

10.3: History of the Juvenile Justice System

The juvenile court was created in Cook County Illinois in 1899, but the concept dates back to seventeenth century Europe. The term ***parens patriae*** originated in the 12th century with the King of England and literally means “the father of the country.” Applied to juvenile matters, *parens patriae* means the king is responsible for and in charge of everything involving youth. ^[1] *Parens patriae* was often used by royalty in England from their homes in the name of the king. Children were often seen as property and were thus subject to the wishes of the king or his agents. ^[2] This was especially relevant when they violated the law.

Within the scope of early English common law, parents had the primary responsibility of raising their children in any manner they deemed fit. However, when children reached 7 years of age or committed a criminal act, chancellors, acting in the name of the king, adjudicated matters concerning the youth. The youth has no legal rights and were essentially wards of the court. As such, the courts were tasked with safeguarding their welfare. While parents were merely responsible for childbearing, the state had the primary and legitimate interest in the upbringing of the children. ^[3]

The concept of *parens patriae* had a substantial influence on events in the United States, such as the child-saving movement, houses of refuge, and reform schools. The persistent doctrine of *parens patriae* can be seen evolving from “king as a father” to a more general ideology, that of the state “acting in the best interest of the child.” Subsequent matters involving youth revolve around this notion of acting in the best interest of the child, whether children were taken away from wayward parents, sent to reform schools for vagrancy, or even held in institutions until they reach the age of majority, or 18 years old. The idea is that the state is acting in their best interest, protecting the youth from growing up to be ill-prepared members of society. Thus, the courts are intervening for the youth’s own good.

In the nineteenth century, children were gradually seen as vulnerable and in need of special care and supervision. One illustration of this concept was the establishment of a **house of refuge** in New York City in 1825. These were urban establishments used to corral youth who were roaming the street unsupervised or who had been referred by the courts. ^[4]

These houses were not intended to house criminals, but rather at-risk youth, or youth who were on the verge of falling into a life of crime because of their social circumstances. Because of the notion of *parens patriae*, many of the parents of these youth were not involved in the placement of their children in these houses. The case of ***Ex Parte Crouse*** is an example. ^[5]

In 1838, a girl named Mary Ann Crouse was sent to a Philadelphia house of refuge at the request of her mother. Her father petitioned to have her released since she was committed without his consent. However, on the grounds that the state has the right to remove children from their home, in their best interest and even sometimes over parental objection (because of *parens patriae*), the Pennsylvania Supreme Court denied the father’s petition. The court declared that failed parents lose their rights to raise their children. Parental custody and control of their children is natural, but not an absolute right. If parents fail to care for their children, educate, train, or supervise them, then the children can be taken by the state. The state is acting in the best interest of the child.

Reform Schools: The 1850s ushered in the development of **reform schools** or institutions used for the housing of delinquent and dependent children. The schools were structured around a school schedule rather than the work hours that defined the workhouses and houses of refuge. Many reform schools operated like a cottage system where the youth were divided into “families” with cottage parents who oversaw the day to day running of the family, discipline of the youth, and schooling. The structure is still used in some youth correction institutions today, however, back in the nineteenth century, children were often exploited for labor and many of the school de-emphasized formal education. ^[6] Additionally, the emphasis of the reform school was on the strength of the family and they believed that by reinserting a strong family presence in the lives of the youth, they would be deterred from further criminal pursuits. ^[7] Regardless of the lack of evaluations as to the effectiveness of these institutions, the popularity of reformatories continued to grow.

The state had the legal authority to commit children and youth to reform schools based under *parens patriae*. However, in 1870, a boy named Daniel Turner was considered a “misfortunate”, or someone who was in danger of becoming delinquent because his family was poor and unable to care for him. He was remanded to a Chicago house of refuge for vagrancy, not a delinquent act. His father filed a writ of habeas corpus and the court ruled that the state has no power to imprison a child, who has committed no crime, on the mere allegation that he is “destitute of proper parental care, and is growing up in mendicancy, ignorance, idleness, and vice.” ^[8] *People Ex Rel. O’connell v. Turner*, 55 Ill. 280 (Ill. 1870). This effectively closed the reform schools in Illinois since they could no longer house non-criminal children. This case challenged the practice of *parens patriae* and ruled that the state can only take control of children if the parents are completely and utterly unfit and/or the child had committed some act of “gross misconduct.” ^[9]

Child Saving Movement: By the end of the ninetieth century, cities were experiencing the effects of three major things: **industrialization, urbanization, and immigration**. Industrialization refers to the shift in work from agricultural jobs to more manufacturing work. This led to a greater number of people moving from the country to the cities, and the cities increasing exponentially in population without the infrastructure to support the increase. Immigration refers to the internal migration of people in America and the external movement of people from other countries. Within America, people were moving from the southern states (remember, this is not long after the end of the Civil War, which ended in 1865) and immigrating from European countries such as Ireland (the potato famine lasted from 1845-1854 and killed an estimated 1.5 million people). Millions of Germans and Asians also immigrated to America during this time lured by Midwest farmlands and the California Goldrush.^[10]

The influx of people into cities weakened the cohesiveness of communities and the abilities of communities and families to socialize and control children effectively.^[11] Nonetheless, the **child-saving movement** emerged during this time in an effort to change the way the state was dealing with dependent, neglected, and delinquent children. The child savers were women from middle and upper-class backgrounds.

There is some debate as to the motives of the child savers. The traditional view is that they were progressive reformers who sought to solve problems of urban life, while others contend that they used their station and resources as an effort to preserve their middle-class white way of life by overseeing the treatment of the immigrant children. Regardless of their motives, it is safe to say that child-savers were prominent, influential, philanthropic women, who were “generally well educated, widely traveled, and had access to political and financial resources.”^[12]

Creation of the Juvenile Court

The juvenile court was created in Cook County, Illinois in 1899. The Illinois Juvenile Court Act of 1899 was the first statutory provision in the United States to provide for an entirely separate system of juvenile justice. The court was created to have jurisdiction over all matters pertaining to youth- dependent, neglected, and delinquent youth.

A 1905 Pennsylvania Supreme Court case, *Commonwealth v. Fisher* *Commonwealth v. Fisher*, 213 Pennsylvania 48 (1905) , conveyed the legal authority of the new juvenile court under *parens patriae*:

"To save a child from becoming a criminal, or from continuing in a career of crime, . . . the legislatures surely may provide for the salvation of such a child, if its parents or guardians 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."

In this case, a juvenile was given a seven-year sentence for a minor crime which would have received a much lesser sentence in adult court. The court upheld the sentence and deemed it was in the best interest of the child. As a result of the case, *parens patriae* was back. The court ruled that “importance to the commonwealth which is vitally interested in rescuing and saving its children, wherever rescue, care and a substitute for parental control are required, to the end that they may, in the enjoyment of sober, industrious and happy lives, fill the full measure of good citizenship.”

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