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NOTES AND COMMENTS

A CHILD'S EMOTIONAL HEALTH—THE NEED FOR LEGAL PROTECTION

I. INTRODUCTION

“A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies.”¹ With those words, the United States Supreme Court recognized that the future welfare of the nation depends upon the health and vigor of today's children. Through the legal process, children are beginning to break the bond of what Martin Luther King, Jr., called “nobodyness”² and are gradually gaining protection of their natural rights.³ Child abuse⁴ statutes in all states have established minimal standards of care, which, if not met, justify intervention on behalf of the child. Yet the majority of statutory schemes designed to protect the “best interests of the child” are deficient in one critical aspect.⁵ Though great strides have been taken to ensure the child's physical well-being, little has been done to safeguard mental and emotional well-being. The law cannot adequately provide for the welfare of children without recognizing that mental and physical development are inseparably intertwined. To promote one without concern for the other is futile. This comment will expose the need for the law to concern itself with the mental health of children, and will suggest methods by which this may be accomplished.

1. *Prince v. Massachusetts*, 321 U.S. 158, 168 (1943).

2. Greene, *An Overview of Children's Rights: A Moral and Ethical Perspective*, in *CHILDREN'S RIGHTS: CONTEMPORARY PERSPECTIVES* 9 (1979).

3. For a good discussion of the natural rights of children see Coughlin, *United Nations Declaration of the Rights of the Child*, in *THE RIGHTS OF CHILDREN—EMERGENT CONCEPTS IN LAW AND SOCIETY* 7-23 (A. Wilkerson ed. 1973).

4. The term “child abuse” in this comment refers both to intentional child abuse on the part of the parent, and to neglect of the child through a parent's omission or failure to act.

5. For a digest of child neglect laws in all American jurisdictions see Katz, Howe, & McGrath, *Child Neglect Laws in America*, 9 *FAM. L.Q.* 1, 73-362 (1975). For a compilation of these statutes see Jenkins, *The Rights of Children: A Trust Model*, 46 *FORDHAM L. REV.* 669, 720-21 n.48 (1978).

II. HISTORICAL PERSPECTIVES OF CHILD ABUSE

Throughout history children have been subjected to mutilation, severe beatings, slavery, and infanticide. The ancient Roman doctrine of *patria potestas*⁶ endowed the father with absolute power over his offspring. Children were viewed as chattel and were accorded no separate identity from their fathers. They could be bought, sold, or intentionally deformed. The more grotesque their disfigurement, the more profitable they became as beggars.⁷

Beatings and other forms of severe punishment were believed necessary to drive out evil spirits and to maintain proper conduct. Because children were considered the property of their parents, parents were free to treat their offspring in any way the parents desired. Schoolmasters often flogged students upon the slightest infraction of the rules.⁸ Occasionally voices of protest were raised. Plato, as well as Plutarch, abhorred the use of the whip. Centuries later, Sir Thomas More and John Colet argued that learning could be better facilitated through gentleness than through fear. These reformers, however, failed to convince the majority of society's members of the need for change.⁹ Countless children were sacrificed to appease the gods. In India and in Mexico, infants were tossed into rivers to satisfy the gods of water. Likewise, children were sacrificed to assure a good harvest. Some infants were slain and their flesh fed to mothers in the belief that this would produce healthy offspring. It was believed that the child's blood would bring strength and youthfulness.¹⁰

The Middle Ages witnessed the conception of the doctrine of *parens patriae*¹¹ which recognized that parental rights brought corre-

6. *Patria potestas*

denotes the aggregate of those peculiar powers and rights which, by the civil law of Rome, belonged to the head of a family in respect to his wife, children, (natural or adopted,) and any more remote descendants who sprang from him through males only. Anciently, it was of very extensive reach, embracing even the power of life and death, but was gradually curtailed, until finally it amounted to little more than a right . . . to hold as his own any property or acquisitions of one under his power.

BLACK'S LAW DICTIONARY 1014 (5th ed. 1979).

7. For a historical overview of child abuse see Radbill, *A History of Child Abuse and Infanticide*, in THE BATTERED CHILD 3 (1968); Thomas, *Child Abuse and Neglect: Part I Historical Overview, Legal Matrix and Social Perspectives*, 50 N.C.L. REV. 293-449 (1972).

8. Radbill, *supra* note 7, at 3.

9. *Id.* at 4.

10. *Id.* at 8.

11. The doctrine of *parens patriae* evolved from the king's authority to protect those unable to protect themselves. BLACK'S LAW DICTIONARY 1014 (5th ed. 1979). In modern times it authorizes the state to intervene to protect the best interests of the child even though such action is contrary to the wishes of the parent. *Prince v. Massachusetts*, 321 U.S. 158 (1943); *Miller v. Hedrick*, 158 Cal. App. 2d 281, 322 P.2d 231 (1958). *Cf. Sturges & Burn Mfg. Co. v. Beauchamp*, 231

sponding parental duties. If corresponding duties were not met, the state terminated parental authority and assumed responsibility for the welfare of the child.¹² Although children were gradually gaining protection, they were still primarily considered economic assets.¹³

"Attitudes toward the rights of children under law and under the parental thumb have gradually changed throughout the centuries, but the change is more a matter of degree than essence."¹⁴ The old Roman and medieval laws are no longer granted official sanction. But tradition dies slowly and acceptance of the old concepts is evident within our culture. The common law clearly bears the imprint of an order conceived during the age of feudalism.¹⁵

III. MODERN TRENDS IN CHILD PROTECTION

The law has long recognized that parents, rather than the state, are better suited for rearing children.¹⁶ Governmental policy, therefore, has been to secure parental rights, often at the expense of children.¹⁷ Although reform legislation has successfully protected children outside the home,¹⁸ the state has hesitated to defend their interests as members of the family. When intervention has been deemed necessary, justification has been based upon the doctrine of *parens patriae*.¹⁹ In practice,

U.S. 320 (1913) (upholding state prohibition of employment of children in dangerous occupations); *Muller v. Oregon*, 208 U.S. 412 (1907) (upholding state regulation of women's work hours as furthering public interest in healthy offspring).

12. V. FONTANA, *SOMEWHERE A CHILD IS CRYING* 228 (1973).

13. S. KATZ, *WHEN PARENTS FAIL* 4 (1971).

14. FONTANA, *supra* note 12, at 227.

15. H. FOSTER, JR., A "BILL OF RIGHTS" FOR CHILDREN 4 (1974).

16. *Prince v. Massachusetts*, 321 U.S. 158 (1943). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.* at 166. See *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1922).

17. Thomas, *Child Abuse and Neglect: Part I Historical Overview, Legal Matrix and Social Perspectives* 166, 50 N.C.L. REV. 293 (1972).

18. See, e.g., *Prince v. Massachusetts*, 321 U.S. 158 (1943) (child labor regulations designed to protect children deemed binding over parental authority); *Sturges & Burn Mfg. Co. v. Beachamp*, 231 U.S. 320 (1913) (upholding state prohibition of employment of children in dangerous occupations).

19. See *Prince v. Massachusetts*, 321 U.S. 158 (1943). "It cannot be doubted that the State was entitled to prohibit the employment of persons of tender years in dangerous occupations The imposition of absolute requirements of this sort is a familiar exercise of the protective power of government." *Sturges & Burn Mfg. Co. v. Beachamp*, 231 U.S. 320, 325 (1913). *State v. Bailey*, 157 Ind. 324, 61 N.E. 730 (1901).

The natural rights of a parent to the custody and control of his infant child are subordinate to the power of the state The welfare of the child and the best interests of society require that the state shall exert its sovereign authority to secure to the child the opportunity to acquire an education.

Id. at 731-32.

however, the parent holds a virtually free hand in the care and treatment of his child. His authority to do with his children as he sees fit is seldom questioned because failure to perform his duties is rarely observed so long as the child appears reasonably well-fed and clothed.²⁰

The failure to safeguard the interests of children through law was observed by Dean Pound near the turn of the century.²¹ He accredited this lack of protection to two fundamental causes. First, the rights of parents have been firmly established at law, and any attempt to secure the interests of children is likely to chisel away traditional parental authority.²² Second, the family has been the cornerstone upon which our society has been built.²³ The majority of parents are successful in rearing their offspring without impinging seriously upon the child's rights.

The Supreme Court has recognized and staunchly defended the right of an individual to initiate and preserve a coherent, private family unit with strictly limited governmental interference.²⁴ In 1923 the Court ruled that the due process clause of the fourteenth amendment guaranteed an individual's right "to marry, establish a home and bring up children"²⁵ In addition, the Court has ruled that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."²⁶ There exists a "private realm of family life which the state cannot enter."²⁷

It is clear that society greatly values the family as an institution, but equally clear that society has an interest in maintaining the rights of all individuals, particularly those who cannot protect themselves. Those involved in the lawmaking process have gradually begun to place greater emphasis upon the protection of children. Parental claims to custody and authority have been limited to protect those interests, but the state has not gone far enough. Although the role of government in child protection "has been clearly one of slow expansion,"²⁸ it must continue to expand until a child's right to emotional

20. FONTANA, *supra* note 12, at 228.

21. Pound, *Individual Interests in the Domestic Relations*, 14 MICH. L. REV. 177, 181-88 (1916).

22. *Id.*

23. *Id.*

24. *See, e.g.*, *Roe v. Wade*, 410 U.S. 113, 152-53 (1972); *Loving v. Virginia*, 388 U.S. 1 (1966); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1922).

25. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

26. *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1924).

27. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1943).

28. KATZ, *supra* note 13, at 4.

health is established and protected.

IV. NEGLECT STATUTES

The law traditionally has defined neglect solely in physical terms.²⁹ Society generally has required parents to meet the physical needs of their children. Through neglect statutes, the law seeks to guarantee that all children will be provided the physical necessities of life, and to ensure that they are not subjected to physical abuse or mistreatment. All states have passed some manner of neglect legislation.³⁰ It has been recognized that the state has the responsibility to intervene on behalf of the child when parents fail to meet minimal standards.³¹

Although neglect statutes in every state provide for the physical care of children,³² the great majority of such statutes make no provision for the emotional care of children.³³ "Gross physical abuse is only one segment of a much wider problem of parental neglect. The unloved child, the emotionally traumatized child, the socially and emotionally deprived child, become a part of our neurotic, disturbed, retarded, or delinquent adults."³⁴ Specialists in the field of mental health have long warned that any statutory definition of neglect must address a child's emotional needs.³⁵ These warnings have seldom been heeded³⁶ despite knowledge that psychological abuse may be detrimental to mental growth and development.³⁷

Typical neglect provisions deal with what has been termed a

29. *E.g.*, OR. REV. STAT. § 418.740 (1977). See Gesmonde, *Emotional Neglect In Connecticut*, 5 CONN. L. REV. 100, 104 (1972); Jenkins, *The Rights of Children: A Trust Model*, 46 FORDHAM L. REV. 669, 715-16 (1978); Satz, Howe, & McGrath, *Child Neglect Laws in America*, 9 FAM. L.Q. 1, 4 (1975). For a statute broadening the definition see ARIZ. REV. STAT. § 8-546.A.2 (1974) which states in part: "Abuse means the infliction of physical or mental injury or the causing of deterioration of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his health, morals or emotional well-being is endangered." *Id.*

30. For a compilation of these statutes see Jenkins, *The Rights of Children: A Trust Model*, 46 FORDHAM L. REV. 669, 720-21 n.48 (1978). For a digest of these laws see Katz, Howe, & McGrath, *Child Neglect Laws in America*, 9 FAM. L.Q. 1, 73-362 (1975).

31. Jenkins, *The Rights of Children: A Trust Model*, 46 FORDHAM L. REV. 720-21 (1978).

32. Paulsen, *The Law and Abused Children*, in *THE BATTERED CHILD* 176 (1968).

33. KATZ, *supra* note 13, at 61.

34. Bain, *The Physically Abused Child*, 31 PEDIATRICS 895, 897 (1963), quoted in Note, *The Legal Response to Child Abuse*, 11 WM. & MARY L. REV. 960, 960 (1970). See also J. BOWLBY, *CHILD CARE AND THE GROWTH OF LOVE* 90 (2d ed. 1965).

35. Gesmonde, *Emotional Neglect In Connecticut*, 5 CONN. L. REV. 100, 104 (1972).

36. This is best demonstrated by the failure of most neglect statutes to address the issue of mental and emotional care. See notes 32-34 *supra* and accompanying text.

37. See notes 53-57 *infra* and accompanying text.

“first” or “apparent” level.³⁸ They are concerned with those acts, or failures to act, which are open and obvious, and which appear to have a clear causal link between harm or possible harm to the child. They make no provision for the emotional upset which may be induced by various acts or failures to act.³⁹ Minnesota is one of the few states which addresses the issue of emotional health in its neglect statute. A neglected child is therein defined as one “[w]ho is without necessary subsistence, education or other care necessary for his physical or mental health or morals because his parent, guardian or other custodian neglects or refuses to provide it”⁴⁰ New York also considers the problem of emotional deprivation by defining a neglected child as one “whose physical, mental or emotional condition has been impaired . . . as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care”⁴¹ In providing for a child’s emotional well-being, these statutes recognize that physical and mental development are interrelated. By addressing a child’s psychological requirements, they command that the child’s total needs be considered.

A number of reasons exist for the general reluctance of most legislatures to expand neglect statutes to include emotional neglect. First, there is a strong presumption that children receive love and emotional support from their parents.⁴² This presumption is the foundation of wrongful death statutes which allow a child to recover monetary damages for the loss of parental guidance and comfort.⁴³ Indeed, society

38. KATZ, *supra* note 13, at 61. See notes 32-34 *supra* and accompanying text.

39. KATZ, *supra* note 13, at 61.

40. MINN. STAT. ANN. § 260.015 (10)(c) (West 1971).

41. N.Y. FAM. CT. ACT 29A § 1012 (f) (i) (McKinney 1975). *Accord*, ARIZ. REV. STAT. § 8-546.A.2 (1974) (which also defines abuse to include the infliction of mental injury).

42. *E.g.*, *In re Palmer*, 81 Wash. 2d 604, 503 P.2d 464 (1972) (en banc). “The nature of parenthood is such that in most instances the parents of the child will be most likely to best provide for its welfare. The maintenance of natural family relations is favored, and parental affection is an element of priceless advantage to the child.” *Id.* at 607, 503 P.2d at 466. *Accord*, *In re Hudson*, 13 Wash. 2d 673, 126 P.2d 765 (1942). In *Johnson v. Southern Pacific R.R.*, 154 Cal. 285, 97 P. 520 (1908), the presumption that children receive emotional support from their parents was shown by the court’s allowing the children to recover for the value of their mother’s “nurture and instruction, moral and physical, and intellectual training.” *Id.* at ___, 97 P. at 526. In order to allow recovery for the loss of these benefits, the court must have presumed they initially existed. “The legal presumption is that it is for the best interests of the child and of society for the child to remain with its natural parents during the period of its minority and be maintained, cared for, and educated by them and under their supervision and direction.” *Hummel v. Parrish*, 43 Utah 382, ___, 134 P. 898, 901 (1913). See generally Foster & Freed, *A Bill of Rights for Children*, in THE YOUNGEST MINORITY, LAWYERS IN DEFENSE OF CHILDREN 323 (1974).

43. See, *e.g.*, *Williams v. McDowell*, 32 Cal. App. 2d 49, 89 P.2d 155 (1939) (interpreting the California statute).

places the responsibility on parents to comfort their children and assist them in learning to interact with other people. But the real and the ideal are often worlds apart. Because child abuse is now known to be widespread,⁴⁴ the presumption that children are always loved should be reassessed. A second reason that neglect statutes have not been broadened to include emotional neglect is that emotional deprivation is not easily observed by the untrained eye. No visible spectacle exists with which to shock the public conscience, thereby inducing legislative action. Society as a whole is reluctant to consider a child abused or neglected when he appears reasonably well groomed and nourished.⁴⁵ A third reason lies in the widespread failure of laymen to comprehend the impact that psychological factors play in human development.⁴⁶ Outside medical circles, the dangers of emotional deprivation are not commonly known. Consequently, neglect is generally defined solely in physical terms. It is associated with "bad housing, poverty and overcrowding,"⁴⁷ but seldom with emotional conflict and the effects such conflict may have on development.

Legislating for children is more difficult than legislating to protect the rights of adults, because in protecting the rights of children, lawmakers invariably cross into territory previously reserved to parents.⁴⁸ Any shift toward increased child protection is certain to be misinterpreted by some voters as an attack on the traditional family unit. The pressure to maintain status quo may impede much-needed reform.

To define neglect in physical terms is relatively simple. Criteria are readily available by which to judge when disease or lack of food or shelter place a child's health or existence in imminent danger.⁴⁹ Any statutory definition of psychological neglect, however, will be less clear-cut than a definition of physical neglect. Further, the complexities of new findings by mental health experts are not easily understood. These reasons partially explain why neglect has traditionally been defined solely in physical terms.

The primary purpose for every neglect statute is to protect children. In light of this objective, it is in the best interests of children that

44. FONTANA, *supra* note 12, at xi. "[C]hild maltreatment is a major national problem that demands *massive action now*." *Id.* The extent of the problem is shown by the existence of reporting laws in all fifty states. See generally Note, *The Legal Response to Child Abuse*, 11 WM. & MARY L. REV. 960 (1970).

45. See note 20 *supra* and accompanying text.

46. J. BOWLBY, *CHILD CARE AND THE GROWTH OF LOVE* 91 (2d ed. 1965).

47. *Id.*

48. FONTANA, *supra* note 12, at 232. See notes 18-27 *supra* and accompanying text.

49. Satz, Howe, & McGrath, *Child Neglect Laws in America*, 9 FAM. L.Q. 1, 4 (1975).

legislative action be taken to establish "emotional neglect" as a separate legal standard. Such a move would not radically depart from the past governmental policy to safeguard the rights of children and to act when necessary on their behalf.⁵⁰ Rather, it would be a logical extension into an area which has always deserved protection, but heretofore not been fully understood. The need for such a standard is further justified because of the "judicial reluctance to carve out categories of neglect that are not clearly provided for in the statute itself. Specific statutory reference to mental health would provide the needed 'peg' upon which to hang a finding of emotional deprivation."⁵¹ Children deserve the opportunity to develop into healthy adults. If they are being denied this opportunity, intervention is clearly required.

V. EMOTIONAL DEPRIVATION—THE MEDICAL FINDINGS

It has long been public policy for the state to intervene, when necessary, to protect the welfare of children.⁵² Disturbingly, the law too frequently fails to meet this responsibility. Medical science reveals a close relationship between mental and physical well-being. The failure to respond to the psychological needs of children is evidenced by the failure to safeguard them from intentional infliction of emotional distress by their parents.

Childhood experiences play a major role in the evolution of the individual personality.⁵³ Whether a child receives the warmth, affection, and companionship he needs will greatly influence his ability to interact socially and to mature intellectually.⁵⁴ Increasing evidence reveals that an intimate relationship between young children and their mother, or permanent mother-substitute, is essential for healthy emotional development.⁵⁵ This intimate relationship between the mother and child, altered in numerous ways by interactions with the father, is believed to be the foundation upon which emotional stability is built.⁵⁶

50. KATZ, *supra* note 13, at 4.

51. *Id.* at 68.

52. See notes 29-30 *supra* and accompanying text.

53. M. RIBBLE, *THE RIGHTS OF INFANTS* 3 (1943). See notes 61-64 *infra* and accompanying text.

54. J. GOLDSTEIN, A. FREUD & A. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 18 (1973).

55. J. BOWLBY, *MATERNAL CARE AND MENTAL HEALTH* 11 (Schocken ed. 1966).

56. BOWLBY, *supra* note 46, at 13. The failure to achieve such a relationship is known as "maternal deprivation." *Id.* at 14. The term is used broadly to describe various situations. A child living in a family which remains together is deprived if his parents are unwilling or unable to give him the love and care he needs. If the bonds of affection are never established, the child may be emotionally crippled. *Id.*; Ainsworth, *The Effects of Maternal Deprivation: A Review of Find-*

A child who does not receive adequate parental care and attention may suffer social, physical, or mental retardation.⁵⁷ The intellect is particularly susceptible to injury. Impairments in language, the ability to comprehend abstraction, and the capacity to cultivate and maintain close personal ties frequently are seriously affected.⁵⁸ A child's growth rate may be slowed even though he receives excellent physical care.⁵⁹ This was revealed when researchers surveyed institutionalized infants who were completely deprived of parental care. Although material provisions were adequate, they suffered from a lack of physical growth as well as from psychological damage. The incidence of disease among such children was higher than among children raised in more normal environments. Insomnia was widespread and mental retardation common. At later stages, these children experienced difficulty in forming mature relationships with others. These children eventually faced difficulty in forming meaningful relationships with their own children.⁶⁰

Emotionally deprived children are also hindered in the development of their consciences and personalities. In the most severe cases,

[t]here is an inability to love or feel guilty. There is no conscience. Their inability to enter into any relationship makes treatment or even education impossible. They have no idea of time, so that they cannot recall past experience and cannot benefit from past experience or be motivated to future goals. This lack of time concept is a striking feature in the defective

ings and Controversy in the Context of Research Strategy, in DEPRIVATION OF MATERNAL CARE, A REASSESSMENT OF ITS EFFECTS 98-102 (1966). See Prugh & Harlow, "Masked Deprivation" in *Infants and Young Children*, in DEPRIVATION OF MATERNAL CARE, A REASSESSMENT OF ITS EFFECTS 14-16 (1966). Likewise, a child physically removed from his mother may be emotionally devastated. BOWLBY, *supra* note 46, at 14.

The degree of harm caused by deprivation will depend upon the degree of separation.

Partial deprivation brings . . . anxiety, excessive need for love, powerful feelings of revenge, and, arising from these last, guilt and depression. A young child, still immature in mind and body, cannot cope with all these emotions and drives. The ways in which he responds to these disturbances of his inner life may in the end bring about nervous disorders and instability of character.

Id. Complete deprivation of parental love may result in death. RIBBLE, *supra* note 53, at 4-6. In the early part of this century it was discovered that newborn infants kept in the best hospitals often drifted slowly into death, "while infants in the poorest homes, with a good mother, often overcame the handicaps of poverty and unhygienic surroundings . . . [T]he element lacking in the sterilized lives of the babies of the former class . . . was mother love." *Id.*

57. *E.g.*, BOWLBY, *supra* note 46, at 21.

58. Ainsworth, *The Effects of Maternal Deprivation: A Review of Findings and Controversy in the Context of Research Strategy*, in DEPRIVATION OF MATERNAL CARE, A REASSESSMENT OF ITS EFFECTS 107 (1966).

59. See R. PATTON & L. GARDNER, GROWTH FAILURE IN MATERNAL DEPRIVATION 52-80 (1963). Patton and Gardner give several case histories of growth failure and slowed mental development due to maternal deprivation.

60. BOWLBY, *supra* note 55, at 27.

organization of the personality structure⁶¹

In contrast, children who receive sufficient emotional nurturing generally develop normally even though they are raised in lower socio-economic surroundings. Social workers frequently encounter children who are obviously well-loved and who are mentally stable though they suffer from neglect in the sense that they are inadequately fed or clothed.⁶²

Each stage of childhood leaves its mark on the maturing personality. A child must develop a feeling of his own self-worth before he will be able to gain confidence in himself and others. When an infant is raised in an atmosphere which does not promote his self-respect, the result is an adult with little or no concern for his personal appearance or the impression he makes on others.⁶³ His ability to work and cooperate with others is diminished. The damaging effects on both mental and physical development are sometimes irreversible.⁶⁴

The emotional bond between parent and child is important, not only to the individual child, but to the welfare of society as a whole. "[T]here is a specific connection between prolonged deprivation in the early years and the development of an affection-less psychopathic character given to persistent delinquent conduct which is extremely difficult to treat."⁶⁵ A propensity to steal is characteristic.⁶⁶ Because parents generally raise their children in the same manner in which they themselves were raised,⁶⁷ mental ill-health brought on by affection-less methods of child rearing can become a self-perpetuating cycle. This

61. BOWLBY, *supra* note 46, at 40.

62. RIBBLE, *supra* note 53, at 4; BOWLBY, *supra* note 46, at 90.

63. GOLDSTEIN, *supra* note 54, at 20.

64. BOWLBY, *supra* note 46, at 21. *See generally* FORUM 22, WHITE HOUSE CONFERENCE ON CHILDREN, *The Rights of Children: Report of Forum 22*, 353 (1970); PATTON & GARDNER, *supra* note 65, at 83-84, found that children who were subjected to early deprivation remained smaller in height and weight than the majority of their peers. *See also* O. WOODWARD, *THE EARLIEST YEARS* 22 (1966). In discussing these problems one author has written:

When childhood experiences are overwhelmingly stressful, arrest of personality occurs and a pattern of repetitive maladaptive behavior may be set in train, which like an ill fate prevents the individual from ever achieving his full potentialities in adult life. A child for example who was deserted by her mother in childhood may be unable to master this event satisfactorily at the time. It often happens that such a person continues even in adult life to seek for a loving mother and in so doing makes inordinate and inappropriate demands on other people such as her husband, or even her employer. When these other people realize they cannot meet the demands made upon them, they turn away, once more abandoning the crippled individual just as her mother had abandoned her in the past.

S. WOLFF, *CHILDREN UNDER STRESS* 13 (1969).

65. BOWLBY, *supra* note 55, at 34.

66. *Id.* at 33.

67. FONTANA, *supra* note 12, at 110.

cycle of emotional instability and criminal propensity can continue indefinitely. For successful development, it is imperative that a child receive ample love and companionship. The change in medical focus in childcare away from physical necessities alone should signal lawmakers that good health requires more than food, clothing, and shelter.

VI. THE ROLE OF THE COURTS

If the protective hand of the law is to shield children from emotional abuse and neglect, the responsibility must fall upon the courts as well as the legislature. The courts, however, have generally been as unwilling as the legislatures to challenge traditional parental authority. Intervention into family affairs has been held to a minimal level. While such restraint is desirable, the courts have been too restrictive; intervention has been limited solely to instances of physical mistreatment.⁶⁸ Neglect statutes have been construed narrowly⁶⁹ as the judiciary has been reluctant to expand the definition of neglect.

In view of public policy, it is ironic that the courts should interpret neglect statutes so narrowly. First, the idea of the "best interests of the child" has traditionally been the measure to determine when governmental intervention is justified.⁷⁰ Indeed, this standard is to outweigh all other considerations when the court must make a determination as to custody.⁷¹ Emotional nurturing on the part of the parent clearly

68. *E.g.*, *Burnette v. Wahl*, 284 Or. 705, 588 P.2d 1105 (1978).

69. *FOSTER*, *supra* note 15, at 13-14. *E.g.*, *Burnette v. Wahl*, 284 Or. 705, 588 P.2d 1105 (1978). In that case, the court refused to recognize a child's cause of action against his parents for the intentional infliction of emotional distress. In part, the court justified its refusal on the legislature's adoption of an "extensive and all-inclusive" scheme designed to insure the well-being of children. The statute did not provide for parental liability for intentional mental abuse. The court said that as the "establishment of a civil cause of action might interfere with the total legislative scheme," *id.* at ___, 588 P.2d 1110, the court should not recognize such an action. Even though the purpose of all neglect statutes is to protect children from harm, the omission from the statute of any language pertaining to emotional care prompted the court to deny an action for emotional distress.

70. "[T]he welfare of the child is the controlling fact in determining the right to its custody . . ." *Stanton v. Stanton*, 13 Ga. 545, ___, 100 S.E.2d 289, 292 (1957). In determining the custody of the child "the primary and controlling issue is the welfare of the child . . ." *McMillin v. McMillin*, 114 Colo. 247, ___, 158 P.2d 444, 446 (1945). *See, e.g.*, TEX. FAM. CODE ANN. tit. 2, §§ 15.01-.02 (2) (Vernon Supp. 1980).

A parent may file a petition requesting termination of the parent-child relationship with his child. The petition may be granted if the court finds that termination is in the best interest of the child . . . A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the court finds . . . termination is in the best interests of the child.

Id. *Accord* *Barry v. Sparks*, 306 Mass. 80, 27 N.E.2d 728 (1940); *Wear v. Wear*, 130 Kan. 205, 285 P. 606 (1930).

71. Whenever a divorce decree "has reference to the custody of children their welfare is of

plays a major role in determining the health and stability of the child. Because of the unwillingness of the legislative and judicial branches to recognize such a need, however, a child's natural right to love and care does not receive legal sanction. Even though the standard is usually the best interests of the child, his best interests are frequently not considered. This is grossly unjust to those least able to defend themselves.

To urge judicial intervention in cases of emotional abuse is not to urge interference with a parent's right to discipline.⁷² A child need not be shielded from every situation apt to trigger distress. Coping with situations that do not always go his way prepares him to face the common adversities of adulthood. A growing child needs guidance, needs instruction, and at times must be corrected for the sake of his own proper training. Parents should not have to fear possible court proceedings when their children are disturbed as the result of necessary and beneficial discipline, but parental authority should be properly exercised. The law should not allow a child's physical or mental health to be jeopardized under the guise of reprimand. The privilege to punish is limited to correction and moderation.⁷³ "[A] parent may not destroy the child whom he has a right to correct."⁷⁴ Parents do not own chil-

controlling importance and in determining such welfare a number of factors may be considered." Thurman v. Thurman, 73 Idaho 122, 245 P.2d 810, 814 (1952). The court in a custody proceeding does not adjudicate a controversy between the contending parties to compose their private differences, but "acts as *parens patriae* to do what is best for the interest of the child." Finlay v. Finlay, 240 N.Y. 429, ___, 148 N.E. 624, 626 (1925). "It is well settled in this state that the welfare of the child is of paramount importance in determining who is entitled to its custody, and that the welfare of the child is to be regarded more than the technical rights of the parent." Pierce v. Jeffries, 103 W. Va. 410, ___, 137 S.E. 651, 652 (1927).

72. It is universally accepted that parents may punish a child in order to maintain discipline. *E.g.*, Hansen v. Hansen, 48 U.S.L.W. 2472 (Colo. Ct. App. 1979); Gibson v. Gibson, 92 Cal. 288, 479 P.2d 648 (1971). In Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955), an action by a minor son against his father for negligence, the court stated:

Since the law imposes on the parent a duty to rear and discipline his child and confers the right to prescribe a course of reasonable conduct for its development, the parent has a wide discretion in the performance of his parental functions, but that discretion does not include the right wilfully to inflict personal injuries beyond the limits of reasonable parental discipline.

Id. at ___, 289 P.2d at 224. See MODEL PENAL CODE § 3.08, (Tent. Draft No. 8, 1958).

The use of force upon or toward the person of another is justifiable if:

- (1) the actor is the parent . . . and:
 - (a) the force is used for the purpose of safeguarding or promoting the welfare of the minor . . . and
 - (b) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme pain or mental distress or gross degradation; . . .

Id.

73. Paulsen, *The Legal Framework for Child Protection*, 66 COLUM. L. REV. 679, 695 (1966).

74. *In re Carl*, 174 Misc. 985, 987, 22 N.Y.S.2d 782, 784 (Dom. Rel. Ct. 1940), *Accord*, Gibson v. Gibson, 92 Cal. 288, 479 P.2d 648 (1971); Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955).

dren. We have moved beyond the medieval concepts. Today the parent-child relationship is a status and not a property right.⁷⁵

It is distinctly unfair for the courts to refuse to protect children from psychological abuse, and at the same time to protect husbands and wives from such abuse. Divorce may be based upon grounds of cruelty and general marital unkindness, grounds which often amount to little more than psychological warfare.⁷⁶ For example, nagging and insulting language have been held to constitute cruelty justifying divorce.⁷⁷ Other cruelties named in divorce proceedings include the refusal of a spouse to communicate verbally with the other,⁷⁸ refusing sexual relations for an unreasonable period,⁷⁹ insulting a spouse before friends,⁸⁰ and falsely charging improper sexual conduct with others.⁸¹ In effect, the spouse is protected from a relationship in which little kindness or consideration exists. But children receive no such legal protection. This inconsistency hardly squares with egalitarian principles. As Henry Foster has said, "Children are people."⁸² For the courts to recognize the importance of psychological well-being, and at the same time to refuse to view such needs with respect to children, is to deny their humanity. "A good deal of the difficulty in our treatment of minors, legal and otherwise, stems from our refusal to accept them as individuals, with their own needs, interests, and desires."⁸³ When disparity of treatment is unjustified, children have a moral right, and should have a legal right, to the same safeguards as adults.

Based upon suits for alienation of parental affections, three jurisdictions have recognized a child's right to emotional care and granted recovery for its loss.⁸⁴ In these cases, a parent has been enticed to leave

75. *Anguis v. Superior Court*, 6 Ariz. App. 68, 429 P.2d 702 (1967); *Elliott v. Elliott*, 235 N.C. 153, 69 S.E.2d 224 (1952); *Commonwealth ex rel. Teitelbaum v. Teitelbaum*, 160 Pa. Super. 286, 50 A.2d 713 (1947).

76. See H. CLARK, *LAW OF DOMESTIC RELATIONS* 346-49 (1968).

77. *E.g.*, *Detjen v. Detjen*, 40 Wash. 2d 479, 244 P.2d 238 (1952).

78. *E.g.*, *Hiecke v. Hiecke*, 163 Wis. 171, 157 N.W. 747 (1916).

79. *E.g.*, *Reeves v. Reeves*, 335 Mich. 193, 55 N.W.2d 793 (1952); *Diemer v. Diemer*, 8 N.Y.2d 206, 203 N.Y.S.2d 829, 168 N.E.2d 654 (1960) (dictum). See also *Martin v. Martin*, 141 Md. 182, 118 A. 410 (1922).

80. *E.g.*, *Hokamp v. Hokamp*, 32 Wash. 2d 593, 203 P.2d 357 (1949).

81. *E.g.*, *Henry v. Henry*, 21 Conn. Sup. 228, 152 A.2d 323 (Super. Ct. 1959); *Hiltbrand v. Hiltbrand*, 68 Idaho 275, 193 P.2d 391 (1948); *Miller v. Miller*, 249 Iowa 725, 88 N.W.2d 816 (1958); *Hartka v. Hartka*, 346 Mich. 453, 78 N.W.2d 133 (1956).

82. Foster & Freed, *supra* note 42, at 318.

83. FOSTER, *supra* note 15, at 8.

84. Three jurisdictions have recognized this right independent of statutory authority. They are: (1) Illinois: *Daily v. Parker*, 152 F.2d 174 (7th Cir. 1945) (reaching its decision in the absence of Illinois state court precedent); *Johnson v. Luhman*, 330 Ill. App. 598, 71 N.E.2d 810 (1947); (2)

the family setting by a third party. Children have been allowed to recover from that third party for the loss of love and companionship which they could reasonably have expected to receive. Such rulings amount to a recognition that children have a legally protectable right to the affection, companionship, and support of their parents. The growing child's future impact on society has been a major determinant in the minds of those judges supporting such a right.⁸⁵

Foster and Freed report that the reluctance of the judicial branch to sustain actions based on emotional deprivation is due in part to "a common suspicion of psychiatric and psychological testimony, its intangible quality, personal guilt, and the conclusive character of a termination of parental rights."⁸⁶ Undoubtedly this reasoning is equally applicable to the legislatures' failure to concern themselves with the mental health care of children.

Research into the ramifications of emotional deprivation is a relatively new field of medical science. The law, which has traditionally refused to recognize emotional abuse as a judicial concern, evolved at a time when the dangers of emotional abuse were unknown. Many judges have been unwilling to overturn longstanding precedent which denies recovery for deprivation because of the lack of precedent or statutory authority allowing such recovery.⁸⁷ Unless the courts move to break with these century-old rulings, children will not receive protection from what is known to be a serious threat to their health and general well-being. Concepts which have outlived their usefulness, and which fail to provide necessary protection against serious threats to health, will continue to be perpetuated.

Judicial efforts to limit a parent's authority over his child should

Michigan: *Russick v. Hicks*, 85 F. Supp. 281 (W.D. Mich. 1949); (3) Minnesota: *Miller v. Monsen*, 288 Minn. 400, 37 N.W.2d 543 (1949).

85. *Jenkins*, *supra* note 31, 730-31.

86. *Foster & Freed*, *supra* note 42, at 323.

87. In *Burnette v. Wahl*, 284 Or. 705, 588 P.2d 1105 (1978), actions were initiated by minor children through their guardian against their parents. The children claimed emotional and psychological injuries were intentionally caused by their parents in failing to provide care, comfort, and companionship. In denying the action, the court stated, "Plaintiffs admit they can cite no cases permitting them to recover from their parents for solely emotional or psychological damage resulting from failure to support, nurture and care for them. . . . [T]his is not a field of recovery which has heretofore been recognized by courts" *Id.* at ___, 588 P.2d at 1108-09. See also *Cox v. Stretton*, 77 Misc. 2d 155, 352 N.Y.S.2d 834 (Sup. Ct. 1974); *General Elec. Co. v. Bush*, 88 Nev. 360, 498 P.2d 366 (1972); *Garza v. Garza*, 209 S.W.2d 1012 (Tex. Ct. App. 1948). In the *Garza* suit, four children brought an action against their father for the loss of his love and companionship, and against his second wife for enticing their father to leave them. In denying recovery, the court stated that it was for the legislature to establish such actions and for the court only to enforce the law as it finds it. 209 S.W.2d at 1014.

not be entered into lightly. A court should not, however, refuse to intervene against psychological abuse on the grounds that such actions have not been taken in the past.⁸⁸ Some jurisdictions have argued that the legislature should define the bounds of any new child right before the courts acknowledge such a right.⁸⁹ Such reasoning is an effort to shift the burden of responsibility. Courts are capable of establishing the parameters of a right. They are sometimes required to engage in this very activity, and are successful in such efforts.⁹⁰

Undoubtedly, some judges experience difficulty in considering a child abused or neglected when he appears to be in reasonably good health and bears no marks of beatings or other violence. Any damage which exists is difficult to discern by physical examination. The very nature of psychological testimony is often vague and frequently is viewed with suspicion. These factors, in conjunction with the possibility of a child's removal from the home upon a finding of neglect, make judges extremely cautious toward such a finding. Unfortunately, it is not always possible to foresee what may be the eventual result of emotional abuse, when inflicted upon a child.

The courts have been slow in keeping pace with the transition within the family that has occurred in this century.⁹¹ The judiciary has

88. See notes 100-103 *infra* and accompanying text.

89. See, e.g., *Whitcomb v. Huffington*, 180 Kan. 340, 304 P.2d 465 (1956); *Burnette v. Wahl*, 284 Or. 705, 588 P.2d 1105 (1978); *Garza v. Garza*, 209 S.W.2d 1012 (Tex. Ct. App. 1948).

90. E.g., *Miller v. Monsen*, 228 Minn. 400, 37 N.W.2d 543 (1949). *Michigan Cent. R.R. v. Vreeland*, 227 U.S. 59 (1912) is an example of a court determining the boundaries of a right. An action to recover for the wrongful death of the intestate, an employee of the railroad, was brought under the Federal Employers' Liability Act of 1908. The Act gave a right of recovery "to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee." 45 U.S.C. § 51 (1976). The railroad argued that as the employee survived his injury for several hours before dying, it was relieved from liability. Counsel argued that a single right of recovery had been created. Either the injured party could recover for his injury, or, in the case of instantaneous death, the action survived for the benefit of the dependents. The Court rejected this narrow interpretation, stating that

[t]he obvious purpose of Congress was to save a right of action to certain relatives dependent upon an employee wrongfully injured, for the loss and damage resulting to them financially by reason of the wrongful death. . . . There is no express or implied limitation of the liability to cases in which the death was instantaneous.

227 U.S. at 68.

91. *Johnson v. Luhman*, 330 Ill. App. 588, 71 N.E. 2d 810 (1947).

It is common knowledge . . . that a transition has taken place in our conception of the family. . . .

The lag in the common law to keep pace with these transitions within the family unit, particularly those affecting the interests of the children, was noted by Dean Pound over a quarter of a century ago

Id. at ___, 71 N.E.2d at 813.

been reluctant to overrule ancient precedent, such as the supposed unity of parent and child.⁹² Modern society has, however, ushered in new demands that the rights of all individuals be protected through equality under law.⁹³ The courts must respond to this change and act to promote the best interests of children, for children cannot act to promote their own interests.

Even without the benefit of legislative enactments authorizing judicial intervention on behalf of emotionally neglected or abused children, there are several alternatives from which the courts may choose to justify such protective measures. Since *Daily v. Parker*,⁹⁴ those courts which have granted a cause of action based on alienation of parental affections have done so based on the doctrine of judicial empiricism.⁹⁵ This theory holds that the common law is not bound by rigid, unbending, and inflexible rules.⁹⁶ Rather, it is a constantly expanding process which is sufficiently elastic to adapt to the increasing needs of society. Reason and natural justice are its foundations. Its rules arise to meet changing societal conditions. Today it is reasonable for the state to desire that its children mature into healthy, productive citizens, and it is reasonable for the state to take measures to ensure that such growth is possible. The common law should be expanded to protect the emotional health of children. To concede that the common law is capable of expansion and change, and to simultaneously argue that the courts have no authority to act in behalf of emotionally abused children, either because the legislature has not mandated such authority, or because the common law has previously adopted a stance contrary to this position, is inconsistent. The courts are free to use the flexibility of the common law as a valuable tool to safeguard the emotional welfare of children. Based on present knowledge of the harm which may occur by psychological abuse,⁹⁷ such action would be both desirable and hu-

92. See notes 149-153 *infra* and accompanying text.

93. "[E]qual protection to all is the basic principle upon which justice under law rests." *Pierre v. Louisiana*, 306 U.S. 354, 358 (1939). See *In re Gault*, 387 U.S. 1 (1966), wherein the Supreme Court declared that the fourteenth amendment as well as the Bill of Rights applies to juveniles as well as adults.

94. 152 F.2d 174 (7th Cir. 1945).

95. See note 90 *supra*.

96. R. POUND, *THE SPIRIT OF THE COMMON LAW* 166-92 (1921). The value of the common law lies in its genius for creativity. "The judge fills the open spaces in the law . . . Within the confines of these open spaces and those of precedent and tradition choice moves with a freedom which stamps its action as creative. The law which is the resulting product is not found but made . . ." Justice Benjamin Cardozo as quoted in *Johnson v. Luhman*, 330 Ill. App. 598, ___, 71 N.E.2d 810, 814 (1947).

97. See notes 53-73 *supra* and accompanying text.

mane.

As an alternative to the expansion of the common law, the courts could, in some instances, interpret the harm caused by emotional abuse as a bodily injury. This would allow the courts to end such abuse by the authority of neglect statutes which universally guard against physical harm.⁹⁸ An injury to the mind or nerves has frequently been considered a bodily injury,⁹⁹ even though bodily impact was not present at the time of the damage.¹⁰⁰ Bowlby states that emotional deprivation may lead to "disorders of the nervous system."¹⁰¹ It is also well documented that emotionally abused children frequently become mentally retarded.¹⁰² Therefore, whenever a child has become retarded because of emotional abuse or has suffered injury to his nervous system caused by emotional abuse, the courts could declare that the child has suffered physical harm. The courts could then intervene by way of neglect legislation. As one court has said, "The nerves are as much a part of the physical system as the limbs."¹⁰³ The primary fault with this approach is that it delays action until serious harm has already occurred. Still, it is preferable to no action at all, and should be considered an alternative.

As a third basis for intervention, the courts could act by authority of the doctrine of *parens patriae*.¹⁰⁴ Through this doctrine, the state has a broad range of power in matters involving the interests of children. The ultimate policy basis supporting the *parens patriae* power is the state's self-interest in perpetuating itself by providing responsible future citizens.¹⁰⁵ It then follows that court intervention is legitimate when necessary to grant children the opportunity to mature into well-adjusted members of society. Such an approach is preventive in nature and allows action whenever harm appears imminent, rather than waiting until damage has become substantial.

"The elements which . . . constitute neglect of a child cannot be limited to mere failure to provide properly for it insofar as its physical

98. See note 32 *supra* and accompanying text.

99. *E.g.*, *Sloane v. Southern Cal. R.*, 111 Cal. 668, 44 P. 320 (1896); *Kimberly v. Howland*, 143 N.C. 398, 55 S.E. 778 (1906); *Phillips v. Atlantic Coast Line R.*, 160 S.C. 323, 158 S.E. 274 (1931).

100. *E.g.*, *Watson v. Dilts*, 116 Iowa 249, 89 N.W. 1068 (1902); *Johnson v. Sampson*, 167 Minn. 203, 208 N.W. 814 (1926); *Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 103 S.E.2d 265 (1958); *Houston Elec. Co. v. Dorsett*, 145 Tex. 95, 194 S.W.2d 546 (1946).

101. BOWLBY, *supra* note 46, at 14.

102. See notes 64-65 *supra* and accompanying text.

103. *Kimberly v. Howland*, 143 N.C. 398, ___, 55 S.E. 778, 780 (1906) (dictum).

104. See notes 11-12 *supra* and accompanying text.

105. *Wilson v. Mitchell*, 48 Colo. 454, 111 P. 21 (1910).

needs are concerned"¹⁰⁶ Even critics such as Wald who argue for a narrower approach to state intervention, recognize that action may sometimes be necessary to halt emotional damage.¹⁰⁷ The law should keep pace with the fact that children are individuals, and abusive parents continue to subject these young individuals to severe suffering. Such children remain without a defense. Perhaps the most blatant example of this lies in the courts' unwillingness to grant a child a cause of action against his parents for the intentional infliction of emotional harm.

VII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The law has only recently come to recognize that emotional injuries may have as serious an impact as physical injuries to a person.¹⁰⁸ Tort actions for intentional infliction of emotional harm have traditionally experienced difficulty in gaining acceptance. Nonrecognition was said to be necessary because of the intangible nature of the injury¹⁰⁹ and the difficulty in measuring damages.¹¹⁰

Initially, a suit for intentional infliction of emotional distress could not be maintained unless accompanied by a previously recognized tort.¹¹¹ Courts later concluded that proving emotional distress alone may be more difficult than when accompanied by another tort.¹¹² The landmark case of *Wilkinson v. Downton*¹¹³ was the first English decision to allow recovery independent of an existing common law claim. American courts followed this precedent and granted such an action where the alleged mental injury was the result of extreme and outrageous conduct.¹¹⁴

An independent cause of action was strengthened by the 1948 revision of section 46 of the *Restatement of Torts (Second)*. That revision brought freedom from emotional distress into the zone of interests protected by law. Section 46 now states that "[o]ne who by extreme and

106. *In re Carl*, 174 Misc. 985, ___, 22 N.Y.S.2d 782, 783 (Dom. Rel. Ct. 1940).

107. Wald, *State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards*, 27 STAN. L. REV. 985, 1016 (1975).

108. W. PROSSER, HANDBOOK OF THE LAW OF TORTS, § 12, at 49 (4th ed. 1971).

109. *Lynch v. Knight*, 9 H.L. Cas. 577 (1861). "Mental pain or anxiety the law cannot value, and does not pretend to redress, when the unlawful act complained of causes that alone." *Id.* at 598.

110. *Gatzow v. Buening*, 106 Wis. 1, 81 N.W. 1003 (1900). See also PROSSER, *supra* note 108, § 12, at 50.

111. PROSSER, *supra* note 108, § 12, at 51.

112. *Id.* at 50.

113. 2 Q.B. 57 (1897).

114. RESTATEMENT (SECOND) OF TORTS § 46 (1965).

outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress and if bodily harm to the other results from it, for such bodily harm."¹¹⁵ Under this standard, recovery requires more than intentional or malicious action. The action must be "outrageous in character, and so extreme in degree, as to go beyond all bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community."¹¹⁶ Further, the defendant need not have an actual desire to cause emotional distress. The element of intent is satisfied if he knows with substantial certainty that such harm will result from his act.¹¹⁷

The authors of the *Restatement* have provided several guidelines to assist in the determination of what constitutes "outrageous conduct." First, insults, indignities, and annoyances do not, in and of themselves, qualify as outrageous conduct.¹¹⁸ The conduct may, however, be considered outrageous if the recipient of the action is known to suffer from some particular sensitivity to the action involved.¹¹⁹ Dean Prosser also suggests that outrageous conduct may result from abuse by the defendant of some position or relationship he has with another.¹²⁰

Theoretically, children possess the same rights and protections as adults.¹²¹ They are entitled to such as citizens. Actually, children are denied these rights and protections because they are children. Adults are protected in tort from the intentional infliction of emotional distress

115. *Id.*

116. *Id.* at Comment d.

117. RESTATEMENT (SECOND) OF TORTS § 8A (1965). "The word intent is used throughout the Restatement of this Subject to denote that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it." *Id.*

118. RESTATEMENT (SECOND) OF TORTS § 46, Comment d (1965). See PROSSER, *supra* note 114, § 12, at 54.

119. RESTATEMENT (SECOND) OF TORTS § 46, Comment f (1965).

120. PROSSER, *supra* note 114, § 12, at 56. *Rockhill v. Pollard*, 259 Or. 54, 485 P.2d 28 (1971), is one case where the relationship of the parties was a key factor in determining the outrageousness of the act involved. There, a physician refused to render emergency medical assistance to an unconscious infant. The court held that the doctor-patient relationship gave rise to an affirmative duty on the part of the doctor to perform the necessary services. His failure to do so was deemed extreme and outrageous conduct, and the court held him liable for the intentional infliction of emotional distress. As in the doctor-patient relationship, parents have special duties and obligations with respect to their children. Parental actions may be considered outrageous by virtue of the relationship that exists between parent and child.

121. FONTANA, *supra* note 12, at 232. See *In re Gault*, 387 U.S. 1 (1966), wherein the Court declared that the fourteenth amendment as well as the Bill of Rights applies to juveniles as well as adults. Cf. *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976) (holding, *inter alia*, that parental consent could not be required before a minor could obtain an abortion). "Minors, as well as adults, are protected by the Constitution and possess constitutional rights. . . . The Court indeed, however, long has recognized that the State has somewhat broader authority to regulate the activities of children than of adults." *Id.* at 74.

by others.¹²² Indeed, it is the widely held view that defendants should be responsible whenever they intentionally cause severe emotional distress, or they intentionally or maliciously do a wrongful act which results in severe mental distress.¹²³ Yet, between parents and unemancipated children, the courts have not recognized a cause of action based upon these grounds. There has been no provision to allow redress for damages. Consequently, children whose parents subject them to emotional abuse are denied protection, even though other members of society have a legal remedy for the same sort of abuse. Safeguards are less stringent for children even though they are more vulnerable to harm than are adults. Public policy demands that each person be responsible for injuries he has inflicted upon others,¹²⁴ but exceptions are made for parents who abuse their children.

The most common policy argument for not allowing a minor child to sue his parents has been the preservation of family peace and tranquility. Beginning with *Hewlette v. George*,¹²⁵ American courts first declared that the abolition of parental immunity would disrupt the family and destroy the very foundation of society. This reasoning led to great injustice when, in *Roller v. Roller*,¹²⁶ the Supreme Court of Washington held that a fifteen-year-old girl who had been raped by her father could not maintain suit, on the grounds that it would destroy the beauty and serenity of the home. American courts borrowed the com-

122. See PROSSER, *supra* note 108, § 12, at 49-62.

123. "[T]he present rule allows recovery [for intentionally causing severe emotional distress] even in the absence of a resulting physical harm." *Savage v. Boies*, 77 Ariz. 355, ___, 272 P.2d 349, 351 (1954). "The rule seems to be well-established where the act is willful or malicious, as distinguished from being merely negligent, that recovery may be had for mental pain, though no physical injury results." *Curnett v. Wolf*, 244 Iowa 683, ___, 57 N.W.2d 915, 918 (Iowa 1953). One court addressing this issue stated:

The interest in freedom from severe emotional distress is regarded as of sufficient importance to require others to refrain from conduct intended to invade it. Such conduct is tortious. The injury suffered by the one whose interest is invaded is frequently far more serious to him than certain tortious invasions of the interest in bodily integrity and other legally protected interests. In the absence of a privilege, the actor's conduct has no social utility; indeed it is antisocial. No reason or policy requires such an actor to be protected from the liability which usually attaches to the wilful wrongdoer whose efforts are successful.

State Rubbish Collectors Ass'n v. Siliznoff, 38 Cal. 2d 330, ___, 240 P.2d 282, 285 (Cal. 1952) (in bank) (quoting RESTATEMENT OF TORTS § 46, Comment d (1948 Supp.)).

124. See, e.g., Schmidtman, *Demise of Parent-Child Tort Immunity*, 12 WILLAMETTE L.J. 605 (1976).

125. 68 Miss. 703, 9 So. 885 (1891). Here, a mother had wrongfully and maliciously confined her daughter to an insane asylum. Although citing no authority, the court denied recovery on the grounds of public policy. This case laid the foundation for the general rule of parental immunity from torts to their children. PROSSER, *supra* note 108, § 122, at 865.

126. 37 Wash. 242, 79 P. 788 (1905).

mon law doctrine of unity between husband and wife¹²⁷ to justify the argument of family peace and tranquility and the parental immunity rule. For several reasons, the theory of interspousal immunity can no longer be legitimately applied to uphold parental immunity.

At common law, the marriage of a man and a woman resulted in a single legal entity.¹²⁸ All personal and property rights of the woman were joined with her husband,¹²⁹ and she had no separate legal existence. Consequently, the wife could not sue her husband because the husband would be both plaintiff and defendant.¹³⁰ The Married Women's Acts in the nineteenth century abolished the concept of one entity between husband and wife.¹³¹ The wife became entitled to own and control separate property,¹³² to sue her husband for injury to that separate property,¹³³ and to bring an action for wrongful injury independently of her husband.¹³⁴ Thus, the theory of one legal entity between husband and wife is obsolete, and no longer provides a solid basis for preservation of parental immunity. Still, the majority rule has been that unemancipated minors may not maintain tort actions against their parents. There have been two basic reasons for this policy. First, it has been deemed desirable to promote the cohesiveness of the family under parental discipline and authority.¹³⁵ The law has sought to prevent upheaval which might undermine this authority.¹³⁶ Second, the law presumes that parents care for and promote the best interests of their children. Hence, parents have retained immunity from the failures which inevitably occur.¹³⁷

127. *Id.* See PROSSER, *supra* note 108, § 122, at 859; McCurdy, *Torts Between Persons in Domestic Relations*, 43 HARV. L. REV. 1030, 1069 (1930).

128. PROSSER, *supra* note 108, § 122, at 864.

129. *Id.* at 859.

130. *Id.*

131. *Id.* at 861.

132. McCurdy, *Property Torts Between Spouses*, 2 VILL. L. REV. 447 (1957).

133. *Id.*

134. *E.g.*, Long v. McWilliams, 11 Okla. 562, 69 P. 882 (1902).

135. PROSSER, *supra* note 108, § 122, at 866.

136. "Preservation of the parent's right to discipline his minor children has been the basic policy behind the rule of parental immunity from tort liability." Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955) (unemancipated minor may sue parent for wilful or malicious tort).

137. Henderson v. Henderson, 11 Misc. 2d 449, 169 N.Y.S.2d 106 (Sup. Ct. 1957). In *Henderson* the court recognized that certain acts would remove this immunity:

By wantonly subjecting his child to probable and certain injury, he forfeits all claim to immunity. Such wanton acts remove from his person the cloak of immunity granted to him upon the assumption that he would care for the needs and the welfare of his child. A suit upon behalf of the infant cannot properly be deemed the disrupting cause of the family's disunity when the parent by his misdeeds has already caused the tranquility of the family unit to be disturbed and shattered.

Id. at ___, N.Y.S.2d at 114.

That parental discipline should be maintained is not seriously debated.¹³⁸ Parental discipline, however, should be subject to reasonable boundaries. In those few jurisdictions which have abrogated the immunity rule, two basic tests have been developed by which to ascertain whether disciplinary action is tortious. In Wisconsin, the rule established in *Goller v. White*¹³⁹ is that parental immunity is abolished except where the parent is exercising his authority, and where the alleged wrongdoing involves discretion as to the provision of basic necessities such as food and shelter.¹⁴⁰ Under this test, the parent is immune from liability so long as he is exercising his authority as a parent, regardless of how negligently he exercises that authority. Under the California test, established in *Gibson v. Gibson*,¹⁴¹ parental liability turns upon what "an ordinarily reasonable and prudent parent [would] have done in similar circumstances."¹⁴² Under this test, parents are liable for negligent acts even though the act involves parental authority.

In *McKelvey v. McKelvey*,¹⁴³ the Supreme Court of Tennessee declared that the common law would not allow a minor to sue his parents and that this was analogous to the interspousal immunity rule. Unfortunately, the court's decision was based on a misinterpretation of the English common law. The English common law did not view the parent and child as one legal entity.¹⁴⁴ The child could own property independently, and could maintain suit to protect his property and contractual interests.¹⁴⁵ The child could initiate a tort action and was responsible for his own torts.¹⁴⁶ Therefore, the *McKelvey* court's attempt to analogize the unity of husband and wife to the unity of parent and child was based upon a misunderstanding of the common law. This misinterpretation was relied upon by many subsequent courts in establishing the parental immunity rule.¹⁴⁷

If domestic tranquility justifies immunity for parental wrongs to

138. See notes 78-82, *supra*.

139. 20 Wis. 2d 402, 122 N.W.2d 193 (1963).

140. *Id.*

141. 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971) (in bank) (overruling *Trudell v. Leatherby*, 212 Cal. 678, 300 P. 7 (1931) and rejecting the implication of *Goller v. White*, 20 Wis. 2d 402, 122 N.W.2d 193 (1963), that within certain aspects of the parent-child relationship the parent is free to act negligently toward his child).

142. 3 Cal. 3d at ___, 479 P.2d at 653.

143. 111 Tenn. 388, 77 S.W. 664 (1903).

144. PROSSER, *supra* note 108, § 122, at 864; McCurdy, *supra* note 132, at 1057.

145. PROSSER, *supra* note 108, § 122, at 864.

146. *Id.*

147. See, e.g., *Rambo v. Rambo*, 195 Ark. 832, 114 S.W.2d 468 (1938); *Mesite v. Kirschstein*, 109 Conn. 77, 145 A. 753 (1929); *Small v. Morrison*, 185 N.C. 577, 118 S.E. 12 (1923); *Roller v. Roller*, 37 Wash. 242, 79 P. 788 (1905).

children, it is difficult to understand why unemancipated children may maintain suit against their parents for injury to property or in contract. Domestic harmony may be upset by a property action as greatly as by a personal tort action. "It seems absurd to say that it is legal and proper for an unemancipated child to bring an action against his parent concerning the child's property rights yet to be utterly without redress with reference to injury to his person."¹⁴⁸

The general rule of no immunity with regard to contract and property actions has been strengthened by the application of the general rule to some tort actions. There has been a definite trend toward limiting immunity, especially where such action will not upset family life or where family unity already has been destroyed. Children have gained the right to sue the estate of a deceased parent¹⁴⁹ and to recover for torts which were related to the parent's business.¹⁵⁰ In addition, personal tort actions have been allowed where the child is emancipated,¹⁵¹ and where the child is adopted.¹⁵² "[T]he tendency has been to whittle away the rule by statute and by the process of interpretation, distinction, and exception, until what we have left today is a conglomerate of paradoxical and irreconcilable judicial decisions."¹⁵³

Yet emotional distress actions against parents have consistently been denied. If children are to be denied a remedy based upon a policy of family tranquility, that doctrine should apply equally to bar suits for other parental wrongs. That has not been the case. Arguments against suits for emotional distress based on family unity are unpersuasive because intrafamily actions are already widely accepted. In addition, by the time court action is sought, family unity has generally substantially deteriorated. There may be little unity to preserve.

By abolishing parental immunity for intentional torts¹⁵⁴ and for negligence suits,¹⁵⁵ the courts have allowed a child to sue his parent. It is doubtful that the peace of the home would be greater hostage to a suit for intentional emotional abuse than to a suit for intentional physical abuse. It may be that to allow an action would actually serve to mend the family. In the words of the Supreme Court of Minnesota,

148. *Signs v. Signs*, 156 Ohio St. 566, ___, 103 N.E.2d 743, 748 (1952).

149. *E.g.*, *Dean v. Smith*, 106 N.H. 314, 211 A.2d 410 (1965).

150. *E.g.*, *Borst v. Borst*, 41 Wash. 2d 642, 251 P.2d 149 (1952) (en banc).

151. *E.g.*, *Badigian v. Badigian*, 9 N.Y.2d 472, 174 N.E.2d 718 (1961).

152. *E.g.*, *Brown v. Cole*, 198 Ark. 417, 129 S.W.2d 245 (1939).

153. *Falco v. Pados*, 444 Pa. 372, ___, 282 A.2d 351, 354 (1971).

154. *E.g.*, *Emery v. Emery*, 45 Cal. 2d 421, 289 P.2d 218 (1955) (in bank).

155. *E.g.*, *Briere v. Briere*, 107 N.H. 432, 224 A.2d 588 (1966).

"Where a wrong has been committed of a character sufficiently aggravated to justify recovery were the parties strangers, the harm has been done. We believe the prospect of reconciliation is enhanced as much by equitable reparation as by denying relief altogether" ¹⁵⁶

To allow intrafamily actions for intentional torts and at the same time to deny such actions for the intentional infliction of emotional distress is inconsistent. The evidence concerning emotional abuse is clear. Children suffer as greatly through emotional maltreatment as through physical maltreatment. It is unjust that the courts more zealously safeguard the child's property and contractual rights than the rights of his person. It is logical for the courts to expand protection to defend the emotional health of children from intentional destruction.

Another argument advanced in opposition to parental suits for emotional distress is that such an action would inundate the courts. ¹⁵⁷ If that should prove to be the case, it may show the extent to which such abuse occurs. It may also emphasize the need for a remedy. ¹⁵⁸ Courts should deal with a case on its merits, regardless of the number of similar claims. Another reason courts have used for denying such actions is the lack of precedent, ¹⁵⁹ but to deny standing to sue simply because "thus saith tradition," is, in the words of Justice Holmes, "revolting." ¹⁶⁰ That a child's right has previously been unrecognized, and that heretofore there has evolved no binding precedent for recovery, is no justification for refusal to uphold a common law remedy where his rights have been wrongfully violated by another. ¹⁶¹ The law is capable of expansion, and a cause of action need not even have a recognized name. ¹⁶² New torts are constantly being recognized. ¹⁶³ "[A]ny rule

156. *Balts v. Balts*, 273 Minn. 419, ___, 142 N.W.2d 66, 73 (1966) (removing the immunity as a defense in tort actions by a parent against a child but reserving the question as to immunity in actions by child against parent).

157. *E.g.*, *Burnette v. Wahl*, 284 Or. 705, 588 P.2d 1105 (1978).

158. *Jenkins*, *supra* note 31, at 743.

159. *E.g.*, *Burnette v. Wahl*, 284 Or. 705, 588 P.2d 1105 (1978).

160. "It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past." Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).

161. *See Dailey v. Parker*, 152 F.2d 174 (7th Cir. 1945); *Russick v. Hicks*, 85 F. Supp. 281 (W.D. Mich. 1949); *Johnson v. Luhman*, 330 Ill. App. 598, 71 N.E.2d 810 (1947).

162. *Smith*, *Torts Without Particular Names*, 69 U. PA. L. REV. 91 (1921).

163. As Dean Prosser has noted:

New and nameless torts are being recognized constantly, and the progress of the common law is marked by many cases of first impression, in which the court has struck out boldly to create a new cause of action, where none had been recognized before. . . . The law of torts is anything but static, and the limits of its development are never set. When it becomes clear that the plaintiff's interests are entitled to legal protection against the

which demands the sacrifice of justice in order that it may hold sway as a universal rule is unworthy of a place in our law."¹⁶⁴ The courts possess the authority to recognize an action against a parent for the intentional infliction of emotional distress without the benefit of precedent. "The doctrine of parental immunity, as far as it goes, was created by the courts. It is especially for them to interpret and modify that doctrine to correspond with prevalent considerations of public policy and social needs."¹⁶⁵ The obstacles to the creation of a legal remedy were constructed by the court and may be removed by the same means. "[I]njury is the primary and paramount consideration, not the character of the defendant who inflicts it, nor the nature of the act itself. If causation and injury can be established, and the defendant acted wrongfully, the law will give a remedy."¹⁶⁶

If the extent of parental immunity is to correspond to public policy and social needs, then it should be abolished with regard to intentional emotional abuse.¹⁶⁷ It is well established that some children suffer from extensive emotional abuse intentionally inflicted by their parents and that such emotional anguish spawns serious side effects and sometimes permanent injury. Children are provided no escape from such circumstances unless there is accompanying physical abuse that can be visibly detected. A right of action to provide minimal safeguards is urgently needed.

Although public policy does seek to promote the peace and unity of the family, it also declares its allegiance to the best interests of the child. The courts should not endeavor to maintain unity at the expense of children's welfare. To do so is to cultivate only an illusion of family

conduct of the defendant, the mere fact that the claim is novel will not of itself operate as a bar to the remedy.

PROSSER, *supra* note 108, § 1, at 3-4.

164. *Cowgill v. Boock*, 189 Or. 282, ___, 218 P.2d 445, 454 (1950) (Rossman, J., concurring).

165. *Nudd v. Matsoukas*, 7 Ill. 2d 608, ___, 131 N.E.2d 525, 531 (1956).

166. Comment, *Recognition of New Interests in the Law of Torts*, 10 CALIF. L. REV. 461, 463 (1922).

167. While parental immunity should be abolished for intentional mental distress, such immunity should remain intact for the negligent infliction of mental distress. The preservation of family peace and harmony, and of the parental right to discipline is a legitimate societal goal. When parental acts have resulted in severe mental distress to the child, but such acts were not commenced with a desire to cause such harm, and the reasonable parent would not have believed that such harm would result, then the policy of parental immunity should prevail. In this instance, the parent is likely to be concerned with his child's welfare and willing to protect the child's interests. But where the parent has acted with a desire to cause severe distress, or had reason to believe that his act would result in such distress, and yet acted in reckless disregard of the consequences, parental immunity should be abolished. In this instance, the parent has exhibited an attitude which would indicate that he does not desire family unity, nor is he concerned with protecting the best interests of his child.

tranquility. In reality there is little cohesion in a family relationship where intentional suffering is dealt to one member by another member. Society disdains the infliction of unnecessary pain and anguish. There is no logical reason to regard children as exceptions to that principle.

Tort law is designed "for the creation and protection of rights."¹⁶⁸ "A child has a moral right and should have a legal right . . . [t]o receive parental love and affection, discipline and guidance, and to grow to maturity in a home environment which enables him to develop into a mature and responsible adult"¹⁶⁹ If courts are not willing to insist on these affirmative parental duties, they should at least take measures against intentional mistreatment which is detrimental to the child.

Precedent which is no longer relevant should be discarded. Every person who is injured or is harmed in his property or reputation, by the wrongful act of another, should find a remedy.¹⁷⁰ One of the primary reasons for the limitation of absolute parental immunity has been to grant such remedies. Consistency requires that the courts extend liability so that children have redress for undeserved mental anxiety intentionally caused by their parents.

The modern rule is to allow children a tort action against parents if the tort was intentional or resulted from willful misconduct.¹⁷¹ Such behavior is in no way related to the responsibilities of parenthood. Parental discipline cannot reasonably be said to be inhibited by the extension of such acts. Immunity does not exist by reason of absolute right of the parent to do with his child as he pleases. Rather, it is a means to enable the parent to fulfill those family responsibilities which society demands, as well as a recognition that shortcomings are inevitable. Immunity is justified upon the premise that authority will be used to benefit the child. When this premise has been destroyed through

168. *Briere v. Briere*, 107 N.H. 432, ___, 224 A.2d 588, 590 (1966).

169. FOSTER, *supra* note 115, at 25.

170. *See, e.g., Johnson v. Luhman*, 330 Ill. App. 598, 71 N.E.2d 810 (1947); MASS. CONST. pt. I, art. XI; OR. CONST. art. I, § 10.

171. *E.g., Hebel v. Hebel*, ___, Alaska ___, 435 P.2d 8 (1966); *Brown v. Cole*, 198 Ark. 417, 129 S.W.2d 245 (1939); *Gibson v. Gibson*, 3 Cal. 3d 914, 92 Cal. Rptr. 288, 479 P.2d 648 (1971); *Tamashiro v. De Gama*, 51 Haw. 74, 450 P.2d 998 (1969); *Schenk v. Schenk*, 100 Ill. App. 2d 199, 241 N.E.2d 12 (1968); *Mahnke v. Moore*, 197 Md. 61, 77 A.2d 923 (1951); *Balts v. Balts*, 273 Minn. 419, 142 N.W.2d 66 (1966); *Belleson v. Skilbeck*, 185 Minn. 537, 242 N.W. 1 (1932); *Briere v. Briere*, 107 N.H. 432, 224 A.2d 588 (1966); *Dunlap v. Dunlap*, 84 N.H. 352, 150 A. 905 (1930); *France v. A.P.A. Transp. Corp.*, 56 N.J. 500, 267 A.2d 490 (1970); *Gelbman v. Gelbman*, 23 N.Y.2d 434, 245 N.E.2d 192, 297 N.Y.S.2d 529, (1969); *Cowgill v. Boock*, 189 Or. 282, 218 P.2d 445 (1950).

mistreatment and abuse, the basis for justification no longer exists. At that point immunity should be abolished.

Parents should not be held responsible for unintentional torts which may occasionally occur within the home, but should be liable for acts of willful misconduct. Intentional parental wrong should remove the shield of immunity as the assumption that a parent is acting to protect his child is no longer valid. Immunity was never meant to serve as a cloak for intended wrongs.¹⁷² It should not apply when a parent acts outside the parent-child relationship. If the relationship is incidental and the child would have been able to maintain the action had that relationship not existed, the action should be maintained in spite of the relationship.¹⁷³

Child neglect is costly to all of society. Abused children are more apt to gravitate to a life of crime, and are violence prone.¹⁷⁴ All citizens pay the costs of crime. Increased crime requires that greater resources be devoted to police and other law enforcement agencies. "Any economy achieved by the failure to provide for the needs of the neglected child is doubly dissipated by the cost of dealing with increases in adult crimes, physical and mental breakdowns, and socially dysfunctional adults."¹⁷⁵ Consequently, it would be in the best interests of society for the law to destroy those elements which are conducive to crime. This requires, however, that lawmakers concern themselves with the emotional as well as the physical health of children. The cycle of child abuse will not be eliminated until the emotional climate of the home is made an object of the law's concern.

VIII. CONCLUSION

The present century has seen increased awareness of both the needs and inherent rights of children. In a resolution supported by the United States, the United Nations General Assembly declared:

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.¹⁷⁶

172. *Dunlap v. Dunlap*, 84 N.H. 352, 150 A. 905 (1930).

173. *See Wick v. Wick*, 192 Wis. 260, 212 N.W. 787 (1927) (Crownhart, J., dissenting).

174. FONTANA, *supra* note 12, 110-15.

175. A. KADUSHIN, *CHILD WELFARE STRATEGY IN THE COMING YEARS: AN OVERVIEW* 20 (1978).

176. Res. 1386, 14 U.N. GAOR Supp. (No. 16) 19 (1960).

Despite professions of good intentions, the move toward equality has been too gradual.

Whether a child receives love and companionship from his parents will have an impact on society. It will affect his ability to function properly within socially acceptable bounds, as well as influence his immediate and prospective physical and emotional well-being. Emotionally deprived children suffer from a loss of identity and often become involved in violent crimes.

Lawmakers have recognized the need to protect children from physical mistreatment and have taken steps to try to prevent it. They have not, however, become fully aware of the need to insulate children from psychological abuse. While the "best interests of the child" standard theoretically guides public policy, little concern has been shown toward safeguarding psychological development. In a society which is based on rule of law, the humanity of children may be protected only if they are granted full legal rights. Our social and legal values must be re-examined. Parental rights should not be so absolute as to preempt a child's right to emotional stability. Many children will continue to be abused if the courts persist in upholding precedent and traditions which yield to parental rights at the expense of the child. Lawmakers cannot guarantee that all children will receive the love and affection essential to well-rounded development, but the law can intervene when physical or psychological abuse is discovered. Children should not be sacrificed in order to preserve traditional parental rights once the family unit has been destroyed.

Every child should have a legal guarantee of a reasonable opportunity for emotional as well as physical development. Children are a precious resource who should be—and who deserve to be—protected at law. The Judeo-Christian belief in the dignity of man has no age limit. It is in the interest of the community as well as the child that abuse of all kinds be condemned. Greatly needed assistance will be unnecessarily delayed if the law continues to view neglect solely in physical terms, rather than as including those factors essential to psychological stability.

J. Dennis Semler