

The Evolution of the Legal Ramifications of Parentage: An Overview

BY HARRY L. TINDALL & ELIZABETH H. EDWARDS

Few, if any, parents like to be told how to raise their children. However, the law informs us that all parents need specific guidance on the rights and duties of parents.

Many believe that the role of parents is to guide, protect, and support their children with love and affection. This belief, though, reflects a modern sensibility that has become pervasive only in recent decades. Until very recently, many people's primary reason for having children had much to do with economics and a supply of labor.

Common Law Duty to Support

The duty to support their children has long been a legal obligation for parents. However, the purpose of early child support laws in England was to prevent children from becoming wards of the parish, rather than to enforce parental duties. In the United States, nineteenth-century courts and legislatures established the obligation to pay child support in connection with granting a parent visitation rights. By the early twentieth century, most states had enacted child support laws, which gave courts the discretionary power to obligate fathers to pay "just" or "reasonable" support for their offspring. Modern child support laws recognize that both mothers and fathers have a duty to support their children, and either parent may be ordered to pay child support.

Child Labor Laws

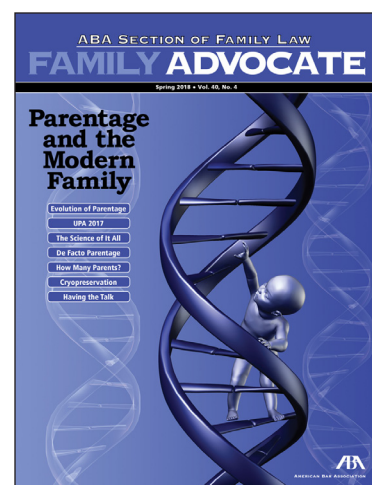
Throughout history, children were considered economic assets of their parents, and a child's labor was an essential resource. Families were often dependent on the labor of their children for survival. It was not uncommon for children as young as five years old to work in fields and factories.

In the early half of the twentieth century, awareness of the poor working conditions of children in urban factories increased, and many advocated for government regulation of child labor. In 1904, activists formed the National Child Labor Committee to abolish the practice of employing children in the workplace, and in 1912, the U.S. Children's Bureau, formed within the Department of Commerce and Labor, was the first national government agency focused solely on the well-being of children.

The most sweeping federal law enacted to regulate child labor was the Fair Labor Standards Act (FLSA), passed in 1938 as part of the New Deal legislation. The child labor laws in the FLSA set forth legal requirements to maintain health and safety in the workplace for minors.

Child Welfare Laws

Common law in England recognized that responsibility for the care and protection



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of children lay with their parents “as guardians by the law of nature,” as well as with the monarchy as *parens patriae*—the parent of the country. Fathers had virtually unlimited rights to discipline their children, as the government was reluctant to get involved in what they deemed private family matters. The first law passed to prevent cruelty towards children, commonly known as the Children’s Charter, was not passed in England until 1889.

In the United States, for many years laws enacted to prevent child abuse varied state by state, and the legal framework to protect children was often unenforceable and needlessly complex. In order to address growing concern for increasingly reported incidents of child abuse, Congress passed the Child Abuse Prevention and Treatment Act (CAPTA) in 1974, creating the nation’s first mandatory child-abuse and neglect reporting laws. Although amended several times, CAPTA remains law and provides federal funding for the prevention, identification, and treatment of child abuse and neglect. Most of today’s parents are well aware that every state has an agency with the power to remove an abused or neglected child from the custody of the parents in order to protect the safety and welfare of that child.

Equal Rights of Nonmarital Children

Under common law, an illegitimate child was deemed *filius nullius* —the child of no one. Until the 1960s, the majority of state laws defined “parent” as encompassing both the mother and father of a child born during marriage, but the definition included only the mother of a child born outside of marriage. Many states deemed unwed fathers as de facto unfit to care for their children, and often children were made wards of the state if their mother passed away or otherwise could not care for them.

In several landmark Supreme Court cases in the 1960s and 1970s, the Court recognized that children born outside of marriage were clearly “persons” under the Fourteenth Amendment, which entitled them to its full protection. *Levy v. Louisiana*, 391 U.S. 68 (1968); see also *Stanley v. Illinois*, 405 U.S. 645 (1972). Consequently, statutes have since abandoned all classifications of children as either “legitimate” or “illegitimate.” Today, children born outside of marriage have the same legal rights as children born of marriages, and parents are not required to be legally married in order to have legal rights in connection with their children.

Fundamental Right of Parents

Neither the U.S. Constitution nor the Bill of Rights explicitly refers to the rights of parents. However, throughout the twentieth century, the U.S. Supreme Court has recognized that parents have the constitutionally protected right to autonomously make child-rearing decisions.

- In *Meyer v. Nebraska*, the Supreme Court struck down a 1919 Nebraska law restricting foreign-language education because the rights of individuals to marry, establish a home, and bring up children are protected by the Due Process Clause. 262 U.S. 390 (1923).
- In *Pierce v. Society of the Sisters*, the Supreme Court recognized that a parent has the right to choose whether a child will attend private or public school. 268 U.S. 510 (1925).
- In *Wisconsin v. Yoder*, the Supreme Court determined that Amish children could not be placed under compulsory education past eighth grade, as parents’ fundamental right to freedom of religion outweighs

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the state's interest in educating children. 406 U.S. 205 (1972). This case is often cited as a basis for parents' right to homeschool their children.

- In *Stanley v. Illinois*, the Supreme Court recognized that fathers of children born outside of marriage had a fundamental right to their children and that they are guaranteed the same rights as married or divorced fathers. 405 U.S. 645 (1972).
- In *Troxel v. Granville*, the Supreme Court struck down a Washington statute permitting anyone to petition for child visitation as unconstitutional infringement on parents' fundamental right to raise their children. 530 U.S. 57 (2000). Under *Troxel*, when considering a petition for visitation by nonparents, courts must presume parents act in the best interest of their children. However, in the wake of this decision, states have been divided over what is required to overcome the parental presumption. Some states have enacted legislation that requires a showing of "harm" to the child, while others require only "detriment" to the child. The Uniform Law Commission is currently drafting a "Non-Parental Child Custody and Visitation Act" to help resolve these differences; a final draft is expected by July 2018.

Allocation of Parental Rights and Duties

The law sets forth parents' legal duties and rights, which are respectively protected and enforced in order to serve the best interest of the child. When parents divorce, these rights and duties are allocated between the parents, with one parent often having certain rights and duties to the complete exclusion of the other parent. Moreover, the rights and duties are not necessarily given exclusively to biological parents, as the law recognizes that grandparents, stepparents, and in some states, de facto parents, often are the primary caretakers of children and may therefore be granted the legal rights of parents.

* Right to Care, Custody, and Control

The Supreme Court has held that parents have a constitutionally protected right, derived from the Fifth and Fourteenth Amendments, to make decisions concerning their child's companionship, care, custody, and control. Accordingly, parents have the right to autonomously raise their children, and courts must presume that they act in their children's best interest.

* Visitation Rights

Parents' visitation rights are inherent in parental status, and the right of a parent to visit with his or her children is recognized by statute in every state. Even in cases of abuse and drug addiction, courts will often order the parents' visitation be supervised to protect the child from danger while also recognizing the parent's right to visitation. Generally, courts will not restrict the visitation rights of parents unless there is a clear showing of physical or emotional danger to the child. See *Santosky v. Kramer*, 455 U.S. 745 (1982) (holding a parent's right to raise his or her child could be terminated only upon "clear and convincing" evidence that the child was neglected).

* Duty of Discipline

A parent's right to discipline his or her child has become a controversial issue in recent years as society's attitude toward corporal punishment has evolved. However, corporal punishment is still permitted in every state either under

Children have a constitutionally protected right to privacy, but it's more limited than their parents' privacy rights.

state statute or common law. The majority of state laws permit parents to use “reasonable force” in disciplining a child; however, what is reasonable depends on the circumstances of the child and parents, and the force used. Whether a parent has excessively punished a child so that it constitutes criminal child abuse is determined on a case-by-case basis by state courts.

* **Right to Make Medical Decisions**

The general common law principle held that minor children are legally incapable of either consenting or refusing to consent to medical treatment. Today, parental consent is almost always required before any medical treatment is administered to a child. Parents are not required to even consult with the child and may even choose a course of treatment to which the child objects.

However, the Supreme Court has recognized the rights of minors to make medical decisions independent of their parents when minors seek abortion services or access to contraception. See *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976). In recent years, many have sought to protect a child’s right to vaccination under the Fourteenth Amendment so that even when parents object to vaccinating their child, that child has his or her own legal right to obtain vaccination for protection. Thus far, only three states—California, Mississippi, and West Virginia—have statutes that eliminate philosophical exemptions to vaccination.

* **Right to Direct Moral and Religious Training**

Parents have the constitutionally protected right to indoctrinate their child with their religious beliefs. *Pierce v. Society of the Sisters*, 268 U.S. 510 (1925). However, some courts have held that a noncustodial parent’s parental rights may be restricted when the exposure to conflicting religions is causing harm to the child. A handful of appellate courts have taken it a step further by holding that the custodial parent has the sole and exclusive right to direct the religion of the child to the complete exclusion of the noncustodial parent. See *Andros v. Andros*, 396 N.W.2d 917 (Minn. Ct. App. 1986); *Lange v. Lange*, 502 N.W.2d 143, 146 (Wis. Ct. App. 1993).

* **Right to Make Educational Decisions**

The right of parents to direct the education of their children is protected by the Constitution. *Meyer v. Nebraska*, 262 U.S. 43 (1923). Education standards vary state by state, but generally, children must attend school for a portion of their childhood. Parents have the right to decide how their children are educated and whether that education should be public, private, religious, or at home.

* **Truancy Laws**

The right to make educational decisions is not without limitations. A controversial method to hold parents accountable for the education of their children lies in truancy laws. Truancy regulations are generally enforced by local governments, with fines ranging from \$100 to \$400 for each absence of a child from school. Habitual violations may lead to fines, loss of custody, and probation for both juveniles and parents.

* **Right to a Child’s Earnings**

For many years, the father was exclusively entitled to the services of his child during the child’s minority, and the mother had no such right recognized under the law. However, today this right is universal, and the law recognizes that

both parents may be entitled to a child's earnings, although some states have restricted this right to the parent who has primary custody. The right to a child's earnings may also be waived by a parent's failure to specifically assert it or by agreement between parent and child. Some states have enacted laws that place a child's earnings in trust until the child reaches the age of majority.

* **Right to Travel**

Although not explicitly mentioned in the Constitution, the right to travel freely from one state to another has long been interpreted to be a basic liberty that cannot be denied without due process of law. However, the best interests of a child may override a parent's right to travel. Parents are often precluded from relocating with a child to another county, state, or country if a court finds that the relocation is not in the child's best interest. Further, courts have held that parents do not have an unqualified right to travel internationally with children, and courts often impose travel and passport restrictions to protect children from international abduction and travel to dangerous locations.

* **Tort Liability of Parents**

The doctrine of parental immunity shields parents from tort claims based on their children's actions and arising from parenting decisions; it has been adopted in most states. Generally, parental immunity does not apply when a parent commits a willful, malicious, or intentional wrong or when parents abandon or abdicate their parental responsibility. Conversely, parents may be liable for the acts of their child where the tortious act was done with the consent of the parent, within the scope of the parent's business, as a result of parental negligence that made it possible for the child to cause the injury, or where a parent has knowledge of the "vicious tendencies" of the child and fails to exercise reasonable measures to control the child.

* **Parental Rights with respect to Children with Special Needs**

The best interests of a child with special needs may vary greatly from one child to another. Accordingly, the extent of a parent's rights and duties may also vary greatly. For instance, the duty to pay child support may be extended in duration and the amount increased if the needs of the child warrant additional support. Further, the right of a parent to make medical decisions may be limited to following the recommendations of the child's primary care physician or consulting specialist. Often children with special needs are more vulnerable and need greater protection than other children, so courts tailor the rights and duties of the parents to suit the best interests of each child with special needs on a case by case basis.

* **Right to Bring Suit on Behalf of a Child**

Under common law, when a person negligently injured a minor, two separate causes of action arose: the minor child had a cause of action for injuries suffered and the parents had a cause of action for the loss of services and for medical expenses incurred by the parent for treatment of the child's injuries. Today, a minor who sustains personal injuries may bring suit either through his or her parents or through a guardian ad litem appointed by the court. Parents also have standing to bring wrongful death actions for the loss of their child, but courts have limited this right to parents whose children are not in foster care. See *Citizen v. American Mfrs. Mut. Ins. Co.*, 607 So. 2d 1001 (La. Ct. App. 3d Cir. 1992).

* **Right to Inherit from a Child**

Until a child reaches maturity, his or her earnings and estate are actually the property of his or her parents. In the event that a child predeceases his or parents, the parents are legally entitled to the child's property and, in most instances, need not go through probate procedures. However, parents of children who are beneficiaries of a trust or similar estate planning are subject to the restrictions of that trust and may not be able to seize that property as their own. Additionally, the laws of intestate succession are constructed in deference to the family unit. Accordingly, most intestate statutes across the country recognize that parents are the heirs of their adult child who passes away without a will, is not married, and does not have children.

* **Right to Educational Information**

Access to educational information and records is governed by the Family Educational Rights and Privacy Act of 1974 (FERPA), commonly known as "the Buckley Amendment." Under FERPA, parents have the right to access their child's report cards, transcripts, disciplinary records, contact and family information, and class schedules. Schools may not withhold a child's educational records from a parent and may generally only disclose a child's records to school officials, another educational institutional, and local educational authorities.

* **Children's Right to Privacy**

Children have the constitutionally protected right to privacy to make decisions free from government intrusion, but this right is much more limited than the privacy rights of their parents. Courts have recognized that children have the right to obtain abortions through a judicial bypass procedure and also obtain contraception without their parents' permission, but the extent of this right varies from state to state. Further, several circuit courts have recognized that minors have the right to informational privacy, but this right is generally subject to a parent's right to access their records.

Conclusion

The legal rights of parents today are highly evolved when compared to those delineated under the common law. Rather than giving fathers absolute control over their children, today's laws set forth specific rights and duties that serve the best interests of the child and that apply to mothers, fathers, and often, nonbiological parents. **FA**

HARRY L. TINDALL (htindall@tindallengland.com) is a founding member of Tindall England PC, in Houston, Texas. He is a certified mediator and arbitrator, and he has been Board-certified in family law since 1975. He currently serves as chair-emeritus of the Joint Editorial Board—Family Law, a joint project of the ABA, American Academy of Matrimonial Lawyers, and ULC. He is a ULC Life Commissioner from Texas; in 2002, he became chair of the ULC Drafting Committee for the Uniform Parentage Act, and in 2015, he was named chair of the Drafting Committee for the Model Veterans Court Act.

ELIZABETH H. EDWARDS (ehedwards@tindallengland.com) is an associate at Tindall England. A graduate of the South Texas College of Law Houston, her practice focuses on family and collaborative law.