Juvenile Injustice: Restoring California Juvenile Rights

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Senior Seminar

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INTRODUCTION

Any free and just society has one indelible core that must be firmly grasped – respect for the individual rights of its citizens. Thomas Jefferson, in the Declaration of Independence, said:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. – That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

Thus, the core purpose of government is to secure the God-given and irrevocable rights of individual citizens. This is reinforced against throughout the Constitution, such as in the 9th Amendment, which acknowledges that the rights expressed in the Constitution do not exclude other rights. Despite this, government agencies in the state of California directly violate the constitutionally protected rights of juveniles on a daily basis – most notably the right to a speedy public trial. In order to preserve the just society that we applaud in this state and nation, California lawmakers must remember that justice cannot exist without equal protection of the laws and actively implement new policy approaches to addressing issues of child abuse, neglect and delinquency to ensure that the fundamental natural rights of juvenile citizens are once again respected by law.

Black’s Law Dictionary defines procedural justice as, “the constant and perpetual disposition of legal matters or disputes to render every man his due.” Additionally, the Bible also expands on the concept of justice. In 2012, Relevant Magazine published an article on the subject of Justice, explaining the meaning of two Hebrew words – Mishpat and Tzadeqah. The first is the traditional legal definition – the assurance of due process. The second is personal and
broader in scope. It is defined closer to “righteousness” than Black’s definition of justice. Christians are bound to seek both Mishpat and Tzadeqah, according to Scripture. Thus, Biblical justice has two aspects – equal protection of the law and a pursuit of righteousness. However, righteousness can never be achieved without a firm foundation of procedural justice.

STATISTICS ON CAN AND DELINQUENCY IN CALIFORNIA

Many Californians are familiar with Child Protective Services, a division under the California Department of Social Services (CDSS), which is designed to protect minors from neglect and abuse by parents and guardians. While this role is filled by agencies of various names at the local level, they generally have the same overall objective. This objective is consistent with the stated overall mission of CDSS, which is “to serve, aid, and protect needy and vulnerable children and adults in ways that strengthen and preserve families, encourage personal responsibility, and foster independence.” The development of these programs came in response to an apparent need for more government intervention to help stop instances of abuse in the United States and California specifically.

CAN Statistics

According to a national study on Child Abuse and Neglect (CAN) from 1998, the rate of child maltreatment was 45 per 1,000 children with 14 of those suffering from “substantiated maltreatment”. California was considerably worse, with 52 out of 1,000 children suffering maltreatment and 20.5 who were victims of substantiated maltreatment. These statistics translate to roughly 5% of the population of California minors who were victims of maltreatment. This maltreatment could range anywhere from physical and sexual abuse to emotional neglect and even physical neglect for the basic needs of the children – like new clothing, health care, and nutrition. While 5% is not an outrageous figure on its own, when one recognizes that these are
the future citizens of our nation, the need for state programs to address these problems is apparent.

In addition, a 1997 study on the correlation between child maltreatment and juvenile delinquency found that:

Subjects with a history of maltreatment were more likely to engage in serious and violent delinquency, use drugs, perform poorly in school, display symptoms of mental illness, and become pregnant. Childhood maltreatment is associated with an increased risk of at least 25 percent for each of these outcomes.5

These are disturbing statistics, particularly if one considers the likelihood of unreported abuse across the state. Even if CPS is able to intervene and rescue children from their circumstances, these children are often still at risk for school truancy and juvenile delinquency in their adolescent years. Thus, the social services system is fundamentally tied to the agencies responsible for juvenile justice and family court.

**Family Indicators of At-Risk Children**

While every situation is unique, there are circumstances that can indicate an increased likelihood for children to fall into deviant behavior. One of the earliest of these indicators is the family in which the child was raised. The preservation of a nuclear family is critical to providing the best possible solutions to problems of juvenile justice. According to the National Center for Health Statistics:

Children living in nuclear families – that is families consisting of two married adults who are the biological or adoptive parents of all children in the family – were generally healthier, more likely to have access to health care, and less likely to have definite or severe emotional or behavioral difficulties than children from nonnuclear families.6
There is something fundamentally unique about the traditional nuclear family that works to equip children for their futures. Additionally, the freedom of parents to raise children as they see fit has long been viewed as a natural right that is beyond the reach of government in all but the most extreme circumstances. Although historical instances of ignorance and misjudgment are common, the statistical support for the value of parental involvement and exclusive authority indicates that the sovereignty of parental authority should not be infringed unless absolutely necessary to preserve the safety and health of a child.

While the number of violent felony arrests of juveniles gradually declined between 1997 and 2009, the number of misdemeanor arrests remains relatively consistent since 1987. More recently, the California Department of Justice cites that there were 96,937 juvenile arrests in 2013 with 32% of these cases being felonies, 56% being misdemeanors, and the remaining 12% being offenses illegal only for minors. Thus, as fewer children are left in the care of their nuclear families and placed as wards of the state, whether through foster care or incarceration, statistics of juvenile delinquency shows no conclusive indication of decline. Though a traditional nuclear family may not be an objective that can be reached for every child, it is certainly something that government programs should be careful about interacting with before they infringing upon it.

**What It All Means**

If nothing else, it should be apparent that the issues of juvenile justice and child abuse prevention are complicated and plagues the state of California even more than the nation at large. In an attempt to help at-risk children from detrimental homes, the social services system has infringed upon not only the sovereign rights of the child’s parents, but also the citizen rights of

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i See Appendix – Crime Rates (CA only) randstatestats.org
the individual minors. This unintended consequence has dramatically increased the likelihood of minors falling into future criminal deviance and being placed under probation or even incarceration within the California Division of Juvenile Justice.\textsuperscript{ii} It should, therefore, be apparent that under most circumstances, children should be left under the uninterrupted care of their own parents within their nuclear families.

In fact, even California administrative officials recognize the importance of this concept. Several state agencies have declared their ideological support for the importance of allowing for parental autonomy. However common this rhetoric may appear to the general public, though, it is often simply that – rhetoric. In reality, the various agencies – CPS in particular – have violated their roles and trampled the rights of parents and minors in the name of protecting children from practices that they deem as unsafe parenting, despite clear mandates against these intrusions on the family. As a result, countless children are pulled from their homes and relegated to such bleak alternatives as the infamously broken foster care system, leading them into deviance and eventually even incarceration, in many cases.

\textbf{THE CORE OF THE PROBLEM}

Stepping back briefly, it is critical to identify what the core issue is in this cycle of juvenile dependency. For one, the state of California has agencies dedicated directly to fighting against parental abuse and neglect situations and finding alternatives for children that are trapped in these family dynamics. Additionally, there are institutions designed to address issues of criminal behavior on the part of juvenile offenders. It has been shown that a strong family is important to preventing the downward cycle of minors into deviancy. But this goal cannot always be achieved. There are often instances where children are harmed by their own parents

\textsuperscript{ii} Formerly known as the California Youth Authority.
and guardians. The core problem of juvenile injustice in California, however, is not the number of Child Abuse and Neglect (CAN) cases or the number of juvenile offenders. It is a fundamental lack of regard for the natural rights of minors, as enshrined in in the U.S. Constitution. Once any government program, whether national or state, prioritizes any other objective in juvenile justice higher than the individual rights of juveniles, it is not only unjust, it is utterly illegal.

**Constitutional Law Considerations**

The 14th Amendment to the Constitution provides the framework for U.S. citizenship. It says, “All persons born or naturalized into the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside.” There are no special qualifications beyond this. Thus, children who are born in the United States or are naturalized with their parents are citizens of the United States of America. Additionally, if the justice system abides by Black’s legal definition of justice, children must have equal protection of the laws, thereby rendering “every man his due.”

According to the 14th Amendment, all citizens – children included – shall have the “equal protection of the laws” and no state can “abridge” those rights without due process of law.iii The meaning of the amendment and the definition of “due process” are two questions that are critical to the advancement of this discussion. According to Cornell Law School, “while the Fifth Amendment originally only applied to federal courts, the U.S. Supreme Court has interpreted the Fifth Amendment’s provisions as now applying to the States through the Due Process Clause of the Fourteenth Amendment.” viii Unfortunately, in the legal system juvenile rights are not given the same degree of respect as in adult cases. The division extends beyond the general differences between the status of minors and adults and reaches into basic procedural due process.

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iii 14th Amend. U.S. Constitution
In 1967, the U.S. Supreme Court ruled on *In re Gault*, which challenged the conventional handling of juvenile justice in the courtroom. In this case, “Gault was a 15 year-old accused of making an obscene telephone call to a neighbor, Mrs. Cook, on June 8, 1964.” The case, heard in the Superior Court of Arizona, was successfully appealed to the U.S. Supreme Court.

The high court ruled that juveniles were entitled to most of the same guarantees of due process of adults. The court ruled that juveniles must be made aware of their rights and what charges have been filed against them. In addition, they found that juveniles had the right to legal counsel and protection from self-incrimination. They also had the right to be confronted by their accuser. However, the court held that minors in juvenile court proceedings do not have the right to a speedy trial, or even a public one. The rationale for this policy was – in part – that the state had an interest in protecting the rights of the children from unnecessary public exposure. It also concerned some official definitions of criminality and the justice system.

**Infancy Doctrine & Juvenile Rights**

In keeping with common law precedent, legal issues relating to minors – whether juvenile crime or abuse and neglect – are treated differently than for adults. While noted common law specialist, William Blackstone drew a line between “infants” and “adults” somewhere between age seven and fourteen, more recent common law precedents and statutes have defined the “age of majority” at 21 years of age. In the State of California, the legal age of adulthood is 18, with a few instances where more risky behavior and actions are still illegal until age 21. The rational for this separation is the view that children and youth under the legal age of majority are considered incompetent to fully grasp their own actions and decisions, and therefore must have additional protection and shelter under the laws of the state.
Constitutional Caveat

It is worth noting that a common argument raised in support of a distinction between juvenile court and adult court is that juvenile delinquency is not necessarily the same thing as a crime. The Constitution’s protection of a public jury trial, for example, does not apply in this case, since it is explicitly required for criminal cases – or so the argument goes.

This observation is worth noting, but it does not detract from the reality that juvenile court proceedings do, generally, have the same core characteristics as any criminal trial. As Justice Black wrote in a dissent to a ruling by the Court on the subject of juvenile rights to jury trial,

Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights, made applicable to the States by the Fourteenth Amendment. 11

So the argument that juvenile delinquency trials do not constitute criminal trials is an outrageous stretch of semantics. Additionally, the 9th amendment acknowledgement that the Bill of Rights is not exhaustive provides additional insight, since there is no recognition of juvenile court proceedings in the express words of the Constitution.

In summary, while alleged juvenile offenders are citizens of the United States and California, per the definition of citizen in the 14th Amendment of the Constitution, they are not subject to the same legal rights as those merely a few years older. While this principle is a carryover of common law precedent which draws the distinction of adulthood at age 14, current law increases the age of infancy to potentially 21 years of age. This means that children who
would have been viewed as adults for six to seven years in Blackstone’s day still have their constitutional rights infringed by the very laws that claim to honor his precedent.

This misapplication of law runs directly afoul of the basic legal framework of western jurisprudence, as the Constitution explicitly recognizes “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” The current system of juvenile justice operates upon principles more egregious to individual liberty than the infamous *Plessy v. Ferguson*, “separate but equal” doctrine, which at the very least afforded black minorities “equal” protection of laws, if only in name. Today, many 17-year-old citizens are not even afforded this right in name.

**Juvenile Rights Violations in CA Social Services**

Tragically, these fundamental violations of juvenile rights are not confined to the court system – but are also reinforced by Social Services. However, this variation of injustice is less visibly pronounced and requires more careful investigation.

As discussed earlier, the Child Protective Services (CPS) divisions under CDSS are designed to protect minors from neglect and abuse by parents and guardians. CPS has the ability to accept anonymous tips from individuals regarding potential domestic abuse scenarios. This is important because it provides CPS with the ability to intervene on behalf of victim children in harmful families before parents can do further harm to the minor, and without having to sort through a complex bureaucratic procedure.

One downside of CPS is that it is only effective at intervening and separating children from parents when needed, but it can do little or nothing to restore that relationship. Instead, the only viable replacement for the child’s birth family in many situations is foster care, which has a broad range of problems for children and government. While government action may be able to
provide temporary health and welfare for the child, it cannot meet the psychological and spiritual needs of the children in the way that a family would. In accordance with Section 300 of the Welfare and Institutions Code, social workers can remove a child from the custody of their parent or guardian if,

The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian…12

Additionally, the child can be taken under State custody if the child “has been left without any provisions for support.”13 These provisions are designed to place the child in protective custody when there are exigent circumstances. Section 300(a) even clarifies that “severe physical harm” must be extreme and lasting and cannot be something as straightforward as “reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.”14

Thus, the provisions of this section of California law clearly indicate that CPS involvement should only be in extreme cases where there is a serious threat to the health or welfare of the child.

Case Studies of CPS Misconduct

Unfortunately, in many cases the power to take custody of a child is abused and used for far less serious cases. For example, in April 2013, Anna and Alex Nikolayev had their five month old son, Sammy, taken from them “after [they] removed him from the Sutter Memorial Hospital intensive care unit without a proper discharge and before taking him to Kaiser Permanente for a second opinion.”15 The parents were told that this constituted severe neglect, and their son was taken from them as a result.
No matter the importance of stopping parental misconduct, removing a child from a parent’s custody over a disagreement on healthcare treatment can hardly be defended as justifiable on the grounds of “severe neglect”, which is when a child’s health is directly endangered by the situation at hand. LAO presents an example of severe neglect being malnutrition,\textsuperscript{16} which is hardly comparable to taking a child to see a second opinion on treatment. Thankfully, this issue made statewide headlines and prompted a public outcry against such outrageous overreach on the part of state agencies.

Another statewide controversy concerning CPS was the abuse-murder of Gabriel Fernandez and the mishandling of the case by an individual social worker. The LA Times noted that the Child and Family Services [the local name for CPS] had an open file remaining for two months without any investigation, despite numerous reports of abuse over the years.\textsuperscript{17} After the discovery of the mishandling of the case, a social worker was fired and a bipartisan audit of CPS in several counties was conducted to help combat corruption.

This report found that in many cases social workers acted off of false information – as seen in the previously discussed cases. Additionally, the report found that, despite regulations requiring careful standards for safety and risk assessment, these requirements were usually bypassed, resulting in poorly conducted investigations.\textsuperscript{18} While this audit raises some awareness of inconsistencies, there is still considerable progress to be made in social services agencies to ensure that cases are handled appropriately and equally. Additionally, once abuse and neglect cases reach the court system, the issue of juvenile rights once again takes center stage.

\textbf{Juvenile Rights & Victim Representation}

California law requires that, under Title Five, Rule 5.552 of California’s Rules of Court, juvenile case files are not open to public record, short of submitting a petition and receiving
approval from the case’s preceding judge. There are a variety of reasons why this is the case, but primarily it prevents unnecessary scrutiny into the private lives of minors, as might be allowable in most adult cases. This, however, creates an environment of secrecy surrounding any cases that involve juveniles. Once again, well intentioned policies have created an unjust climate, where minors – in the interest of preserving privacy – have the right to public trial stripped away simply on the basis of their legal age and perceived cognitive abilities without any ability to make the file public record.

At this point, the fundamental flaws of California government agencies and the court system should be apparent. Even in CAN cases, the individual rights of the juvenile are trampled in the interest of “protecting” them from abuse. Unfortunately, recognizing the problems that exist is only one step in policy analysis. It must also be proven that there are viable and preferable policy alternatives.

**BIBLICAL PERSPECTIVE**

Given this understanding, the complexity of the issue and the laws that both protect and punish minors, it is important to consider some key biblical concept that can help a Christian make sense of appropriate juvenile justice. At the very core of this discussion is the concept of justice – something that stands out in both the Old and the New Testaments. Second, is the concept of parenting and respect for a father and mother’s wisdom and authority – something that is explored extensively in Proverbs, but also throughout the rest of Scripture. Most of all, it is important to remember the biblical model of how a family should look in the best possible situation. None of this discussion is meant to disregard the brokenness of individuals, or to imply that children or parents are always responsible for their situation, but it should provide some idea of what a best-practice scenario would look like, holistically.
**Biblical Justice**

As stated prior, the biblical model of justice is not simply procedural or punitive in nature. Ultimately, the Christian faith is far more interested in finding *shalom*, which is pure, righteous peace. The Bible speaks explicitly about the importance of justice, and Christians must understand and appreciate this fact. Micah 6:8 says, “He has told you, O man, what is good; and what does the Lord require of you but to do justice, and to love kindness, and to walk humbly with your God?” In essence, God’s children are required to do justice and offer mercy in a spirit of humility.

This concept is not confined to the Old Testament, though. James 1:27 says, “religion that is pure and undefiled before God, the Father, is this: to visit orphans and widows in their affliction, and to keep oneself unstained from the world.” This concept is something difficult for us to remember, as we recognize that it is Christ who saves us, not our own works. Yet James is very clear that works are vital as well, not because they save us, but because they reflect whether we are really submitted to God. He writes:

> But someone will say, ‘You have faith and I have works’ Show me your faith apart from your works, and I will show you my faith by my works…For as the body apart from the spirit is dead, so also faith apart from works is dead.iv

This does not mean that our entire purpose in the world is confined toward justice and mercy – in fact, our greater purpose is to pursue a relationship with God through the power of the Holy Spirit and by the blood of Jesus – but if our hearts and minds are truly submitted to God, our actions should reflect a pursuit of justice.

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iv James 2:18, 26
Wisdom of Parents

The Bible is also very clear about the importance of family, and good parenting, and how children should value the wisdom of their parents. Proverbs 6:20-23 is one example of the value of good parenting, and provides a good basis for the importance that comes from learning wisdom from one’s parents:

My son, keep your father’s commandment, and forsake not your mother’s teaching. Bind them on your heart always; tie them around your neck. When you walk, they will lead you; when you lie down, they will watch over you; and when you awake, they will talk with you. For the commandment is a lamp and the teaching a light, and the reproofs of discipline are a way of life…

The essence of this passage is important to this discussion because it demonstrates that good parenting is indispensable to the development of a child. When a government program or process might be able to meet the needs of a society for safety, rule of law, and criminal justice, it cannot instill wisdom with the same value as the words of a father or mother.

Biblical Family Model

Most of all, the structure of a biblical family provides us with a good understanding of what Christians should pursue. There are two key chapters in the book of Ephesians, where Paul provides a discussion of the importance of family and describes the biblical relationship between spouses and between parents and children. Ephesians 5:22-23 says, “Wives submit to your own husbands, as to the Lord. For the husband is the head of the wife even as Christ is the head of the church.” In addition, husbands must “love your wives, as Christ loved the church and gave himself up for her.”\(^v\) Finally, Ephesians 6:1-4 says that children must obey their parents and

\(^v\) Ephesians 5:25
honor them and that fathers should not provoke the child, but raise them in the teachings of the Lord. While this model does not describe every aspect of the Christian family, it certainly presents an image of Christ’s relationship with the church. If Christ, as God-incarnate, pursued a “family” relationship with his church, according to such a model, then seeing the traditional nuclear family as a representation of the “ideal” family is a fair representation of the biblical ideal for spousal and parent-child relationships.

This does not mean that public policy should force a biblical model. Not only would such policies be unconstitutional, they would also be harmful to the actual model itself and could create more problems for children than exist currently. However, Christians should understand the importance of the biblical model and seek to replicate it as carefully as possible in their own lives, teaching these values to their children to ensure that the voluntary best practice model is not forgotten as one pursues government policy.

BEST PRACTICES

Moving forward, it is important to consider how the juvenile justice system of California can protect the rights of children appropriately, while holding delinquents accountable for their actions and protecting victims from abuse and neglect. Government programs cannot solve every problem. Also, not every truant or deviant child will be able to be molded toward positive development before they slip and commit a crime. Immanuel Kant, an 18th century philosopher, presented an ethical model to help find what duty an individual has toward other persons and systems. His categorical imperative provides a good approach to how one can examine ideal policymaking, and says, “Act only according to that maxim by which you can at the same time will that it should become a universal law.”19 As esoteric as this phrase sounds, it really is
merely academic vernacular for the golden rule – individuals have a duty to treat others as they
would like to be treated.

Legal Prerequisites

At the core of this argument is the importance of preserving the constitutional rights of all
those who are citizens of the United States under the 14th Amendment. Blackstone’s
commentaries provide powerful insight into the importance of age in determining the guilt or
innocence of a minor in cases where they are accused of a serious crime. While the basic
principles behind infancy doctrine have empirical support for determining their capability of
committing crimes, this should not have any impact on determining whether or not certain
constitutional rights are honored for minors. Protecting juvenile privacy is a laudable objective.
Regardless of intentions, though, case law precedent in regards to juvenile privacy rights cannot
override the requirements of due process under the U.S. Constitution, which are expressly stated.
Therefore, the best approach to restoring juvenile rights begins with an unwavering adherence to
the expressed rights of citizens, in accordance with the Constitution.

Policy Objectives

Government policy should continue to protect the health and safety of minors, but should
never violate the constitutional rights of these children, even if it is meant for their own good.
The importance of parental involvement is not only a matter of legality; it is also a matter of
health for children. When children are able to develop within their own families with parents and
siblings around them, it contributes to their own psychological and spiritual development. They
develop a sense of purpose and identity that cannot be matched in most foster homes. Studies
even indicate that children that are institutionalized see reductions in brain activity, stunting their
cognitive development.20 This means that parental authority should be respected unless there is
clear psychological or physical harm to the child. In the presence of abuse, the primary objective should be to find children a safe place within their family, separate from the individual offender. This could include placement with a legal adult sibling, a grandparent, or even an aunt or uncle. Only in situations where there is no viable family member that could meet the needs of the child, should the child even be considered for foster care or other institutionalized care.

Respecting the citizenship rights of minors is important also to protect alleged juvenile offenders from unjust legal punishments. If adults value the constitutional protection of their rights – including a respect for due process – then according to Kant’s categorical imperative, this should be the case for competent minors as well.

**Accountability**

Another factor that is important to consider, for a best-practice scenario, is the state of the workers themselves and whether or not there is appropriate accountability. The system should not breed further corruption or misconduct, as is common in the foster care system. Instead, policies must be designed to benefit society as a whole specifically in the lives of minors. From a best practice perspective, the recent CPS audit provides valuable insight on the importance of ensuring that state workers abide by statutory law as well as organizational metrics of performance. This ensures that there are no more repeat incidents, which could result in further overreach or misconduct on the part of the social workers. If workers fail to conduct their investigations with more care and respect for the rights of parents and children, they must face serious consequences for such misconduct.

If, in time, the CPS system does not show a marked decrease in cases of misconduct and personal ideological bias influencing individual case investigations, then the programs themselves should simply be eliminated. Wherever possible, the nuclear family should not be
touched by the state, and the legal code regarding state intervention should be followed carefully. Social workers should also be held accountable for any instance where a child is taken from his or her home by force. Finally, the due process rights of competent minors should be respected, even in cases where they are deemed victims, because to do otherwise would be unethical, given Kant’s categorical imperative.

Restoring juvenile rights in California is not merely a pipedream, it is necessary to restoring the foundation of justice upon which all of common law jurisprudence was built. California is an influential figure in matters of legislation and policy. The old adage, “as California goes” is remarkably true, and California legislators and policymakers still have the opportunity to take advantage of this unique position to set new precedents for the future of juvenile rights and help minors find equal protection under the law.

**RECENT COURT PRECEDENT**

**The Weakening of Parens Patriae**

While the State of California does not recognize the right of juveniles to a public jury trial, there are a few states in the nation that do allow this option in specific circumstances. Kansas, for example, has this option for juveniles under severe sentence. In the case, *In re L.M.*, the Supreme Court of Kansas ruled that,

Changes to the Kansas Juvenile Justice Code since 1984 have eroded the benevolent, child-cognizant, rehabilitative, and *parens patriae* character that distinguished it from the adult criminal system. Because the Kansas Juvenile Justice Code has become more akin to an adult criminal prosecution, it is held that juveniles henceforth have a constitutional right to a jury trial under the Sixth and Fourteenth Amendments. 21
This case sets a strong precedent for the future of juvenile justice in the United States. In the court ruling, the chief issue that came into question was the issue of whether or not juvenile cases were subject to the same legal protections as adult criminal cases. Given past precedent on the basis of the doctrine of *parens patriae*, which allows the state to act as parent, it was argued that juvenile delinquency trials were not subject to 5th and 6th amendment protections because they were not truly “criminal” cases.

There are many benefits posed by the doctrine of *parens patriae*, as it addresses the key issue of accountability and competency with regard to the individual. This also allows for the state to have a legitimate interest in the health and welfare of disabled persons and/or minors, and can help prevent and protect against instances of abuse, neglect, or other mistreatment. The doctrine of *parens patriae* “originated in the English chancery courts to protect the crown’s interest in feudal succession and established royal authority to administer the estates of orphaned minors with property” 22, but was later incorporated into the juvenile court system. This came following the successful establishment of various houses of juvenile justice, across the United States, which sought to rehabilitate children and adolescents into society, rather than incarcerated them at such a young age.

However, to advance that the interpretation that *parens patriae* ought to trump the expressed words of the United States Constitution is an egregious abuse of judicial authority. This was noted by several justices in their opinion on another case relating to juvenile court – McKeiver v. Pennsylvania, pointing to the explicit wording of the texts. Additionally, Justice Black, in the dissent, pointed out that for identical circumstances an adult would have jury trial protection. He writes that: “It would be a plain denial of equal protection of the laws – an invidious discrimination to hold that others subject to heavier punishments could, because they
are children, be denied these same constitutional safeguards.” Unfortunately, in the McKeiver case, the dissent was unable to sway the other justices.

However, the Kansas ruling took a bold step away from past precedent that upheld this discrimination and recognized the importance of providing equal protection of law for juveniles and adults, finally recognizing the rights of minors to public jury trials. While federal courts have yet to recognize the need for such a ruling, the continuing development of juvenile justice necessitates further state recognition of the due process rights of juveniles. Such a ruling in California could be a huge step toward repairing this blatant oversight in historical jurisprudence and help to restore the justice that juveniles deserve under both Constitutional and California statutory law.

**POLICY RECOMMENDATIONS**

In light of this discussion, there are a few key policy recommendations that could help to restore juvenile rights under California law, while preserving the general purpose behind juvenile law and justice. To clarify, these recommendations are not intended to be seen as a complete solution to the problems within juvenile justice; instead they are designed to preserve the basic values that are at the heart of American government and the English common law system, as well as preserve legal protection for the rights of minors.

**Proposal 1: CPS Audits: Increase Accountability to State Workers**

Due to the severe abuse of power and money among state programs – most notably among social workers and foster care parents – the State of California should take special care to raise accountability for state workers. This should be achieved through careful audits of CPS, the foster care system, and the rest of the CDSS, to assess where excessive funds are benefiting the administrative agencies and state workers at the expense of children and families. In the wake of
such an investigation, the results should be used to help determine which agency functions are
unnecessary and eliminate them to ensure that funds can be allocated toward their most efficient
use.

The recent audit of several child services divisions was a noteworthy step in the right
direction, but this should not be only a single report conducted as a result of two special
incidents. Instead, there should be regular audits of CPS on rotation throughout the several
counties of the state of California. Regular audits, although cumbersome, would be a huge step
toward ensuring that child services holds to their statutory and constitutional bounds.
Additionally, these reports could help to ensure that social workers are made aware of the
necessary state mandates for conducting investigations and potentially prevent not only blatant
overreach, but also poor insight into true abuse.

While auditing every county yearly would be difficult if not impossible, yearly reports on
several individual counties would be achievable. The ultimate objective of this policy
recommendation is to ensure that state workers recognize their roles as serious intervention for
children in need and hold them responsible for their actions.

Proposal 2: Ensure Statutory Law Does Not Violate Constitution

This proposal is critical in light of what this study of the juvenile court system has
discovered. While there is common law precedent for treating juveniles in a slightly different
manner than adults, this should not be so great that it violates the constitutional rights of
competent minors as citizens of the United States.

This means that the fifth and sixth amendment protections of citizens with regard to
criminal court proceedings should be respected. While statutory laws regarding the treatment of
minors are important, the Supremacy Clause of the Constitution ensures that any statute that
violates the U.S. Constitution is void. Thus, there needs to be a reexamination of current statutory law at both the federal and state level, with regard to the treatment of minors, particularly in the case of juvenile offenders. It is vital that the California juvenile court system recognize that delinquency trials, while not a part of the adult court system, still are used as a method of determining the guilt or innocence of an individual, and are therefore still criminal in nature. As criminal cases, then, they are subject to the provisions of the 6th amendment, incorporated through the 14th. This recognition will protect children from inequitably treatment under the laws and potential exploitation by foster parents and state workers, whose individual objectives or values may conflict with the legal framework of justice.

Proposal 3: Open Record for CAN Cases

Recognizing the importance of confidentiality in cases where the juvenile is the alleged offender, this proposal would create the option for parents and/or the minor themselves, to choose to have the case file opened to public record. This would only be allowed in hearings on Child Abuse and Neglect (CAN) cases, and only if they deemed their habeas corpus rights – rights under procedural due process – have been violated.

The unique advantage of this policy is that it does not mandate that all minor abuse cases are made public, but would merely allow for the option to make the file public if a party in the case deemed that their legal rights were not being adequately respected. In essence, the judge’s ruling would still stand – but the public would have the opportunity to see the specifics of the case, and it would allow for public opinion to influence future policy accordingly. This policy would close the loophole which allows for complete autonomy on the part of juvenile court judges, and instead ensure that the conduct of judges and attorneys remains consistent with statutory and constitutional law.
This policy is undoubtedly the most controversial and difficult to achieve, but the importance is clear when it is understood that it does not mandate that all abuse and neglect cases are public record – instead, it must be specifically requested by the child or the child’s parents, after a written and oral statement that they perceive their legal rights have been disrespected through the juvenile justice system. Unsealing the veil of juvenile court proceedings would force judges and state workers to be more self-monitoring of their actions and behaviors toward parents and children since they could now fall under public scrutiny.

Proposal 4: CA Joint Resolution on Family Role

Finally, this proposal would demand a joint resolution from the Senate and Assembly of California, condemning unsubstantiated interference in the parenting of a child in the State of California, affirming the importance of the traditional family structure for preventing delinquency and encouraging nongovernmental solutions to problems of juvenile justice. This would not need to be based upon any biblical argument but purely in light of empirical evidence in support of the stability of the nuclear family. Such a resolution would not carry any financial obligations, nor would it codify any new statute that would need to be enforced. Instead, it would simply act as a commendation of the importance of good mothers, fathers, and siblings to the development and success of young people. While this policy would not create any new framework for statutory law, it would allow for greater awareness of the problems present in California’s juvenile justice system and social services departments. It could also been seen as a basis for a shift of focus back to the original purpose of state involvement in juvenile justice – to preserve the rights and freedoms of minors, under the laws of the United States and the State of California.
In essence, these four recommendations would not create any new bureaucratic systems or statutes. Instead, they would merely raise public awareness and ensure that the bureaucrats currently responsible are held accountable for their actions while in public service. These four acts alone will not be able to address all of the concerns within California’s social services and juvenile justice systems. However, they are vital to the restoration of the rights of juveniles within the juvenile court system of California, and allow for equal protection of the laws for the state and nation’s most valuable asset – our future generations of American citizens.

CONCLUSION

In conclusion, the issues within California juvenile justice are massive and extend beyond anything that a single policy proposal could hope to address. If there could be a single problem present throughout the entire system, it would be the shift in focus away from legal protection of children’s rights to the legal protection of their health and welfare. In the past, the latter was implied, but not the core legal issue at stake.

As seen in this study, the systematic shift toward the establishment of a juvenile justice system that meets the physical needs of minors and juvenile offenders was well intentioned but responsible for gross violations of juvenile rights, resulting in a system that ignores the legal rights of juveniles, as citizens, to have speedy jury trials. In California, the Department of Social Services (designed to protect children from abuse and neglect by their parents and guardians) is often guilty of needlessly separating children from their families. In light of research that acknowledges the importance of a stable family to deter juvenile delinquency, these weaknesses in the juvenile justice system are unacceptable and must be addressed.

These four policy recommendations will begin the process of restoring what was lost. By increasing accountability for state workers, the social services system will not prioritize their
own objectives at the expense of children. A renewed focus on constitutional rights of minors will influence the development of juvenile justice in the near future and prevent statutes that would violate the citizenship rights of competent minors. An open record option for certain minor abuse cases would provide families and children a voice when they feel that have been disadvantaged by government policy. Finally, a joint legislative resolution condemning unnecessary state involvement in family and demanding public support for non-governmental solutions to family reunification will help to strengthen the dichotomy between government policy and the integrity of parental and family rights in the great State of California. Restoring the rights of juveniles is not a nice idea – it is necessary. It is also a foundation upon which Californians can once again lead the nation toward new freedom and opportunity and set the stage for court reform across the nation. It is time that California stop being a contributor to juvenile injustice and instead works to defend the constitutional rights of all of its citizens.
ENDNOTES


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