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Until the enactment of sweeping changes in the California Juvenile Court Law in 1976[1] the parent was only peripherally involved when his child came before the court. He was under a duty to attend the court sessions and could be cited to appear and bring the child with him.[2] If he disobeyed the citation, a warrant could be issued for his arrest.[3] He could be ordered to pay the costs of legal representation, care and medical attention furnished to the child while the child was in custody.[4] In addition, he could be coerced into submitting to an order specifying

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1. Juvenile Court Law, ch. 1071. CAL. A.B. 3121 (1976).
2. CAL. WELF. & INST. CODE § 661 (West Supp. 1976).
3. CAL. WELF. & INST. CODE § 662 (West. 1972).
4. CAL. WELF. & INST. CODE §§ 903, 903.1 (West 1972).

that he participate in a counseling program if the court permitted the child to remain in the family home.[5]

While preserving involvement in these limited areas, the 1976 legislation adds provisions subjecting the parent to direct orders of the court concerning the care, custody, supervision and conduct of the child.[6] When considered in conjunction with concurrent changes designed to shift the treatment of delinquents from institutions to the community, it is obvious that the legislative intent underlying the new procedure is to impose greater responsibility on the parent for the conduct of his child and to remedy, through judicial intervention, those conditions within the family home which are factors contributing to the child's delinquency. The role of the parent in juvenile court proceedings has thus been changed from one of passive participation to one in which the parent will become an active agent of the court in implementating a program designed to remedy the child's behavior problems.

These provisions of the new law do not represent the first effort to deal with the juvenile delinquency problem by controlling or regulating the conduct of the parent. However, previous attempts were designed to structure parental conduct by means of criminal law sanctions; a significant feature of the 1976 law is that the parent need not be found to be inadequate or unfit before the court may intervene and direct the manner in which the parent raises his child. If used wisely and with restraint, this approach could prove to be a constructive and effective means of dealing with the growing juvenile delinquency problem.

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5. Welfare and Institutions Code Section 727 provides that when the minor has been adjudged a dependent on any of the grounds specified in Welfare and Institutions Code, Section 600(d) (neglect, cruelty, depravity or physical abuse) and the court orders that a parent shall retain custody subject to the supervision of a probation officer, the parent *shall* be required to participate in a counseling program designated by the court. When the dependency status is based on any of the other grounds specified in Section 600, and the parent is permitted to retain custody, such counseling *may* be ordered.

When the minor has been adjudged a ward on any of the grounds specified in Welfare and Institutions Code, Sections 601 or 602, and the parent is permitted to retain custody, he *may* be ordered to participate *with the child*, in such a program. CAL. WELF. & INST. CODE § 727 (West Supp. 1976).

6. "The juvenile court may direct any and all reasonable orders to the parents and guardians of the minor who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of subdivision (1)." CAL.WELF. & INST. CODE § 727(2) (West Supp. 1976).

Welfare and Institutions Code Section 727(1) provides that when a minor has been adjudged a dependent child or ward of the court, the court may make any and all reasonable orders for his care, supervision, custody, conduct, maintenance, support and medical treatment. CAL. WELF. & INST. CODE § 727(1) (West Supp. 1976).

THE PARENT'S ROLE IN JUVENILE DELINQUENCY

J. Edgar Hoover is quoted as saying that "juvenile crime could be abated if parents were made to face legal and financial responsibilities for the criminal acts of their children."[7] His statement is representative of the commonly held opinion that juvenile delinquency can be traced to parental inadequacy and neglect. However, the validity of this assumption was substantially eroded by the findings of the President's Commission on Law Enforcement and the Administration of Justice, Juvenile Delinquency and Youth Crime.[8] Even though the Report deemed the family to be the first and most fundamental unit in our society charged with the responsibility for developing the child's potential, and although it stressed the importance of the family relationship in the control of delinquency, it found many contributing causes of delinquency outside the family. Urbanization, social class, educational level and social instability were identified as several of the factors possessing some relationship to the inadequate home life of the delinquent. In many instances well-meaning parents were found to be powerless to alter these extraneous conditions and were as much their victims as were their delinquent children.

The Report placed blame on parents in many situations. Lack of affection, inconsistent mixtures of permissiveness and strict discipline and lack of concern for the child's problems were cited as common parental shortcomings. Yet the problem was characterized as "parental poverty" rather than as parental perversity; it was recommended that, instead of being punished, inadequate parents be offered job training, family planning and educational improvement programs. While parents were found to be at fault in some situations, social forces operating on the family were found to be the more significant factor accounting for the magnitude of the juvenile delinquency problem.

Aside from the findings of this respected study group, there are abundant reasons why the time-honored concept that inadequate or neglectful parents are the principal cause of juvenile

7. Newsweek, April 2, 1956 at 95.

8. REPORT OF THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, JUVENILE DELINQUENCY AND YOUTH CRIME, 215 *et seq.* (1967).

delinquency should be laid to rest.[9] It is well known that many wayward youngsters come from excellent homes presided over by capable and concerned parents. But even the most watchful parent cannot shield his child completely from the adverse influences arising from peer group associations, violence realistically portrayed on television or the reports of adult misbehavior carried by the newspapers. These latter-day Tom Sawyers among our youthful population find neither the logs nor the river capable of venting their spirit of adventure. The relevation that the children of the President of the United States sampled marijuana is an indication of the tendency of our youth to seek new forms of excitement (though laws might be violated in the process) even when they have had excellent home lives and the best of parents.

Inadequate and irresponsible parents, no doubt, have a detrimental influence on children. However, as the findings of the President's Commission indicate, these parents represent a substantial rather than a principal cause of juvenile delinquency. Even so, reasons remain for making efforts to improve their performances as parents and to motivate them to accept more responsibility for their children's conduct. While such goals might be sought in a cooperative manner by existing social organizations, it would seem that greater parental response and more effective results could be attained through the force of law.

PUNISHING THE PARENT FOR THE CHILD'S MISBEHAVIOR

Ben B. Lindsey, a distinguished judge of the juvenile court in Colorado in its early years, held the same beliefs as did J. Edgar Hoover regarding the role of parents in juvenile delinquency. His efforts led the legislature of that state to enact, in 1903, a law providing that a parent who caused, encouraged or contributed to the delinquency of his minor child was guilty of a misdemeanor and could be fined or imprisoned.[10] Trial jurisdiction was in the juvenile court and that court was authorized to suspend the imposition of sentence if the parent complied with certain conditions.

Judge Lindsey declared that this law ". . . is the most important feature of the juvenile law of this state . . . The purpose of this law is to compel careless homes to take care of their children."[11]

9. Alexander, *What's This About Punishing Parents*, FED. PROBATION, 23 (1948).

10. *The Contributory Delinquency Law*, ch. 94, 1903 COLO. SESS. LAW.

11. Lindsey, *The Juvenile Laws of Colorado*, 18 GREEN BAG 126, 127 (1906).

He went on to state that:

> Parents who are true to their own home and children are entitled to have the benefits of a law that will insure the performance of such duties, for the sancity [sic] and security of each home depends a great deal on how well neighboring homes are also conducted . . . We must recognize that over half of the original inmates of prisons and institutions are from the youth of the nation who arrived at the prison through neglect in childhood, and bad habits formed at the formative period of life, between eight and sixteen years of age . . . It is much better that the state should perform this function wisely, humanely and while there is an opportunity to prevent crime, than to postpone the evil day until the child has become a criminal, for the state is today taking care of tens of thousands of its young men after they have become criminals, when they might have been saved from lives of crime by sane, sensible, and sympathetic interest by the state in boyhood.[12]

Judge Lindsey continued to praise the so-called Colorado "Adult Delinquency Law" and, several years after its enactment, declared that the court had "more than demonstrated" its effectiveness in character-building when dealing with the child and in homebuilding when dealing with the parent. Later, the Colorado Supreme Court, in limiting the laws' application to the parent or person having custody of the child, referred to the wide approval and acceptance both locally and nationally and to the favorable consideration given it by the leading nations of Europe and Asia.[13]

The New York Experience

Even though they were not supported by studies or statistics the enthusiasic statements of Judge Lindsey and of the Colorado Supreme Court appear to have carried considerable weight for a number of states soon adopted adult delinquency laws. A New York statute,[14] the stated purpose of which was to make parents feel more responsible for the conduct of their children, was adopted prior to the establishment of "children's courts" as separate judicial entities in that state and at a time when jurisdiction over parents cited under the law was vested in the magistrates of the criminal courts. However, two surveys conducted during a four-year period after that law's enactment

12. *Id.* at 130.
13. Gibson v. People, 44 Colo. 600, 601, 99 P. 333, 334 (1909).
14. N.Y. PENAL LAW § 289 *as amended by* ch. 655, 1905 N.Y. Laws.

revealed that, although the magistrates unanimously commended its character and purpose, they rarely used the law.

Supporters of the statute were quick to point out that under the highly praised Colorado law the parent and child stood before the same court and that the reluctance of New York magistrates to utilize the procedure was due to the absence of that element. Consequently, when the legislature in 1909 was considering the establishment of children's courts, it was strongly urged that the adult delinquency statute be placed within the jurisdiction of those courts so that parental inadequacy could be dealt with in conjunction with the child's behavioral problem. Unfortunately, the legislation was "miserably drawn"[15] in that it placed such jurisdiction in the children's courts in the upper portion of the state but left it in the adult criminal court in New York City. Nevertheless, the proponents proclaimed "that of all the laws calculated to prevent delinquency among children, those that punish, by fine or imprisonment, the parents or other persons who contribute to such delinquency are the most significant."[16]

Ten years later, in response to an inquiry into the effectiveness of the statute, the Chief Clerk of the Children's Court of New York City described it as a "dead letter" because that court lacked jurisdiction over the parents and became his own investigation of the criminal court records disclosed that only one case was prosecuted under it.[17] Subsequent legislation remedied this shortcoming by placing jurisdiction under the statute in the Children's Court of New York City.[18] However, until the end of World War II that statute was not used as a means of dealing with the problems of juvenile delinquents in the Children's Court of New York City, or elsewhere in the state.

The post-war upsurge in juvenile crime and delinquency brought forth a demand from the public that those in positions of authority take effective action to deal with the problem. Since most persons who were questioned on the subject expressed the opinion that parental inadequacy was the major cause of juvenile misbehavior and since the "adult delinquency law" was designed to place responsibility for the conduct of the child on

15. This was the view of the New York City Bar Association referring to the New York Penal Code Section 494 as amended by Chapter 478 of the 1924 New York Laws.

16. Abbott and Abbott, *The Children's Court Bill*, 11 N.Y. CHARITIES PUBLICATIONS COMMITTEE 50 (1910).

17. Bates, *The Possibilities and Methods of Increasing Parental Responsibilities for Juvenile Delinquency*, 12 J. CRIM. L. 61, 68 (1921).

18. *Children's Court Act of the City of New York*, ch. 254, 1924 N.Y. Laws.

the parent, the stage was set for the first test of the effectiveness of the long-dormant law.

Shortly after the New York Police Department announced its intention to "crack down on parents who do not control their children," Mrs. Genevieve Rivera was arrested and brought before the Children's Court on the charge that she had failed to control her son while he was shooting a pellet gun to annoy passersby. She was subsequently tried in that court and found guilty of the charge.

While the result in the *Rivera* case appeared to be a step toward the accomplishment of the purpose of the statute, it raised many legal and philosophical conerrns. The President of the Welfare Society of New York described the punishing of parents as a means of solving the juvenile delinquency problem as a "step backward."[19] Others maintained that Mrs. Rivera was as much a victim of society as was her son. Financed by interested citizens and organizations, the appeal seriously questioned the jurisdiction of the Children's Court to hear adult criminal matters. The Appellate Division held that, although the Children's Court had jurisdiction to hear the matter, such proceedings should not be conducted in the usual informal manner of that court but, rather, in accordance with the procedures of the adult court; a finding of guilt based on proof beyond a reasonable doubt supported by legally admissible evidence was mandated. The decision of the trial court was reversed because hearsay evidence had been received and utilized in the finding.[20]

The *Rivera* case marked the beginning and the end of the New York City Police Department's campaign to prosecute inadequate parents as a means of curbing juvenile delinquency even though the jurisdiction of the Children's Court in such cases had finally been established. Perhaps the dissuading factor was the answer received by the judge of the Children's Court to his inquiry addressed to the Juvenile Court of Toledo, Ohio, where the prosecution of parents deemed inadequate had been practiced for many years. Judge Paul W. Alexander, in his reply, pointed out the difficulty of proving the case against an alleged "inadequate parent" and asserted that punishing par-

19. New York Times, Feb. 1, 1947, Part 2, at 1.
20. Human v. Rivera, 272 App. Div. 352, 71 N.Y.S. 2d 321, (Sup. Ct. 1947).

ents was no panacea. Commenting on an extensive study made by the Toledo court he said:

> In fine, we might say our study seems to show that to punish parents who contributed to the delinquency or neglect of their children accomplishes very few, if any, of the things claimed for it except revenge, that in some cases where the parent is refractory and resists the casework approach, a certain amount of actual punishment may bring about cooperation, that in selected cases, where the other methods have failed, prosecution and the threat of punishment are rather effective.[21]

The prevailing judicial philosophy in New York shortly after the *Rivera* case was expressed in a statement issued by the judges of the Children's Court in which they voiced their opposition to a proposed anti-vandalism law:

> The duty by law of the Children's Court is to treat, rehabilitate, and not punish the child. Treatment of the child requires parental sympathy and cooperation. Punishment of parents creats and widens a breach between parent and child, thus impeding treatment, and renders work with the parent all but impossible . . .[22]

Several years later the adult delinquency act was removed from the jurisdiction of the Children's Court, was classified as a general criminal law and was placed within the jurisdiction of magistrates' courts.[23] No further attempt was made to use it as a means of correcting parental shortcomings in an effort to modify the delinquent conduct of children. Instead, enforcement was limited to punitive action against those, including parents, who by their acts, usually of a sexual or immoral nature, contributed to the delinquency of a minor.

Thus, while New York sought to reap the benefits which Judge Lindsey attributed to a law which subjected the parent to criminal penalties for neglect or inadequacy which contributed to the delinquency of his child, the enactment of such a statute did not result in the attainment of that goal. Although the failure to utilize the procedure at the outset was attributed to the misplacement of jurisdiction over the parent, the law was inexplicably rejected even when both parent and child stood before the same court. Although an ideal factual situation was eventually presented and successfully prosecuted, and even though the reversing appellate opinion expressed approval of the procedure, further efforts to utilize the law were nevertheless abandoned, apparently due to disapproval of the approach both by the judiciary and by a vocal public element.

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21. Alexander, *What's This About Punishing Parents*, FED. PROBATION 23, 29 (1948).

22. New York City Laws int. No. 884, 1020 (1952). This law was commonly known as the anti-vandalism law and was never chaptered nor enacted.

23. N.Y. PENAL LAW § 494 *as amended by* ch. 478 1924 N.Y. Laws.

It cannot be said that the approach advocated by Judge Lindsey was given a fair test in New York. Perhaps the validity of Judge Lindsey's unsubstantiated claims was doubted and it was felt that youngsters who had had the benefit of the clean fresh air and open spaces of Colorado weren't very delinquent in the first place. Yet, Judge Alexander, having had the benefit of an intensive study based on the use of a similar statute over a period of years, indicated that the procedure was useful in certain situations. The expressed opposition in New York centered on the punishment of the parent. In practice, the imposition of sentence could have been suspended on the condition that the parent comply with certain court orders concerning the management of the family home and the regulation of the minor's conduct. To the extent that it could have been utilized in that fashion the law might have been useful in reducing juvenile delinquency in New York.

California Contributing Statutes

There is no indication that California has ever followed the scheme of Judge Lindsey's "adult delinquency law." The present Penal Code Section 272, enacted in 1961, is based on former Welfare and Institutions Code Section 702 which placed original jurisdiction over persons charged with conduct contributing to the delinquency of a minor in the juvenile court. Under that former statute, the defendant was arraigned in the juvenile court in accordance with the procedures specified in the Penal Code. If he pled guilty, the juvenile court had jurisdiction to impose sentence or to grant probation. If he pled not guilty, the matter was transferred to the superior court for trial and any further proceedings. The defendant was entitled to a jury trial in the superior court on the misdemeanor charge.

Although the purpose of the former statute was held to be the safeguarding of children from those influences which would tend to cause them to become delinquent, the procedure requiring the case to be transferred to the adult court on a plea of not guilty was inconsistent with the concept of modifying parental behavior as a part of the proceedings involving the child. Unlike Judge Lindsey's approach, the main California objective was to punish the defendant for his misconduct; any benefit to the child due to the rectification of parental inadequacies was incidental.

The legislative purpose in enacting Penal Code Section 272 was to abolish the costly procedure of trying misdemeanor charges by jury in the superior court. Complete jurisdiction was placed in the municipal court and the district attorney was given the responsibility of prosecuting such cases.[24] If there was even any intention to utilize the California contributing statute as a means of remedying the child's delinquency problem by requiring the parent to accept the responsibility for his child's conduct in the manner advocated by Judge Lindsey, the 1961 legislative change (whereby jurisdiction was placed over the parent in the adult court) frustrated that intention by creating the same situation which was blamed for making the earlier New York law unworkable.

A review of the California cases decided both before and after the 1961 legislative change fails to disclose any consistent use of the contributing law as a tool for correcting parental inadequacies in conjunction with juvenile delinquency proceedings. Rather, it appears that parents were prosecuted only for specific acts committed in the presence of, or having a direct influence on, the minor.[25] Quite often the law was invoked against parents accused of neglect, abuse or other forms of mistreating their children. However, even in that area, the common remedy was to withhold custody in the dependency proceedings until the parent was found capable of caring for the child and until he agreed to accept certain conditions imposed upon him when home placement was ultimately ordered.

The failure of California juvenile courts to utilize the criminal law sanctions available under the contributing statute as a means of remedying parental inadequacies is most likely due to a combination of the absence of any valid indication that this method had been used effectively elsewhere and the overwhelming weight of respected professional opinion in opposition to it.[26] Judge Lindsey's unsubstantiated claims are meaningless when compared to the evaluation made by Judge

24. 36 STATE BAR J. 862, 865 (1961).

25. People v. Lamanuzzi, 77 Cal. App. 301, 246 P. 557 (1926). People v. Bergotini, 172 Cal. 717, 158 P. 198 (1916). Allegations that the father was intoxicated in presence of his children, that the children lacked parental control, and, that the home of the mother was an unfit place for children were insufficient to state an offense due to failure to allege that acts of parents were committed in presence of children or had any direct effect on the morals of the minors.

26. Rubin, *Should Parents be Held for Juvenile Delinquency?* 34 Focus, March 1955 at 35. "Wherever the concept takes hold that parents who fail should be punished, it should be exposed as a delusion; wherever it has been put into practice, it should be banished as quackery."

Alexander on the basis of a study of five hundred cases. Aside from the negative attitude of the experts, the self-defeating nature of the punitive approach is a sufficient reason to deem it an effective method of dealing with juvenile delinquency. To punish the parent is to punish the child; the penalty, whether a fine or imprisonment, affects the entire family of which the child is an interdependent member.[27]

COERCING PARENTAL COOPERATION

California juvenile courts, ignoring the punitive approach as a means of influencing parental conduct, have generously indulged in the practice of obtaining the cooperation of parents by threatening to deprive them of custody. Dependency cases are particularly suited to this approach since the usual basis for that status is parental neglect, and the justification for imposing conditions on the parent when custody is restored is the need to insure the well-being of the child. However, the parent's agreement to abide by conditions in order to regain custody is also likely to be forthcoming in delinquency cases, often because of the financial burden the parent would face should his wayward child be institutionalized. In a dependency case the conditions are expressed to the parent. His agreement to abide by them under the supervision of a probation officer or social worker is the justification for the court's ordering the return of the child to his custody. In a delinquency case the conditions are a part of the order releasing the child to his parents. The parent's acceptance of these orders is implied from his failure to object to them. In neither type of cases is the parent under a direct court order which could be the subject of a contempt citation; the sanction, if any, for failure to comply with these orders is to remove the child from the custody of his parent.

Although it is superior to the punitive approach as a means of rectifying those parental shortcomings which contribute to the minor's delinquent or dependent condition, the practice of withholding custody in order to gain the cooperation of the parent

27. *Criminal Liability of Parents for Failure to Control Their Children*, 6 VAL. L. REV. 332, 352 (1971-72).

has been severely criticized.[28] However, there is uniform recognition of the necessity for using this procedure in cases of aggravated abuse or neglect where the well-being of the child far outweighs any rights the parent might have regarding his custody.

Although it lacks the penal aspects of proceedings under the contributing law, depriving the parent of custody is not without serious consequences to the parent. Parents who are weak and frustrated may look upon the removal of their children from their homes as indications of their failures as parents. Further, removal may make it extremely difficult for parents to re-establish themselves in their proper roles at a future time. It is likely that many parents are unable to accept the state's act (taking custody) as one founded on the best interests of the child but rather view it as a form of punishment for their inadequacies.[29] Therefore, in formulating its order regulatiug the conditions under which the parent might regain custody, the court should be mindful of parental attitudes and should direct its efforts toward structuring a program which will give the parent the impression that he is being helped and not coerced in his attempt to resolve the problems of his child.

Direct Orders To Parents—A New Approach

The provisions of the 1976 legislation which enable the juvenile court to make direct orders to the parent for the care, custody, maintenance and control of the minor[30] are designed to accomplish the goals sought under the punitive approach advocated by Judge Lindsey without simultaneously penalizing the parent. Under court direction and without the threats of penal sanctions or of custodial deprivations the parent can now be required to assume responsibility for the conduct of his child and to rectify those home conditions which have been identified as factors causally related to juvenile delinquency. He may also be ordered to participate with the child in a counseling program for the purpose of dealing with the particular behavior problem as it affects the child's relationship to the family.[31] The only limitations placed on such orders by the statute are that they must be reasonable and be deemed necessary and proper by the court to effectuate the disposition of the case.

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

29. Dobson, *The Juvenile Court and Parental Rights*, 4 FAM. L. Q. 393 (1970).

30. CAL. WELF. & INST. CODE § 727(2) (West Supp. 1976).

31. CAL. WELF. & INST. CODE § 727 (West Supp. 1976).

Inasmuch as the failure to obey any order of the court is punishable by way of contempt proceedings,[32] the parent does act under some sort of threat. However, unlike proceedings under the contributing statute, court orders made in accordance with the new law do not imply or allocate blame for the child's condition. In view of the findings of numerous studies on the subject identifying parental inadequacy as a substantial cause of juvenile delinquency,[33] a liberal use of the new law therefore appears to be justified for the purpose of instructing parents regarding the steps to be taken in solving the delinquency problems of their children. However, there are a number of factors which may inhibit the availability and effectiveness of the procedure including jurisdictional problems, parental rights and the limitations on judicial intervention into family life.

Juvenile Court Jurisdiction Over Parents

Under the new law the parent can be subjected to direct orders of the court concerning the manner in which he raises his child, manages his home and, perhaps, conducts his own life. While preexisting jurisdictions to make orders for paying the costs of care and legal services can be justified as a form of civil action placed within the juvenile court in a manner akin to the prosecution procedure under the former adult delinquency statutes, the basis for jurisdiction to make orders regulating parental conduct is not entirely clear. Whatever legal responsibility a parent may have for his child's conduct remains within the jurisdiction of the civil and criminal courts.[34] If jurisdiction of the juvenile court is founded on parental inadequacy, it appears that the due process requirement is not met in the absence of a procedure permitting the parent to be heard on the issue. The new law does not require any judicial finding concerning the parent before it may issue its orders. Consequently, if jurisdiction over the parent exists, it arises from the fact of parenthood alone. Prior to the enactment of the new law such jurisdictional concerns did not exist because, in dealing with the child's problem, the court was able to indirectly induce parental

32. CAL. WELF. & INST. CODE § 512 (West 1972).

33. REPORT OF THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, JUVENILE DELINQUENCY AND YOUTH CRIME, (1967); Ludwig, *Delinquent Parents and the Criminal Law*, 5 VAND. L. REV. 719-20 (1951-52).

34. CAL. CIV. CODE § 1714.1 (West 1973), CAL. PENAL CODE § 272 (West 1970).

participation by threatening to punish or by otherwise coercing the parent in a variety of ways.

A distinguished authority in the field doubts the existence of juvenile court jurisdiction over parents.[35] Research has failed to disclose any contrary position. Perhaps the absence of any controversy in this area is due to the absence of prior legislation requiring the parent to submit to the direct orders of the court in the manner provided by the new law.

Since the procedure permitted by the 1976 legislation is conditioned solely on the fact of parenthood, jurisdiction to address the orders to the parent will most likely be upheld under the common law doctrine of *parens patriae*, a panacea widely used in the interpretation of juvenile court law. Although they are also worthy of serious consideration under the policy power theory, parental rights are easily cast aside under the *parens patriae* concept which is founded solely on the public's concern for the child's well-being. This theory furnishes the justification for issuing orders to parents in the absence of showing of inadequacy since the state, as the ultimate parent, may utilize the services of the natural parent to provide any needs of the child.

The Rights of Parent and Child

The orders issued under the procedure established by the new law should be consistent with the rights of both parent and child. It has been a basic tenet of the law that parents have broad freedom with regard to child rearing. Some courts have suggested that the principle of family privacy and autonomy may be constitutionally protected. The Supreme Court has stated:

> The Court has frequently emphasized the importance of the family. The rights to conceive and raise one's children has been deemed 'essential' . . . The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment . . .[36]

In recent years the state has assumed an ever-increasing role in child rearing. Although they have usually favored parental autonomy, courts and commentators have also been ambivalent regarding the proper balance to be struck between that doctrine and the *parens patriae* concept. Many state statutes preface their provisions with statements affirming the inviolability of the family and yet authorize substantial intervention.[37] Califor-

35. Wald, *State Intervention on Behalf of Neglected Children: A Search for Realistic Standards*, 27 STAN. L. REV. 985, 1036 (1975).
36. Stanley v. Illinois, 405 U.S. 645, 651 (1972).
37. *See* MASS. GEN. LAWS ANN. ch. 119(1) (West 1969).

nia law accords recognition to the importance of the family home[38] but allows state intervention to a considerable degree.

The likelihood of a clear resolution of the conflict between the duty of the state to intervene in the interest of protecting the child and the rights of the parent is remote. However, even those who most strongly uphold the *parens patriae* doctrine agree that the least intervention necessary should be practiced. Fortunately, this is an appropriate framework for the application of the new law.[39]

Even though the state under the *parens patriae* doctrine has the duty to see that every child within its borders receives proper care and treatment,[40] children are nevertheless deemed "persons" within the meaning of the Bill of Rights and their constitutional rights must be recognized.[41] These rights have been held to be separate from those of the parent.[42] If the court views the minor as a part of a family system rather than as an autonomous individual living in the home, its parental orders would ordinarily prescribe rules of conduct rather than constitutional rights and parental authority would consequently prevail over the wishes of the child. However, there is a potential for conflict in some areas such as religious preference. Judicial intervention is not justified to the extent that an order to the parent would have the effect of depriving the child of a constitutional right since the effect of such a directive would be to create, rather than to resolve, conflict within the family structure.[43]

38. "The purpose of this chapter is to secure for each minor under the jurisdiction of the juvenile court such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental and physical welfare of the minor . . ."

39. Prior to the enactment of the 1976 legislation, intervention has been, for the most part, in the form of casework by probation officers and social workers. The intervention discussed in this article consists of the court's order requiring the parent to perform certain acts or to refrain from some type of conduct with reference to his child or the family home. However, it may also be in a form which requires his submission to the activities of caseworkers.

Limitations have been suggested on the extent of intervention in neglect cases. *See* note 28 *supra*. The standards suggested therein are worthy of consideration in determining the extent of use of the procedure established by the new law.

40. In re McDonald, 201 N.W.2d 447, 453 (1972).

41. In re Gault, 387 U.S. 1 (1967).

42. Wisconsin v. Yoder, 406 U.S. 205 (1972).

43. Aikman, *The Child's Right to a Child-Centered Disposition*, Vol. 25, No. 2 JUV. JUST. 10 (1974).

Limitations on Judicial Intervention

The new law vests broad discretion in the juvenile court regarding both the nature and the number of orders which it may direct to the parent. Undoubtedly, the reasonableness of the directives will be the subject of appellate scrutiny more often than will be their necessity or propriety. However, whether the juvenile court was justified in issuing such orders initially will seldom be seriously questioned on appeal.

Presiding over a program designed to rectify the child's delinquency problem, the juvenile court judge may seek to improve family home life so thoroughly that he risks assuming the role of a benevolent despot. Inasmuch as his information is gleaned from reports of probation officers and social workers who are for the most part, upper middle class college graduates, he may be inclined to view such commonly used descriptions as "untidy" homes, "dominant" parents or "manipulative" children with far greater concern than such appellations deserve. Seldom will the judge be presented a social study report which does not identify some inadequacy in the family home, be it so minute as breakfast dishes in the kitchen sink discovered during a noon visit or so gross as an utterly unconcerned parent. It is unlikely that any home is absolutely perfect in every respect and many are in need of substantial improvements in order to be classified as adequate. Consequently, the opportunities for issuing orders to correct adverse conditions abound. However, the assumption that judicial intervention to correct every deficiency will make the family home better is invalid.

Under the new law, the order which may be directed to the parent must not only be reasonable but it must also be proper and necessary. In meeting this last requirement the court should first identify the causal relationship between the isolated deficiency and the delinquent condition of the child. While this may not be a difficult task when the court encounters a parent who permits his child to roam the streets at all hours, a less identifiable relationship exists when the parent is extremely rigid in exercising his authority over the child and seldom displays any affection toward him. The mere fact that parental conduct or home conditions can be made better by a court order does not alone justify the issuance of one to the parent. Unless the conduct or condition sought to be changed is causally related to the child's behavior problem, judicial interference is both unnecessary and unwarranted.

Not every deficiency which has been identified as a contribut-

ing factor in the child's delinquency pattern requiring a court order for its rectification will meet the further requirement of propriety. For example, although the excessive hours a father is employed may be identified as a causative factor in that insufficient time may exist for the normal father-son activities, yet the needs of the family may be such that any diminishment in earnings would result in financial disaster which would affect every member of the family. Even if it were deemed a reasonable method of dealing with the child's problem, an order requiring the father to lessen his hours of work would still be inappropriate.

The reasonableness of an order directed to the parent may be examined from two points of view. The first consideration should be whether the order tends to correct the deficiency which has been identified. A requirement that a child be in the family home no later than a certain hour of the night has the effect of diminishing his opportunities to engage in late-hour mischief. An order requiring the parent to deliver the child to the school in the morning is likely to diminish a truancy problem. On the other hand, ordering an unwilling child to participate in Bible study would not tend to overcome the minor's use of illegal drugs.

The second aspect of the order's reasonableness concerns the ability of the parent to perform it. Perhaps a tour of Europe would inspire the child to greater interest in his school work. However, if the tour were beyond the financial ability of the parent, an order requiring it would be both unreasonable and improper.

Those orders addressed to parents which do not meet these statutory requirements will not be enforceable by contempt proceedings. However, there are additional reasons for the juvenile court judiciary to exercise restraint as to both the nature and the number of directives they issue to parents. Parents are as likely as their children to the excessive use of authority and a set of rules covering every aspect of family life may not be well received in most cases. Parents should not be deprived of their rightful role in child raising and the existence of the new procedure of involving the parent in juvenile court proceedings concerning his child should not be the impetus for re-structuring

the family home to fit a specific pattern prescribed by the state. Intervention for the purpose of resolving those adverse conditions and conflicts which have been identified as contributing causes of the child's problem offers the best hope of attaining the still worthy goals sought by Judge Lindsey without violating the rights of the child or those of members of his family.[44]

Summary And Conclusion

It is a common notion that juvenile delinquency can be traced to the failure of the parent to properly perform his duties in raising his child. A good family life is recognized as advantageous to a child's development. When a youngster "goes wrong" it is believed that his parent has failed to provide a proper home atmosphere and is, therefore, responsible for the child's problem.

Studies have identified inadequate parents as a cause of delinquency; however, they report that many other causes may be operating at the same time, some of which are beyond the control of the parent. In perspective, inadequate parents are more properly described as a substantial, rather than as a major cause of juvenile delinquency.

It has been noted that the procedure of prosecuting parents for the misconduct of their children, although it was highly praised by its sponsor, did not receive judicial acceptance in one state, and that an intensive study during a ten-year period of the procedure's use in another state produced the conclusion that it did not yield the results that had been promised. Although the difficulty of establishing the causal relationship between the conduct of that parent and the delinquency of his child is cited as one reason for the failure of this approach, the harm to the family resulting from the imposition of criminal sanctions upon the parent is also a substantial negative factor.

California juvenile courts, wisely abstaining from the process of punishing parents as a means of controlling juvenile delinquency, have nevertheless indulged in the widespread practice of coercing parental cooperation by threatening to deprive the parent of custody. Although it is less deserving of criticism than the punitive approach, this practice also has its shortcomings. Its negative effect on the parent's morale and the excessive amount of intervention into family life it promises are cited as factors inhibiting its effectiveness.

44. Johnson, *The Juvenile Offender and His Family*, Vol. 26, No. 1 Juv. Just. 31 (1975).

The 1976 California legislative enactment, which enables the juvenile court to make direct orders to the parent for the care, custody, maintenance and control of his child, presents an opportunity to involve the parent in the process of resolving his child's problems in a meaningful manner. Although the parent has now been made subject to the usual contempt penalties for disobeying court orders, he has nevertheless been spared the stigma of blame inherent in the punitive approach and the anxiety and pressures associated with judicial threats to deprive him of custody.

The constitutional basis of the juvenile court's jurisdiction over the parent is likely to be found in the common law doctrine of *parens patriae.* Under this concept the parent need not be entirely deprived of his role in rearing his child and the state, as the ultimate parent, should preempt the parent's authority only to the extent necessary to promote the best interest of the child.

While the new law offers an opportunity to involve the parent in a program to resolve his child's delinquency problems, it also presents the danger of excessive judicial intervention into family life. The requirement that the orders directed to the parent be reasonable, necessary and proper is not a serious obstacle to the imposition of an all-but-endless set of rules governing every aspect of the family's structure.

The assumption that every child's delinquent situation is due to some parental inadequacy is invalid. Equally without merit is the premise that every parent of such a youngster is in need of direction concerning the manner in which he should raise the child. Orders under the new law should be issued to parents only to correct conduct or conditions which have been identified as being casually related to the child's behavior problem.

The new law provides a new approach to goals which have not been reached for over seventy years. The parent now stands beside his child in juvenile court. His responsiveness to judicial directions for the purpose of resolving his child's problems will depend in large measure on the perception, wisdom and sound discretion of the court. Although the method advocated by Judge Lindsey deserved its fate, his goals remain as worthy of attainment as ever.