Notes

Prologue


Chapter 1


2. See, e.g., I Laws of a Public and General Nature, of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri, and of the State of Missouri, Up To the Year 1824, ch. 154, at 436, approved Jan. 19, 1816; §1.010, RSMo 2000. See generally Joseph Fred Benson, Reception of the Common Law in Missouri: Section 1.010 as Interpreted by the Supreme Court of Missouri, 67 Mo. L. Rev. 595 (2002).


5. 4 Whart. 9, 1839 WL 3700 (Pa.).


7. Mormon Church v. United States, 136 U.S. 1, 57 (1890).

8. See In re Gault, 387 U.S. 1, 18 (1967).


13. 2 Floyd C. Shoemaker, Missouri Year By Year 346 (1942); Monia Cook Morris, The History of Woman Suffrage in Missouri, 24 Mo. Hist. Rev. 67, 70 (1930); U.S. Bureau of Educ., Statements Relating to Reformatory, Charitable, and Industrial Schools For the Young 472 (1875).

14. 1 Floyd C. Shoemaker, Missouri Year By Year 385 (1942) (founder of the American public kindergarten movement); Selwyn K. Troen, Operation Head Start: The Beginnings of the Public School Kindergarten Movement, 66 Mo. Hist. Rev. 211, 212, 217 (1972) ("irresistible impulse").

15. Jacob A. Riis, The Children of the Poor 174 (1892).


17. See Mo. Rev. Stat. 96, 97 § 6 (1835) (billiards halls); id. at 315, 318 § 22 (1835) (licensed inns or taverns); Mo. Rev. Stat. 71, 72 § 6 (1845) (gambling or wagering); id. at 641 (1845) (sue or be sued); id. at 854 (1845) (criminal proceedings).

18. 1 Laws of a Public and General Nature, supra note 2, ch. 143, § 82, at 420, approved July 21, 1815; id. ch. 41, at 142, approved July 4, 1807.

19. See, e.g., State v. Tice, 90 Mo. 112, 2 S.W. 269, 269 (1886); State v. Adams, 76 Mo. 355, 355 (1882).


22. William T. Cross and Charlotte B. Forrester, County Almshouses and Jails of Missouri 3-4 (Mo. State Nurses' Ass'n 1913) (jails as fortresses); Mo. Rev. Stat. 334, 335 § 1 (1835).


25. See, e.g., Joseph Fred Benson, The Case of the Murdered Dandy, 29 St. Louis B.J. 56 (Summer 1982).


28. 1 Laws of a Public and General Nature, supra note 2, ch. 65, § 32, at 217 (approved Nov. 4, 1808); Laws of the Territory of Missouri 136-60 (1818).

29. Gustave de Beaumont and Alexis de Tocqueville, On the Penitentiary System In the United States and Its Application To France 138 (1833).


32. See Homer Folks, Care of Destitute, Neglected, and Delinquent Children 198-99 (1907).


35. Evelyn Roberta Koenig, supra note 33, at 20 tbl.1; Walter L. Rutnam, History of the Juvenile Court in St. Louis, Missouri 8 (unpublished M.S. dissertation 1931, on file in the Washington U. library).


40. 4 Messages and Proclamations of the Governors of the State of Missouri 56-57 (1924) (inaugural address, Jan. 2, 1865).

41. See Report of the Municipal Commission on Delinquent, Dependent and Defective Children 13 (1911) (mayor's report); Gaylord E. Landau, supra note 37, at 20 (no directed play).

42. Act of Feb. 24, 1873, 1873 Mo. Laws 353, 356 (public concern about cruelty); Gaylord E. Landau, supra note 37, at 23 (separation of delinquent and dependent children).


45. Id. (completion of Girls' House); In re Lorkowski, 94 Mo.App. 623, 624, 68 S.W. 610, 611 (St. L. Ct. App. 1902) (hard labor).

46. 5 Messages and Proclamations of the Governors of the State of Missouri 44 (1924) (Gov. Brown's adjourned session message, Dec. 6, 1871); id. at 266-67 (Governor Woodson's adjourned session message, Jan. 7, 1874); 1. J. Mo. Const. Convention of 1875, at 199 (Isidor Loeb and Floyd C. Shoemaker, eds. 1920) (Henry Boone).

48. Act of June 14, 1909, 1909 Mo. Laws 599; Act of Mar. 21, 1913, 1913 Mo. Laws 141, 142 (objections); Margaret Reeves, Training Schools For Delinquent Girls 42-43 (1929) (northern states).


52. 8 Messages and Proclamations of the Governors of the State of Missouri 332 (1926) (first biennial message, Jan. 5, 1899).

53. See 1 Floyd C. Shoemaker, supra note 14, at 401-02.

54. Ex Parte Loving, 178 Mo. 194, 77 S.W. 508 (1903) (children as young as eight); Report of the Municipal Commission, supra note 41, at 37 (little protection against older inmates); Ben B. Lindsey, Introduction in Thomas Travis, The Young Malefactor xvii (1908) (leading juvenile court judge).


58. Id.


60. See Benjamin Clay Weakley, supra note 59, at 10-11 (separate cells); Walter L. Rutnam, supra note 35, at 15 (ten-year-old prisoners).

61. See Lawrence M. Friedman, supra note 10, at 163; Timothy D. Hurley, Origin of the Illinois Juvenile Court Law, in The Child, the Clinic and the Court 320, 321 (1925) (Cook County jail); Ernest K. Coulter, The Children In the Shadow 39 (1913) (1900).

62. See Missouri Conference of Charities and Corrections, Proceedings, 1901, at 23 (1901 charge); Elizabeth J. Clapp, Mothers of All Children: Women Reformers and the Rise of Juvenile Courts in Progressive Era America 92 (1998) (1901 legis-
lation); Walter L. Rutnam, supra note 35, at 12 (federal prisoner).
64. See Lawrence M. Friedman, supra note 10, at 1633.
65. Mo. Rev. Stat. 167 (1835) (earliest years of statehood); id. at 172 § 41 (1835) (abandonment).
66. See, e.g., Note, Rights of Parents to Custody of Children, 6 Colum. L. Rev. 454, 455 (1906).
69. Jacob A. Riis, supra note 15, at 143.
71. See Walter L. Rutnam, supra note 35, at 36 (1890 charter amendment); Ada Mary McGeer, The Backgrounds of a Selected Group of Neglected Children: A Study of Families From Which Children Have Been Committed As Neglected To the St. Louis Board of Children's Guardians By the Juvenile Court 7 (unpublished M.S.W. thesis 1941, on file in the Washington U. library) (third humane society in the nation).
72. Act of Apr. 15, 1889; 1889 Mo. Laws 116; Act of Mar. 11, 1897, 1897 Mo. Laws 75, § 1.
73. Act of May 6, 1899, 1899 Mo. Laws 50 § 1. See, e.g., In re Graham, 239 Mo.App. 1036, 1046, 199 S.W.2d 68, 74 (K.C. Ct. App. 1946) (abandonment required a showing of conduct by the natural parent “indicating a settled intention to leave the child permanently in the care of others”); In re Watson’s Adoption, 238 Mo.App. 1104, 1113-14, 195 S.W.2d 331, 336 (St. L. Ct. App. 1946) (intent to abandon the child could be shown if the parent either voluntarily and intentionally relinquished custody with the intent never to reclaim parental rights or perform parental duties, or intentionally withheld care, love and protection from the child without just cause).
77. See Mo. Rev. Laws 500, § 13 (1825).
78. See Fern Boan, A History of Poor Relief Legislation and Administration In Missouri 44 (1941) (public sale).
80. II Mo. Rev. Stat. 814 §§ 4075-78 (1879); Mo. Rev. Stat. 66, 67 § 6, 613 §§ 4, 5 (1835); II Mo. Rev. Laws 618-619 (1825); Laws of the Territory of Missouri 141 (1807).
82. See id. at 413, 414 § 4 (binding out free black children); LeRoy Ashby, supra note 68, at 76.
83. Mo. Rev. Stat. 66, 68 § 16, 70 § 25 (1835) (runaway apprentices); Hastings
H. Hart, The Development of Child Placing in the United States, in Foster-Home Care For Dependent Children 12 (U.S. Children's Bureau 1924) (masters' bargains).

84. Sarah Ramsey and Daan Braveman, supra note 75, at 1607, 1609.
85. See William T. Cross and Charlotte B. Forrester, supra note 22, at 3 (no more than farmhouses); Mo. Rev. Stat. 798, 799 § 10 (1845) (reasonable and humane coercion).
86. See II Mo. Laws, 1824-36, ch. 76, at 121, ch 174, at 232; Mo. Rev. Stat. 798, 799 § 7 (1845); Fern Boan, supra note 78, at 214-15 (end of the 1850s; 1903); David J. Rothman, The Discovery of the Asylum: Social Order and Disorder In the New Republic 185 (1971) (forty years later).
89. Amos Griswold Warner et. al, supra note 88, at 130 (Michigan and New York); Missouri State Board of Charities and Corrections, Monthly Bull. 16 (July 1919) (Missouri in 1886); George B. Mangold, Social Reform in Missouri 1820-1920, 15 Mo. Hist. Rev. 191, 199-201 (1920) (1904 Missouri investigation).
91. See II Perry McCandless, A History of Missouri, 1820-1860, at 223 (1972) (St. Louis children's asylums by 1860); George B. Mangold, supra note 89, at 191, 207 (1841 incorporation; home for soldiers' orphans); 1 Floyd C. Shoemaker, supra note 14, at 120 (St. Louis Girls Industrial Home).
92. Sarah Ramsey & Daan Braveman, supra note 75, at 1607, 1613.
94. Foster-Home Care For Dependent Children, App. C, at 205 (U.S. Children's Bureau 1924).
95. Stephen O'Connor, supra note 30, at xiv.
97. Stephen O'Connor, supra note 30, at 100.
98. Charles Loring Brace, The Dangerous Classes of New York and Twenty Years' Work Among Them (1872); Walter I. Trattner, supra note 87, at 117 (draining the city); Carl N. Degler, supra note 11, at 129-30 (1858 acknowledgment).


104. Sony Hocklander, Some Children of the Orphan Trains Rolled Into Loving Homes, Others to Hard Labor and Heartache, Springfield (Mo.) News-Leader, June 4, 2002, at 1A.


106. See Ryan Morgan, Orphan Train Reunion Gathers Kids Who Sought Homes in the 20’s, Denver Post, Apr. 29, 2001, at B2 (groups of three or four); Sony Hocklander, supra note 104, at 1A.


108. See, e.g., Wills v. Sullivan, 211 Mo. App. 318, 321-22, 242 S.W. 180 (K.C.Ct. App. 1922) (affirming jury’s damages verdict for fifteen-year-old plaintiff orphan train rider against Pettis County woman who strapped his bare body, struck him with a large piece of heavy wood, caused him to lose an eye by strapping his head, and caused him to lose the hearing in one ear by beating him over the head with a stove lifter and other heavy items).

109. See Stephen O’Connor, supra note 30, at 211.

110. Charles Loring Brace, supra note 98, at 243 (free to leave); Hastings H. Hart, supra note 74, at 175-76 (no agreement).

111. 3 Messages and Proclamations of the Governors of the State of Missouri 66 (1922) (inaugural address, Oct. 22, 1857).


113. See Florence Kidd, Efforts to Encourage Immigration to Missouri After the Civil War 12, 14, 25 (unpublished M.A. thesis 1931, on file with the University of Missouri-Columbia library).


116. Emelyn Foster Peck, Summary of State “Importation and Exportation
Very Special Place in Life

Laws,“ in Laws Relating to Interstate Placement of Dependent Children 1 (1924); Stephen O’Connor, supra note 30, at 256.

118. Id. § 3; Carl Kelsey, The Importation of Dependent Children, 18 Annals of the Am. Acad. of Political and Soc. Sci. 278, 286 (1901) (questions about constitutionality); Deborah Shirley Portnoy, supra note 88, at 171 (bonds and quarterly reports).

119. See Special Message By the President of the United States (to Congress), Feb. 15, 1909, in Foster-Home Care For Dependent Children, App. A, at 196 (1924) (act of philanthropy); Emelyn Foster Peck, supra note 116, at 1 (restrictive legislation by 1924).

120. Interview with Jack Markway (Aug. 24, 2002).

121. See, e.g., Sharon Burns, We The People, Daily Oklahoman, June 3, 2002, families section (about 450 orphan train riders and two million of their descendants live in the United States).


123. Rush H. Limbaugh, The Adoption of Children in Missouri, 2 Mo. L. Rev. 300, 301 n.10 (1937) (ordinarily too cumbersome and expensive); Mo Const. art. IV § 27 (1865); Davis v. Hendricks, 99 Mo. 478, 12 S.W. 887 (1889) (discussing 1863 special adoption act).


125. Act of Feb. 23, 1857, 1856-1857 Mo. Laws 59; Holloway v. Jones, 246 S.W. 587, 590 (Mo. 1922); Torwegge v. O’Reilly, 239 S.W. 116, 120 (Mo. 1922); In re Clements, 78 Mo. 352 (1883).

126. 78 Mo. 352 (1883).

127. See Torwegge v. O’Reilly, 239 S.W. 116, 120-21 (Mo. 1922).


129. Missouri Children’s Code Comm’n, A Complete Revision of the Laws For the Welfare of Missouri Children 9 (1916). See also, e.g., Charles Dickens, Bleak House (1853).

130. Missouri Children’s Code Comm’n, supra note 129, at 35.


132. See id. at 7, 10, 11.

133. See id. at 19.


135. Id.

136. Act of Apr. 10, 1917, 1917 Mo Laws 193, 194; Neihaus v. Madden, 348 Mo. 770, 777, 155 S.W.2d 141, 144 (1941); In re McAvoy’s Adoption, 237 Mo. App. 1099, 173 S.W.2d 108, 111-12 (K.C. Ct. App. 1943); Shepherd v. Murphy, 332 Mo. 1176, 61 S.W.2d 746 (1933) (on the adoptive parents’ death, their property passed to the adopted child; on the child’s death, the property passed to the adoptive parents’ heirs and not to the natural mother).

137. St. Louis Union Trust Co. v. Hill, 336 Mo. 17, 24, 76 S.W.2d 685, 688 (1934).
Chapter 2

1. Alfred J. Kahn, A Court For Children 16 (1953).
2. 1899 Ill. L. 131 § 3.
3. Herbert H. Lou, Juvenile Courts in the United States 23 & n.1 (1927) (other nations); Grace Abbott, The Juvenile Court Movement Throughout the World, in The Child, the Clinic and the Court 267 (1925) (same); Bernard Flexner et al., The Child, The Family, and the Court: A Study in the Administration of Justice in the Field of Domestic Relations 12 (U.S. Children's Bureau 1933); Margaret K. Rosenheim et al. (eds), A Century of Juvenile Justice xiii (2002) (leading juvenile justice experts); Paul W. Alexander, A Brief Reintroduction to the Juvenile Court, 50 ABAJ 353, 353 (1964) (quoting Pound).
6. Proceedings of the Twenty-First Annual Meeting of the Missouri Bar Ass'n 65, 74-76 (1904) (emphasis in the original). See also Remarks of Hon. Frank P. Sebree, "In Memoriam of William Muir Williams," 270 Mo. iii (en banc 1917).

8. Ex Parte Loving, 178 Mo. 194, 204-05, 77 S.W. 508, 509-10 (1903).

9. 178 Mo. at 216-17, 77 S.W. at 514.

10. Richard Hofstadter, The Age of Reform 145 (1956) (agrarian ideal); Walter Williams, The History of Missouri 113 (1907) (7% of Missourians).

11. 11 Messages and Proclamations of the Governors of the State of Missouri 12 (1928) (Inaugural address, Jan. 13, 1913); Thomas Travis, The Young Malefactor 37 (1908).


14. See II Twelfth Census of the United States 1900, pt. 1, at 631 (1902); Joseph Fred Benson, One Hundred Years of Justice: A History of the Circuit Court of St. Louis County, Missouri, 1877-1978, at 45 (St. Louis County Gov't 1981); 9 Messages and Proclamations of the Governors of the State of Missouri 382 (1926) (first biennial message, Jan. 2, 1907).


16. Act of Apr. 11, 1911, 1911 Mo. Laws § 177, 179 § 2, § 8535 RSMo 1909 (cities of the first class).

17. See Walter L. Rutnam, supra note 7, at 12, 14.


20. See State ex rel. Cave v. Tincher, 258 Mo. 1, 166 S.W. 1028 (1914); Act of Apr. 10, 1917, 1917 Mo. Laws 195, 197 § 2, 199 § 7; Act of Apr. 11, 1911, 1911 Mo. Laws 178 § 1.


22. See State ex rel. Cave v. Tincher, supra note 20, 258 Mo. at 12-13, 166 S.W. at 1029; Ex parte Loving, supra note 8,178 Mo. at 202, 77 S.W. at 509 (wise and beneficient purposes).

23. State ex rel. Cave v. Tincher, supra note 20, 258 Mo. at 13-14, 166 S.W. at 1030; Ex parte Badger, 286 Mo. 139, 226 S.W. 937 (1920).

24. See Katherine F. Lenroot and Emma O. Lundberg, Juvenile Courts At Work: A Study of the Organization and Methods of Ten Courts 23 tbl. 3 (U.S. Children's Bureau 1925) (St. Louis City juvenile court in 1920); Walter L. Rutnam, supra note 7, at 34 & n.1 (first twenty-six years); M. Ruth Vance, The Juvenile Court of Jackson County 13 (M.A. thesis 1938 on file with the University of Missouri-Columbia Library) (Jackson County).