive to me was to be "upbeat and light," a task that is very difficult considering the time of day and the day of the week. I think he also asked me to be erudite. In doing so, I will invoke the talents of W. H. Auden, the author of the wonderful poem, "Law Like Love,"²⁵ which describes the relativity of the definition of law, subject to the viewer.

20. Daniel Buckley, *Should Teen Killers Be Executed?*, TUCSON CITIZEN, Feb. 13, 2002, at 1A (reporting that five of Arizona's 128 death row inmates committed their crimes while under age of 18, with three of those five coming from Pima County).

21. ARIZ. REV. STAT. §§ 13-3405, 13-3407 (2002-03).

22. See Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799 (2003).

23. See, e.g., NAT'L ADOPTION INFO. CLEARINGHOUSE, TRANSRACIAL AND TRANSCULTURAL ADOPTION (1994), available at <http://www.rainbowkids.com/tranrace.html> (last visited Aug. 9, 2003).

24. OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, DEP'T OF JUSTICE, GUIDE FOR IMPLEMENTING THE BALANCED AND RESTORATIVE JUSTICE MODEL 5 (1998), available at <http://www.ojjdp.ncjrs.org/pubs/implementing/case.html> (last visited Aug. 9, 2003).

25. AUDEN, *supra* note 1.

Law Like Love

Law, say the gardeners, is the sun,
Law is the one
All gardeners obey
To-morrow, yesterday, to-day.

Law is the wisdom of the old
The impotent grandfathers feebly scold;
The grandchildren put out a treble tongue,
Law is the senses of the young.

Law, says the priest with a priestly look,
Expounding to an unpriestly people,
Law is the words in my priestly book,
Law is my pulpit and my steeple.

Law, says the judge as he looks down his nose,
Speaking clearly and most severely,
Law is as I've told you before,
Law is as you know I suppose,
Law is but let me explain it once more,
Law is The Law.

Yet law-abiding scholars write:
Law is neither wrong nor right,
Law is only crimes
Punished by places and by times,
Law is the clothes men wear
Anytime, anywhere,
Law is Good morning and Good night.

Others say, Law is our Fate;
Others say, Law is our State;
Others say, others say
Law is no more,
Law has gone away.

And always the loud angry crowd,
Very angry and very loud,
Law is We,
And always the soft idiot softly Me.

If we, dear, know we know no more
Than they about the Law,
If I no more than you
Know what we should and should not do
Except that all agree
Gladly or miserably

That the Law is
And that all know this

If therefore thinking it absurd
To identify Law with some other word,
Unlike so many men
I cannot say Law is again,

No more than they can we suppress
The universal wish to guess
Or slip out of our own position
Into an unconcerned condition.
Although I can at least confine
Your vanity and mine
To stating timidly
A timid similarity,
We shall boast anyway:
Like love I say.

Like love we don't know where or why,
Like love we can't compel or fly,
Like love we often weep,
Like love we seldom keep.

With Auden's words in mind, let me leave you with these words of my own:

Like love we must maintain our passion for children.

Like love we must understand that their opportunity is ephemeral.

Like love our heart and heads must be focused on their needs, and like love, the fullness of our life is dependent on their continued well being.

Again, welcome, and many thanks for your willingness to share in this symposium.