Law, Psychology, and Children

Overarching Issues*

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Society's treatment of children and families is guided by the premises that children lack the ability and/or the capacity to be autonomous directors of their own lives and that the private autonomous family is best suited to provide for the best interests of children. These premises are based on two assumptions: (a) that parents will act in their children's best interests, and (b) that parents possess the maturity, experience, and judgment required to make life's difficult decisions, which children lack. We explore these premises and assumptions along with the concept of the best interests of children and the relationship between children's capacities and children's rights. We conclude that collaboration between legal scholars and social scientists will enhance the likelihood of more informed decision making about these issues.

Almost a decade ago, the first author and his colleagues (Reppucci, Weithorn, Mulvey, & Monahan, 1984) edited a book on children, mental health, and the law as a modest first step in providing an integrated compendium of the state of psychological knowledge in this field. At the time, although two legal casebooks (Mnookin, 1979; Wadlington, Whitebread, & Davis, 1983) and the enormously influential volumes by Goldstein, Freud, and Solnit (1973, 1979) were available, no texts existed to teach psychology students about these issues. A few groundbreaking empirical investigations (Grisso, 1981; Weithorn & Campbell, 1982) and a conference on children's competence to consent (Melton, Koocher, & Saks, 1983) had recently provided exciting demonstrations of the potential of psychological research to contribute to the legal arena regarding children. Moreover, in

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the same year that our book was published, Melton (1984) issued a provocative
call for developmental research on legally relevant topics, and in the world at large
the explosive McMartin Day Care child sexual abuse scandal made headlines
nationwide.

The McMartin trial, which lasted for more than 5 years and eventually proved
to be the most expensive civil proceeding in American history, cast a negative
light on mental health professionals' understanding of legal contexts. The salience
of the child sexual abuse situation in this country has been a stimulus to many
cognitive and developmental researchers to pursue investigations of children's
suggestibility, memory, eye witness testimony, lying, and other topics (e.g.,
Doris, 1991; Ceci, DeSimone, & Pednick, 1992). In addition, the increasing crime
statistics for juveniles (Mulvey, Arthur, & Reppucci, in press), the increased
number of divorces with the concomitant child custody battles (Weithorn, 1987),
and the overwhelming statistics regarding child abuse and neglect in general
(Cicchetti & Carlson, 1989) have increased the involvement of both researchers
and clinicians in these areas. Entities such as the Consortium on Children, Fami-
lies and the Law, under the leadership of Gary Melton at the University of
Nebraska–Lincoln and composed of research groups at the Universities of Buf-
falo, Hawaii, Iowa, Michigan, Pittsburgh, and Virginia, have become active
forces in stimulating research and policy projects since the mid-1980s. Thus the
time seemed ripe to develop a special issue on law and children for Law and
Human Behavior.

Rather than focus a special issue on a specific topic regarding law and chil-
dren (although we hope future special issues will do this), we decided to cast a
general net for papers in order to encourage submissions of uniqueness and rel-
evanee. Whereas special issues usually elicit about 10 to 15 manuscripts, we
received 39 completed manuscripts and numerous other inquiries. As readers may
judge for themselves, we believe the nine papers that survived the rigorous review
process justify this approach. Some represent recent work in fields that have
attracted a fair amount of research, whereas others are unique in their subject
matter. In all cases, they represent exciting research directions that have the
potential to stimulate more researchers to become involved in this arena.

Before presenting these papers, however, we provide a brief overview of the
domain of children, psychology, and the law as a framework for interpreting and
integrating the studies that follow as well as a context for the field.

Basic Premises

The functioning of institutions within a society reflects basic propositions
about that society's beliefs. In our society, the family may be the most critical
institution. Our treatment of the family appears to be guided by two related
premises: (1) children, by virtue of their age and experience, lack the ability
and/or the capacity to be completely autonomous directors of their own lives; and
(2) the private and autonomous family is the institution most suited to provide for
the best interests of society's children. This second premise provides the rationale
for society's protection of familial sanctity and assumes that, in general, state
intervention into families is a negative occurrence.