

ANNOTATED BIBLIOGRAPHY

ADVOCATING FOR CHILDREN AND FAMILIES IN THE ERA OF MASS INCARCERATION: THE IMPORTANCE OF YOUTH AND FAMILY ENGAGEMENT

The resources in this annotated bibliography were compiled as part of the January 2023 session of the Racial Justice Webinar Series co-hosted by the Gault Center and the Georgetown Juvenile Justice Clinic & Initiative based on Chapter 11 Things Fall Apart: Black Families in an Era of Mass Incarceration in *The Rage of Innocence: How America Criminalizes Black Youth* by Kristin Henning.

In addition to Prof. Kristin Henning, this webinar featured Jeannette Bocanegra-Simon, Executive Director of Justice for Families (J4F), and Prof. Dorothy Roberts, George A. Weiss University Professor of Law & Sociology and Raymond Pace & Sadie Tanner Mossell Alexander Professor of Civil Rights at the University of Pennsylvania Carey Law School and Founding Director of the Penn Program on Race, Science & Society in the Center for Africana Studies.

Watch the webinar recording for a full understanding of how these resources can help advocates enhance their individual case and policy advocacy for Black and Brown youth and their families: <https://www.youtube.com/watch?v=znsJj7DhFB0>

These articles, books, and cases are cited in reverse chronological order. Please find the most recent articles at the beginning of each section.

I. Books

Dorothy Roberts, *Torn Apart: How the Child Welfare System Destroys Black Families—And How Abolition Can Build a Safer World*, Basic Books (2022).

- Many believe the child welfare system protects children from abuse. But as *Torn Apart* uncovers, this system is designed to punish Black families. Drawing on decades of research, legal scholar and sociologist Dorothy Roberts reveals that the child welfare system is better understood as a “family policing system” that collaborates with law enforcement and prisons to oppress Black communities. Child protection investigations ensnare a majority of Black children, putting their families under intense state surveillance and regulation. Black children are disproportionately likely to be torn from

their families and placed in foster care, driving many to juvenile detention and imprisonment.

Kristin Henning, Chapter 11 Things Fall Apart: Black Families in an Era of Mass Incarceration in *The Rage of Innocence: How America Criminalizes Black Youth*, Penguin Random House (2021).

- In Chapter 11 of *The Rage of Innocence*, Kristin Henning writes about the impact of the criminalization of Black youth on their parents, siblings, and families.
 - **About *The Rage of Innocence*:** Drawing upon twenty-five years of experience representing young people in Washington, D.C.'s juvenile courts, confronts America's irrational and manufactured fears of Black youth and makes a compelling case that the nation's obsession with policing and incarcerating Black America begins with Black children. Unlike White youth, who are afforded the freedom to test boundaries, experiment with sex and drugs, and figure out who they are and who they want to be, Black youth are seen as a threat to White America and denied the privilege of healthy adolescent development. Weaving together powerful narratives and persuasive data, Henning examines the criminalization of Black adolescent play and sexuality, the demonization of Black fashion, hair, and music, and the discriminatory impact of police in schools. *The Rage of Innocence* lays bare the long-term consequences of racism and trauma that Black children experience at the hands of police and their vigilante surrogates and explains how discriminatory and aggressive policing has socialized a generation of Black teenagers to fear and resent the police.
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II. Articles, Toolkits, and Other Resources Organized By Topic

Shackling

- ❖ Elizabeth Clarke, “Shackling People in Court is Shameful, Unnecessary Legacy of Slavery,” *Juvenile Justice Information Exchange*, November 7, 2017, available: <https://jjie.org/2017/11/07/shackling-people-in-court-is-shameful-unnecessary-legacy-of-slavery/>
 - This article connects indiscriminate shackling to the legacy of slavery in the United States. U.S. states are rapidly removing Confederate statues, symbols of racial oppression. But there is another holdover from slavery that is prevalent in our society today — the routine use of shackling persons using handcuffs, leg irons and other hardware to confine individuals in the justice system.

- ❖ **Campaign Against Indiscriminate Juvenile Shackling Toolkit (January 2016), available:** <http://defendyouthrights.org/wp-content/uploads/2016/01/Toolkit-Final-011916.pdf>
 - Indiscriminate shackling is an enormous problem in juvenile courts. The practice unnecessarily humiliates, stigmatizes and traumatizes young people, impedes the attorney-client relationship, chills due process protections, runs counter to the presumption of innocence and draws into question the rehabilitative ideals of the juvenile court.
 - The Campaign Against Indiscriminate Juvenile Shackling (CAIJS), created in August 2014, works across the country to support advocates in their efforts to amend laws, court rules, policies and practices in their own states to end the automatic shackling of children in juvenile court. CAIJS is a project of the National Campaign to Reform State Juvenile Justice Systems and the National Juvenile Defender Center.

- ❖ **Affidavit of Dr. Gwen Wurm, January 2015, available:** <http://defendyouthrights.org/wp-content/uploads/2015/01/Gwen-Wurm-full-shackling-affidavit-Jan-2015.pdf>
 - Shackling impacts the cognitive functioning of youth: “A picture of someone shackled is meant to convey a sense of danger, of a contained beast. This image is frequently utilized in movies and television. It is a picture of someone feared. An adolescent with a forming identity cannot easily shrug off this image of himself. Rather, it becomes integrated in his own identity formation, possibly influencing his behaviors and responses in the future.”

- ❖ **Affidavit of Dr. Marty Beyer, January 2015, available:** <http://defendyouthrights.org/wp-content/uploads/2014/09/Beyer-Affidavit-w-CV-Jan-2015-Final.pdf>
 - This affidavit focuses on the shame and humiliation being restrained brings to adolescents, as well as the actual physical pain shackles cause. In Dr. Beyer’s opinion, courtroom shackling needlessly traumatizes youth and is thereby counter to the family court’s goal of rehabilitation.

- ❖ **Brian D. Gallagher and John C. Lore III, *Shackling Children in Juvenile Court: The Growing Debate, Recent Trends and the Way to Protect Everyone’s Interest*, 12(2) UC Davis J. of Juvenile L. & Policy 453 (Summer 2008), available:** <http://defendyouthrights.org/wp-content/uploads/2014/11/Gallagher-Shackling-Children-in-Juvenile-Court-the-Growing-Debate-Recent-Trends-2008.pdf>
 - This law review article provides an overview of the history of shackling and arguments for and against shackling youth. While the authors do not support the full elimination of shackling, they do argue against indiscriminate shackling of

youth and provide factors for the court to consider in making individual determinations.

Solitary Confinement

- ❖ **Stop Solitary for Kids Campaign, last accessed January 2023, available:**
<https://stopsolitaryforkids.org>
 - Stop Solitary for Kids is a national campaign to end solitary confinement of youth in juvenile and adult facilities in the United States. The campaign is a joint effort by the Center for Children’s Law and Policy, the Center for Juvenile Justice Reform, the Council of Juvenile Correctional Administrators, and the Justice Policy Institute.
 - The campaign website includes a variety of news, action items, and resources, such as reports and a podcast.

- ❖ **Jessica Feierman, Karen Lindell and Nathan Eaddy, *Unlocking Youth: Legal Strategies to End Solitary Confinement in Juvenile Facilities* (2017), available:**
https://jlc.org/sites/default/files/publication_pdfs/JLC_Solitary_Report-FINAL.pdf
 - This report by the Juvenile Law Center provides background information on solitary confinement in juvenile facilities and strategies to use the law for reform. These strategies include policy reforms, litigation, community partnerships, and strong youth defense.

- ❖ **Natalie J. Kraner, et al., *51 Jurisdiction Survey of Juvenile Solitary Confinement Rules in Juvenile Justice Systems* (July 2016), available:**
<https://www.lowenstein.com/media/2825/51-jurisdiction-survey-of-juvenile-solitary-confinement-rules-72616.pdf>
 - This report is a seminal nationwide survey on the laws and policies governing the use of solitary confinement in juvenile correctional facilities. The survey’s primary focus is on the use of this practice in secure facilities where youth serve custodial sentences or are being held for a significant amount of time while they await adjudication, as opposed to short-term or temporary placements in what are commonly known as detention facilities. In addition to canvassing every state’s governing rules, the authors interviewed a number of practitioners and the administrators of juvenile facilities about the actual use of solitary confinement in their home jurisdictions in an effort to identify how the states’ practices deviate (if at all) from their written rules and policies. This survey, which is an updated and expanded version of one released by the Lowenstein Center for the Public Interest at Lowenstein Sandler in 2013, also undertakes a more detailed review of the permitted uses of solitary confinement for reasons other than punishment.

- ❖ **ACLU Advocacy Toolkit: Ending the Solitary Confinement of Youth in Juvenile Detention and Correctional Facilities (June 2014), available:** <http://njdc.info/wp->

[content/uploads/2014/10/ACLU-Advocacy-Toolkit-Ending-the-Solitary-Confinement-of-Youth-in-Juvenile-Detention-and-Correctional-Facilities.pdf](https://www.aclu.org/content/uploads/2014/10/ACLU-Advocacy-Toolkit-Ending-the-Solitary-Confinement-of-Youth-in-Juvenile-Detention-and-Correctional-Facilities.pdf)

- This Toolkit contains an issue summary, as well as a variety of resources related to messaging, starting a campaign, sample advocacy materials, national standards, and model legislation.

Family Visitation

- ❖ **Brae Young and Jillian J. Turanovic, *Spatial Distance as a Barrier to Visitation for Incarcerated Youth and Why Families Overcome It*, 39(2) Justice Quarterly (2022) available:**

<https://www.tandfonline.com/doi/abs/10.1080/07418825.2020.1770843?journalCode=rjqv20>

- For youth in residential facilities, visits from family can be quite important. But youth are routinely confined far from home, and travel distance can deter many families from visiting.
 - In the current study, researchers examined the conditions under which families overcome distance as a barrier to visitation. Researchers used data on youth who completed residential placement in Florida ($N = 2,345$) and negative case analysis to explore whether household income, parent-child closeness, and family support affected the likelihood that youth were visited despite being far from home.
 - Spatial distances suggests that families from higher socioeconomic levels can afford to visit incarcerated youth more. Additionally, families with higher household incomes and greater parent-child closeness were more likely to travel substantial distances to visit. These findings suggest that policies aimed at increasing parent-child closeness and access to financial resources could maximize visitation for confined youth.
- ❖ **Brae Young and Jillian J. Turanovic, *What About the Kids? Examining the Visitation-Recidivism Relationship Among Incarcerated Juveniles*, 54(7) Youth & Society (August 3, 2021) available:**

<https://journals.sagepub.com/doi/full/10.1177/0044118X211036724>

- Although the visitation-recidivism relationship has been studied extensively among adult correctional populations, it has received little attention among incarcerated youth.
- In this study, researchers use a diverse sample of youth released from confinement in Florida ($N = 7,296$) to examine the effects of visitation and visitation consistency on two measures of recidivism—re-arrest and re-adjudication. They also consider whether the visitation-recidivism relationship

varies depending upon youths' risk for reoffending (as determined by sociodemographic, offense history, and family risk factors).

- The results indicate that, for the average youth, visitation is associated with a marginal reduction in the likelihood of recidivism, and that the effects are more pronounced for high-risk youth. These results underscore the importance of targeting the most at-risk youth for programming options within correctional facilities and suggest the need for continued availability of visitation programming generally.

❖ **Juleyka Lantigua-Williams, “When a Sibling Goes to Prison,: *The Atlantic*, November 14, 2016, available:**

<https://www.theatlantic.com/politics/archive/2016/11/when-a-sibling-goes-to-prison/507020/>

- Over 5 million kids in the United States currently have or have had a parent in prison. That works out to about one in 14 American children—a majority of whom are under age 10. Broken down by state, children with incarcerated parents can represent 3 to 13 percent of the population, according to “[A Shared Sentence](#),” a report by the Annie E. Casey Foundation. The unusually intense stress that these children face has been well documented and studied. That’s mostly due to researchers’ emphasis on the parent-child relationship when analyzing incarcerated populations—and how little support is available for those left-behind children who are forced to stand by as their primary role models, caregivers, and providers are put behind bars.

❖ **Ryan Shanahan and Sandra Villalobos Agudelo, *Families as Partners: Supporting Youth Reentry*, Vera Institute of Justice (January 2012),**

- Summary available: Youth with consistent family visitation also did better in school. Summary: Emily Bergman, “No Surprise Here: It’s Important to Promote Family Connections for Incarcerated Youth,” Kids Forward, (available: <https://kidsforward.org/surprise-important-promote-family-connections-incarcerated-youth-2/>)
- Youth who were visited weekly had significantly less behavior incidents per month than youth who were infrequently or never visited by family members. The vast majority of youth had some form of contact with families like phone calls or letters, but in-person visitation has a strong impact on the well-being of incarcerated youth.

Collateral Consequences of Juvenile Legal System Involvement

❖ **Christopher Gowen, Lisa Thurau, and Meghan Wood, *The ABA’s Approach to Juvenile Justice Reform: Education, Eviction, and Employment: The Collateral***

Consequences of Juvenile Adjudication, 3 Duke Forum for L & Soc. Change 187 (2011).

- Although mandatory prohibition and eviction of youth has significant effects on both youth and their families, the most extreme issue lies with federal regulations that give local housing authorities complete discretion to prohibit admission and evict families from public housing. *Id.* 197
- The Supreme Court held in [*HUD v. Rucker*](#) that a tenant is responsible for the drug-related conduct of children listed as tenants in a lease and can be evicted even if the tenant has no knowledge of the children's illegal conduct. *Id.*
- Because indigent and minority children are more likely to be involved in the juvenile justice system, their public housing is more likely to be jeopardized. Disruption in a youth's housing also undermines his or her connection to both education and the community, thereby weakening some of the key social and educational supports in the youth's life. Indigent youth are thus subjected to severe consequences that simply do not exist for those with the means to afford housing and legal counsel. *Id.*
- When a youth's family is evicted on the basis of a minor juvenile offense, the disparity between the offense and the punishment lacks proportionality. *Id.*

❖ **Wendy J. Kaplan and David Rossman, *Called "Out" at Home: The One Strike Eviction Policy and Juvenile Court*, 3 Duke Forum for L. and Soc. Change 109 (2011), available:**

<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1019&context=dflsc>

- One Strike Eviction policies mean a juvenile conviction might result in an eviction of the entire family. In fact, in a 2002 study of Chicago evictions shortly after Congress passed this law, researchers determined that 25 percent of the "One Strike" evictions resulted from a juvenile conviction.
- An informal study in a New Orleans court revealed that twenty percent of the eviction actions filed by the local PHA were based on the allegations against of young people.
 - The work of the defense attorney becomes more complicated when a conviction can also affect family members, as in the case of a potential eviction.
 - Concern about crime in public housing has spawned a strategy, known as the One Strike policy, that makes criminal behavior by public housing tenants—or their children—grounds for eviction.
- Over 2.6 million children currently live in homes that are subject to One Strike. Research suggests that ten percent of them have been arrested, making eviction a potential consequence for them and their families.

- ❖ Ashley Nellis, “Addressing the Collateral Consequences of Convictions for Young Offenders,” *The Champion* (July/August 2011), available: <https://jjie.org/wp-content/uploads/2018/09/Addressing-the-Collateral-Consequences-of-Convictions-for-Young-Offenders.pdf>
 - Youth re-entering their communities from out-of-home placement struggle to achieve housing stability. Factors contributing to high mobility and residential displacement include severe and unresolved conflicts with parents, abuse from parents, homeless parents, overcrowding, lack of rental history, income levels insufficient to afford market rate rent, criminal history, and deficits in independent living skills. Some youth return to supportive homes while others do not.
 - Two separate studies found that one in four youth (25 percent) released from foster care, a group home, or juvenile detention center spent their first night either in a shelter or on the street.
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Fines and Fees

- ❖ *Bail, Fines, and Fees Bench Card*, The Gault Center and the National Council of Juvenile and Family Court Judges (2018), available: http://defendyouthrights.org/wp-content/uploads/2018/04/Bail-Fines-and-Fees-Bench-Card_Final.pdf
 - This bench card provides judges and other stakeholders information on the negative impacts of bails, fines, and fees for youth in juvenile courts.
 - ❖ Jessica Feierman, et al., *Debtor’s Prison for Kids*, Juvenile Law Center (2016), available: <https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf>
 - 20 states charge fees for juvenile probation or supervision
 - 22 states charge fees for diversion.
 - 31 states charge fees for evaluation or testing.
 - 11 states charge to seal or expunge a record.
 - ❖ Erick Eckholm, “Court Costs Entrap Nonwhite, Poor Juvenile Offenders” *The New York Times* August 31, 2016, available: <https://www.nytimes.com/2016/09/01/us/court-costs-entrap-nonwhite-poor-juvenile-offenders.html>
 - This article tells the story of Dequan Jackson who had his probation extended by more than a year because he and his family could not afford \$200 court cost.
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GPS Monitoring:

- ❖ Leah Mack, “Electronic Monitoring Hurts Kids and Their Communities,” *Juvenile Justice Information Exchange*, October 24, 2018, available: <https://jjie.org/2018/10/24/electronic-monitoring-hurts-kids-and-their-communities/>
 - This guest opinion focuses on the financial and mental health costs of electronic monitoring and outlines the lack of data that supports the effectiveness of it.
 - “African-American youth and youth from poorer neighborhoods are most likely to have a probation officer document noncompliance and are more likely to receive more severe consequences.”

- ❖ James Kilgore, “You’re Still in Jail”: How Electronic Monitoring Is a Shackle on the Movement to Decarceration,” *Truthout*, October 22, 2017, available: <https://truthout.org/articles/you-re-still-in-jail-how-electronic-monitoring-is-a-shackle-on-the-movement-for-decarceration/>
 - This article discusses the expansion of mass incarceration via electronic monitoring. Specifically analyzing how measures like EM which reduce incarcerated populations, also have an unacknowledged Achilles heel, which is the uncritical acceptance of electronic monitors (EM) *as an alternative* to incarceration.
 - The article was authored by James Kilgore. Kilgore is a father, partner, activist and writer based in Urbana, Illinois. He is a researcher for MediaJustice’s Challenging E-Carceration project and director of advocacy and outreach for FirstFollowers Reentry Program. He is the author of six books, including *Understanding Mass Incarceration* and *Understanding E-Carceration*.

- ❖ Kate Weisburd, *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 *Iowa L. Rev.* 297 (2015), available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2585224.
 - This article examines the routine, and troubling, use of electronic monitoring in juvenile courts. After describing the realities of the practice and its proffered justifications, this Article refutes three key misperceptions about the practice: (1) that it lowers incarceration rates because it is used only on youth who would otherwise be detained; (2) that it effectively rehabilitates youth; and (3) that it is cost-effective.

Abolition

- ❖ **Dorothy Roberts, “A Veneer of Benevolence,” *Inquest*, April 29, 2022, available: <https://inquest.org/a-veneer-of-benevolence/>**
 - Themes in this essay include abolition, child welfare, family policing, prison industrial complex, surveillance, and the war on drugs.

- ❖ **Dorothy Roberts, “Abolishing Policing Also Means Abolishing Family Regulation,” *Imprint News*, June 16, 2020, available: <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>**
 - “Defunding police is part of a broader struggle to abolish the prison industrial complex, including jails, prisons, detention centers and other carceral practices, while building a radically different society that has no need for them. From its origins in slave patrols, policing has served as a violent arm of the racial capitalist state by protecting the interests of white elites and controlling black and other marginalized communities through everyday physical intimidation and arrests. As abolitionist organizer Mariame Kaba recently stated, “The surest way of reducing police violence is to reduce the power of the police, by cutting budgets and the number of officers.” In moving toward abolition, then, it is critical to support reforms only if they reduce — and do not increase — police funding, tools and power.”
 - This resource is an opinion essay by Professor Dorothy Roberts arguing that calls for abolition in policing must also include a call for abolition of the family welfare system. The Imprint, which provides independent, nonpartisan daily news covering the issues faced by vulnerable children and families.

- ❖ **Justice for Families, *Families Unlocking Futures: Solutions to the Crisis in Juvenile Justice* (September 2012), available: http://njjn.org/uploads/digital-library/Families_Unlocking_FuturesFULLNOEMBARGO.pdf**

Purpose

 - This report was a collaborative effort by several grassroots organizations and two resource organizations, which provided research, policy, and writing support for this project. All participating grassroots organizations are members of Justice for Families, a national alliance of membership-based organizations and allies organizing to build a united response to the crisis in juvenile justice across the country.
 - Juvenile justice systems were established more than a century ago because there was broad recognition even then that children must be treated differently than adults. In recent years, neuroscience and developmental research have helped us recognize the many ways that the human brain is still developing throughout adolescence, and that the capacities for judgment, empathy, and impulse control are not fully formed until early adulthood. As a result, adolescent misbehavior and risk-taking are common, rather than unusual; most adults report behavior as teens that could have led to arrest, while very few commit crimes as adults.

- Even in cases of fairly serious acts of delinquency, most youth can be safely helped to find a path to a more promising future, given the opportunity and effective community and family-based interventions. And decades of research confirm that locking up kids charged with crimes for normal adolescent behavior or schoolyard fights is an utterly bankrupt approach, contributing to higher probabilities of more serious delinquency, thereby failing to either protect the community or improve the well-being and life chances of children.
- When children are incarcerated, we increase the risk of putting them on a path to adult crime. Our overreliance on locked institutions exposes young people to violence, increases the odds that they themselves will be subjected to violence, and deprives them of a decent education and other meaningful activities that contribute to healthy development. And we waste taxpayer dollars by throwing too much money at a system that just doesn't work.
- It should be clear that states and communities across our nation need to change policy. It should be obvious that we must find effective alternatives to the institutionalization of children, by working to embed effective, evidence-informed practice and programs in juvenile justice systems. Just as obvious, we cannot find better solutions for children without listening to their families. The stories in this report illustrate how our current approach tears families apart. Rather than helping families, today's juvenile justice systems increase their mental and emotional strain, and shunt them aside, rather than enlisting them as key members of the team. This report adds greatly to our understanding of the impact of our current practices, exposing those practices as ill-conceived, visceral, simplistic responses to complex issues. Let's listen to these voices—and then recommit to true partnership with families. Together, we can create a more thoughtful, a more humane, and a more effective juvenile justice system.

Methodology

- Justice for Families and its research partner, the DataCenter, surveyed just over 1,000 parents and family members from 20 cities across 9 States; conducted 24 focus groups of 152 youth, parents, and other family members from 12 cities across 9 States; reviewed nearly 300 articles from 11 metropolitan areas that discussed families of court-involved youth; and completed a literature review of government and community alternatives to "zero-tolerance" school discipline procedures and traditional juvenile justice system court processing and adjudications. Through the focus groups and surveys, families described how the rapid growth of the prison system, zero-tolerance policies, and aggressive police tactics, coupled with the decline of social services and public education have devastated their predominantly low-income communities of color. In this context, the juvenile justice system has functioned as a principal feeder into the Nation's vast prison system. This report and the work of Justice for Families is designed to correct misperceptions about system-involved youth and their families; to demonstrate the depth of engagement by system-involved youth and their families; and to voice the critical need for these families' active participation and leadership in re-designing the youth justice system so that it promotes safer and more prosperous communities for low-income families and their children. The report examines in detail how families and their children are impacted by

traditional juvenile justice procedures. The report concludes with the presentation of a "blueprint" for juvenile justice transformation that takes into account the perceived needs of the involved families.

III. Cases and Law

Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054 (2000).

Facts:

A Washington state statute (1) permitted any person to petition a state court for child visitation rights at any time, and (2) authorized the court to order visitation rights for any person when visitation might serve the best interest of the child. Pursuant to the statute, paternal grandparents filed a petition to obtain visitation rights with their deceased son's children. After the Washington Superior Court for Skagit County granted the grandparents more visitation time than the children's mother desired, the mother appealed. While the appeal was pending, the mother, who had never married the children's father, was married to a father of six, who adopted the two children. The Washington Court of Appeals reversed the visitation order and dismissed the petition for visitation (87 Wash App 131, 940 P2d 698). The Washington Supreme Court, affirming the judgment of the Court of Appeals, expressed the view that the statute infringed on the fundamental right, under the Federal Constitution, of parents to rear their children (137 Wash 2d 1, 969 P2d 21).

Holding:

The Court reiterated the importance of allowing parents to decide what is in their child's best interests, including the right to decide when and whether to permit visitation by others. In concluding that a grandparent's visitation order imposed by the state court was an unconstitutional infringement on the mother's fundamental right to make decisions concerning the care and control of her two daughters, **the Court explicitly accepted the historical presumption that the "natural bonds of affection lead parents to act in the best interests of their children."** The Court further acknowledged the absence of any finding or even allegation that the mother in Troxel was unfit. As the Court stated, **"so long as a parent adequately cares for his or her children ... there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children."**

- The fundamental liberty interest of parents to care for and be in control of their child was established some 75 years ago. (Citing, *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, 43 S.Ct. 625 (1923) which held that parental rights to "establish a home and bring up children" and "to control the education of their own" was protected by the Due Process Clause).
- **Relying heavily on precedent, the Court reiterated that "it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects**

the fundamental right of parents to make decisions concerning the care, custody, and control of their children.”

Related Case: Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625 (1923)

Facts:

Plaintiff in error was tried and convicted in the District Court for Hamilton County, Nebraska, under an information which charged that on May 25, 1920, while an instructor in Zion Parochial School, he unlawfully taught the subject of reading in the German language to Raymond Parpart, a child of ten years, who had not attained and successfully passed the eighth grade. The information is based upon "An act relating to the teaching of foreign languages in the State of Nebraska," approved April 9, 1919. On review, the court reversed the state supreme court's judgment, holding that the Nebraska statute was arbitrary and infringed on the **“the ‘liberty’ protected by the Due Process Clause which includes the right of parents to ‘establish a home and bring up children,’** found in the Fourteenth Amendment to the United States Constitution.

Holding:

The Court held that the statute was arbitrary and without reasonable relation to any legitimate State goal. The court further held that the liberty guaranteed by U.S. Const. amend. XIV protected the teacher's right to teach and the right of parents to engage the teacher in educating their children. The court stated that education and acquisition of knowledge were matters of supreme importance that should be diligently promoted. The State could not, under the guise of exercising its police power, interfere with such guaranteed liberty interests. The court found that, by the statute, the legislature was attempting to materially interfere with the calling of modern language teachers, with the opportunities of students to acquire knowledge, and with the power of parents to control the education of their own children. Thus, the teacher's conviction was based on an unconstitutional statute.

Bellotti v. Baird, 443 U.S. 622, 99 S. Ct. 3035 (1979).

Facts:

A Massachusetts statute required parental consent before an abortion could be performed on an unmarried woman under the age of 18, but provided that an abortion could be obtained under a court order upon a showing of good cause if one or both parents refused consent. This statute was challenged in an action brought by plaintiff William Baird and others in the United States District Court for the District of Massachusetts as violating the United States Constitution. After a three-judge district court held the statute unconstitutional and permanently enjoined its enforcement, direct appeals were taken to the Supreme Court of the United States. The Court vacated and remanded, holding that the district court should have abstained from deciding the constitutionality of the statute and instead certified pertinent questions to the Massachusetts Supreme Judicial Court for a determination concerning the meaning of the challenged law.

On remand, the district court certified several questions to the highest court of Massachusetts. Among the questions asked were (1) whether the statute permitted any minors, mature or

immature, to obtain judicial consent to an abortion without any parental consultation whatsoever, and (2) whether a court whose assistance was sought in obtaining an abortion could refuse its consent if it found a minor to be capable of making an informed and reasonable decision to have an abortion, but found that a parent's, or its own, contrary decision was a better one. With respect to the first question the Massachusetts court answered that in general the law did not permit minors to obtain judicial consent to an abortion without any parental consent whatsoever, that consent had to be obtained for every nonemergency abortion unless there were no parent available, and that an available parent had to be given notice of any judicial proceedings brought by a minor to obtain consent for an abortion. With regard to the second question, the Massachusetts court answered affirmatively. Following the Massachusetts court's decision, the district court again declared the statute unconstitutional and enjoined its enforcement.

Holding:

Rationales in support of parents' rights include the parents' personal fulfillment in raising a child in accord with their own values, interests, and morals, society's interest in having parents guide and instruct children, and society's interest in diversity that would be achieved by having each family raise children without monolithic dictates of the State on moral, religious, and political views.

Because society relies on parents to inculcate values, religious beliefs, and standards of good citizenship that help children grow into mature, socially responsible citizens, "parents and others ... who have ... primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility.

Thus, both legislative and judicial deference to parental control and instruction prepares children to live independently and advances individual freedoms and liberty in society.

UN Convention on the Rights of the Child, available:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

- Article 7 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, **the right to know and be cared for by his or her parents.**
- Although the United States has not specifically articulated a child's right to family, the UN Convention on the Rights of the Child gives all children the right to a family. The right to a family allows children to be connected to their history, and it offers a protective perimeter against the violation of their rights. Children separated from their families become easy victims of violence, exploitation, trafficking, discrimination and all other types of abuse.
- **Related article:** *The Fundamental Right to Be Parented and the Implications for Children with Incarcerated Mothers*, available: <https://racism.org/articles/basic-needs/family/10713-the-fundamental>