Background to the Nathaniel Abraham case

The origins of the juvenile justice system in America

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The trial of 13-year-old Nathaniel Abraham in Pontiac, Michigan has focused attention on the nation's juvenile justice system. Abraham has been charged as an adult for first-degree murder under a 1997 Michigan law that sets no minimum age for the prosecution of children as adults for violent and serious offenses.

Abraham was only 11 years old at the time of the shooting death of Ronnie Greene on October 29, 1997, the crime for which he stands accused. His attorneys have further argued that at the time he was functioning at the level of a six- to eight-year-old child. The state has concocted its case against Nathaniel—in which they have presented no evidence to substantiate their charges—in an attempt to set a precedent and legitimize the 1997 law.

The Abraham case underscores a growing tendency throughout the US judicial system to prosecute and sentence children as adults. Forty-six states have in recent years changed legislation to allow juveniles to be tried as a adults, with fourteen of these states having instituted mandatory adult prosecution for some offenses. The human rights organization Amnesty International has condemned the US for its treatment of children in the judicial system, particularly its execution of juvenile offenders.

This trend aimed at the dismantling of a system in which children are treated differently in the eyes of the courts goes against practices and traditions dating back decades. The juvenile justice system in the US has its origins in a movement by progressive reformers a century ago to stop the barbaric practice of treating children like criminals.

The Act to Regulate the Treatment and Control of Dependent, Neglected and Delinquent Children—or the Illinois Juvenile Court Act—was enacted by the Illinois legislature on July 1, 1899. This reform of the criminal system rejected as cruel and unjust the treatment of children as adults under criminal law. It was one of the earliest reforms of the middle-class Progressive movement in the United States, and it was so well received that within 10 years similar laws were adopted by 22 other states.

Jane Addams, the founder of Hull House in Chicago, was one of the leaders of the Juvenile Court movement to stop the abuse of children by the adult criminal system. For Addams and the settlement house reformers the campaign for a Juvenile Court system went hand in hand with other reforms to eliminate abusive conditions faced by children.

The settlement movement of Jane Addams and Hull House had its origin in the settlement concept, which came from Britain. The idea was that well-educated, middle-class, young people would be in a better position to help solve some of the problems of the working class, poor and immigrants in the overcrowded cities by settling in the slum neighborhoods. One distinction of Jane Addams's Hull House was that it drew members from beyond its educated middle-class base, from the working class. The movement attracted trade unionists, including those involved in the 1894 Pullman strike led by socialist Eugene Debs, as well as immigrants living in Chicago's tenements.

Among the other issues facing working-class and immigrant children raised by Jane Addams and the residents of Hull House was the practice of sending poor children to poorhouses, called almshouses. The *Hull House Bulletin* of April 1, 1897 pointed out: “Curiously enough there is no law in Illinois forbidding the presence of children in the poorhouse, and hundreds of children pass through the poorhouses of Illinois every year.” However, a bill designed to stop the practice of sending children to the almshouses, sponsored by Hull House and another organization of reformers called the Board of Charities, failed to pass the state legislature in 1897.

Frederick Wines, secretary of the Illinois Board of Charities, described the kind of Juvenile Court system sought by the Progressive reformers in his speech summing up the 1898 conference of the Board of Charities, whose topic was “Who are the Children of the State?” Wines said, “We make criminals out of children who are not criminals by treating them as if they were criminals. That ought to be stopped. What we should have, in our system of criminal jurisprudence, is an entirely separate system of courts for children, in large cities, who commit offenses which would be criminal in adults. We ought to have a ‘children's court' in Chicago, and we ought to have a ‘children's judge' who should attend to no other business. We want some place of detention for those children other than a prison.”

The 1899 Illinois Juvenile Court Act set up such a court, and it was located across the street from Hull House in Chicago. It created children's judges who, for a period of time, were appointed by the city with the informal approval of Hull House. Youthful offenders were no longer prosecuted or condemned as criminals; they were called “delinquents," and the law put juvenile offenders on probation and kept them out of adult jails. Hull House continued to play a major role in the Juvenile Court system after the legislation was passed.

Julia Lathrop, a leading advocate from Hull House, became the first chairperson of the Juvenile Court Committee, and a working-class Hull House resident, Alzina Stevens, became the court's first probation officer. The Juvenile Court was not originally intended to be a legal institution. The reformers envisioned it more as place where specialists could work together to examine a child's character, background, psychology and home environment, and develop a plan

of treatment in the child's best interest.

The second judge of the Juvenile Court in Chicago was Julian Mack, who was appointed in 1904. A legal scholar who had been a founding editor of the *Harvard Law Review*, Mack had no previous experience working with children and the law, but was closely associated with Hull House. He developed the legal theory and procedure for the new Juvenile Court, and promoted it widely and enthusiastically.

Mack found precedent for the separate and humane treatment of children by a modern juvenile court system in the old chancery procedures of the common law English courts. His other major contribution to the legal foundations of the juvenile justice system was to elaborate the doctrine of *parens patriae* whereby the state is recognized as the ultimate parent of all children and is therefore responsible for every child's welfare.

The state, said Judge Mack, "as the greater parent of all of the children within its border, must deal with the child as the wise, the kind, the just but the merciful parent would deal with his own child, must abandon the idea that for every petty offense the great authority of the state must be vindicated, and its punishment visited upon the minor."

Mack, like the Progressive reformers of the last century, advocated that the court should look into the background of the child. "Why isn't it the duty of the state," he remarked, "instead of asking merely whether a boy or girl has committed a specific offense, to find out what he is, physically, mentally, morally and then, if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen."

Judge Ben Lindsey, the founder of the Denver Juvenile Court, contrasted the criminal court to the Juvenile Court system as follows: "The criminal court for child offenders is based on the doctrine of fear, degradation and punishment. It was, and is, absurd. The Juvenile Court was founded on the principle of love. We assumed that the child had committed not a crime, but a mistake, and that he deserved correction, not punishment. Of course, there is firmness and justice, for without these there would be danger in leniency. But there is no justice without love."

It is worth comparing these compassionate sentiments to the vindictive outlook of prosecutors and judges today who have tossed out the conception of social support and the rehabilitation of children in favor of the criminalization and punishment of the youth.

The Juvenile Court system abandoned the adversarial format of the criminal courts. It sought to provide the "care and guidance" necessary for rehabilitation, and tried to extend probation to allow children to stay in their homes. They replaced criminal charges with petitions of delinquency, trials with hearings, findings of guilt with adjudications of delinquency; criminal sentences were replaced with dispositions. Juvenile Court proceedings were not public in order to protect children from the stigma of criminal prosecution.

The rehabilitative ideal of the Juvenile Court system was based on the progressive viewpoint of the reformers that the cause of juvenile crime was to be found in the environment in which the children were living, and that a change in their conditions could change their characters. Advocates of the rehabilitative model rejected the old justifications for criminal punishment like deterrence, retribution and incapacitation. They supported sanctions only to change the "characters, attitudes, and behavior of convicted offenders."

Little change was made in the structure or formal objectives of the Juvenile Court system until the Supreme Court intervened in the 1960s. Three decisions by the Supreme Court between 1966 and 1970—Kent v. United States (1966), In re Gault (1967) and In re Winship (1970)—attempted to improve the Juvenile Court system as it then existed by extending Constitutional democratic rights guarantees and criminal procedure safeguards to children in the Juvenile Court system.

The Kent case described the Juvenile Court system as the "worst of both worlds," where children received neither "the protections accorded to adults" nor the "solicitous care and regenerative treatment postulated for children" by the progressive reformers. Justice Fortas wrote the Court's opinion and stated that the Court would no longer tolerate "procedural arbitrariness in juvenile courts." The Court held that juveniles had the right to a lawyer before the Juvenile Court could waive jurisdiction and transfer their case to adult criminal court.

Kent also addressed the issue of mental incapacity, based on the then-new District of Columbia definition of criminal responsibility in the Durham case. The Durham test defining criminal responsibility was "that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."

In re Gault is the landmark Supreme Court case that articulated the Warren Court's solutions to the shortcomings it found in the Juvenile Court system. The Court decided in Gault to extend basic Constitutional due process rights to children. It held that certain criminal procedure protections guaranteed by the Constitution under the Bill of Rights and the Fourteenth Amendment in the adult criminal law system must be applied to children in the Juvenile Court system.

In re Gault required that the due process rights of notice, counsel, cross-examination and the right against self-incrimination must be provided to children facing delinquency dispositions in the Juvenile Court system. In re Winship added that the criminal burden of proof must also apply in juvenile proceedings.

The present-day proponents of the prosecution of children as adults—as in the Nathaniel Abraham case—pose a danger to the protection of children established under the Juvenile Court system and threaten a return to conditions children faced in the nineteenth century.

The American Civil Liberties Union reports that juveniles sentenced to adult criminal jails are five times more likely to be sexually assaulted, twice as likely to be beaten and 50 percent more likely to be attacked with a weapon than children housed in juvenile facilities.

While under the Juvenile Court doctrine of *parens patriae* the state is supposed to be ultimately responsible for the well-being of all children within its borders, particularly those in its direct custody, it is precisely this state that now poses the greatest threat to the youngest and most defenseless members of society.