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A Child's Rights in the Eyes of the Law

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After having done extensive research for my Family Law unit, I find that there are many extraneous factors which make the enforcement of children's rights difficult. The laws that pertain to "children" seem especially controversial due to the many conflicting opinions regarding who constitutes a child, what rights a child should have, and what is best for each individual child.

In the eyes of the law, a "child" is someone who is at risk, dependent, and unable to decide what is "best" for him or herself. While I do not entirely agree with this definition of a child, I do feel that it is important to understand laws pertaining to children's rights so that the policies established by our government can be justified. If a law is found to be inappropriate or "out-of-date," then we, as active citizens, will have the knowledge and insight to encourage our legislators to change the laws.

I want to help my students understand their rights as citizens and the limits on their rights as children. During current events discussions held in my classroom each Doming, my students often ask thought-provoking and challenging questions that I simply cannot answer. Throughout the past few months, I have done much reading about this topic and I now feel even more in the dark than before. The law, in theory, tries to protect children from parents and other adults who are not able or willing to safeguard them against certain dangers or risks but the enforcement of the law seems so subjective at times that the state may not always offer children something better; lawmakers may unintentionally create a worse situation. When parents' and children's interests conflict, the child's well-being should be paramount because in my opinion, children need to be sheltered and nurtured. Adults are supposed to be able to care for themselves.

For my curriculum unit, I will have my class focus on four legal issues and debate several as if they were legislatures in Connecticut's government. I will teach the legislative processes of our government and the hierarchical system of our judiciary branch. It is essential that my students understand the proper channels that must be followed in our legal system. Since my students will be studying the legislative process as part of their traditional 6th grade curriculum already, I feel that the idea of introducing them to "mock legislative debates" will be a creative and intriguing focus of this unit for the first 3 legal issues. We will be visiting the state capitol and thus, observing actual state representatives discussing real issues currently under debate. Each student will then become a state representative responsible for adequately representing the constituents from their region. Each child must research his/her geographic location and present an oral and written report detailing the statistics and pertinent data from their region (i.e. population, # of men, women, children, schools, etc.). Then, as we prepare to discuss the legal issues, students will have the opportunity to read

actual cases which I will have copied from casebooks. They will read these cases and write short essay responses as to their feelings and/or opinions. I will then guide my students through the debating process and will incorporate several lessons on public speaking before the actual legislative session begins. I will be copying cases from the Yale Law Library and the Library of Social Sciences. It would be too lengthy for me to include them in this unit but some of the cases to be copied are mentioned throughout this unit.

Throughout this “legislative session”, I am going to try and not reveal the actual rulings and decisions pertaining to each issue. I would like to see what the children’s opinions are without tainting their findings with already established laws. Cases which I feel would be of high interest for my sixth graders include: juvenile curfews, refusal by parents to authorize medical care, children’ rights from inadequate parents, and compulsory education.

After studying the final legal issue, compulsory education, the class will extensively read about and study the case *Wisconsin v. Yoder*. They will then produce a “mock trial” based on that case in particular. Students will “perform” the various roles which are essential to our judicial system: attorneys, jurors, judges, defendants, plaintiffs, witnesses, experts, etc. Since the typical classroom has about 24 students, there should be plenty of “extras” to serve as witnesses and courtroom observers. If possible, I would like to perform this mock trial in the school gymnasium or cafeteria in front of the other sixth grade classes. The process of producing a “mock trial” will be explained in greater detail during the latter part of this unit which focuses on compulsory education.

After reading the article, “When Children Take Action”, I discovered that not only can this educational unit work in a classroom, but it can have dramatic effects on students’ willingness to take action and actually change ineffective laws. As Colleen Foye Bollen states in her article, “The children now care what laws get passed. They also recognize that what goes on in the state capitol affects everyone in the state.” That is my goal for my students. Hopefully, this unit will show children that if they take an informed and intelligent approach to our society’s problems, maybe they can be the generation who “makes a difference” in our laws and in our lives.

Before beginning with the legal background part of the unit, I would just like to enclose the following poem which I read in *The State of America’s Children* (1992) . Having worked with children for several years now, I have found that they are by nature, risk talkers. Sometimes we adults could learn much about life if we just watched children’s behaviors. This poem will hopefully provide inspiration to children, adults, and especially lawmakers who hold so much power in their decisions.

To laugh is to risk appearing a fool,

To weep is to risk appearing sentimental,

To reach out to another is to risk involvement,

To express feelings is to risk exposing your true self,

To place ideas and dreams before a crowd is to risk their loss,

To love is to risk being loved in return,

To live is to risk dying,

To hope is to risk despair,
To try is to risk failure,
But risks must be taken
because the greatest hazard in life is to risk nothing,
The person who asks nothing, does nothing, has nothing,
is nothing!
They may avoid suffering and sorrow,
but they cannot learn, feel, change, grow, love, live!
Chained by their attitudes, they are a slave.
They have forfeited their freedom.
Only a person who risks is free!
anonymous

Legal Issue #1 Refusal by Parents to Authorize Medical Care

Consent is a basic requirement for medical services. Since a child cannot consent for himself, a parent or guardian must. In matters that involve medical decisions for children, parental autonomy (see legal definitions) is not absolute. The government not only has a right, but a duty to protect children, and so it can and will intervene when the parent(s) refuse to consent to medical treatment. In my class, we will discuss children's rights when parents refuse to authorize medical care in a variety of situations; life-threatening and nonlife-threatening.

Life-saving Treatment

Parental autonomy is sacrificed in matters that put a child's life in danger because the denial of treatment or operations that would result in the death of a child is justifiable grounds for state intervention. The law assumes that most parents normally protect their child's body as if it were their own. However, some parents deny themselves and their children proper medical care due to religious or ethical beliefs. Washington D.C.'s Superior Court had a case named "In re Pogue" where Judge Murphy authorized blood transfusions for an otherwise healthy newborn infant that would have died without the treatment. The mother refused transfusions for herself and her baby. The reason for the mother's refusal was not clearly stated in the book I read but obviously religious issues could complicate matters such as this one. Judge Murphy ruled that the mother was an "adult" and could make her own decisions for herself but that the state must step in as a substitute parent to protect the child. Coercive intervention was justified and necessary in this case because otherwise the parents' decision would have deprived that child of an opportunity to grow up and experience

adulthood.

Baby Doe Cases

Other cases are more complicated and controversial. Baby Doe cases have been appearing in our courtrooms more frequently in the past two decades. These cases are difficult because the life of the child may be regarded by the parents and/or doctors as “hopeless” based on extreme birth defects or other conditions. At times, the family may wish that the baby be allowed to die. What must the state do in circumstances such as these? I would want my students to consider these options and brainstorm possible legal solutions.

Effective October 1985, states are required to intervene in cases where the infants are being denied necessary medical treatment. However, in defense of the families’ right to make a decision, the government also said that medical treatment can be withheld in the following three situations: when the child is in an irreversible coma, where death will occur quickly, and/or where the treatment is so extreme and the chance for life so remote that treatment would be considered inhumane. Students will need to debate amongst themselves as to whether or not these are “good” and acceptable standards.

Cases where death is not an issue pose more vague and difficult questions for lawmakers. I would like my students to study extensively a case where the child’s life is not in imminent danger but medical care is being refused by parent(s). For example, in “In re Green”, the Pennsylvania Supreme Court was faced with a mother’s refusal on religious grounds to consent to surgery which would have corrected her son’s paralytic scoliosis. This disease, also known as curvature of the spine, is debilitating and her son’s condition was so severe that he could not stand or walk. Without the surgery, physicians warned that the boy could become bedridden. To justify the mother’s decision, however, the operation was considered dangerous. Here the court dearly did not want to overstep the mother’s decision but it did want to determine the boy’s views since the decision would affect him for the rest of his life. The boy opted not to have the operation and the court did not intervene any further.

I would like my students to decide what should be legally done if indeed the child wants the medical treatment or surgery. What if this goes against the wishes of the parents? What should be decided if the child wants or needs some treatment but the parents refuse because they cannot afford it? In this day with millions going without the necessary healthcare, this is certainly a pertinent issue. What if the parents are divorced, have shared custody, yet disagree as to the proper medical care? Whose decision dominates here and why? How do we really know that the child’s wishes are being granted? Too many times, as we will learn about in the topic of inadequate parents, children can become intimidated and influenced by their parents. Are parents inflicting their own beliefs or opinions on the child?

Legal Issue #2 Juvenile Curfews

With the increase of crime in our country committed by and toward young people, many state and local governments have attempted to deal with juvenile crime through juvenile night curfews. In 1986, for example, DeKalb County, Georgia, enacted a midnight to 5 a.m. curfew for persons under the age 18 in response to increased crime acts. Why are our legislatures allowed to prohibit children from being out at night when they do not do the same to adult criminals? Although a curfew aimed at all citizens could not possibly survive constitutional scrutiny, curfews aimed at children are often deemed legally permissible and accepted by our society.

Freedom of movement is one of the most important rights enjoyed by United States citizens. It is not until a right is taken away that you truly appreciate it. In many countries, you are *not* allowed such freedom. For Americans, however, as long as you are using the streets for a legitimate purpose, you can go wherever or whenever you please. During emergency situations, the government may impose curfews on *all* citizens—adults as well as minors. We have experienced such curfews in our recent history in Los Angeles, California, following the 1992 not guilty verdict of LA police officers in the Rodney King beating trial. The curfews were obviously established to protect all citizens' safety although it is a sharp contradiction from previously established laws prohibiting curfews against all people.

In the matters involving juvenile curfews, the state often oversteps the parents' ultimate authority. Regardless of how a parent feels about his/her child being out after curfew hours, the state appears to have the final say. Parents have challenged this law based on their right to raise a family free from governmental interference or intervention. Courts have responded by stating that some situations allow for extra restraints on minors that could not constitutionally be placed on adults. Just recently in the news was a court decision in Orlando, Florida, that upheld a juvenile curfew despite pleas by the American Civil Liberties Union (ACLU). Circuit judge William Gridley denied a request to temporarily block the curfew which prohibits children under 18 from being in a 12- square block area from midnight to 6 a.m. Gridley said that he could not find that the law violates teenagers' fundamental rights. There will be no exceptions for teenage tourists, including foreign visitors to Orlando.

Children's Rights and the Law discusses how an 1898 case called *Ex Parte McCarver* overturned a Texas city ordinance that forbid children aged twenty one and under to be "out on the streets" after 9 p.m. Almost one hundred years ago, however, it is important to note that juvenile delinquency was not as extreme as it is now. In the 1990's especially, it appears that the state must take a more active approach to parental issues than it did nearly a century ago. As an educator of children who would be affected by curfews, I feel that some curfews today established in major inner cities such as New Haven and Hartford are just trying to protect these children from random acts of violence.

The wording used in a legal curfew seems to be extremely important. For example, a California court ruled in 1945 in *People v. Walton* that children under age eighteen were prohibited from "being and remaining" on a public street between the hours of 9 p.m. - 4 a.m. The term "remaining" reduced any constitutional problems because its definition indicates clearly that such a behavior was considered loitering. Loitering was merely regulatory, not illegal.

Changing just a few words can really alter the interpretation of the law. By not clarifying themselves, legislatures can create unconstitutional ordinances. A perfect example of this legal ambiguity can be found in *City of Seattle v. Pullman*. The Washington Supreme Court struck down a curfew that prohibited " minors from loitering, idling, wandering, or playing" in public between 10 p.m. - 5 a.m. Obviously, this law was filled with so many vague terms which could not clearly be defined that it was overturned. What constituted a minor? What was an acceptable definition of playing? Does this mean that a ten year old could be arrested for retrieving his ball that rolled off his lawn into the public street? Young people also argued against the term "loitering" because then again, could a minor be arrested for standing on the public sidewalk in front of his/her house? These examples make the law seem rather absurd.

I would like my sixth grade students to analyze cases that distinguish curfews between "remaining on streets" and merely being " present out in public". Students will have to decide if there are acceptable exceptions to each condition and what punishments should be in place for failure to obey such curfews. They must also

consider what if the minor was with a parent or other adult. For example, some eighteen or nineteen year olds might be dating someone who is old enough not to be affected by a curfew. What would happen in situations such as these? How should a court decide if the minor was traveling home from a night job, church or school activity, or emergency situation? What if the teenager needs to work at night to help support his/her family financially? Will the courts pay the bills if that minor is not allowed to work a night job? My students must also consider how curfews in various towns will affect minors just traveling “through” such a town to reach another destination in a city that doesn’t inflict curfews on juveniles. For example, let’s say four teenagers are driving to a music concert in Hartford. They must drive through New Haven that has imposed a curfew on minors. They are stopped by police for a routine check in New Haven. Do they get arrested for breaking the curfew? These, and many other controversial issues, must be delicately handled in any discussion concerning juvenile curfews.

Other issues which I will present to my students for further debate include: curfews in cities or towns which have a college campus. Since some of the university students probably fall into the age limits of curfews, how should a municipality handle these areas? Do all college students have to be in their rooms by the designated hour? How could this be enforced on larger campuses where thousands of students are always out and about? What would policies be for college students that commute and take night classes? Would there be exceptions and again, how would they be determined?

In juvenile curfews as well as other legal issues, the law is in the awkward position of wanting to protect children from harm and yet giving children as much autonomy as they can handle. “Age” is the difficult question which seems to have no feasible solution. Does someone become an adult at 18... 21... ? Interestingly, the age of majority used to be fifteen. Since each child’s maturity level is different, determining one age for ALL minors is a very grueling task. A young girl could be considered mature at 15 while a young boy could be 19 and still extremely immature. It is rather important to note that the controversy over a child’s level of maturity vs. their biological age is pertinent to all four issues mentioned in this unit.

Legal Issue #3 A Child’s Rights from Inadequate Parents

While we have established that a parent should be the primary caregiver for the child, unfortunately, not all parents do what is best for their children. When and where the state intervenes in such cases is a highly debatable issue. The term “neglect” is often so vague and subjective that courts are “afraid” to take action. Children can be neglected physically and/or psychologically (emotionally). So many different terms are used when referring to inadequate childcare that, again, the multitude of definitions seems confusing. Courts have to differentiate between neglect, abuse, maltreatment, deprivation, etc. None of these terms seem to have universally accepted definitions. Even court decisions across the country illustrate how truly subjective some of these issues have become.

In *Children’s Rights and the Law*, definitions for abuse and neglect are given which I agree with, and would like to refer to them from here on out in reference to this topic. Abuse is “any intentional, non accidental injury, harm, or sexual abuse inflicted on a child.” Neglect is “the responsible caretaker’s non provision of care essential to a child, such as food, clothing, shelter, medical attention, education, or supervision.”

A particularly “hot” topic in the child abuse debate is “excessive” discipline vs. “acceptable normal” discipline. How far can a parent go in spanking or hitting his/her child for unacceptable behavior? When I was growing

up, spankings were much more common and accepted than they seem to be in today's society. Although recent surveys indicate that 75% of parents spank their children, some parents have probably become too afraid that they will be brought up on abuse charges for hitting their child. Who will determine if the frequency or severity of the punishment crosses the line into child abuse? Again, the courts seem to be giving ambiguous answers.

Any type of sexual abuse seems to be more clearly definable. Incest, rape, sodomy, or sexual exploitation of children is considered a criminal offense. Before we begin to explore how abuse cases are determined and acted upon, let me just point out that with each state having such different standards, our country lacks the legal uniformity to take proper steps to curb child abuse. What would not be tolerated in Connecticut, for example, may be accepted in Rhode Island or vice versa. After doing more research in this topic, I feel that the United States should establish federal laws that regulate family behavior under the same criterion in all fifty states. This will decrease any misinterpretations amongst the states.

While survey after survey of reported child abuse cases have been done in the past thirty years, it is extremely difficult to determine if indeed abuse has decreased or increased. Heightened awareness, more sophisticated reporting systems, and sympathy for the child have encouraged more people to "come out" and report suspected cases of neglect. According to recent statistics, however, more than 2.4 million American children have been reported abused or neglected in 1989. Nationwide reported cases climbed more than 226% in the last decade.

What has remained as one of the biggest obstacles in conquering child abuse has been the difficulty in prosecuting parents. As stated in *Children's Rights and the Law* :

The evidence that is available from eyewitnesses is for the most part useless. Even if the child is alive and mature enough to testify, he may have changed his account of the incident to match the abuser's version. The victim of child abuse is far more susceptible to the influence of the alleged abuser than are most victims of other crimes. While other siblings often are present when the child is abused, they are also easily influenced and intimidated. Further, the husband-wife privilege may prevent the other parent from testifying. The defendant may know how the injury occurred, usually will maintain that the child was hurt accidentally....(page 173)

Four primary factors are responsible for the difficulty of prosecuting parents: 1) the debate over the child's competency and credibility as a witness, 2) the admissibility of statements made by a child out-of-court, 3) husband/wife and doctor/patient privileges, and 4) the use of character evidence. What must the courts do if the child is too young to explain what is happening to him/her? I would like my students to delve into this topic specifically and examine some criteria that can be accepted. I want my students to ask at what age a child could possess the understanding to testify. For me, it seems like we are coming to another standstill in the age issue. There have been competent five year olds who were allowed to testify and yet there have also been incompetent twelve year olds whose testimony was disregarded. This issue must remain open to changes for each individual case. Since no two children are alike, decisions on acceptable ages for testimony cannot be too rigidly established. Obviously we do not intend to put 18 month olds on the stand, but maybe a three or four year old is capable of expressing truthfully what happened to him/her.

As I read more about this never-ending dilemma regarding age limits, I find it almost ironic that we have people making these decisions who themselves do not all function on equal levels. Many *adults* can still be considered immature or incapable of making appropriate decisions. Personally, I know someone who is thirty and considerably less mature than some of my thirteen year old students.

Unfortunately, children often become intimidated before testifying by the adults who may have abused them in the first place. Another factor to take into consideration when determining the validity of children's statements is the trauma itself. Will being forced to "re-live" the abuse through testimony have further damaging effects on the child's well-being? Some children may intentionally block out or try to forget what happened to them. First and foremost, the child's overall condition must be considered before being put into such a traumatic experience publicly.

In all matters involving child abuse, the state must determine if and when the child is to be returned to his parents. There is no question that children should be protected from harm, but not at the cost of greater harm resulting from the intervention itself. We must acknowledge that a parent's interests may indeed be different from a child's interests. Unfortunately, all parents do not always act in their child's best interests and some NEVER WILL! We, as a society, need to recognize that children are "not" property of their parents; they belong to themselves. Children are merely in trust of their parents. The disruption of the family and relationships within that family unit must be considered. The perfect balance of child protection and parental autonomy has not yet been reached in the courts. The tendency is currently toward state intervention but that will go through different phases as well.

Hypothetically, let's just say that a child was neglected by his parents. The state intervened, the parents received counseling and help, and now they want to be given a second chance (under supervision) to be better parents. What should the court's decision be? Everyone makes mistakes. Have these people learned from theirs and now they are better? The courts may be causing unintentional harm to the child by not reuniting him with parents that may be ready to prove how they've changed.

Legal Issue #4 Compulsory Education

In this legal issue, my students will thoroughly examine the case of *Wisconsin v. Yoder* which dealt with the compulsory attendance policy that was being questioned by an Amish community in Wisconsin. There was no doubt that the Amish parents wanted what was best for their children-according to their religious beliefs. This happened to contradict, however, with the required attendance policies established by the state for all children under the age of sixteen. The Amish adults in their community allowed the children to attend public school until the eighth grade, which is only about age thirteen or fourteen. They then wanted the children to attend vocational school in the Amish community. This, of course, was to train them for their future as Amish members for life. As I read this case, I was struck by several things. While I can respect their right to religious freedom under the first amendment, I am curious as to what the children's feelings would actually be if they were given a choice. If they knew that the decision was solely theirs to make, would they feel more independent and choose to remain in the public schools?

Again, we come to the issue of individual age maturity? Are some children mature enough to make these decisions for themselves or are they still too young and must rely on their parents to make these choices for them? What if the child didn't want to grow up to remain in the Amish community? An education provided by the public schools would give them more freedom and choices in the "outside" world from the Amish.

As you have seen while reading this unit, a central focus in each legal issue for me has been the perplexing debate of a child's biological age versus his/her competence or maturity level. The question that seems most crucial is whether age should count in these legal decisions. To be perfectly honest, I have done a great deal

of reading on this topic and I am still quite confused. I will simply say that it appears that each individual case must remain exactly that, individual! No two children are alike and therefore, legislatures, lawyers, judges, and those professionals dealing directly with children must remain open-minded and objective with each new case before them.

As I mentioned earlier in the introduction, the way I see this unit developing is that we will study the legislative processes of our government and after visiting the state capitol and our local representatives, establish “mock legislative debates” on the first three issues already discussed. For the final issue of compulsory education, however, I would like to explore the judicial system with my students from the viewpoint of a “mock trial” of the case *Wisconsin v. Yoder* .

In the planning of this mock trial, I have utilized as many legal connections as possible. A fellow teacher’s husband has agreed to come into the classroom on several occasions and give small lectures about the law and assist us in setting up our mock trial. I will also try to arrange for a field trip to the local courthouse before we begin our “trial”. I also have a friend in law school who has volunteered to come in a few times to coach students about their roles and legal responsibilities in this case. Students will take on roles that encompass all facets of the judicial process including those of: attorneys, judge, jurors, witnesses, defendants, courtroom observers, bailiff, courtroom reporter, journalists, etc. Since this is a rather “extensive” project, I plan on spending about three weeks preparing my students for the “trial” which will take place in the last few days of the entire Family Law unit. I expect to have a rehearsal for the trial and work out any problems then. My plan is to perform this “mock trial” in front of other classes so that they may see all of the hard work and research that went into the trial. Parents and relatives of my students will also be invited to the “courthouse” to observe the trial.

As I mentioned before, I will not reveal the actual decision of *Wisconsin v. Yoder* until after the trial. I feel that this will encourage children to think more freely without any already established beliefs or opinions. The timeframe for this unit will be approximately six weeks in the late winter (February- April). If anyone is interested in setting up a mode trial of their own, please feel free to contact me then for my lesson plans and advice since I will have had the experience of just producing one.

Legal Definitions

abuse - any intentional, nonaccidental injury, harm, or sexual abuse inflicted on a child.

adult - a person who, because he/she is 18 years or older, is presumed, in law, to be independent and capable of making decisions for him/herself.

child - a person who, because he/she is less than 18 years of age, is presumed, in law, to be dependent and incapable of making decisions for him/herself.

compulsory - obligatory; required.

curfew - an order or regulation enjoining specified classes of a population to retire from the streets at a prescribed hour.

emergency placement - occurs when a child is believed to be threatened with imminent risk of death or

serious bodily harm; the state is authorized to place him/her under care and custody pending a hearing.

ground for intervention - defines circumstances under which the state is authorized to investigate and/or to modify or terminate the legal relationship between a child and his/her parents.

neglect - the responsible caretaker's nonprovision of care essential to a child, such as food, clothing, shelter, medical attention, education, or supervision.

parent - adults who have the right and responsibility, in law, to make decisions for their child.

parental autonomy - the right of parents to raise their children as they think best, in accordance with their own notions of child rearing.

temporary placement - a child is placed under the temporary care of adults who are not his/her parents. The goal here is to assure a reunion with the child's parents as quickly as possible.

violation of family integrity - occurs when the state coercively intrudes between parent and child except as authorized by a ground for intervention.

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