

Title
Lois R. v. Superior Court - The Rights of Parents in Juvenile Neglect and Dependency Proceedings

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Author
Aubry, Ernest

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Although no one would deny the right of children to receive care or treatment necessary to their health (even, if proper, under the auspices of the juvenile court), there has been an undue emphasis in all juvenile court jurisdictions throughout the country upon what the states consider the welfare of the child.1 The emphasis is "undue" for at least three reasons: (1) it assumes (or has created) a false dichotomy between the interests of the child and those of the parent; (2) it has been used to the exclusion, even of acknowledgment of parental rights vis-a-vis their children and, additionally, has resulted in infringements upon other substantive rights of the parent;2 and (3) "welfare of the child" has led to the application of ambiguous, political and highly discriminatory criteria by which parents are deprived of their children.

The foregoing notwithstanding, assuming we start anew, it is clear that the courts must recognize the existence of certain parental rights concerning care and custody of children.3 In California, if the lead of a recent Court of Appeals decision is followed, not only must such rights be acknowledged, additionally procedures must be established and followed to secure those rights in the judiciary's balancing the interests of child and parent.4

To comprehend the treatment of parents in juvenile court dependency and neglect proceedings, one must recognize that the juvenile courts have been used as an instrument of socialization of the poor and the "misfit" — i.e., to impose the value structure of the dominant culture. The juvenile court process has been, in Professor ten Broek's language, part of the "family law of the poor"5 (as contrasted with the family law of the remainder of the community).

Failure to acknowledge this leaves unexplained the chasm between pronouncements of the Supreme Court with respect to the dominant position of parental rights in our social schemata6 and the actual treatment of parents in the juvenile court process. Supreme Court pronouncements have been, in practice, translated into rights for that segment of society other than the poor.

The importance of parental rights to the indigent enmeshed in juvenile court proceedings is of tremendous proportions, for involvement of the poor is on no casual basis; it is a daily and pervasive occurrence.

In California, for instance, dependency and neglect actions affect thousands of families each year. In 1967, there were 15,067 dependency "arrests,"7 and in fiscal year 1968-1969, California juvenile courts adjudicated 12,940 dependency cases.8

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1. In the guise of the child's "welfare," the most flagrant abuses against the parent have been justified; e.g., denial of court-appointed counsel for the indigent parent; unreasonable intrusions into parents' homes; discriminatory treatment of the poor on the basis of socio-economic biases and ignorance and lack of appreciation of standards of life in poverty communities; holding detention hearings without the presence of the parent; a lessened burden of proof than is applicable in the ordinary civil action, resulting from a shifting of the burden to the parent to establish non-culpability, and from a combination of relaxation of and non-conformance to basic evidentiary rules observed in other proceedings (such as admissibility of hearsay and non-expert opinion evidence, most often in the form of social study reports).

2. See, e.g., Wyman v. James, 400 U.S. 309 (1971), in which the court held that as a condition of receipt of AFDC, a recipient parent, without constitutional infirmity, be made to submit to intrusions into her home in the form of caseworker home visits, a condition, as noted by Justice Douglas in his dissent, that is not deemed appropriate in cases of subsidies to farmers and to industry.


4. In the course of any juvenile court neglect or dependency adjudication, however, as in the Lois R. case discussed infra, there is no justification for so "balancing" the rights of parents against those of their children.


Very seldom do the children of affluent parents become the subjects of dependency hearings. As commentators have recently pointed out, "the educated, economically independent family is the rare exception among the neglect referrals."

There has historically been an inexorable linkage between poverty, dependency upon welfare, and juvenile court proceedings. Professor ten Broek described as follows the dilemma in which a parent receiving welfare payments finds himself or herself because of the tendency on the part of the welfare caseworker during home visits to question the household's manner of life:

Where there is an AFDC home,

"Parental right is diminished by the more or less continuing contact and active interests of social workers and other officials. To some extent, this curtails the exclusiveness of parental control, leaving the parent less free to determine the place of abode and the manner and standard of living. It also leaves the parent less free to lead his or her private life. Because of the presence of the social worker, however occasional questions of fitness are more likely to arise with regard to the management of the household and budget, the suitability of the home for the rearing of the children, issues of morality, extramarital relations, drinking, and the like."10

THE INCIDENCE and effects of juvenile court neglect actions among the poor have been exacerbated among racial minority communities because of the disproportionate numbers of families in those communities who are dependent upon welfare.11

Hence, it is undeniable that the safeguarding of parental rights, together with the corollary right of children to live in the home of their natural parents, is of tremendous importance in the poor and racial minority communities.

Following the dictate of In re Raya12 that parental rights do have a role to play in dependency or neglect adjudications and such rights must be given effect in the procedures adopted during the course of the hearing, the California Court of Appeals in Lois R. v. Superior Court,13 not only recognized the dominant position of parental rights in society, for both rich and poor, but gave effect to that principle by holding that concepts of parens patriae and the "welfare of the child" cannot be used to treat parents as non-parties to the litigation, to not grant them procedural and substantive safeguards or to justify in the juvenile court relaxed rules of procedure.

The specific evil overcome by Lois R. was that of a juvenile court judge assum-
ing the role of prosecutor,14 thereby losing the impartiality required by due process to judge the facts, rule on objections and motions, and in the end, decide whether or not the allegations of the petition should be sustained.

As described in Ruiz v. Delgado,15 quoted by the court in Lois R., fusion of the roles of judge and prosecutor operates as follows:

"Under the procedure in the Puerto Rico District Court the judge must alternate roles in rapid succession, or even assume both at once. Thus, when interrogating a witness he is examining for the people, but when listening to the answer to the question he has propounded, he is weighing it as judge, and at the same time considering what question, as prosecutor, to ask next. Correspondingly, when he listens to the answer to a question put by the defense, he must, as judge, impartially evaluate the answer, but, simultaneously, as prosecutor he must prepare the next question for cross-examination. The mental attitudes of the judge and prosecutor are at considerable variance. To keep these two personalities entirely distinct seems an almost impossible burden for even the most dedicated and fairminded of men."

The general evil aimed at in seeking relief from such conduct in the juvenile court is vindication and protection of the substantial rights of parents enrolled in the proceedings of that court, regardless of relaxation of either substantive or procedural rules, previously sanctioned by statute or court-developed under the justification of parens patriae.

"[Even] if the type of conduct indulged in by [the referee] is authorized by statute, we[17] find that it nevertheless violates a parent's right to due process of law as guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution."18

Not only is Lois R. a vindication of parental rights; it also represents protection for the child. The right of natural parents to the care, custody and control of their children is of fundamental importance in our system. This society has in numerous ways and throughout its history expressed its commitment to the family as its basic organizational unit for socializa-

14. Assuming the role of prosecutor involves "structuring the case" (which means eliciting all evidence for the county welfare department; the petitioner who initiated the juvenile court proceeding examining the petitioner's witnesses, cross-examining witness on behalf of the parent; and otherwise determining the course of the litigation by raising objections sua sponte and ruling thereon).

15. 359 F. 2d 718, 720 (D.C. Puerto Rico).

16. See notes 14 and 15, supra, and accompanying text.

17. Cal. Welf. & Instit. C. § 680 provides that the court is to "control all proceedings during the hearings with a view to the expeditious . . . ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the person upon whose behalf the petition is brought."

18. 19 Cal. App. 3d at p. 899.