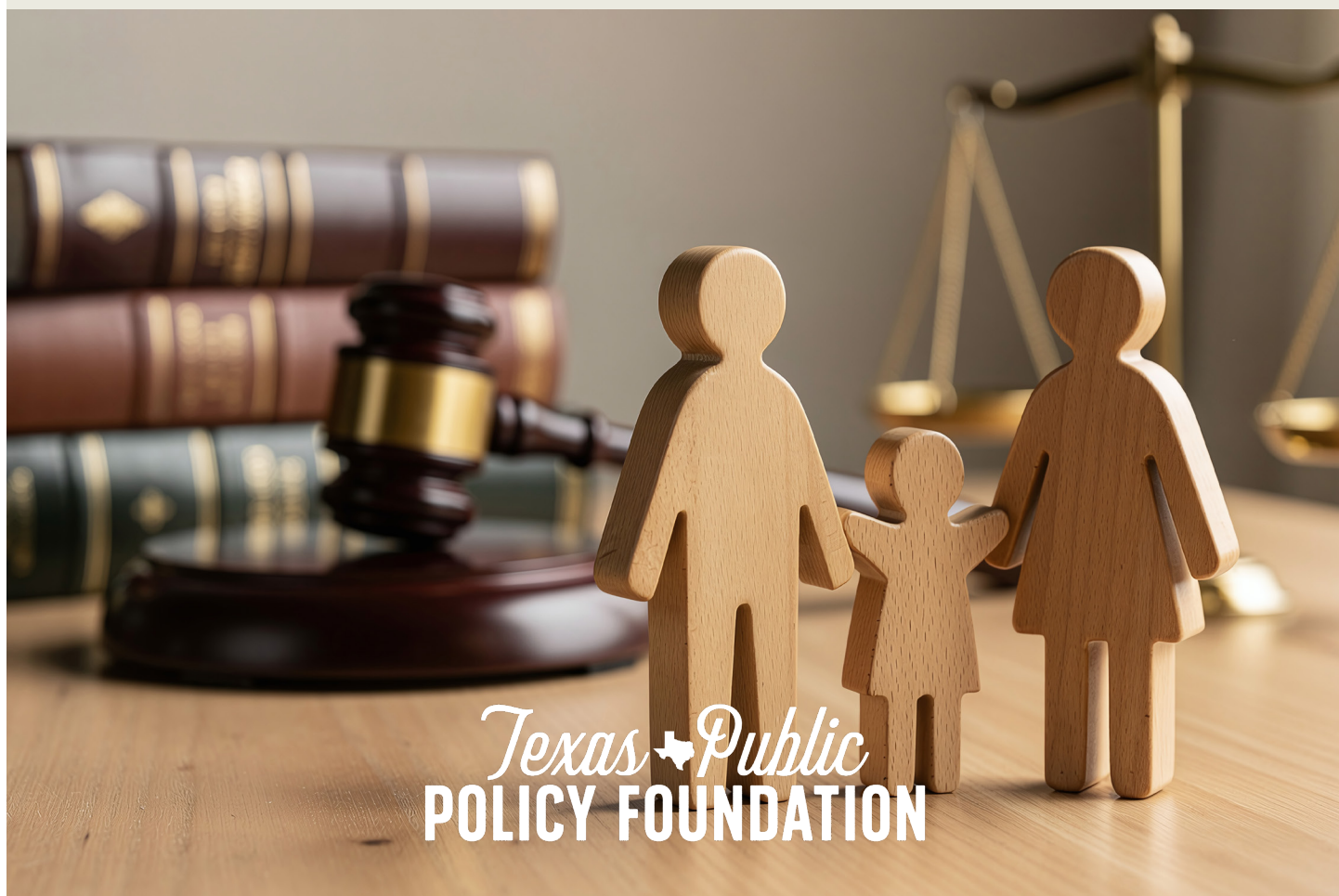


FAMILY SUCCESS PROJECT

TOWARD AN OFFICE OF PARENTAL RIGHTS IN TEXAS

A Legal-Political-Historical Approach to the Protection
of the Fundamental Rights and Duties of Parents

WRITTEN BY **Noah Torres**
September 2026



Texas  *Public*
POLICY FOUNDATION

TABLE OF CONTENTS

Introduction | Page 3

By What Right?: Parents, Children, and Decision-Making Authority | Page 3

Parental Rights as Natural Rights in the Texas Constitution:

Natural Parental Primacy, its Premises, Legal History, and Opponents | Page 5

Chapter I: Understanding Parental Rights in Constitutional and Jurisprudential Contexts | Page 9

Parental Rights in the United States: Constitutional Theories, Precedent, and Interpretation | Page 9

Parental Rights, Natural Law, and the Influence of the Classical Legal Tradition:

Canon, Civil, and Common Law and Parental Rights in American Constitutionalism | Page 18

Chapter II: Empirical Benefits of Parental Primacy: Parenting Styles and Child Development Outcomes | Page 26

Chapter III: Present Threats and Protections to Parental Rights in Texas | Page 29

Contemporary Litigation, Issues, and Threats to Parental Rights in Texas | Page 29

Chapter IV: Constructing an Office of Parental Rights: A Policy Solution to Protecting the Rights of Parents | Page 34

The Floridian Example: The Florida Office of Parental Rights | Page 34

Chapter V: Concluding Remarks: Rights Talk and the Ongoing Family | Page 36

Summary: Parental Rights as Natural Rights Consonant with

American Jurisprudence and Empirical Research | Page 36

Prospective Solution and Vision: The Office of Parental Rights

and the Importance of Family | Page 38

References | Page 40

TOWARD AN OFFICE OF PARENTAL RIGHTS IN TEXAS

A Legal–Political–Historical Approach to the Protection of the Fundamental Rights and Duties of Parents

WRITTEN BY **Noah Torres**

KEY POINTS

- **Changing legal images** of the family, constitutional disputes, and state overreach threaten parental rights as a broad, actionable claim of parents over the direction of their child's life.
- **The Due Process Clause** protects the broad unenumerated rights of parents to direct their child's upbringing, grounded in the abiding presence of parental rights in the nation's history and tradition.
- **American legal history** and tradition, defined by natural law jurisprudence from the lineage of common, canon, and civil jurisprudence, protects parental rights as conscience rights to fulfill duties to children.
- **Empirical research demonstrates** that parenting styles corresponding to active, involved, and directed parenting, protected by a broad concept of parental rights, provide the most favorable outcomes to children.

INTRODUCTION

By What Right?: Parents, Children, and Decision-Making Authority

A persisting and disputed question that has sparked strident discourse about the legal image of the family concerns the legal effects of childbearing both on parents and children as rights-bearing entities and on the bidirectional relationship between parents and children. The question of the legal effects of parenthood on the relationship between parents and children has occurred against the emergence of new legal and cultural perceptions of the family and its members, itself the result of governments either furthering a coherent set of objectives relating to the family in family law or harmonizing discordance between political, social, and economic realities of family life with the law. Against this backdrop, the disputed question of the legal effects of parenthood asks when having born a child or having assumed responsibility for a child according to some arrangement (viz., adoption) recognized by positive law, whether parents, as individuals bearing some degree of responsibility, in fact possess “primary responsibility for children and decision-making authority over them” (Moschella, 2016, p. 1). This inquiry concerns whether parents or legal guardians possess either rights or obligations relating to the upbringing of their children; that is, whether they possess some sort of authority or faculty to act or not act for some end as it concerns their child, and in acting or not acting, are they bound to act or not act according to a minimum determined by a measure or rule of justice. This question is one of the rights of parents: precisely, “by what right?” can a parent direct the course of their child's life, or by what standard of justice does a parent exercise authority over their child?

The question of parental rights and obligations gives rise to two correlative inquiries. The first, whether children possess rights or obligations that parents must respect, and the second, whether the state possesses rights or obligations that vest in it the authority to override the decision-making of parents or children (notwithstanding their rights-bearing character) or to act or not act for the sake of promoting, preserving, or defending the rights, obligations, or welfare of parents or children according to a standard of justice.

This inquiry concerns at least three actors—parents, children, and the state—each of whom may or may not possess rights and obligations to another party, and whose rights may or may not supersede those of another when in conflict. Those responsible for the care of children must decide on the trajectory of their development across several domains: social, emotional, physical, medical, educational, religious, economic, and behavioral. This responsibility fundamentally concerns one’s effort to “love, nurture, educate, guide, and accompany the child throughout his or her entire developmental process” (Adolphe, 2024, pp. 439–441). Thus, matters relating to decisions that alter the trajectory of a child’s education, healthcare, discipline, religious practice, and socialization are several.

In Texas, the present legal regime explicitly affords primacy to parental decision-making. Article I, Section 37 of the Texas Constitution, reflective of amendments made to the document on November 4, 2025, asserts that:

To enshrine truths that are deeply rooted in this nation’s history and traditions, the people of Texas hereby affirm that a parent has the responsibility to nurture and protect the parent’s child and the corresponding fundamental right to exercise care, custody, and control of the parent’s child, including the right to make decisions concerning the child’s upbringing ([Texas Constitution, Art. I, Sec. 37](#)).

Indeed, the Constitution might provide a satisfactory answer to the disputed question of the legal effects of parenthood (parental rights), the locus of decision-making authority (parents), and by what right parents are the locus of that decision-making authority (some set of truths that have their basis in the nation’s history and traditions and the positive law-enactment of the section). Moreover, Texas has codified positive determinations of parental rights and obligations to their children in [Texas Family Code 151.001](#), identifying *inter alia*, the rights of parents to direct the moral and religious training of their child, to represent their child in legal matters and make decisions of legal significance, the right to designate the school their child will attend, and other rights effected by the virtue of the law; duties include, *inter alia*, care, support, protection, and the management of the child’s estate. Notwithstanding the latest penning of language in the Texas Constitution that explicitly recognizes that parents have an obligation to care for their child and that their right—a legal effect of parenthood—affords them primacy over the direction of their child’s life trajectory and development, there remains a quandary over the ambit of parents’ rights. More precisely, it is a question over the interpretation of parental rights.

Parental rights occupy, in part, the contentious space of family law. As family law jurist Mary Ann Glendon notes, “[family law] often may have some effect on the way people think, feel, and act, but it is striking how stubbornly the forms of behavior involved in family life seem to follow their own patterns independently of the legal system” (Glendon, 1989, p. 16). In other words, while the law seeks to prescribe a normative vision of family life, individuals may simply reject this vision, for beyond increasing assertions of the privacy of the ongoing family, individuals may simply find little importance in modeling their behavior on what is prescribed in statute, merely because of extant self-satisfaction in their present arrangement. Competing personal visions of family life, then, influence individuals’ receptivity to elements of family law such as parental rights.

Furthermore, acceptance of a normative vision concerning the family, such as the Texas Constitution's vindication of parental rights, is not aided by the "legal agnosticism" of family life over the past century. On one hand, since at least the middle of the twentieth century, courts have engaged in a "juristic flattening" of distinctions between members of the ongoing family; while they may be a unit, the law increasingly cognizes them as individuals with competing interests under the same household, thus altering the interpretation of parental rights, notwithstanding the text of statute. On the other hand, "despite the lip service paid to parental authority, current high court decisions [in the United States] have strongly emphasized the independent individuality of even the minor child, especially in cases involving adolescent sexuality" (Glendon, 1989, p. 99–100). That is all to say, within family law, individuals may act according to their own norms rather than norms prescribed by law; the law is reticent to prescribe norms, and when norms are prescribed, those norms may be treated by both individuals and the law as having fallen into desuetude or meriting minimally burdensome interpretations.

As it concerns parental rights, different parties whose actions affect the exercise of parental rights may have different conceptions of the extent and limits of those rights. The parents of one child may choose to exercise their rights in one way, while the parents of another child elect a different path. One physician may interpret the role of parental authority in medical decision-making differently from another; the same may be said of educators, online platforms, and other parties. Moreover, judges and jurists may offer distinct interpretations of the scope and quality of parental rights, driven by competing claims about the substantive roles of parents, children, and the state.

Parental Rights as Natural Rights in the Texas Constitution: Natural Parental Primacy, its Premises, Legal History, and Opponents

Against other theories and interpretations of parental rights, many animating both practical engagement and legal interpretation of parental rights in Texas, this

paper will affirm a particular juristic and philosophical theory of parental rights, and that this particular theory is that embodied in the Texas Constitution and broader political and legal tradition of the United States, defined by a nexus of Roman, canon, civil, and common law. Fundamentally, this theory of parental rights is defined by the premises that parental rights are natural and primary, insofar as the inclination for spouses to join together to raise children is an intrinsically desirable basic good and that parents have an associative obligation to their children to principally direct and care for their well-being that only in circumstances of abuse and neglect can the positive law eclipse the rights of parents; it is precisely this joining together and intimate association of parents and children through the natural bonds of childrearing that are productive of parental rights (Moschella, 2016; Araujo, 2010). Of course, the notion of obligations toward children—present in both this theory of parental rights and in Texas statute—implies the correlative existence of child rights. This same legal-philosophical tradition recognizes that children's rights, deriving from their inherent human dignity, entitles them to protection, love, and care of their parents (Adolphe, 2022, p. 440; Witte, 2011). Pointedly, this theory is not primarily based on a practical claim, namely that parents know their children best, nor on any economic or even purely positive law or constitutional claim. Rather, it is based on the "special obligations inherent in the parent-child relationship, and the pre-political authority that is the flip side of those obligations," (Moschella, 2016, p. 4). In sum, this theory holds that "parental authority is primary and aims directly at the overall well-being of the child, while the state's authority...is indirect and subsidiary to that of parents," and that the state only has direct educational authority with respect to "specifically civic (rather than child-centered) aims," and in these circumstances must "assist parents in carrying out their obligations," and "avoid policies that conflict with parents' rights," to raise their children in accordance with their conscience (Moschella, 2016, p. 5–6). This theory of parental rights is undergirded by the belief that the family occupies a pre-political space and is the fundamental unit of

society, and thus necessary for achieving the good of the individual and the common good of Texas. This theory of parental rights is thus not ultimately or fundamentally derived from economic, constitutional, or child-developmental considerations, but rather from essential aspects of human existence; economic, constitutional, and child-developmental considerations are consequences of applications of this theory rather than causes of its veracity.

We might call this theory a theory of natural parental primacy, as represented in contemporary scholarship by Robert P. George, John Finnis, Melissa Moschella, Elizabeth Kirk, Helen Alvare, Ryan T. Anderson, and others involved in natural law and classical legal theory. It is this theory of parental rights that is embedded within the Texas Constitution. Moreover, even in the counterfactual world where the Texas Constitution was mute on parental rights and did not explicitly “enshrine truths” relating to these rights based on the nation’s “history and tradition,” there would be little reason to vitiate this understanding of parental rights. After all, the American and Texan legal systems did not appear *ex nihilo*. They are indebted to and part of an existing legal tradition defined by the “deepest presuppositions that underlie Western legal systems from antiquity through its apex in the ‘European synthesis of Roman law, canon law, and local civil law’ and into modernity,” specifically concerning the concepts of law and right, generally, and their application to specific circumstances, including the rights of parents and the law of the ongoing family (Christiansen, 2025, p. 13). Thus, if there is a tradition the text of the Constitution refers to, it is precisely the American tradition as part of this broader tradition. As a matter of fact, the concept of parental rights as inherited by American jurisprudence is clearly indebted to sources of classical, canonical, and common law and thus can locate, at the least, both conceptual illumination and historical continuity from these traditions’ enumerations, and thus the historical theories of parental rights of the canon lawyers of the Catholic Church, the civilian lawyers in Bologna, and the common lawyers of London all bear directly on the character

of parental rights in Texas (Witte, 2019). Indeed, the Burger Court, echoing prior decisions such as *Meyer v. Nebraska* and *Pierce v. Society of Sisters*, already recognized that Western legal thought reflects a “strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition” (*Wisconsin v. Yoder*, 1972).

Even more, social science already indicates that a child’s developmental trajectory yields optimal outcomes in a home headed by their married biological parents, relative to other family structures (Regnerus, 2012). Of course, this observation is about family structure phenomena and not necessarily the reasonably uninhibited exercise of parental rights; it is possible to conjure up an image of a household headed by married biological parents who have constrained parental authority and nevertheless have children whose outcomes are superior to children in other structures with similar restraints on parental decision-making. However, a legal regime that prioritizes the decision-making authority of parents reflects certain realities about the qualities of the members of the ongoing family and how those qualities affect the character of their relationships. First, prioritizing parental decision-making over the decision-making of the minor child is a recognition that the child “has not yet [achieved] a stable self-dominion,” and thus lacks the “prerequisites for the ability to make fully reasonable judgments” about the direction of their life that might be most conducive to their flourishing (Moschella, 2016, p. 137). Indeed, minor children and adolescents, because of their relative immaturity, may have their reasoning “distorted by sub-rational factors,” which thus necessitates authoritative control marked by parental warmth, firmness, and involvement (Moschella, 2016, p. 138; Steinberg, 2001). Second, by the nature of their intimate relationship with their child, parents are “well-positioned to know what an individual child needs” and state intervention in favor of a non-parental decision-maker would “expose the child to significant risk of family disruption and

contentious litigation” that is demonstrated to cause substantive harm to the developmental trajectory of the child (Huntington & Scott, 2022, p. 2529). In fact, the intimacy between a parent and child is productive of the associative obligation and consequent right of a parent to direct the course of their child’s life in minority; after all, this intimate relationship means that the child is “personally dependent on” on the parent to fulfill their obligation as personal relationships create personal dependencies that only one person can fulfill (Moschella, 2016, p. 38).

Notwithstanding the fact that the primacy of parental rights is an abiding feature of American jurisprudence and that a legal regime that recognizes the primacy of parental rights allows parents the latitude to raise their children in a manner most consonant with their child’s idiosyncratic character, there exists a spectrum of oppositional theories against parental rights *per se* or certain theories of parental rights. Since, as previously indicated, there are at least three possible decision-makers in the ongoing family, there is an even greater number of possible arrangements (and corresponding theories) among them. These ideas all share a common concern for the welfare of children, an awareness that parents play an important role in the life of their children, and that the state has a responsibility to protect children; they differ perhaps only in the nuances of their conceptions of rights and extent to which the rights, responsibilities, or duties of some party involved in the ongoing family can exclude the intrusion of some other party.

One theory of the relations of members of the ongoing family has its genesis in the works of twentieth century American political philosopher John Rawls, who contended that while liberal democracies do not endorse a particular comprehensive doctrine of a “good life” or morals that parents ought to pass onto their children, the state possesses a duty to ensure that children’s education is principally focused on the role of children as “future citizens,” which is achieved by the dissemination of certain political virtues that adhere to a standard

of public reasonableness that itself is conducive to fostering mutual cooperation among citizens (Rawls, 1993, p. 195–200). Rawls’ claim is far from objectionable; mandatory civic education and a promotion of values that support political coexistence are essential to the vitality of any political community. However, Rawls’ progeny, namely Stephen Macedo and Amy Gutmann, assert not only that comprehensive doctrines that do not correspond to public reasonableness should be excluded from education, but also that parents’ authority is eclipsed in various contexts to preserve a certain conception of political life (Macedo, 2000). A second theory, which advocates for strong state paternalism to protect child welfare, is articulated by theorists such as James G. Dwyer. Per Dwyer, “talk of parents’ rights encourages an entitlement view of parenthood that makes parents more resistant to guidance from others, more preoccupied with their own desires, and less concerned with the interests of their children,” and that discussion of duties is more apt for producing harmonious relations between parents and children; it is unclear why Dwyer considers these dichotomously (Dwyer, 2006, p. 12). Moreover, for Dwyer, talk of parental rights obfuscates the harm that faulty parental decision-making might cause for a child, leading Dwyer to conclude that children ought to have “legal rights equally strong as adults,” so that the state should more aggressively exercise its *parens patriae* role against what might “advance the self-fulfillment of other persons or what is best for society as a whole” (Dwyer, 2006, p. 202–203). For Dwyer, this would not only entail eclipsing parental rights in cases of abuse or neglect, but also when the well-being and interests of the child conflict with the interests of others. A third theory is posited by a spectrum of collectivists who argue for a “diffusion of parenting,” where the family “retains its social role as the main form of child-rearing,” but dislocates primary responsibility for child-rearing from parents who are merely “embedded in a network of kin and community” (Archard, 2015, p. 166). Part and parcel of this theory is the expansion of child rights and an “abridgment of... rights to parental privacy and autonomy” for the sake of securing children the best

Certainly, it would be a mistake to assume that history, anthropology, or even the law only knows the family as an insular institution, but it is one thing to claim that the village is the only family or that the village has an exclusive right to raise children and another that the village can help raise children.

possible life (Archard, 2015, p. 167). Another theory, posited by Richard Farson, David Gottlieb, and John Holt, holds that children ought to possess substantial control over their upbringing, so much so that their positive rights are equal in quality and quantity to positive rights of adults, thereby closing the legal lacuna between minority and majority. For child liberationists, “self-determination is fundamental to all other rights [children] are entitled to claim... [they] must have the right to decide about everything that concerns them” (Veerman, 1992, p. 134). Articulating nine fundamental rights to children, including rights to alternative home environments, information, education of one’s self according to his own will, sexual freedom, economic power, and political power, Farson admits that children may not actually use these rights, “but that does mean we must deprive them [of these rights],” for “the granting of rights is not based on developmental-psychological phases or on age” (Farson, 1974; Veerman, 1992, p. 136).

Gazing up at this tantalizing constellation of ideas about the ongoing family and the rights and relations of its members ought to make something quite clear to the reader. The term “family” is a “pigeonhole into which lawyers [and theorists] try to fit all sorts of relationships,” to cognize a variety of arrangements (Glendon, 1991, p. 124). These theories operate on the

implicit assumption that “family” is not necessarily isomorphic to the image of a two-parent household—or even a single-parent household—as these arrangements, from their view, are prone to insularity or parental navel-gazing in child-rearing. For these theorists, “family” is less of an identifiably distinct institution, but rather an amalgamation of individuals bound by varying degrees of affinity and affection. These individuals are mostly perceived precisely as such: individuals with competing rights and interests, and whose relations within the family—itself understood as merely an amalgamation of individuals—might be fittingly or justly served by the diffusion of parenting roles among non-familial actors. Certainly, it would be a mistake to assume that history, anthropology, or even the law only knows the family as an insular institution, but it is one thing to claim that the village *is* the *only* family or that the village has an exclusive *right* to raise children and another that the village can *help* raise children. Considering this distinction, then, it might be apt to understand that children possess membership in both the family and the political community—and in some circumstances, a religious jurisdiction that claims normative authority—but that a child’s relationship to the political community is mediated via their parents (Moschella, 2016, p. 5).

Perhaps inspired by the proliferation of differing views on the family, there are several discernible challenges to parental rights. For example, the Rawlsian tendency to conceptualize education as primarily and principally the space to effectuate the reproduction of good citizens via civic curricula—while it captures a necessary obligation of the state for its own sake—makes a critical error “in claiming that *only* an education for Rawlsian liberal citizenship will do, and that such an education is crucial enough to the health of the polity that it ought to be mandated even against the reasonable concerns of some parents that it will erode the particular religious or moral value” that they hold dear (Moschella, 2016, p. 84). While this paper does not seek to determine what constitutes the good citizen or good civic education, it recognizes since parents are the

principal educators of their children and since Texas statute provides parents ample means to review instructional material or remove their children from certain instructional or educational contexts, a Rawlsian vision that resorts to normative interference in the decision-making of parents is wholly unsatisfactory ([Texas Education Code, Chapter 26](#)).

Considering the plurality of sites of conflict that exist between parental rights and obligations toward their children, this paper will affirm that parental rights, as understood in both the extended legal-philosophical tradition of the United States and in Texas statute, deserve unique protection by the state and will contend that this protection is best supported by the erection of a hypothetical office within the Office of the Attorney General dedicated to parental rights. As a proposed entity, this office will be designated by the placeholder “Office of Parental Rights.” To empower this office to achieve its end, namely the protection of the exercise of parental rights and obligations according to the rightly formed conscience of those with parentage or legal guardianship over minors, it ought to be equipped minimally with certain legal mechanisms, instruments, and tools that would enable it to carry out certain investigative, enforcement, and reporting functions.

To this end, this paper will grapple with several germane points. First, it will briefly explore the history of parental rights and obligations and the corresponding rights and obligations of children throughout the classical and American legal traditions, which, in their development, were supplemented by certain philosophical presuppositions about the ongoing family. It will explore Supreme Court decisions, American jurisprudence, and classical jurisprudence in the canon, civil, and common law traditions, which enumerate this very theory. This chapter will serve in part to demonstrate that the concept of parental rights is not a contemporary legal fiction generated to justify certain policy ends, that it is extractable from the twentieth-century image of the family that one might assume a defense of parental rights seeks to privilege, that

parental rights were developed in the context of a harmonious, overlapping relationship between the family and state and religious institutions (and thus is not inimical to the presence of other authorities), that parental rights have a positive relationship with the common good, and that parental rights are fundamentally rights of the conscience. Third, this paper will explore empirical evidence that demonstrates that a robust parental rights regime operating with a presumption that parents are both fittingly and justly situated as primary educators and directors of their children’s development is most conducive to the long-term flourishing of their children. This paper will then explore the extant statutory protections to parental rights in Texas. Finally, this paper will offer a vision for constructing an Office of Parental Rights.

CHAPTER I: UNDERSTANDING PARENTAL RIGHTS IN CONSTITUTIONAL AND JURISPRUDENTIAL CONTEXTS

Parental Rights in the United States: Constitutional Theories, Precedent, and Interpretation

As previously indicated, there is a wide variety of competing definitions and conceptions of parental rights in law, philosophy, and policy, differing on both the ambit of parental and state authority and the deference given to minor decision-making in the context of contested spaces relating to the minor’s development. Despite the dizzying array of alternative justifications for this or that parental rights regime, the Texas Constitution confines itself to an understanding of parental rights that is vindicated by the nation’s history and tradition. Consequently, ascertaining a proper legal image of parental rights is a historical-judicial endeavor; juridical decisions such as those laid down in monumental parental rights cases such as *Meyer v. Nebraska*, *Pierce v. Society of Sisters*, *Wisconsin v. Yoder*, *Troxel v. Granville*, *Mahmoud v. Taylor*, and most recently, *Mirabelli v. Bonta*, *inter alia*, outline how parental rights have been interpreted in American jurisprudence. Yet a recollection of judicial decisions and the positive law that influenced them offers only a partial understanding. Both these decisions and the positive

law were not created in a vacuum but were deeply indebted to broader jurisprudential and philosophical notions about the ongoing family and the relations among its members. Even more, these notions are fundamental for locating parental rights' proper place in American constitutional law.

Thus, when exploring the question of parental rights in the American legal tradition and the broader tradition it is connected to, it is necessary to uncover what the law said about parental rights, how it came to speak of parental rights, and why it advanced certain propositions rather than others. Consequently, this inquiry will also explore both the abiding philosophical ideas undergirding the concept of parental rights and the history of the concept of parental rights in positive law traditions that, while exterior to the body of American positive law, are nevertheless part of the same organic legal tradition growing out from the synthesis of Roman, canon, common, and civil law. This approach might seem idiosyncratic and unusual, especially considering that this paper is concerned with circumstances in Texas. Nevertheless, "law is indeed a product of will, reason, and memory—of politics, morality, and history—all three," and thus only an incomplete understanding of parental rights could be ascertained by confining focus to what statute or jurisprudence facially dictates on the ongoing family (Berman, 2006, p. 757). Of course, this does not mean that the sources of law—whether they be philosophical, moral, or historical—will singularly resolve contemporary issues surrounding parental rights, but rather that they will aid the legislator, jurist, and policymaker in better understanding the nature of parental rights and how the law might attain a fuller understanding of their operation in the present. Moreover, recognizing these inextricable links to American law will aid in justifying respect for parental rights on non-positive grounds; parental rights are not worth our respect merely because the law dictates that we respect them, but rather because the law reflects an intelligible and rational understanding of the role of parental authority. Neither reason nor history can be manipulated to issue "disembodied commands,"

yet "lawmaking must be historically situated within a developing community" to most fully attend to its needs (McCall, 2018, p. 12). Myopically focusing on the language of statute or the plain text of a judicial decision traps the legislator, jurist, and policymaker in conflicting legal and moral obligations and forecloses the role of "our reason or at least limiting its purview" (McCall, 2018, p. 9). Therefore, for a legal concept so inextricably intertwined with the personal livelihood and well-being of Texas parents and their children, it is all but necessary to consider the fullest picture of parental rights.

To this end, this chapter will not only focus on adjudications relating to parental rights but also on the historical-philosophical contexts concerning the good of families, parents, and children in which the court reached these decisions.

***Meyer v. Nebraska* (1923)**

In the quest for coherence regarding parental rights in Texas, the first relevant case in the constitutional pantheon is *Meyer v. Nebraska* (1923), which marked the culmination of litigation in Nebraska over severe restrictions on instruction in non-English languages. In 1919, the state of Nebraska passed the Siman Act, which proscribed instruction in foreign languages unless certain conditions were met. There are two relevant statutes in the Siman Act. The first statute asserted that "no person...in any private, denominational, or parochial school, teach any subject to any person in any language other than the English language," while the second statute asserted that "languages other than English, may be taught as languages *only* after a pupil shall have attained and successfully passed the eighth grade" (Epstein, 2025, p. 12). In other words, no subject other than languages can be taught in a tongue other than English, and if languages, as the principal subject, are taught in any school, they can only be taught to students who have passed the eighth grade.

In response to these statutes, the Evangelical Lutheran Synod, two other churches, and parents sued for injunctive relief, arguing that "instruction

in foreign languages to enable [parents] to participate in the same religious services and exercises in the home and in the church" (Bybee, 1996, p. 895). Their desire to teach these languages, mostly German, Polish, and Bohemian, was not (as anti-German nativist sentiment at the time may have suggested) nefarious or subversive. Rather, German Americans contested that "English-only education would weaken their children's ties to their culture" and extinguish any cultural memory within a single generation (Bybee, 1996, p. 894). To their dismay, the lower courts denied the Synod relief, which was affirmed by the Nebraska Supreme Court in *Nebraska District of Evangelical Lutheran Synod v. McKelvie*. Per the court in *McKelvie*, prohibitions on teaching foreign languages were not unconstitutional, noting that it "does not deprive any person of life, liberty, or property," and is merely a "reasonable exercise of the police power" (*Nebraska District of Evangelical Lutheran Synod v. McKelvie*, 1922). Moreover, the court contended that the Siman Act did not deny anyone the opportunity to learn a foreign language, nor did it prohibit individuals from using a foreign language, but rather to ensure that for the "general public benefit," all individuals in Nebraska were proficient in English, something only the "foreign element of our population" would contest (*McKelvie*, 1922).

In response to the *McKelvie* decision, Robert Meyer, a teacher at a Lutheran school, modified his instructional schedule so that formal teaching of the Bible in the German language was conducted after official instructional hours. In response, Meyer was charged with a violation of the law and was fined \$25 (Bybee, 1996, p. 896). Meyer sued the state, contending that the Siman Law interfered with the right to religious freedom when the language is expressly taught for the purpose of using it for religious purposes; the court disagreed, contending that the law rendered no such interference (Bybee, 1996, p. 896). Curiously, in his dissent, Justice Letton of the Nebraska Supreme Court contended that the Siman Act interfered with the "natural and indefeasible right to worship Almighty God according to the

dictates of [one's] conscience," as well as the right of a parent to "have some voice in the bringing up and education of his children" (Bybee, 1996, p. 896).

Eventually, *Meyer* reached the Supreme Court of the United States, and Nebraska's defense was resoundingly rejected by the court in a 7-2 decision. Operating according to decidedly *Lochner*ist premises concerning substantive due process, the court held that:

while this Court has not attempted to define with exactness the liberty thus guaranteed [by the Fourteenth Amendment]... it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men (*Meyer v. Nebraska*, 1923).

Animated by their interpretation of the Due Process Clause, the Court dismissed the contentions of Nebraska with ease. To the question of whether instruction in the German language was sufficient to invoke the police power, the Court remarked that "mere knowledge" of the language "cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable" (*Meyer*, 1923). Nevertheless, the Court acknowledged that the intent behind the statute, namely to "improve the quality of its citizens," is an unequivocal prerogative of the state and that public safety could theoretically be "imperiled" by an exceedingly insular foreign population (*Meyer*, 1923). Yet, despite pleas that public safety was threatened by a potentially recalcitrant German population, the Court insisted that "the individual has certain fundamental rights which must be respected," among them being "the power of parents to control the education of their own [children]," and the corresponding "natural

duty of the parent to give his children education” ([Meyer, 1923](#)). In other words, the Court affirmed that despite a legitimate and compelling state interest to restrict foreign language instruction, the rights of parents supersede.

Pierce v. Society of Sisters (1925)

Not long after *Meyer*, in 1925, the Court reviewed another case that centered on a violation of the Due Process Clause of the Fourteenth Amendment, namely *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary* ([1925](#)). In 1922, Oregon voters enacted by initiative the Compulsory Education Act, rendering it a crime to send one’s child to a Catholic school ([Garnett, 2000, p. 122](#)). Like the statute in question in *Meyer*, the statute in *Pierce* was animated in part by simplistic nativist prejudices, this time not against Germans, but against Catholics, who during this period were prejudiced as “bad” citizens because of their observance of a spiritual authority, namely the Papacy ([Farrelly, 2017](#)). As highlighted by Garnett, *Harper’s Weekly* warned that “the primary object of the Roman party is not the education of the children, but the maintenance and extension of the Roman sect,” a supposed goal that was perceived as dichotomous to a particular civic goal championed by the Act’s supporters. Believing that compulsory public education, disjointed from “suspect” religious or ideological perspectives, was essential to ensuring children “acquire a uniform outlook on all national and patriotic questions,” and that education in “public primary schools was the only sure foundation for the preservation of free institutions” ([Jorgenson, 1968, p. 458](#)). So zealous was this attitude that an Oregon newspaper compared Catholic schools to supposed Bolshevik-controlled public schools in Canada, despite public statements from Catholic bishops that only the Bolsheviks sought to destabilize American public life ([Jorgenson, 1968](#)). The reader ought to note that excluding the prejudices articulated by supporters of the law, the lodestar belief that mandatory public education was essential to social reproduction is shared by contemporary theorists such as Macedo and Gutmann, as well

as their progenitors, who were contemporaries of the Oregon law, such as John Dewey ([Dewey, 1934](#)).

In response to the passage of the law, the Sisters of the Holy Names of Jesus and Mary filed an appeal for an injunction, arguing that the law would deprive them of property without due process, would deprive parents of the right to control the education of their children, and deprive teachers of the right to pursue their career according to their personal desires ([Jorgenson, 1968](#)). Before the Taft Court, the argument on behalf of the Oregon law was eviscerated with the same logic utilized in *Meyer*. As in *Meyer*, so in *Pierce* did the Court recognize a legitimate state interest to “reasonably regulate, to inspect, supervise, and examine them... [to ensure] that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare” ([Pierce, 1925](#)). The Court, however, found no issue with parochial education, asserting that it is “long regarded as useful and meritorious,” a characterization quite like the Taft Court’s view of the German language. Instruction in German and Catholic education only became particularly objectionable after World War I and the precipitous increase of Catholic immigrants to the United States, prior to which neither was perceived with as intense suspicion and distrust.

Operating on the assumption that the Due Process Clause protected unenumerated rights, the Taft Court asserted that the Compulsory Education Act “interferes with the liberty of parents and guardians to direct the upbringing and education of children... rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State” ([Pierce, 1925](#)). And further, “the child is not a mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations” ([Pierce, 1925](#)). Once again, the Court had delineated a boundary between parental rights and legitimate government interests. Moreover, as in *Meyer*, the Court employed rational basis

language yet was effectively grounded in an argument anticipating strict scrutiny, contending that parental rights could not be abridged “due to the fundamental nature of the liberty interest at stake” (Moschella, 2023, p. 417). To this point, the Court in *Pierce* shifts from questions of rational relationships between the law and state interest to necessity, questioning if the state’s effort to restrict parochial and private education is a necessary condition to achieving its rational end of ensuring that children receive an education (Moschella, 2025, p. 12). Yet, while *Meyer* and *Pierce* may have protected parental rights from intrusions of the government via substantive due process and a mode of judicial review representing a chimera of rational basis and strict scrutiny, it was this very mode of review that simultaneously facilitated subsequent adjudications in favor of parental rights and reticence at interpreting *Pierce* as applicable beyond the threshold of the schoolhouse (Moschella, 2025, p. 2). Since these cases predate both a cogent articulation of strict scrutiny, which the Court produced in *Korematsu v. United States* (1944), and the so-called *Glucksberg* test from *Washington v. Glucksberg* (1997), which requires in part of a review of “history and tradition” of any unenumerated right protected by the Due Process Clause, courts subjected parental rights to inconsistent interpretations relating to their scope and their location within the constellation of rights protected by the Constitution.

***Wisconsin v. Yoder* (1972)**

Forty-seven years after *Pierce*, the Supreme Court reviewed another case concerning parental rights: *Wisconsin v. Jonas Yoder*. The question in *Yoder* was whether Wisconsin’s compulsory education laws violated the First and Fourteenth Amendment rights of Amish parents who, out of sincerely held beliefs, refused to send their children to secondary school (*Wisconsin v. Yoder*, 1972). In rendering their decision, the Burger Court depended on *Pierce*. Citing *Pierce*, the Court affirms that the state has a “high responsibility” in regulating education, yet also notes that it is “not totally free from a balancing process when it impinges on fundamental rights and interests, such

as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious obligations of children” (*Yoder*, 1972). Further, the Court remarked that “the history and culture of Western civilization reflect a strong tradition of parental concern for their nurture and upbringing of children,” which is fundamentally at odds with an exercise of *parens patriae* to “save a child from himself or his parents... [if] the state will, in large measure, influence, if not determine the religious future of the child” (*Yoder*, 1972). While Justice Burger explicitly harkens back to the protections afforded to parents in *Meyer* and *Pierce*, his opinion reveals the Court was principally and directly concerned with a violation of the Free Exercise Clause, so much so that the Court “failed to make clear how much significance to attach to the fact that two different rights were implicated” (Strasser, 2019, p. 1337). Precisely, the Court indicated that “when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record,” strict scrutiny is required to “sustain the validity of the State’s requirement” (*Yoder*, 1972). Implicitly, then, the Burger Court suggests that if strict scrutiny is not required to sustain a statute, the interests of parenthood are considered separate from other issues, thus calling into question where parental rights sit within the constitutional framework. Certainly, the *Yoder* decision is, in substance, a protection of parents’ rights to direct their children’s lives. Additionally, the Burger Court is quite cognizant of the essential role that parents play in directing the development of their children and that this role has endured the *longue durée* of American and Western family life. Yet, by treating a First Amendment right as the operative variable that determines whether questions concerning parental rights are subject to juridical review via rational basis or strict scrutiny yields uncertainty regarding the locus of parental rights *per se*—and not merely in educational or religious contexts—in the American jurisprudential tradition.

***Troxel v. Granville* (2000)**

With the confounding but salutary specters of *Meyer* and *Pierce* continuing to loom over parental rights jurisprudence, the Supreme Court in 2000 reviewed another case concerning the rights of children, this time a matter outside education. In *Troxel v. Granville* (2000), the Supreme Court considered the question of whether a Washington statute that permits any person to petition for visitation rights and authorizes state superior courts to grant such rights *if* visitation may serve a child's best interest unconstitutionally infringed on the rights of parents to rear their children. In this case, summarized by Culley (2001), Brad Troxel and Tommie Granville, a cohabiting couple, had two children whom they regularly socialized with Troxel's parents. In 1993, Troxel committed suicide, and Granville possessed full custody of the children. While Granville continued to allow her children to visit Troxel's parents, Granville limited her daughters' visitation time with Troxel's parents to a short period per month. The elder Troxels appealed, initially securing a pragmatic accommodation that balanced the interests of both parties. Yet, Granville appealed, and the Superior Court found that the elder Troxels were part of a loving family that could "provide opportunities for the children." Subsequently, the Washington Court of Appeals found that the Troxels lacked sufficient standing to seek expansive visitation rights. Once the case reached the Washington Supreme Court, the Court held that the Troxels had standing to seek visitation rights, yet found the statute unconstitutional.

In this case, the Rehnquist Court delivered a plurality opinion by Justice O'Connor, also joined by Justices Souter and Thomas in their respective concurrences. In the plurality opinion, O'Connor concluded that the Washington statute violated Granville's "due process rights to make decisions concerning the care, custody, and control of her daughters," which are protected by the "substantive component" of the Fourteenth Amendment as "certain fundamental rights and liberty interests" (*Troxel*, 2000). Further, O'Connor notes that "the interest of parents in the care, custody, and control of their children is perhaps

the oldest of the fundamental liberty interests recognized by this Court," citing *Meyer*, that this right is specifically protected by the Due Process Clause (*Troxel*, 2000). And further, "it cannot be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children" (*Troxel*, 2000).

Despite Justice O'Connor's unequivocal characterization of parental rights as protected by the Fourteenth Amendment, interpretative confusions that bear on the precise nature of parental rights in American jurisprudence remained unmitigated, and perhaps intensified. First, consider the words of Justice Thomas. In his concurrence, Thomas affirms that there is an unquestionable "fundamental right of parents to direct the upbringing of their children," yet the plurality, for all its insistence on Due Process Clause protections, fails to articulate "the appropriate standard of review," namely strict scrutiny (*Troxel*, 2000). Furthermore, as Kirk (2023) notes, the Supreme Court failed to resolve a disputed question inaugurated by *Meyer* and *Pierce*, namely the scope of parental rights and their relation to government interests. Rather than define an appropriate space of contention between rights and interests, i.e., to consider precisely where—if anywhere—parental rights or government interests end, and the other begins, the Court simply afforded lofty praise to parental rights (Kirk, 2023, p. 733). From a moral or philosophical standpoint, this is laudable, but from a constitutional or jurisprudential perspective, it expands the possibility of litigation that may threaten parental rights. Moreover, the standard of review utilized by the plurality, "special weight, falls far short of heightened scrutiny and in any case does not adequately guide courts as to the requisite degree of deference that must be afforded a fit parent" (Kirk, 2023, p. 734).

Additionally, *Troxel* clumsily adheres to the *Glucksberg* test, if superficial invocation can be considered adherence at all. In *Washington v. Glucksberg*, the Court unequivocally asserted that the Due Process

Clause “specially protects those fundamental rights and liberties which are, objectively, deeply rooted in the Nation’s history and tradition” (*Washington v. Glucksberg*, 1997). These rights and liberties require a “careful description” of precisely how they are integrated within the history and tradition of the United States. As the majority asserts, “We begin, as we do in *all* due process cases, by examining our Nation’s history, legal traditions, and practices” (*Washington*, 1997). Whereas the majority opinion in *Washington* is replete with references to the theories and statutes undergirding English common law, *Troxel* simply quotes the propositions asserted by the Court in *Meyer* and *Nebraska* about history without any effort to explore the nuances of parental authority in the American or broader Western legal tradition. In his dissent, Justice Souter appears to partially broach this problem, noting that the nation’s history, legal traditions, and practices “do not give us clear or definitive answers” (*Troxel*, 2000). Souter’s remarks are less directed at the muteness of the plurality on the history of parental rights and more at the supposed muteness of the nation’s history as it concerns legal rights to visitation, and are thus inapposite; moreover, his own brevity—relative to *Glucksberg*—concerning the history of visitation rights further compounds the problem.

Put plainly, while *Troxel* may have intensified the Court’s rhetorical appreciation of parental rights and clarified its commitment to parental rights as a matter of Due Process, *Troxel* did little to resolve a fundamental question, namely, the role and scope of parental rights in constitutional law and jurisprudence. Unsurprisingly, this problem has gone unresolved.

***Mahmoud v. Taylor* (2025)**

In 2025, the Supreme Court heard another germane parental rights case, *Mahmoud v. Taylor* (2025). In *Mahmoud*, the question at hand was whether public schools burden parents’ religious exercise when they compel elementary school children to participate in instruction on gender and sexuality against parents’ religious convictions without notice or an avenue to

opt out of said instruction (*Mahmoud*, 2025). Consider the facts of the case, as summarized by Justice Alito in the majority opinion. The Board of Education of Montgomery County, Maryland introduced a variety of “LGBTQ+ inclusive” books into primary school curriculum, facially designed to normatively modify children’s thinking about sexuality and gender. Despite objections from parents of children attending Montgomery County schools, the Board refused both to notify parents of instructional periods dedicated to the questioned material and to permit students to opt their children out of instruction, citing that instruction was to serve the purpose of teaching children that there is no “right or normal way to be.” Additionally, the Board’s curriculum provided teachers with guidelines for discussion and encouraged them to answer student questions in ways that affirmed particular propositions concerning sexuality and gender. While Montgomery County Public Schools initially permitted students to opt out of instruction, this policy eventually ceased.

On the matter of whether compulsory participation in instruction that parents find objectionable from a sincerely held religious belief, the Court grounded its arguments firmly in those of *Yoder*. Harkening back to *Yoder*, Alito notes that the “practice of educating one’s children in one’s religious belief...receives generous measure of protection from our Constitution... it extends to the choices that parents wish to make for their children outside the home” (*Mahmoud*, 2025). Moreover, Alito notes that the Board’s policy “substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise that *Yoder* found unacceptable,” (*Mahmoud*, 2025). While the Court assumes no opinion on the veracity of the beliefs of any party involved, it finds that the curriculum enacted in Maryland was decidedly normative. The upshot of the Court’s appraisal of the content as normative is that as in *Yoder* where the compulsion of Amish children could reasonably contribute to the extinction of the specific mores and customs of the Amish that parents sincerely sought to impart to their children, the books “carry with them a ‘very real threat of undermining’

the religious beliefs” of the parents ([Mahmoud, 2025](#)). Furthermore, while one might contend that the activities to which parents raised objections in *Yoder* and *Mahmoud* are differentiated in kind or that *Yoder* only applies to the specific circumstances for a specific group of people, Alito asserts that “we have never confined *Yoder* to its facts... we have treated it like any other precedent... it cannot be breezily dismissed as a special exception granted to one particular religious minority” ([Mahmoud, 2025](#)). Indeed, as in *Yoder*, so in *Mahmoud* the Court seeks to protect their “well-established right” to direct the religious upbringing of children ([Mahmoud, 2025](#)). Hence, *Mahmoud* quite plainly imposes a strict scrutiny requirement “regardless of whether the law is neutral or generally applicable” ([Mahmoud, 2025](#)).

As it seems, then, the Court re-entrenched *Yoder* as a defense of parents’ exercise of their right of free exercise. Nevertheless, as Moschella notes, *Mahmoud* failed to address questions of interpretation and due process, as it leaves a “narrow interpretation of *Pierce*,” wherein the decision only bears on the question of public school attendance and leaves parental rights in other domains exposed to contentious litigation ([Moschella, 2026, p. 97](#); [Alvare, 2023](#)).

***Mirabelli v. Bonta* (2026)**

The jurisprudential trajectory concerning parental rights in First and Fourteenth Amendment contexts once more reappeared in 2026 in *Mirabelli v. Bonta* ([2026](#)). At question in the case is whether certain California policies that prevent schools from informing parents about children’s efforts to engage in gender transition unless the child consents to parental notification violate their rights and require schools to use children’s preferred names and pronouns, notwithstanding parental desires, violate parents’ rights as protected by the Free Exercise Clause and the Due Process Clause. Of note, *Mirabelli* is a case that appeared on the Court’s interim relief docket and was considered to determine whether to lift the Ninth Circuit’s stay of a district court’s injunction against the state of California’s policies.

Some background is in order ([Mirabelli, 2026](#)). Two sets of parents, John and Jane Poe and John and Jane Doe, have raised objections to the California policies. The former set of parents, the Poes, have a daughter who clandestinely began gender transition. At school, their daughter presented herself as a male, yet school officials withheld any information about their daughter’s gender incongruence. Not until their daughter attempted suicide did the Poes learn from a physician that their daughter suffered from gender dysphoria. Upon having moved their daughter to a new school, the school administration withheld information concerning their daughter’s revived efforts to present as a male. The latter set of parents, the Does, has a daughter who has intermittently identified as male since the fifth grade. In the seventh grade, the Does confronted school administration concerning the school’s treatment of the daughter’s gender dysphoria, only for the school administration to withhold information according to the dictates of the positive law. As the court notes, these parents eventually sought class-wide relief, and the District Court identified two subclasses, namely those parents who objected to the state’s policies and those who sought a religious exemption from the policies ([Mirabelli, 2026](#)). While the District Court granted a summary injunction, the Ninth Circuit elected to stay the injunction pending an appeal. Rather laconically, the Ninth Circuit justified its stay on tenuous arguments, expressing a degree of skepticism about the parents’ substantive due process claims as the Supreme Court “has cautioned that we must be ‘reluctant to expand the concept of substantive due process’” ([Mirabelli v. Bonta, 9th Circ., 2026](#)). As for free exercise claims, the Ninth Circuit contended that *Mahmoud* was a narrow decision that focused uniquely on “curricular requirements,” and thus was not germane to the question in *Mirabelli* ([Mirabelli, 9th Circ., 2026](#)).

In the Supreme Court’s *per curiam* decision, the Court asserts, on the basis of both *Yoder* and *Mahmoud*, that California’s policies “substantially interfere with the ‘rights of parents to guide the religious development of children,’” insofar as these policies “cut the primary protectors of children’s best interests:

their parents” ([Mirabelli, 2026](#)). Moreover, the Court contends that the intrusion on parents’ free exercise is substantially worse than the intrusion considered in *Mahmoud*, as California’s school policies are not only normative, but concern the very well-being of an individual child, and thus sufficient to trigger strict scrutiny review ([Mirabelli, 2026](#)). Further, the Court asserts that, by concealing information from parents, the plaintiffs almost certainly suffered a violation of their due process rights insofar as these policies interfere with and disrupt “parents’ rights to direct the upbringing and education of their children” ([Mirabelli, 2026](#)).

Furthermore, Justice Barrett offered a concurring opinion, asserting that while substantive due process is a “controversial doctrine,” it has “long embraced a parent’s right to raise her child, which includes the right to participate in significant decisions about her child’s mental health” ([Mirabelli, 2026](#)). Barrett’s concurrence is in part animated by the dissent, authored by Justice Kagan and joined by Justice Jackson. While Kagan affirms that parental rights are protected by the Due Process Clause, she levels several arguments against the concurrence and *per curiam*, most notably contending that the majority exhibits a degree of doctrinal incoherence or inconsistency. Precisely, the majority of the Court has exhibited a conspicuous degree of skepticism toward substantive due process (as in *Dobbs v. Jackson Women’s Health Organization*), yet readily applies it to the question at hand ([Mirabelli, 2026](#)). Furthermore, Kagan implicitly recognizes the torturous, nagging question concerning parental rights and substantive due process, noting that if the Court had granted *certiorari* to one of several cases concerning similar or identical policies, it “could ensure that the issues raised by such policies receive the careful, disciplined consideration they merit” ([Mirabelli, 2026](#)). In other words, this “careful, disciplined consideration” appears to be an implicit suggestion that the *Glucksberg* test, which was further reinforced in *Dobbs*, is all but necessary to cogently assess whether substantive due process protects parental rights in the disputed context. To

Justice Kagan’s point, both the *per curiam* decision and Justice Barrett merely invoke the nation’s “history and traditions” and warn against abuse of substantive due process when “judges will use their own values as a guide” ([Mirabelli, 2026](#)). Implicit in this argument, of course, is the unstated premise that parental rights *against* the type of policies enacted by the state of California are part of the nation’s history and tradition. Yet, *pace* Kagan, as salutary a historical investigation of these rights would be to a compelling ruling, the concurrence recognizes that the Court may once more revisit this case if the plaintiffs continue litigation, where such an explanation would be more apt.

As a matter of protection of parental rights, *Mirabelli* is another commendable determination, and while it anticipates the possibility of the Court finally delineating what constitutes “history and tradition” in the matter of parental rights, it leaves much to be desired until then, as evinced by the jousts between the concurrence and dissent. Indeed, as much as the dissent might quietly desire a historical illustration of parental rights in the nation’s history and tradition to vindicate a narrower scope of said rights, the concurrence risks “barreling toward a libertarian conception of parental rights,” where nearly any imaginable course of life for children could be vindicated by a court ([Christiansen, 2026](#)). To this point, alternative arguments have been proposed that seek to utilize the language of parental rights to achieve substantive ends quite contrary to the child’s best interests.

Some salient points arise from this explication of parental rights cases in the American tradition. First, as much as parental rights might be subject to debate in the legal academy and as much as certain definitions of the exact juridical nature and scope of parental rights are cast as the product of the nexus of conservative social forces bearing down on the law in a manner so as to obscure the supposed “true” interpretation of *Pierce* and its progeny, the American judiciary has recognized parental rights as constitutional rights. Second, while the American

judiciary having a salutary perspective of parental rights as a constitutional right protected by the Due Process Clause insofar as these rights are sanctioned by the nation's history and tradition, it has consistently and conspicuously fallen short of both applying the appropriate mode of judicial review and of fulfilling a task essential to strengthening the status of parental rights as a due process juridical phenomenon, namely an actual explication of where parental rights sit in the nation's history and tradition, and thus the nature of the rights themselves. Questions of origin, scope, nature (i.e., if parental rights are positive or negative rights, or both), and whether the best interest of children depends on a robust conception of parental rights are presently unanswered in jurisprudence. If they are never defined, parental rights will continue to have a tortured and confused existence as a legal concept; consequently, they will continue to generate an avalanche of cases marked by unpredictability and inconsistency in outcomes. Parental rights will be vindicated in one instance, contorted for ideological ends in another, and perhaps even reduced or ignored in some cases. Like a toy car fought over by children in a classroom, wherein one child might push it around on a track, another might throw it in the air hoping it flies, and another might rip its wheels off, parental rights' applications are at the behest of the courts.

While these issues might seem confined to debates in constitutional law, they present a real and serious problem. Parental rights are exposed, and in the absence of any effort to articulate a coherent understanding of their nature or a coherent, cogent legal defense of parental rights that rests on said definitions and is embodied in statute, they will remain vulnerable. In Texas, these problems are critical. After all, the state constitution and statutes make the very same appeal to history and tradition, yet if any state enforcement of rights through a hypothetical Office of Parental Rights is to be effective, some clarity about this history and tradition would be advantageous.

Parental Rights, Natural Law, and the Influence of the Classical Legal Tradition: Canon, Civil, and Common Law and Parental Rights in American Constitutionalism

In an effort to bring said clarity, it is worth briefly considering the legal and political thought concerning parental rights that formed the foundation of not only American parental rights jurisprudence, but also all parental rights jurisprudence in jurisdictions touched by English common law, itself—particularly in the matter of families—dependent upon the nexus of the European synthesis of Roman, canon, and civil law. Moreover, since these laws are the product of the nexus of philosophy, morality, and history, their explication will also help illuminate the moral character of parental rights. That is, this brief excursus will reveal not only what the law has uttered but also why it has rendered those utterances. To this end, this paper will briefly explore parental rights in the family law jurisprudence of not only the English common law but also the canonical and civilian traditions that exerted significant influence on it. The organizing principle and lodestar of these traditions, however, is natural law and its self-evident proposition that parental rights are subjective rights, fundamental and pre-political in nature, and not dependent upon the state for their existence. Indeed, these very principles are referenced throughout several of the aforementioned cases.

Common Law

Working backward chronologically from the American tradition, English common law has much to say about the authority of parents over their children. While there exist many sources of the English common law, for the sake of brevity, consider the words of William Blackstone in his *Commentaries on the Laws of England*. Per Blackstone, the “most universal relation in nature is...[that] between a parent and child,” and parents possess specific duties or obligations toward their children, namely “their maintenance, their protection, and their education” (Blackstone, 1765/1893, I.XVI, p. 469). Moreover, Blackstone suggests, in tandem with the broader network of Western jurisconsults, that the

“duty of parents to provide for the maintenance of their children is a principle of natural law,” or in other words, it is an objective *right* according to natural law, as parents have “[brought] children into the world” (Blackstone, 1765/1893, I.XVI, p. 447). Furthermore, Blackstone also broaches that parents possess a subjective right, dependent upon an obligation, toward their children, noting that “natural right obliges [parents] to give necessary maintenance to children” (Blackstone, 1765/1893, I.XVI, p. 447). Blackstone’s remarks provide some fundamental explication of the character of parental rights. First, they are not arbitrary but are bound by a natural duty that parents have towards their children. In other words, they exist for the promotion of a child’s well-being, which, as Blackstone implicitly suggests, parents know best insofar as the “universal relation” between parents and children “ascertains and makes known” that parents are best equipped to provide for their children (Blackstone, 1765/1893 I.XVI, p. 447). Moreover, Blackstone was not merely elucidating lofty ideas about natural law but also identifying principles operative in English courts. In 1601, parental authority and duties were enshrined in “statutory form as part of Elizabethan Poor Law” (Helmholz, 2015, p. 104) and later in 1741, when the Court of Chancery relied on the principle that parents possess both authority and a duty to their children according to the laws of nature (Helmholz, 2015, p. 104).

As John Witte notes, “this [natural law jurisprudence] was the legal formulation that passed into American colonial and state laws of the family,” perhaps best enunciated in distinctly American contexts by the American jurist James Kent, who “simply repeated Blackstone’s language about the interlocking ‘natural rights and duties of parent and child’” (Witte, 2019, p. 265). For as Kent notes, “the rights of parents result from their duties... the law gives them a right to such authority; and in the support of that authority, a right to the exercise of such discipline as may be requisite for the discharge of their sacred trust” (Kent, 1826, IV. 29.182, p. 211).

These few magisterial remarks by Blackstone and Kent first reveal that the Supreme Court’s characterization that parental rights are part of the nation’s history and tradition is factually true. These rights are attested as legitimate legal concepts. Moreover, they suggest that parental rights are not inimical to children possessing rights of their own, for as Blackstone notes, “children have the perfect *right* of receiving maintenance from their parents” (Blackstone, 1765/1893, I.XVI, p. 447). However, both Blackstone and Kent leave this investigation still wanting. While they affirm that parents and children possess subjective rights and that these rights are exercised for an objectively right or just end, namely the well-being of children, there nevertheless remains a deeper question: why the English tradition affirms these rights and whether its interpretation is idiosyncratic. Moreover, Blackstone and Kent both render appeals to the natural law, a topic of some interpretative dispute, as some posit that the “natural law should not generally be used as an independent, extrinsic source of law by which to decide cases,” as it might invite the very utilization of “judges’...own values” in adjudication that Justice Barrett warns against (Buckner, 2023, p. 495; Mirabelli, 2026).

Questions about judges and their jurisprudential paradigms aside, it is evident that natural law jurisprudence performs an essential function in constructing the theory of parental rights and has occupied a lodestar position in American and classical jurisprudence, thereby making the concept of parental rights near incomprehensible without substantial reference to its principles. As Helmholz (2026) notes, “natural law’s existence was known and accepted...by virtually all lawyers as a credible jurisprudential source prior to the nineteenth century...believed to be universal principles that should apply and make a difference in law’s application,” thus leading to conclusions that “obligations stemming from responsibility, such as parental rights, should be recognized and enforced in courts of law.” Further, as legal historian John Witte notes, “much like the medieval canon lawyers half a millennium before him, and like the philosophers of his day,

Blackstone identified a matrix of natural rights and duties that the law imposed on parents and children” (Witte, 2019, p. 265). Additionally, in the present, constitutional law is experiencing a “natural law moment,” that, depending on the perspectives of this movement’s participants, produces either normative constitutional theories proposing “a methodology for resolving constitutional disputes” or seeks to identify “what...our law is” that ought compel a serious reflection on the role (Alicia, 2025, p. 309). To this point, in a survey of American case law between 1859 and 2020, 4,965 judicial opinions mention “natural law” or the “law of nature,” and notably, for those cases between 2009 and 2020, 2,270 opinions mention said concepts, thus suggesting that natural law maintains an evergreen presence in the American judiciary (Helmholz, 2026, p. 125). Even more, the law of nature has had considerable overlap with the development of unenumerated rights in American constitutional law, wherein many “lawyers assumed congruity between the laws of nature and other sources of law” (Helmholz, 2007b, p. 417).

Canon Law, Civil Law, and Scholasticism

If, then, Blackstone is indebted to medieval and early modern commentators from the Catholic Church’s canonical tradition and Europe’s civilian tradition, both deeply intertwined and influenced by natural law and Roman law, some further investigation is warranted. After all, if Blackstone’s arguments depend on these traditions—even if mediated through jurists such as Samuel Pufendorf or Hugo Grotius—they will not make much sense without understanding the source. To this end, first consider some fundamental characteristics of natural law theory that are shared across the great majority of participants in the canonical, civil, and common law. The preeminent explicator of natural law and natural right, Thomas Aquinas, offers a succinct definition. Noting that law is an “ordinance of reason for the common good, made by him who has care of the community, and promulgated,” and that right is when something is “said to be just, as having the rectitude of justice,” where justice is defined by the law (Aquinas, 1273/1920; Aquinas, 1273/1920). Natural

law, then, is that which is self-evident, that “good is to be done and pursued, and evil is to be avoided” (Aquinas, 1273/1920). This definition is more fully defined by the Spanish jurist, Francisco Suarez, who influenced John Locke, Samuel von Pufendorf, and Hugo Grotius, all authorities who are either integral to the American tradition or profoundly influential upon its most serious thinkers. As Suarez notes, “natural law, then, in the proper sense of the term... is that form of law which dwells within the human mind, in order that the righteous from the unrighteous,” and “it is the natural power of comprehension implanted in [humans], which is directed to befitting action” (Suarez, 1612/2015, I.III. p. 43). Critically, Suarez, following his progenitor, Francisco de Vitoria, develops the foundations of all subsequent subjective rights language, noting that “*i*us (right)... is a moral power which every man has...over that which is due to him... Accordingly, this right to claim, which every man possesses with respect to a thing which in some way pertains to him... is the true object of justice” (Suarez, 1612/2015, I.III, p. 30). John Locke articulates similar principles about the natural law, noting that it is something possessed by all men and inclines them toward social existence (Locke, 1676/2002).

In matters of parental rights, these natural law theorists arrive at conclusions that demonstrate their conceptual understanding of the sphere, scope, and quality of those rights. In fact, Aquinas articulates his conception of this parental authority in the context of conflict concerning parental rights, namely, whether the children of non-Christian parents can be baptized by Christians. Unequivocally answering no, Aquinas asserts that a child “is enfolded in the care of its parents,” and it would thus be “contrary to justice, if a child were... to be taken away from its parents’ custody, or anything done to it against its parents’ wish” (Aquinas, 1273/1920). So cherished is this unique connection between parents and children, Aquinas elsewhere asserts that they share in a parental and filial friendship wherein parents “can know their offspring better than their children can know they are their children,” suggesting that

parental care for children is uniquely profound and grants parents special care, knowledge, and thus obligations toward their children (Aquinas, *Eth.* VII, 12, n. 19). Francisco de Vitoria remarks that “no one can really hold the idea that a father is not bound to bring up his children,” as someone must ensure their care “until they reach adulthood” (Vitoria, 1532/1999, p. 251). And further, “children would not be properly brought up” if they lacked parents or guardians (Vitoria, 1528/1999, p. 41). Similarly, Suarez asserts that there is a “fellowship of children and parents...since otherwise they [children] could not live, nor be fittingly reared, nor receive the proper instruction” without their parents (Suarez, 1612/2015, III.I, p. 420). Moreover, in light of Suarez’s articulation of subjective right that endows man with authority over something pertaining to himself, consider that Suarez, highlighting Roman law, says that right in this sense is applicable to a “certain bond or connexion born of relationship...it is not applied to the relationship itself, but to the moral claim, or faculty, born of that relationship” (Suarez, 1612/2015, I.III, 30). That is to say, in light of the relationship between parents and children and his doctrine of subjective rights, Suarez indicates that the relationship itself is productive of a *ius* or right for a parent to have a moral claim over their children.

Owing to these thinkers, John Locke asserts that when children are born, “their parents have a sort of rule and jurisdiction over them...but it is a temporary one,” (Locke, 1689, p. 751). And moreover, with “age and reason as they grow up loosen [these bonds], til at a length they drop quite off, and leave man at his own free disposal,” (Locke, 1689, p. 751). Similarly, Locke recognizes that parents have simultaneously a right and a duty—a conception generated from canon law---noting that the “power that parents have over their children arises from the duty which is incumbent on them, to take care of their offspring...to inform the mind and govern the actions of their yet ignorant nonage...the parents are bound to” (Locke, 1689, p. 752). Moreover, like Aquinas, Vitoria, and Suarez, Locke unequivocally affirms that parents possess this power by nature (Locke, 1689).

The ideas of parental rights held by Scholastics such as Aquinas, Vitoria, and Suarez, as well as their Enlightenment inheritors such as Locke, were inseparable from views of the family household. In their eyes, the household occupied a unique space in political life, wherein it was complementary to but shielded from the state, yet existed in a relationship defined by alterity and reciprocity. Precisely, they held that “if the political community was to function well, its constituent household communities needed to function well” (Haar, 2019, p. 284). This complimentary yet distinct existence characterized the family and state because for the sixteenth-century Scholastic, Adam Tanner, the family has a defining relationship—that between parents and children—that is has a “fully separate cause for obligation” than the state, insofar as the rights and duties between parents and children exist prior to and before legal obligations an individual citizen has to a political community, and thus orders it primarily toward the care and upbringing of children, and only mediately to the common good (Haar, 2019, p. 258). Moreover, even though parents and children both have rights and are separate persons, they did not have an equal contractual relationship based purely on legal justice, but rather a relationship based on a parent’s authority over his child (Haar, 2019). Yet, as citizens, the common good was dependent upon the persons *in* the household acting *both* for the distinct good and justice of the household—defined both by the rights, duties, and their friendship--and the political common good and justice, thus suggesting that the household was a “para-political space” where parents simultaneously exercised their authority over the children, modeled friendship, and engaged in the broader community whilst nevertheless remaining distinct from the state (Haar, 2019, p. 279). It was thus that there was a relationship of “interdependence between the two spheres of human interaction,” where the “city was useful for a life successfully lived, not at least because it assigned a place for the household virtues critical for the functioning of a political community” (Haar, 2019, p. 281).

In sum, these teachings indicate that Blackstone, Kent, and other commentators referencing parental rights refer to a legal concept that has existed in the *longue durée* of legal thought and evince that “parental duties give rise to parental rights, the Western tradition has long taught” (Brady, 2024, p. 526). Moreover, these authors all possess an unwavering awareness that children have rights too, and that those rights require their parents to care for their well-being. For as John Witte notes, “medieval theologians and jurists did talk about natural rights of parents and children within and beyond the household,” representing a strong commitment to justice within the relations of the ongoing family (Witte, 2019, p. 259).

These theories of both natural law and natural parental rights and duties corresponding to the rights of children are not confined to the speculations of jurists; they are present in the works of canon and civil lawyers alike and populate the decisions of these traditions’ respective courts. Briefly, consider the canon law tradition, which is the Catholic Church’s organic body of law governing the church and its members, with the Pope as the supreme lawgiver and judge, dating back to the earliest years of the first century. Despite the great length of canon law’s existence, which continues to develop its jurisprudence in the present, for the sake of brevity, focus will concern only certain jurists, legal principles, and case law. While one might wonder why this inquiry wades into the canonical tradition, consider the words of James Kent, who remarked that with respect to laws relating to the family and marriage, “the principles of canonical jurisprudence and the rules of the common law, are the same” (Reid, 2004, p. 8). And further, Kent remarks that the “principles of natural law” ought not be unheeded and inoperative despite the United States having no ecclesiastical courts recognized by law” (Reid, 2004, p. 8). In other words, even though the United States does not have church courts whose decisions are necessarily binding on other fora, canonical jurisprudence has, for much of legal history, all but shaped family law, and it must be considered a legitimate source for inquiry. Moreover, “canon law

was the preemptory law” of Western Europe, and thus exerted a significant degree of influence on the *ius commune*, or the “shared law” defined by the mix of canonical and secular jurisprudence in various jurisdictions throughout Europe (Witte, 2019, p. 92). Finally, while it may be a common assumption that neither the canon law nor the civil law exerted any meaningful influence on the English common law and thus has little relevance for American interpreters, recent scholarship has eviscerated this opinion, demonstrating that English lawyers made ample reference—even in the post-Reformation period—to canonical and civil sources, particularly in family law. While English lawyers did not simply copy the papal law books verbatim, they relied heavily upon them (Helmholz, 1987; Zimmerman, 1990). However, when treating the “powers and rights of men who labored under a [legal] disability,” such as “minor children,” English lawyers found that the “common law was of only indirect use,” and instead drew from the papal decretals and the *ius commune* (Helmholz, 2022, p. 130).

In medieval and early modern canon law, parental rights were conceived of via the concept of *ius patriae potestatis*, or the “right to govern the family,” which included “responsibility for the nurture and disciplining of children subject to parental power” (Reid, 2004, p. 82). A brief survey of some jurists is in order. The thirteenth-century canonist, Bernard of Parma, posits that the “upbringing and education of children... was an obligation of the natural law,” and thus a right of parents to ensure said upbringing and a right of children to expect this upbringing (Reid, 2004, p. 84). Moreover, this right, as cognized by canon law, was explicitly ordered to the good of the child. In the Decretals of Pope Gregory IX, an authoritative source of canon law, Gregory, when questioned about whether a parent could have their rights over their children terminated, responded in the affirmative, asserting that if a father knowingly abandoned, neglected, or exposed his child, the father has behaved “impiously” and forgoes all parental rights and power (Gregory IX, 1230). Of note, since the Pope is the supreme legislator and judge in the canonical system, this interpretation was all but universal. This

opinion is affirmed by several other papal lawyers over the course of the medieval period, including Hostiensis, Iohannes Andreae, Odofredus, Accursius, and Gandulf of Bologna, all of whom contended that neglect constituted a betrayal of one's children, a legitimate cause to terminate parental rights, and that instead of neglect, a parent ought exercise these rights to secure "the good of children...including material support but also... a loving relationship" (Reid, 2004, p. 87). The sixteenth-century canonist, Domingo de Soto, who operated in the same tradition as Vitoria and Suarez, asserts that it is "fair and just and even right for a father to have authority over his children for their own good, whom he loves, stabilizes, and educates for their own sake," yet also, "a son has a right to his parents, who are bound to care of their own" (Soto, 1589, p. 278).

In the courts and binding decisions by popes, these rights of both parents and children alike were recognized. As Helmholz (2007) has ascertained, canon law courts in pre-Reformation England took these rights quite seriously. Perhaps no better space for exploring the nexus of natural law, parental rights, and canonical jurisprudence exists than cases concerning the legitimacy of children, as courts were forced to recognize both the rights and duties over and for children, notwithstanding their legal status. For example, when, in 1347, a couple had a child outside of marriage and the father had denied that he had any rights or responsibility over the child, the ecclesiastical tribunal in the Diocese of Rochester ordered the father to pay "for the sustenance of the aforesaid child" on the basis that his child had a right to his aid and that as a father, he had a right and responsibility to provide for his child's welfare (Helmholz, 2007, p. 52). And further, in a 1741 canonical declaration to restrain the practice of clandestine marriages, Pope Benedict XIV asserts that even though such marriages "deprive [children] of legitimacy and proof of filiation... nature itself compels parents to nurture and educate their children," lest the children "cannot be raised either in virtue or in a decent manner, but are left to chance...contrary to the laws of nature," suggesting that even if

children may not be recognized as having a positive law connection to their parents, they indeed have an overriding relationship by natural law that endows both parties with rights and duties (Benedict XIV, 1741, para. 3). Other juridical questions concerning decision-making by children demonstrate the scope and extent of parental rights. For example, even though entry into religious or clerical life was a laudable course of action, canonical decisions reveal that parents "were permitted to invalidate their children's decision to enter monasteries," while other cases ruled that parents could invalidate lesser vows relating to ascetic practices, insofar as children lacked the reason "that the taking of vows demand" (Reid, 2004, p. 95). Notwithstanding the unique nature of a vow, one might consider these cases analogous to contemporary circumstances in which children or non-parental authorities seek to validate a significant life trajectory or decision that is at odds with parents' desires for their children's development. And concerning the abiding authority of parents, Benedict XIV, in a 1747 response to a question by authorities of the city of Rome, asserted that children of non-Christian parents cannot be baptized against the will of their parents, as parents direct the course of their children's life (Benedict XIV, 1747). The canonical resolution of disputed questions surrounding the rights of parents over critical decisions such as the taking of vows or the baptism of their children indicates that even when a minor child believes their spiritual health might be best cultivated through religious or monastic life or when some other non-parent figure believes that the child must be baptized—as when in the danger of death, when efforts to baptize the children of non-Christian parents most frequently materialized—the rights of the parents nevertheless remained primary.

Secular jurists and courts thought quite similarly, even though most family law matters were reserved for canonical courts. For example, the civilian jurist Bartolus de Saxoferrato's fourteenth-century commentaries on Roman law reveal that natural law imposes an obligation and authority on parents to support their children (Helmholz, 2015, p. 19). In

Put simply, Western jurisprudence has consistently conceived of parental rights as expansive and applying to the whole of familial life. Eclipsable, undoubtedly, but never exclusive to some specific domain.

a case decided with reference to both canon and civil law, a married man departed his family to fight in a war, leaving his son with his father-in-law. His father-in-law sued to recover the costs of the child's upbringing, but the father argued that the father-in-law had simply acted out "piety and kindness" (Helmholz, 2015, p. 57). The court denied the father's argument, and instead asserted that "in the law of nature, the duty to provide *alimenta* [maintenance] belonged to the father himself," and therefore the father-in-law, regardless of his motives, had furnished nothing as a gift (Helmholz, 2015, pp. 57-58). In other words, only the father could rightly be said to have both authority and an obligation over the son, and that he must assume responsibility for anything done for the son's benefit.

Taken together, these explorations of the canon and civil law traditions reveal several critical elements about the natural right and duty of parents that have persisted into the American jurisprudential tradition. First, and perhaps most obvious, parental rights, broadly conceived, over children are not recent legal fictions, nor are decisions like those rendered in *Pierce* narrowly tailored to address only a specific issue, despite what some critics might assert (Ziegler et al., 2023). They are neither the product of social movements infiltrating jurisprudence. Indeed, the Supreme Court, when it has "spoken of the connection between parental rights and duties, it is drawing on the tradition...of the interlocking matrix of natural

rights and duties between parents and children [which] endured as a staple of the Western tradition through the early modern period in both Protestant and Catholic thought, and it was carried through the Enlightenment...by many critical of Christianity" (Brady, 2024, p. 527). Put simply, Western jurisprudence has consistently conceived of parental rights as expansive and applying to the whole of familial life. Eclipsable, undoubtedly, but never exclusive to some specific domain. Second, parental rights and duties are not discordant but rather concordant with the concept of children's rights or even notions of a child's distinct and individual goods. Parental rights are not, as the remarks of one member of the Board of Education of Montgomery County in *Mahmoud* might suggest, a coercive tool to make children "parrot dogma" fed to them by their parents (*Mahmoud*, 2025). Certainly, "very few parents want slavish children or stunted adults," yet since children are "born fragile and dependent, and the parents who have given them life and have a natural affection for them, assist their growth and development over time, and prepare them for independent lives" (Brady, 2024, p. 526). To this end, then, "the Western tradition has long taught... parental duties give rise to parental rights...and children's rights corresponding to the duties held by parents" (Brady, 2024, p. 526). Precisely, this is a harmonious relationship, based on the assumption that parents, while not perfect, have the obligation to do what is right according to their conscience for the sake of their children. Third, this tradition of parental rights reveals that these rights are not insular, being far from excuses for parents to subject children to wanton misconduct. As the past has shown, it is possible—and even preferential—to recognize that parents have primary authority over their children, but that alongside their children, exist in a "multidimensional sphere" where together "churches and states...have set out ideals, guides, rules, and procedures... for parental roles, rights, and responsibilities," that not did not merely seek to protect the rights of parents and children alike, but sought to support the exercise of these rights, recognizing the "public and private good" that such exercise facilitates (Witte, 2019, p. 198; Witte, 2019, p. 32).

Nevertheless, the parental rights tradition recognizes that the family is a fundamental community within society that prepares children to be “born into the larger community as a relatively independent and responsible agent,” thereby foreclosing undue government interference and inviting support only when necessary ([Moschella, 2023b, p. 1573](#)). Therefore, in the present, this suggests that a restrained exercise of *parens patriae* and the police power, both legitimate powers of the state for the sake of protecting children against real injury and securing the common good, should be prudentially utilized only when necessary. In the same vein, parental rights are not inherently insular, seeking to unreasonably restrict children from pursuing fulfillment in their lives or to rob them of the supportive role others in society might play in their lives, but rather ensure that their interactions correspond to what is best tailored to their own needs, known by their parents.

Additionally, the wisdom from the canon, common, and civil law traditions and their animating philosophies also help aid the precise contours of parental rights in the contemporary period. Precisely, while it would be playing tricks on the dead to make canonists resolve all problems of parental rights in the present, since they participate in an abiding natural law tradition, they point towards a larger body of thought about the role of parents, rights, obligations, and even the role of the individual conscience in raising children. At the heart of questions about parental rights in the past and present is a question of conscience and integrity. If parental rights derive from an obligation imposed on parents by the fact of having born or having primary care of a child to act or not act in some way to secure “positive assistance for the enjoyment or some good and/or...to be free from interference in one’s pursuit of some goods,” then parental rights necessarily involve a right to integrity, namely a right to fulfill one’s perceived duties that correspond one’s “status as a rational being capable of making free choices for which she is morally responsible and morally bound to act in accordance with her best judgment,” so long as such actions do not violate the fundamental rights of

children ([Moschella, 2016, p. 50, 55](#)). Precisely, integrity is that harmony between the “reasoning and desiring aspects of oneself, *and* harmony between one’s judgments and actions,” or in other words, following one’s conscience ([Moschella, 2016, p. 15](#)). Indeed, while one’s conscience may be flawed or in desperate need of counsel, one cannot be forced to act or not act in one way or another, unless that action is truly injurious to someone else. Moreover, parents cannot be compelled to transfer decision-making to another subject because not only would it transfer an obligation to another that is less equipped to act insofar as any other decision-making subject is less equipped to function as the primary executor of the obligation, but also because translation of such obligation would violate a parent’s conscience to fulfill their duty to ensure the flourishing of the children. Consider an example offered by Moschella (2016, p. 57–58), wherein a mother objects to her daughter’s exposure to some set of instructional material in a school. If the state were to deprive the mother of the right to prevent exposure, the state would effectively deny the mother her moral responsibility to her daughter that she recognizes in conscience. As we have seen, the jurisprudential tradition on which parental rights depend recognizes that the family is a “basic unit of society,” that has its own sphere, the maintenance of which is essential for the upbringing of children ([Moschella, 2023b, p. 1572](#)).

Ultimately, these points ought to aid in clarifying the role of parental rights for jurists, lawyers, and policy-makers alike. Any effort to legislate, juridically vindicate, or politically support parents, children, and the family as a space where these individuals exercise their rights requires a coherent and comprehensive understanding of what is being protected. Moreover, seeing as in American jurisprudence there remains the particularly distressing and abiding failure to accurately define the scope and character of parental rights in history and tradition, if any litigation is to occur on behalf of parents by a hypothetical Office of Parental Rights, said office should know precisely what it is arguing for, in part to substantiate its own claims, defend the constitutional right

articulated in the Texas Constitution and Supreme Court decisions, but also in part to secure—in the event an appeal—substantive historical matter for any reviewing court to engage with. After all, if the constitutional status of parental rights is to be effectively secured in the contemporary American jurisprudential tradition, it necessarily depends upon fulfilling the rigor of the *Glucksberg* test. How an Office of Parental Rights might vindicate parents' rights in a manner wholly consistent with this history and tradition is discussed in Chapter IV.

CHAPTER II: EMPIRICAL BENEFITS OF PARENTAL PRIMACY: PARENTING STYLES AND CHILD DEVELOPMENT OUTCOMES

Despite the aforesaid illustration of the contours of the historical and traditional legal ecology of parental rights, the reader might nevertheless ponder if these theories correspond to any real or substantive benefit for children. If the law is merely prescribing some sort of relationship in the ongoing family that harms children, it collapses into a frightening conundrum of incoherence: it defies not only its own operative principles to not injure another, but also its own affirmation that the protection of the best interests of children is an essential responsibility of all authoritative parties who have some compelling interest about their wellbeing, *viz.* parents and the state. To this end, it is worth considering an essential empirical inquiry: whether the parental exercise of meaningful decision-making authority over their children is associated with better integral-developmental outcomes for those children. Another relevant question concerns the influence of family structures on childhood outcomes; however, it is not of primary interest. Research indicates that children raised in two-parent households experience superior outcomes throughout their childhood and into adulthood (Wilcox et al., 2024; Kearney, 2023). As verifiable as that claim may be, and while it might be interpreted to justify the proposition that parents are the individuals best equipped to raise their children, it resolves little about parental decision-making, and results may be influenced by exogenous factors such as income, social capital, parental marital

satisfaction, and delegation of tasks between parents.

Turning to the question of parental decision-making, several studies indicate that when parents exercise a degree of active, uninhibited involvement in their children's lives across domains (and therefore do not passively, actively, or unwillingly cede decision-making to a non-parental subject), their children have improved, positive outcomes. In these contexts, the four parenting styles developed in child psychology function as useful analytic lenses. These four parenting styles are designated as authoritative, authoritarian, permissive, and neglectful/uninvolved. Authoritative (high warmth-high control) parenting signifies as "unique combination of high control and positive encouragement," on part of parents toward their children (Baumrind, 1971, p. 1). Authoritarian (low warmth-high control) parenting signifies parents who are "relative to others, withdrawn, and distrustful," yet also "detached and controlling" (Baumrind, 1971, p. 2). Permissive parenting (high warmth-low control) signifies parents who are "noncontrolling, nondemanding, and relatively warm" (Baumrind, 1971, p. 3). Baumrind eventually expanded her parenting style typology to include neglectful or uninvolved parenting (low warmth-low control), which signifies parents who have minimal involvement in their child's life and express little attachment to their children, though such a style is not necessarily coterminous with abusive parenting (Baumrind, 1989; Baumrind, 1991; Kuppens & Ceulemans, 2018).

Since Baumrind's initial 1971 study, which inaugurated a Copernican shift in the conceptualization of the effects of parenting on children, her research has consistently demonstrated that authoritative parenting styles impart the most favorable outcomes for children. Authoritative parenting is defined by the parent's effort "to direct the child's activities... in a rational issue-oriented manner," wherein the parent "exerts firm control at points of parent-child divergence, but does not hem the child in," with arbitrary restrictions (Baumrind, 1971, p. 22). The authoritative

parent “affirms the child’s present qualities, but also sets standards for future conduct” (Baumrind, 1971, p. 22). She uses reason as well as power to achieve her objectives, and most notably, “she does not base her decisions on group consensus or the individual child’s desire, but also does not regard herself as infallible” (Baumrind, 1971, pp. 22–23). The benefits of authoritative parenting are consistently evident across several domains, while authoritarian styles have benefits in certain circumstances.

In educational contexts, Steinberg et al. (1994) found that students whose parents exercised authoritative parenting exhibited more favorable levels of psychosocial development, academic achievement, internalized distress, and problem behaviors when measured over the course of a year. For example, with respect to self-reliance, children of authoritative parents experience the greatest point-change (+.04) compared to children of authoritarian parents (+.00), permissive parents (.01), and neglectful parents (–.06) (Steinberg et al., 1994). Similarly, children of authoritative parents had improved social competence (+.05) compared to children of authoritarian parents (+.00), permissive parents (–.01), and neglectful parents (+.00) (Steinberg et al., 1994). Moreover, in certain contexts, both authoritative and authoritarian parenting improve childhood academic achievement (Watabe & Hibbard, 2014). Per Majumder (2015), American students who had authoritative parents actively involved in the course of their child’s education and decision-making relating to their academic pursuits were more likely than uninvolved or permissive parents to have 1.1 more years of schooling and approximately 20 percentage points more likely to obtain a bachelor’s degree. Newman et al. (2015) indicate that in the United States, maternal authoritative parenting has a statistically significant relationship with more favorable high school achievement relative to authoritarian and neglectful styles, with other variables such as paternal education or family size demonstrating minimal predictive power. Adolescents with authoritative parents are also more likely to achieve higher academic achievement within a six-month

time span than children with neglectful or authoritarian parents (Hayek et al., 2022).

Beyond educational contexts, authoritative parenting has manifold benefits. Certain parental practices typical of authoritative parenting, such as monitoring, supervision, behavioral control, expectations, and inductive discipline, are associated with higher life satisfaction (Suldo & Huebner, 2004; Lavrič & Naterer, 2020). Authoritative parents also aid their children in developing prosocial behavior conducive to a stable trajectory into adulthood, whereas children whose parents were neglectful or permissive were less likely to exhibit prosocial behavior (Carlo et al., 2017). Children of authoritative parents who guide their children’s behaviors are less likely than children with neglectful or permissive parents to engage in taboo, delinquent, or risky sexual or substance behavior (Hoskins, 2014; Hoeve et al., 2009). Children whose parents are authoritative also tend to have more positive and trusting relations with their parents (Karavasilis et al., 2003).

While authoritative parenting tends to evince the most positive benefits for children, authoritarian parenting, namely when parents assume a firmer, more voluntaristic approach to parenting characterized by minimal acquiescence to children’s requests, may not yield negative consequences depending on traits of the discrete family, including culture, customs, norms, and ethnicity. For example, as Dwairy et al. (2006) suggest, authoritarian parenting in Middle Eastern and North African groups with increased levels of adolescent-family connectedness does not harm adolescent mental health. In one study of two groups of children, one containing children from Western European backgrounds and the other from Egyptian, Iranian, Indian, and Pakistani backgrounds, negative self-esteem and cognition were only present in the former group and not the latter (Rudy & Grusec, 2006). In other words, authoritarian parenting styles are not necessarily detrimental but rather have their detriment contingent on other variables dependent on family-specific cultural milieus, expectations, and norms.

Third, these findings on parenting styles suggest that parenting efficacious in producing positive outcomes for children depends on asymmetric relationships between parents and children, while remaining attentive to and considerate of children's real needs and desires.

Part and parcel of both authoritative and authoritarian parenting is parental monitoring, conceptualized as surveillance but operationalized as the daily aggrandizement of knowledge about the youth's activities and lives. As Dishion and McMahon (1998) note, parental monitoring is fundamentally "structuring the child's home, school, and community environments, and tracking the child's behavior in those environments." This definition has been further specified. Per Guilamo-Ramos et al. (2010, p. 206–208), parental monitoring involves activities such as questioning "other individuals about their children's behaviors or whereabouts," as well as developing an awareness of the "child's activities, including with whom, where, and what they are doing." Per Gentile et al. (2012, p. 471), parental monitoring has three modes, namely active mediation, wherein parents have directed conversations about their child's activities, restrictive mediation, wherein parents establish rules, and co-viewing, the practice wherein parents function as active or passive participants with their children in a given activity, e.g., playing a game with their child or watching television with their child. Fundamentally, parental monitoring is aimed at both predicting future contingencies in their children's lives and acquiring information to inform their parental decision-making calculus.

The benefits of parental monitoring are numerous. Kaniūšonytė (2015) indicates that parental monitoring is correlated with positive youth contribution to the development of self, family, and the community. Yang et al. (2023) indicate that parental monitoring has protective effects for adolescents, including deterrence of aggressive and antisocial behavior, particularly those who are in early adolescence. Lippold et al. (2013) indicate that parental monitoring is conducive to preempting delinquency and substance abuse. Reviewing parental monitoring across several ethnicities, Laird et al. (2009) indicate that when children have awareness of parental supervision, they are less likely to engage in risky behaviors. The absence of parental monitoring is associated with more behavioral problems and antisocial deviance from commonly held norms (Dillion et al., 2008).

In light of Baumrind's quadripartite parenting typology, wherein authoritative and authoritarian parenting produce more favorable outcomes when compared to neglectful or permissive parenting, some claims undergirding parental rights are corroborated. First, when parents engage in authoritative or authoritarian parenting styles, especially monitoring, they enable their children to have more positive outcomes across several domains, suggesting that the flourishing of children depends upon idiosyncratic, uninterrupted guidance by those who know children best. Moreover, these findings suggest that parental authority is not merely conventional but a natural developmental necessity corresponding to the developmental immaturity of children and adolescents, thereby justifying the view of the relationship between parents and children articulated by the natural law tradition that has animated the jurisprudential tradition of this nation's history. Second, neglectful or permissive parenting, wherein parents do not engage in comprehensive monitoring behavior and have minimal engagement with their children's lives, may approximate the effects of non-parental institutions, either assuming decision-making authority ordinarily held by parents or forbidding parental monitoring of children's activities in varied

contexts. That is to say, since there is a correlation between increased likelihood of negative outcomes and neglectful or permissive parenting and since non-parental decision-making exclusive of parental decision-making would preclude certain behaviors associated with authoritative or authoritarian parenting styles and monitoring and thereby produce a state of affairs substantively similar to those produced by neglectful or permissive parenting, then the intrusion of non-parental actors in the household may correlate with similarly negative consequences for children. Third, these findings on parenting styles suggest that parenting efficacious in producing positive outcomes for children depends on asymmetric relationships between parents and children, while remaining attentive to and considerate of children's real needs and desires. Fourth, a collapse of meaningful parental authority or the enforcement of a symmetric relationship between parents and children may produce negative social externalities, such as delinquency, academic failure, and risky or criminal behavior, that not only impose social costs but also hinder the attainment of the common good and general welfare. Society, therefore, has a real interest in not eclipsing parental authority but rather supporting and reinforcing its legitimate and well-ordered exercise.

CHAPTER III: PRESENT THREATS AND PROTECTIONS TO PARENTAL RIGHTS IN TEXAS

Thus far, we have analyzed parental rights via two distinct analytic lenses. The first concerns jurisprudence and philosophy, and the second concerns empirical research concerning parenting styles within the spheres of child psychology and developmental science. Together, these frameworks confirm that the family functions as the natural and primary locus of moral and practical formation for children and that parents who exercise a primary, active, and meaningful role in their child's development are correlated with positive outcomes for their children. Therefore, these frameworks ought not

only to remind Texas policymakers of the real need to ensure that effective legal mechanisms are in place to protect parental authority in the state, but also the real need to understand the space carved out by the jurisprudential and philosophical tradition for any future legislation concerning parental rights, especially the construction of an Office of Parental Rights. Further necessary is an understanding of current statutes protecting parental rights in Texas. These statutes ought to be interpreted in light of the nation's history and tradition, as recognized by the Texas Constitution. Moreover, these statutes, by their nature, will reveal where parental rights might be infringed upon as a matter of positive law. To this end, consider **Table 1** (next page), which highlights relevant statutes governing parental rights in Texas.

By their very nature as positive determinations of parental rights, contrivance of the statutes detailed in the above table constitutes threats and injury to parental rights. Beyond the merely abstract, however, there are several instances of violations of parental rights in Texas that warrant the concern of the Legislature, as a body tasked with the care of the common good and the protection of the rights of Texans. Moreover, even though the Texas Constitution explicitly protects parental rights, there are nevertheless future potential spaces for the contestation of the exercise and extent of parental rights, as well as when the state might lawfully eclipse the exercise of parental rights or terminate them *in toto*.

Contemporary Litigation, Issues, and Threats to Parental Rights in Texas

For example, in the ongoing case before the Supreme Court of Texas, *In re Interest of K.N., K.L., K.L., and K.L., Children*, the Court is considering the disputed questions of whether a trial court that terminated the parental rights of C.N., mother, and R.L., father, possessed subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act and whether the termination of parental rights

Texas Family Code

Statute	Chapter Subject	Section Subject	Notes
§32.001	Consent to Treatment of Child by Non-Parent or Child	Consent by Non-Parent	Defines persons who may consent to varying types of medical treatment when the person having the right to consent cannot be contacted.
§34	Authorization Agreement for Nonparent Adult Caregiver	N/a	Defines roles, responsibilities, scope, contents, applicability, and penalties relating to agreements that authorize non-parental caregivers to perform certain acts relating to a child.
§35	Temporary Authorization for Care of Minor Child	N/a	Defines the process for establishing temporary authorization for care of a minor. Defines legal effects of temporary authorization.
§35A	Temporary Authorization for Inpatient Mental Health Services for Minor Child	N/a	Defines process for establishing temporary authorization for inpatient mental health services for minor child.
§151.001	Rights and Duties in Parent-Child Relationship	Rights and Duties of Parent	Defines the rights and duties of a parent.
§151.003	Id.	Limitation on State Agency Action	Forbids state agencies from adopting rules or policies that violate fundamental rights and duties of a parent.
§153.002	Conservatorship, Possession, and Access	Best Interest of Child	Establishes as a rebuttable presumption that a parent acts in the best interest of a child; outlines requirements for a rebuttal.
§153.071	Id.	Rights and Duties Appointed as Conservator	Requires, if both parents are appointed as conservators, the court specifies the rights and duties of each parent.
§153.073	Id.	Rights of Parent at All Times	Defines the rights of a parent at all times unless limited by a court order
§153.074	Id.	Rights and Duties During Period of Possession	Defines the rights and duties that a parent has during possession of a child when appointed conservator, unless limited by court order.
§153.131	Id.	Presumption that Parent to be Appointed Managing Conservator	Unless a court finds that it is not in the best interest of a child, requires that a parent be appointed as the sole managing conservator of a child.
§153.132	Id.	Rights and Duties of Parent Appointed Sole Managing Conservator	Identifies the rights and duties a parent has as sole managing conservator, unless limited by court order.
§153.191	Id.	Presumption that Parent to be Appointed Possessory Conservator	Requires that a parent who is not appointed as a sole or joint managing conservator is appointed as a possessory conservator unless that appointment is not in the best interests of a child.
§153.192	Id.	Rights and Duties of Parent Appointed Possessory Conservator	Defines the rights and duties of a parent appointed as possessory conservator unless limited by court order.
§153.193	Id.	Minimal Restriction on Parent's Possession or Access	Requires that any order that denies possession of a child to a parent or imposes restrictions may not exceed those required to protect the best interests of a child.
§161	Termination of the Parent-Child Relationship	N/a	Outlines legal mechanisms for termination of parental rights.
§261.307	Investigation of Report of Child Abuse or Neglect	Information Relating to Investigation Procedure and Child Placement Resources	Requires the Department of Family and Protective Services, upon first contact with the parent, to provide the parent an explanation, inter alia, of their rights during an investigation.

§262	Procedures in Suit by Governmental Entity to Protect Health and Safety of Child	N/a	Outlines the lawful process by which a governmental entity with an interest in the child may file a suit affecting the parent-child relationship.
§266.004	Medical Care and Educational Services for Children in Conservatorship of Department of Family and Protective Services	Consent for Medical Care	Delineates that medical care may not be provided to a child in foster care unless a person authorized by this section has provided consent.
Texas Education Code			
§26	Parental Rights and Responsibilities	N/a	Recognizes that a parent has the right to direct the moral and religious training of their child and make decisions concerning their education; requires the creation of a parental rights handbook; recognizes the right of parents to have access to records, course material, assessments, teaching materials, board meetings, instructional materials, and full information concerning the student. Requires the development of a parental engagement policy by the school district board of trustees.
§26A	Grievance Policy	N/a	Requires the board of trustees of a school district to adopt a grievance policy to address grievances received by individuals, including parents, <i>inter alia</i> .
Texas Health and Safety Code			
§161.0041	Public Health Provisions	Immunization Exemption Affidavit Form	Outlines requirements for claiming an exemption from a required immunization based on reasons of conscience, including claims by parents.
§166.085	Advance Directives	Execution of Out-of-Hospital DNR Order on Behalf of a Minor	Identifies parents, legal guardians, or managing conservators as individuals who may execute out-of-hospital DNR orders on behalf of a minor.
Texas Penal Code			
§9.61	General Provisions	Parent-Child	Permits the lawful use of corporal punishment by a parent when necessary to discipline or safeguard the child.

under statutory grounds D¹ and E² and the placing of children into the sole managing conservatorship of the Department of Family and Protective Services without termination is justified on the basis of the refusal of C.N., mother, to cooperate as opposed to neglect or abuse. C.N. and R.L. request review of the decision of the 7th District of Texas Court of Appeals.

As a matter of parental rights jurisprudence and the condition of parental rights in Texas, the more salient question present before the Court is the second, namely, whether the termination of parental rights

on certain statutory grounds and the placement of children with the Department is justified on the basis of refusal to cooperate with Department services. Petitioner C.N. contends that the Department investigated claims of abuse, and following an investigation, did not seek to remove her children, but instead sought an order for her to participate in services (*In the Interest of K.N., K.L., K.L., and K.L., Petition for Review C.N.*). Subsequently, C.N. did not participate in services and had no contact with the Department for six months, nor were any efforts made to compel contact during this period. In August 2022,

1 Tex. Fam. Code 161.001 (D), “Knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child.”

2 Tex. Fam. Code 161.001 (E), “Engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child.”

C.N., R.L., and the children moved to Louisiana, and in November 2022, the Department filed for emergency protection, resulting in the mother's arrest and the return of the children to Texas. Eventually, C.N.'s parental rights over K.N. were terminated (as were the rights of her unknown father), and the K.L. siblings were placed under the Department's managing conservatorship. The rights of R.L. over the K.L. siblings, who are his biological children with C.N., were also terminated, though the rights of C.N. over the K.L. siblings remained intact (*In the Interest of K.N., K.L., K.L., and K.L., Petition for Review R.L.*).

In re. K.N. et al. presents a troubling and complex situation. Narrowing focus to the salient question, viz. the relationship between parental noncompliance and statutory endangerment defined by termination grounds D and E, one can abstract a generalized threat to parental rights in Texas. Precisely, if it is the case, as the Petitioner avers, that the Department treated noncompliance with services as singularly sufficient to justify the finding of "endangering conduct" as described under grounds D and E and that the ostensibly endangering conduct, viz. C.N.'s discipline of K.N. was insufficient for categorization of endangerment as defined by positive law, then parental rights in Texas are conspicuously vulnerable to the relocation of a now defunct termination ground, namely O, in other grounds, namely D and E. It is worth noting that for the duration of events concerning C.N. and children, ground O was operative. When the Supreme Court ultimately adjudicates on this matter, ground O will be defunct, having been since September 1, 2025. Ground O and its extinguishment from statute is an important fact not so much for the resolution of *In re. K.N. et al.*, but rather for the abstracted and generalized threat present in the case. Pointedly, the binding or non-binding character of ground O at any temporal point is not salient. What is salient is that at the time of the events, the Department appears to have rehoused the substantive content of ground O in D and E, and despite the non-existence of ground O, it may continue to do so unless the Supreme Court finds that non-compliance may not be construed to constitute endangerment.

Other spaces wherein parental rights are vulnerable are inextricably linked to child protective services contexts. Texas statute imposes a requirement on all persons to report suspected abuse or neglect of a child ([Tex. Fam. Code 261.101](#)). Moreover, statute imposes a requirement on all professionals, identified as individuals licensed or certified by the state or are the employees of a facility licensed, certified, or operative by the state, who in the course of their duties, have direct contact with children, to report within 24 hours of developing a reasonable cause, any supposed abuse or neglect that has adversely affected a child's physical or mental health or welfare ([Tex. Fam. Code. 261.101](#)). In Texas, failure to report constitutes a Class A misdemeanor and may be upgraded to a felony if the report involves a child with an intellectual disability ([Brown & Stathatos, 2022](#)). Put simply, Texas maintains a universal mandatory reporting regime, binding all persons to submit a report, despite evidence suggesting that universal mandatory reporting regimes did not necessarily aid in achieving the goal of identifying and reducing real instances of injury and harm to children ([Brown & Stathatos, 2022](#)). In fact, research indicates that mandatory reporting regimes increased the quantity of reports that did not correspond to confirmed instances of abuse, and thus the increased number of engagements with child protective services by parents and children ([Brown & Stathatos, 2022](#)). In an effort to ameliorate its reporting structure, in 2023, the Legislature eliminated anonymous reporting via [H.B. 63](#) and in 2025 required school officials to provide parental notification of suspected abuse no later than one school business day via [S.B. 12](#). While these revisions provide meaningful reform, school districts may maintain variable and disparate reporting practices, resulting in varied reporting patterns. Districts with aggressive approaches to reporting may generate significantly more reports and thus lead to more parental and child engagement with the Department of Family and Protective Services.

Parental rights remain vulnerable in other contexts such as school-based healthcare or juvenile probation, yet the Texas Legislature has aggressively

sought to reinforce statutory protections to parental rights in these contexts and others. While these reinforcements create statutory protections for parents, they necessarily produce new sites of conflict between parents and non-parent decision-makers, thereby illuminating potential vulnerabilities to parental rights. In other words, when the law colonizes a space relating to parental rights and reasserts its coercive control over that space as its own domain, it simultaneously renders the space a novel site of incursion, conflict, and contention in the form of discordant interpretation of the law's prescriptions and proscriptions. Notwithstanding the binding character of parental rights legislation in Texas and its orientation toward protecting the good of parents, children, and thus Texas, parental rights legislation represents less the erection of an impenetrable bulwark and more the establishment of the boundaries of a new frontier defined by ordinances that necessarily depend upon, for their own integrity, the coordination of the vigilant defense of judicious courts and administrators whose main tools for defense are right interpretation and implementation. To reiterate, one should not assume that, because the legislature has enacted robust protections for parental rights in certain contexts, parental rights are no longer vulnerable in those contexts. What is protected is necessarily vulnerable.

Consider then, for example, S.B. 12, otherwise colloquially known as the "Parent's Bill of Rights." Passed during the 89th Legislature, S.B. 12 creates several protections for parents, specifically in educational contexts. The fundamental provision of the bill, now a provision of the Texas Education Code, codifies that parents possess the fundamental right to direct the moral and religious training of their child, make decisions concerning the child's education, and consent to medical, psychiatric, and psychological treatment of the parent's child (S.B. 12, 89R). Additionally, S.B. 12 prohibits social transitioning assistance, forbidding school district employees from assisting children in engaging in social transition, wherein they adopt new names, pronouns, or gender expressions to correspond to a sex opposite their sex at birth (S.B.

12, 89R). S.B. 12 also introduces a significant breadth of transparency rights for parents, requiring school districts to furnish parents with information relating to curricula, instructional materials, school options, programs, and health education. Moreover, S.B. 12 establishes that parents are entitled to access information concerning a child's medical records and library materials checked out by the child. Finally, S.B. 12 also requires that schools respect the rights of parents to withhold consent for their child's participation in a given school activity (S.B. 12, 89R).

More fundamentally, as previously mentioned, the Legislature has enshrined parental rights in the Texas Constitution through Senate Joint Resolution 34 (SJR 34) during the 89th Legislative Session. This resolution asserts that not only do parents have a fundamental right to exercise care, custody, and control of their child, but also that neither the state nor any of its political subdivisions shall interfere with the rights of parents unless the interference is essential to further a compelling government interest and is narrowly tailored to accomplish that interest (SJR 34, 89R).

These protections are markedly robust and reinforce the state's firm commitment to both the natural relationship between parents and children and the longstanding juridic codification of that natural relationship across Roman, canonical, civil, and common law traditions that came to define the jurisprudence of the state of Texas. Nevertheless, it is important to recognize that no matter how robust these protections may be, by the very nature of their erection of protections, they also facilitate new sites of conflict defined by conflicting and discordant interpretations of statute. If, then, the state is to enforce these robust protections guaranteed by law and thus binding on the consciences of all Texans, it must ensure it is equipped to exercise this task. The establishment of an Office of Parental Rights as a division of the Office of the Attorney General represents a potent means of equipping the state to this end.

CHAPTER IV: CONSTRUCTING AN OFFICE OF PARENTAL RIGHTS: A POLICY SOLUTION TO PROTECTING THE RIGHTS OF PARENTS

Despite the ongoing quest for coherence of the juristic character of parental rights in American constitutional law, which rests squarely on the Supreme Court enunciating a comprehensive and cogent picture of its relationship to the nation's history and tradition, the Supreme Court has consistently reaffirmed the rights of parents as fundamental and an essential liberty interest. Further, the American jurisprudential tradition—and thus the broader classical tradition from which it was begotten—demonstrates that parental rights are not only pre-political and natural, but an essential fixture of the influential traditions of canon, civil, and common law. Even more, empirical research suggests that certain parenting styles and parental monitoring practices that most closely align with the actionable moral claims of parents subsumed under the header of parental rights are highly beneficial for children. Positive law in Texas, specifically the Constitution and several statutes, evinces an unequivocal recognition of the primacy of parents in steering the course of their child's life.

On closer inspection, however, parental rights appear ensnared in a dispute over totem and taboo, one that is legally and juristically exploitable by the interpretative vagaries that seep through the cracks of the Supreme Court's compelling but ultimately incomplete articulation of the juristic character of parental rights. On the one hand, defenders of parental rights highlight the endurance of parental rights as a legal concept and the benefits that parents, empowered with authority, can provide for their children. Parental rights, rightly understood, therefore, are unassailable. On the other hand, detractors assert that a broad conception of parental rights across all domains is not reflective of American jurisprudence and is archaic in light of the increased focus on the legal status of the child, thus contending that such rights should be restrained or minimized in juridic, political, and administrative contexts. While the exposition of

the history and tradition of parental rights should help alleviate these concerns, both natural and legal persons may act on presuppositions about parental rights that conflict with the inherited legal and political conceptions of parental rights in the American and classical traditions. Therefore, both parents' rights and the legal and political conceptions of parental rights are exposed to infringement and delegitimization, respectively.

In an effort to simultaneously protect the rights of parents, which embody a real state interest, and to reinforce the legal and political conception of parental rights present in the American and classical tradition, Texas ought to construct an Office of Parental Rights, located in the Office of the Attorney General. This office ought to function as a mechanism to aid parents in vindicating their parental rights against infringement by third parties. Moreover, this office would have its justification on the very premises it would protect in the legal forum: parental rights are an inextricable part of this nation's history and tradition as defined by American and classical jurisprudence and are presumptively exercised for the best interest of the child unless demonstrated otherwise.

The Floridian Example: The Florida Office of Parental Rights

The only other state in the United States that has established a governmental entity exclusively dedicated to protecting parental rights is Florida. On April 29, 2025, Florida Attorney General James Uthemeier established the Office of Parental Rights, equipping the Office with two essential functions. On the one hand, the Office serves as an intake mechanism for complaints from parents who believe that an actor has violated their parental rights across ten categories within the Office's substantive jurisdiction. These categories include denial of access to school records, lack of consent for personal data collection, unauthorized healthcare services, interference with educational decisions, coercion or encouragement to withhold information from parents, failure to notify parents of suspected criminal offenses,

objectionable instructional material, violations of parental notification for health services, restrictions on parental participation in school governance, and unauthorized data sharing ([FL Office of Attorney General, 2025a](#)). Additionally, the Office will process and review reports of businesses displaying youth-focused advertising of electronic cigarettes ([Florida Office of Attorney General, 2025b](#)). On the other hand, as a division of the Florida Office of Attorney General, the Office is equipped with the authority to litigate received and processed through its intake mechanism and if necessary, will forward criminal cases to the Florida Office of Statewide Prosecution ([FL OAG, 2025a](#)). The Florida Office of Parental Rights has also inaugurated interagency collaboration with the Florida Department of Education to better enforce protections of parental rights in educational contexts ([FL OAG, 2025b](#)).

The Florida Office of Parental Rights represents a watershed moment in the effort to protect the essential juristic reality of parental rights and the effects of those rights on the relationship between the parent and the child, being the first of its type in the United States. Notwithstanding the laudable character and aims of the Office, the Florida Office provides a useful model for Texas to further evolve if the state elects to establish an analogous entity. Perhaps most notably absent from the Florida Office is legislative sanction for its creation; it is instead a creature of the Office of the Attorney General. If erected as merely a creature of the Attorney General in Texas, the Office has a fragile existence, lacking any real institutional durability due to the absence of a dedicated budget identified by statute or guaranteed staffing and structures. Moreover, if erected as a creature of the Attorney General, it exists *ad nutum* of the Attorney General and can thus be dissolved or consolidated at his will. To ensure the integrity and durability of a future Office of Parental Rights in Texas, the Office must be erected as a creature of the Legislature.

Presently, no office or division in the OAG is principally and directly dedicated to parental rights issues. Offices with cognizance to handle specific

issues relating to parental rights and duties include the Child Support Division, which possesses the authority to enforce child support and to intervene in certain suits affecting the parent-child relationship (SAPCR) concerning existing support orders, as well as the Office of Special Litigation, which possesses the authority to handle matters of affirmative policy litigation not cognized by extant litigation divisions. The Office of Parental Rights should be empowered to vindicate the parental rights of Texans in all spheres outside the jurisdiction of the Child Support Division and Office of Special Litigation while engaging in close collaboration with these departments. To this end, the Office of Parental Rights should be empowered with the statutory authority to investigate alleged violations of parental rights by the state or its political subdivisions, assist parents in understanding and advocating for their rights in various contexts, remedy verified infringements upon parental rights without litigation, institute legal proceedings (if necessary) to rectify said violations of parental rights, enforce parental rights statutes, collaborate with the state and its political subdivisions to develop lawful policies concerning parental rights, and provide annual reports documenting alleged violations and enforcement action.

If afforded these powers, the Office of Parental Rights will be equipped to meaningfully enforce current statutes protecting parental rights and thereby provide several benefits for Texas and Texan parents. First and foremost, the localization of enforcement authority in a centralized apparatus overcomes the deficiencies of the current enforcement regime, which is dependent upon sporadic and reactive costly litigation by parents. This centralization and localization thus allow only for the development and deployment of consistent legal arguments against violations of parental rights, and thus compel the juridification of a comprehensive juristic doctrine of parental rights. Second, the establishment of the Office of Parental Rights will significantly alleviate the challenges that presently beset parents who allege injury against their parental rights. Under the current legal regimes, parents must secure the aid of a

lawyer, construct a compelling case, and engage in multi-year litigation. This is especially burdensome for low-income or marginalized families. Simply put, the decisions rendered by certain actors often arise from “middle-class parenting norms that may differ from those of parents in low-income communities,” and thus “intervention sometimes occurs in situations that involve no serious threat of harm to the child,” but are cause for suspicion by some state actor (Huntington & Scott, 2022, p. 90). The existence of an Office of Parental Rights, therefore, would not only provide substantive legal support to these families, but also a sense of moral comfort. Third, an Office of Parental Rights is conducive to faster resolution of disputes, as the Office is singularly equipped to investigate, negotiate, institute legal proceedings, and secure voluntary compliance instead of torturous litigation. Fourth, an Office of Parental Rights might directly or indirectly compel the state and its political subdivisions to steer away from unlawful or excessive policies concerning parental rights. On the one hand, if the Office is equipped with the means to collaborate with political subdivisions and to provide guidance on developing policies that do not infringe on parental rights while nevertheless securing a reasonable interest, then these subdivisions might forgo policies that would otherwise violate parental rights. On the other hand, if the Office is equipped with powerful enforcement mechanisms, the state and its political subdivisions will be encouraged to discourage practices that might infringe on parental rights and to engage in more nuanced policy development. This dynamic would be especially beneficial in the contexts of political subdivisions where interactions with parental rights are numerous, including the Department of Family and Protective Services and school districts. Finally, the paramount benefit of the Office of Parental Rights is the systematic enforcement of parental rights, understood both as an essential feature of American and classical jurisprudence and as fundamental for the flourishing of Texas children.

In sum, the Office of Parental Rights presents an effective avenue for Texas to affirm and support parental

rights. The creation of the Office would represent not only a centralized enforcement effort benefiting parents and children alike, but also a catalyst for the deployment of persuasive juristic arguments that would reinforce the role and significance of parental rights in the legal and political landscape of Texas.

CHAPTER V: CONCLUDING REMARKS: RIGHTS TALK AND THE ONGOING FAMILY

Summary: Parental Rights as Natural Rights Consonant with American Jurisprudence and Empirical Research

Dominating present legal and political disagreement concerning the ongoing family and the relations between its members, namely parents and children, is a strident rights discourse, animated by competing premises, propositions, and visions, seeking to comprehend the role of parents within the constellation of new social and legal images of the family. Two fundamental questions reside at the center of these disputes: the first, identified by Melissa Moschella, is “to whom do children belong?” and the second, concerning the ordering of the life trajectory of the child, is “who decides by what right?” While the first question is not asked in any proprietary sense—as the Western legal tradition has not meaningfully cognized children as or like property since antiquity—but rather as human persons for whom parents are immediately and principally responsible for their care, custody, and well-being. In other words, this question is relational, seeking to determine which acting subject’s relationship with the child is the primary and ultimate relationship characterizing the child’s existence. The second question, notwithstanding the answer to the first, seeks to resolve who is responsible for directing the child’s life and on what grounds is such acting subject justified as the director of the child’s life. For some theorists, such as Amy Gutmann and Stephen Macedo, whose work has animated policy concerning the relationship between the parent and child in educational contexts, the child belongs to the “larger political community at least as directly as to their families,” therefore leading to the conclusion that the state has priority in decision-making contexts concerning the

life of children (Moschella, 2016, p. 147) Other respondents, such as James Dwyer recognize that children belong to their parents, but that parental rights talk is laden with a degree of parental narcissism and the state ought to supplant or modify parental decision-making in order to serve the best interests of the child. Others, such as Richard Farson and John Holt, contend that the child belongs absolutely to himself and deserves primacy in decision-making concerning his life trajectory, regardless of his immaturity.

Another view, however, charts a cogent and coherent middle ground and is found to rest firmly in the constitutional jurisprudence of the United States, shaped by the influence of over a millennium of historical jurisprudence that reached the American tradition via the English common law, itself indebted—particularly in matters of family law and the rights of parents and children—to the *ius commune*, the symbiosis of canon and civil law. The classical legal tradition posits that parents have a natural right to serve as their children’s principal educators and a natural duty to exercise this right for the benefit of their children. While this tradition posits that both the state and the family are products of natural inclinations for sociability and community and are interdependent on each other, they nevertheless prize the family as a pre-political space grounded in part in an inherent natural obligation between the parent and child that the state cannot interfere with unless to protect the rights of one party. This tradition is affirmed by the United States Supreme Court in several critical cases, namely *Meyer v. Nebraska*, *Pierce v. Society of Sisters*, *Wisconsin v. Yoder*, *Troxel v. Granville*, *Mahmoud v. Taylor*, and *Mirabelli v. Bonta*. In each of these cases, the Court affirmed that parental rights are an essential element of the nation’s history and tradition, and while unenumerated in the Constitution, are protected by the Fourteenth Amendment’s Due Process Clause. However, while the Supreme Court has consistently adjudicated in favor of a strong conception of parental rights, it has failed to articulate in its decisions the locus of parental rights in the nation’s history and tradition, thus failing to

satisfy the *Glucksberg* test, an essential showing for any unenumerated fundamental right. It is the hope of the author of this paper that the brief explication of the juristic history of parental rights in part aids in rectifying that issue for lawyers and jurists who seek to press for this demonstration in the legal forum, as well as for policymakers who themselves seek to understand why both the Supreme Court and Texas Constitution assert that parental rights are justified by this nation’s history and tradition. Moreover, the fundamental claims of this legal, political, and philosophical tradition concerning parental rights are that the right of parents is one held in conscience and integrity. Since parents are obligated to care for their children and since their right enables them to fulfill this obligation, they are beholden to their conscience to direct their children in the manner they believe most apt, provided they do not infringe on the rights of the child or some other person.

An additional dimension to the strident dispute surrounding parental rights is whether a broad interpretation of parental rights—where parents are equipped to direct their children’s lives in almost every circumstance—is even beneficial to children. For some detractors, no matter what jurisprudence or philosophy asserts, a broad conception of parental rights is merely a totem and ought to be a taboo. Yet, empirical research indicates that certain parenting styles and modes of parental monitoring that closely align with the type of parenting that a broad conception of parental rights would permit, insofar as parental decision-making and action are not usurped by a non-parental actor, are in fact beneficial for the child’s overall developmental trajectory. Authoritative parenting, wherein parents have a 1) high demandingness and direction over the direction of their child’s life and 2) high warmth and care for their children, consistently yields the most favorable outcomes for children in education, behavior, pro-social behavior, values transmission, and life satisfaction. Even more, in some cultures that are inclined toward communal attitudes, authoritarian parenting, wherein parents are marked by high demandingness and low warmth, may yield

favorable outcomes. In stark contrast, neglectful or permissive parenting, wherein parents exhibit low demandingness and either low or high warmth, is associated with the least favorable outcomes for children. One might consider these two styles analogous to circumstances in which a non-parental actor prevents a parent from engaging in and acting upon an essential monitoring activity, e.g., reviewing curriculum materials, inquiring about the child's social life at school, or inquiring about the child's social presentation. In other words, active and involved parenting—which has been precluded in some instances where non-parental actors seek to substitute their decision-making—is all but necessary to produce the most favorable outcomes for children, suggesting that a broad conception of parental rights is necessary for children to be best reared by their parents.

Prospective Solution and Vision: The Office of Parental Rights and the Importance of Family

Against this backdrop, the necessity of an Office of Parental Rights within the Office of the Attorney General becomes clear. On one hand, since nuanced but critical vagaries continue to disturb parental rights jurisprudence at the stratum of American constitutional jurisprudence notwithstanding the unequivocal affirmation by the Supreme Court of the rights of parents as a fundamental liberty interest, the state of Texas has a real interest in centralizing parental rights enforcement and deploying a cogent, comprehensive, and coherent jurisprudential theory in legal fora, principally to ensure that the integrity of the parent-child relationship in the ongoing family is preserved against infringements, and secondarily to engage in issue preservation concerning the precise contours of the parental rights doctrine characterizing the nation's history and tradition. To achieve its primary end, the Legislature should statutorily construct and task this Office with comprehensive investigative, enforcement, and reporting powers. These powers would enable the Attorney General to protect the rights of parents via more efficient and efficacious means, remove the costly burden of litigation from the shoulders of parents, deter the state and its political subdivisions from future

infringements of parental rights, issue guidance to the state and its political subdivisions concerning policy, and provide a sense of security to Texas parents who in conscience seek to raise their children according to their informed vision of what is best for their development. On the other hand, and more importantly, the family unit, defined by the bonds between parents and the natural bonds between parents and children, is essential for the good and flourishing of both the individual and of Texas. Parental rights, understood as the associative obligation and right of conscience parents have to raise their children, are thus necessary to ensure the integrity and sustenance of the family unit. In the absence of those rights or in the absence of any protections for those rights, the family loses its essential character as the primary ecology or first "workshop" of social and civic responsibility and their underlying virtues. That is, if the household is to function as the space where parents and children alike, through closeness, love, mutual enrichment, and education grow as a unit and as individuals, it is necessary that the faculty of parents to direct and coordinate the upbringing of their children is not merely respected as a coherent philosophical concept or a persisting juristic theory, but rather as a real and actionable claim possessed by each parent and protected by the state. Texas, therefore, has a real interest in protecting parental rights, both for the proximate motive of supporting the integral development and holistic well-being of children, and for the remote motive of facilitating the maturation of virtuous individuals, who are prepared by their parents in childhood to be the artisans of their own destiny as adults, will be the next generation of leaders of the state.

Having completed this reflection on the character of parental rights from the past to the present, their developmental value for children, and the role that the state of Texas plays in protecting the exercise of parental rights, it is important to remember that this is to "neither wax nostalgic about a prior age of the Western family, nor write pedantic about arcane antiquities with no modern utility" (Witte, 2011, p. 326). As the eminent family law historian John Witte notes, to reflect on an abiding concept like parental

rights that have had their fundamental character shaped by canon law courts in Rome, civil law courts in Paris, and common law courts in London is to reflect on a concept that has “shaped the Western family and legal tradition, for better or worse. These are the models that have to be dealt with—critically, constructively, and comprehensively” (Witte, 2011, p. 326).

Thus, notwithstanding how contentious or vexing questions about the rights of parents and children in their relationship embedded in the ongoing family may be, the family remains:

The only theatre in which we can realize our full capacity for good or evil, joy or suffering. By attaching us to beings and feelings that are perishable, families expose us to conflict, pain, and loss. They give rise to tension between love and duty, reason and passion, immediate and long-range objectives. But relationships between...parents and children can also provide frameworks for resolving such tensions (Glendon, 1988, p. 313).

Indeed, in a world where the family is made fragile by the dizzying array of challenges that a dynamic modernity hurls its way, the “principal bonds which

remain to unite the family may be the ties of human affection,” which we ought hope, through mutual love, inspire lasting goodness and responsibility, and thus set the members of the family on the path to flourishing and self-fulfillment (Glendon, 1988, p. 313). For as necessary as the bond between the parent and child is for the good of the child, so necessary is the bond between the parent and child for the good of Texas. After all, the common good of our larger home, Texas, depends on the common good of each smaller home, the family, itself dependent on the flourishing of each of its members.

Thus, if we ask ourselves, then, “To whom do children belong?” we must answer that in one sense, they belong to themselves, and in another sense, to their parents. And if we ask ourselves, “Who decides by what right?” we must answer their parents by the nature of the bond and obligation. If we ask ourselves a third and previously unposed question, “To whom does protection of the bonds of the family belong?” we must answer not only ourselves as members of the smaller home, but also the state, as the guarantor of our larger home. An Office of Parental Rights is but one step toward promoting the good of our smaller homes and, thus, our larger home, Texas. ■

REFERENCES

- Adolphe, J. F. (2022). *Natural law, rights of the family, and international human rights instruments*. In T. Angier, I. T. Benson, & M. D. Retter (Eds.), *The Cambridge handbook of natural law and human rights*. Cambridge University Press.
- Alicea, J. J. (2025). *The natural law moment in constitutional theory*. The Catholic University of America, Columbus School of Law. <https://scholarship.law.edu/cgi/viewcontent.cgi?article=2183&context=scholar>
- Alvaré, H. M. (2023). Families, schools, and religious freedom. *Loyola University Chicago Law Journal*, 54(2), 579–622. <https://lawcommons.luc.edu/lucj/vol54/iss2/9/>
- Archard, D. (2015). *Children: Rights and childhood* (3rd ed.). Routledge.
- Aquinas, T. (1964). *Commentary on Aristotle's Nicomachean ethics* (C. I. Litzinger, Trans.). Dumb Ox Books. <https://isidore.co/aquinas/english/Ethics.htm>
- Aquinas, T. (1947). *Summa theologiae*. Benziger Bros. <https://www.newadvent.org/summa/>
- Baumrind, D. (1971). Current patterns of parental authority. *Developmental Psychology Monograph*, 4(1, Pt. 2), 1–103. <http://dx.doi.org/10.1037/h0030372>
- Baumrind, D. (1989). Rearing competent children. In W. Damon (Ed.), *Child development today and tomorrow* (pp. 349–378). Jossey-Bass.
- Baumrind, D. (1991). The influence of parenting style on adolescent competence and substance use. *Journal of Early Adolescence*, 11(1), 56–95. <https://doi.org/10.1177/0272431691111004>
- Benedict XIV, Pope. (1741, November 17). *Satis vobis compertum*. Vatican. <https://www.vatican.va/content/benedictus-xiv/it/documents/enciclica--i-satis-vobis-compertum--i--17-novembre-1741--il-pont.html>
- Berman, H. J. (2006). *Law and revolution II: The impact of the Protestant Reformations on the Western legal tradition*. Harvard University Press.
- Blackstone, W. (1765–1769/1979). *Commentaries on the laws of England* (Vol. 1). University of Chicago Press. <https://oll.libertyfund.org/titles/sharswood-commentaries-on-the-laws-of-england-in-four-books-vol-1>
- Brady, K. A. (2024). Law, religion, and education. In R. Domingo, G. S. Hauk, & T. P. Jackson (Eds.), *Faith in law, law in faith: Reflecting and building on the work of John Witte, Jr.* (pp. 515–540). Brill.
- Brown, A.C., Stathatos, P. (2022). Reporting child abuse and neglect: One size does not fit all. *Texas Public Policy Foundation*. <https://www.texaspolicy.com/wp-content/uploads/2022/04/2022-04-RR-RfF-BrownStathatos-ReportingChildAbuseNeglect-002.pdf>
- Buckner, L. (2023). A right defined by a duty: The original understanding of parental rights. *Notre Dame Journal of Law, Ethics & Public Policy*, 37(2), 493–551. <https://scholarship.law.nd.edu/ndjlepp/vol37/iss2/3>
- Carlen, C. (1990). *Papal pronouncements, a guide: 1740–1978*. Pieren Press
- Carlo, G., White, R. M. B., Streit, C., Knight, G. P., & Zeiders, K. H. (2018). Longitudinal relations among parenting styles, prosocial behaviors, and academic outcomes in U.S. Mexican adolescents. *Child Development*, 89(2), 577–592. <https://pmc.ncbi.nlm.nih.gov/articles/PMC5562534/>

- Christiansen, J. (2026, February 17). *One cheer for parental rights in education*. The New Digest. <https://thenewdigest.substack.com/p/one-cheer-for-parental-rights-in>
- Christiansen, J. (2025). *The classical legal tradition as our tradition*. SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5550598
- Culley, S. E. (2001). Troxel v. Granville and its effect on the future of grandparent visitation statutes. *Journal of Legislation*, 27(1), 237–252. <https://scholarship.law.nd.edu/jleg/vol27/iss1/9/>
- Dewey, J. (1934). *A common faith*. Yale University Press.
- Dillon, F. R., Pantin, H., Robbins, M. S., & Szapocznik, J. (2008). Exploring the role of parental monitoring of peers on the relationship between family functioning and delinquency in the lives of African American and Hispanic adolescents. *Crime & Delinquency*, 54(1), 65–94. <https://psycnet.apa.org/record/2007-19947-002>
- Dishion, T. J., & McMahon, R. J. (1998). Parental monitoring and the prevention of child and adolescent problem behavior: A conceptual and empirical formulation. *Clinical Child and Family Psychology Review*, 1(1), 61–75. <https://pubmed.ncbi.nlm.nih.gov/11324078/>
- Domingo de Soto. (1553/2015). *De iustitia et iure libri decem*. The School of Salamanca. <https://id.salamanca.school/texts/W0011>
- Dwairy, M., Achoui, M., Abouserie, R., & Farah, A. (2006). Parenting styles, individuation, and mental health of Arab adolescents: A third cross-regional research study. *Journal of Cross-Cultural Psychology*, 37(3), 262–272. <https://doi.org/10.1177/0022022106286924>
- Dwyer, J. G. (2006). *The relationship rights of children*. Cambridge University Press.
- Epstein, R. A. (2025). A natural law approach to parental rights. *Journal of Contemporary Legal Issues*, 26(1), Article 3. <https://digital.sandiego.edu/jcli/vol26/iss1/3/>
- Farrelly, M. J. (2017). *Anti-Catholicism in America, 1620–1860*. Cambridge University Press.
- Farson, R. (1974). *Birthrights*. Macmillan.
- Florida Office of Attorney General. (2025, April 29). *Attorney General James Uthmeier launches first in the nation office of parental rights*. <https://www.myfloridalegal.com/newsrelease/attorney-general-james-uthmeier-launches-first-nation-office-parental-rights>
- Florida Office of Attorney General. (2025, May 23). *Attorney General James Uthmeier partners with Commissioner of Education Diaz on protecting parental rights*. <https://www.myfloridalegal.com/newsrelease/attorney-general-james-uthmeier-partners-commissioner-education-diaz-protecting>
- Garnett, R. W. (2000). Taking Pierce seriously: The family, religious education, and harm to children. *Notre Dame Law Review*, 76(1), 109–154. https://scholarship.law.nd.edu/law_faculty_scholarship/220/
- Gentile, D. A., Nathanson, A.I., Rasmussen, E.E., Reimer, R.A., & Walsh, D.A. (2012). Do you see what I see? Parent and child reports of parental monitoring of media. *Family Relations* 61(3), 470–487. <https://drdouglass.org/drpdfs/GNRRWMonitoring2012.pdf>
- Glendon, M. A. (1991). *Rights talk: The impoverishment of political discourse*. Free Press.
- Glendon, M. A. (1989). *The transformation of family law: State, law, and family in the United States and Western Europe*. University of Chicago Press.

- Gregory IX. (1230). *Decretalium D. Gregorii papae IX compilatio*. The Latin Library. <https://www.thelatinlibrary.com/gregory.html>
- Guilamo-Ramos, V., Jaccard, J., Dittus, P., & Collins, S. (2010). *Parental monitoring of adolescents: Current perspectives for researchers and practitioners*. Columbia University Press. <https://books.google.com/books?id=t44ITNGPyVUC>
- Haar, C. P. (2019). *Natural and political conceptions of community: The role of the household society in early modern Jesuit thought, c.1590–1650*. Brill.
- Hayek, J., Schneider, F., Lahoud, N., Tueni, M., & de Vries, H. (2022). Authoritative parenting stimulates academic achievement, also partly via self-efficacy and intention towards getting good grades. *PLOS ONE*, 17(3), e0265595. <https://pubmed.ncbi.nlm.nih.gov/35353817/>
- Helmholz, R. H. (2007). Children's rights and the canon law: Law and practice in later medieval England. *The Jurist*, 67(1), 39–57. <https://muse.jhu.edu/pub/16/article/610256/pdf>
- Helmholz, R. H. (2026). Natural law in American courts: From the Civil War's end to the present. *Harvard Journal of Law & Public Policy Per Curiam*. <https://journals.law.harvard.edu/jlpp/wp-content/uploads/sites/90/2026/01/49.Helmholz.pdf>
- Helmholz, R. H. (2015). *Natural law in court: A history of legal theory in practice*. Harvard University Press.
- Helmholz, R. H. (1988). *Roman canon law in Reformation England*. Cambridge University Press.
- Helmholz, R.H. (2007b). The law of nature and the early history of unenumerated rights in the United States. *University of Pennsylvania Journal of Constitutional Law*, 401–421. https://chicagounbound.uchicago.edu/journal_articles/667/
- Hoskins, D. H. (2014). Consequences of parenting on adolescent outcomes. *Societies*, 4(3), 506–531. <https://www.mdpi.com/80796>
- Huntington, C., & Scott, E. S. (2022). The enduring importance of parental rights. *Fordham Law Review*, 90(6), 2529–2574. <https://ir.lawnet.fordham.edu/flr/vol90/iss6/4>
- Jorgenson, L. P. (1968). The Oregon school law of 1922: Passage and sequel. *The Catholic Historical Review*, 54(3), 455–466. <https://www.jstor.org/stable/25018244>
- Kaniūšonytė, G. (2015). The effects of parental monitoring on adolescent and emerging contribution: A longitudinal examination. *International Journal of Psychological Studies* 7(1), 9–16. <https://ccsenet.org/journal/index.php/ijps/article/view/45529>
- Karavasilis, L., Doyle, A. B., & Markiewicz, D. (2003). Associations between parenting style and attachment to mother in middle childhood and adolescence. *International Journal of Behavioral Development*, 27(2), 153–164. <https://psycnet.apa.org/record/2003-02062-008>
- Kearney, M. S. (2023). *The two-parent privilege: How Americans stopped getting married and started falling behind*. University of Chicago Press.
- Kirk, E. R. (2023). Parental rights: In search of coherence. *Texas Review of Law & Politics*, 27, 729–784. <https://scholarship.law.edu/scholar/1127/>
- Korematsu v. United States*, 323 U.S. 214 (1944). <https://supreme.justia.com/cases/federal/us/323/214/>

- Kuppens, S., & Ceulemans, E. (2019). Parenting styles: A closer look at a well-known concept. *Journal of Child and Family Studies*, 28(1), 168–181. <https://pmc.ncbi.nlm.nih.gov/articles/PMC6323136/>
- Laird, R. D., Criss, M. M., Pettit, G. S., Bates, J. E., & Dodge, K. A. (2009). Developmental trajectories and antecedents of distal parental supervision. *Journal of Early Adolescence*, 29(2), 258–284. <https://pmc.ncbi.nlm.nih.gov/articles/PMC3740745/>
- Lavrič, M., & Naterer, A. (2020). The power of authoritative parenting: A cross-national study of effects of exposure to different parenting styles on life satisfaction. *Children and Youth Services Review*, 116, 105274. <https://www.sciencedirect.com/science/article/abs/pii/S019074092030918X?via%3Dihub>
- Lippold, M. A., Greenberg, M. T., & Collins, L. M. (2014). Youths' substance use and changes in parental knowledge-related behaviors during middle school: A person-oriented approach. *Journal of Youth and Adolescence*, 43(5), 729–744. <https://pmc.ncbi.nlm.nih.gov/articles/PMC3938985/>
- Locke, J. (1676/2002). *Essays on the law of nature*, (W. von Leyden Ed.) Oxford University Press.
- Locke, J. (1689/1988). *Two treatises of government* (P. Laslett, Ed.). Cambridge University Press. <https://www.jstor.org/stable/pdf/1972599.pdf>
- Macedo, S. (2000). *Diversity and distrust: Civic education in a multicultural democracy*. Harvard University Press.
- Mahmoud v. Taylor*, 606 U.S. ____ (2025). https://www.supremecourt.gov/opinions/24pdf/24-297_4f14.pdf
- Majumder, M. A. (2016). The impact of parenting style on children's educational outcomes in the United States. *Journal of Family and Economic Issues*, 37(1), 89–98. <https://link.springer.com/article/10.1007/s10834-015-9444-5>
- McCall, B. M. (2018). *The architecture of law: Rebuilding law in the classical tradition*. University of Notre Dame Press.
- Meyer v. Nebraska*, 262 U.S. 390 (1923). <https://supreme.justia.com/cases/federal/us/262/390/>
- Mirabelli v. Bonta*, 607 U.S. ____ (2026). https://www.supremecourt.gov/opinions/25pdf/25a810_b97d.pdf
- Mirabelli v. Bonta*, (9th Circ. 2026). <https://www.scotusblog.com/cases/case-files/mirabelli-v-bonta/>
- Moschella, M. (2026). Clarifying the true breadth and strength of parental rights under *Pierce v. Society of Sisters*. *Harvard Journal of Law & Public Policy* 49(1), 95–118. <https://journals.law.harvard.edu/jlpp/wp-content/uploads/sites/90/2026/01/49.Moschella.pdf>
- Moschella, M. (2023). Defending the fundamental rights of parents: A response to recent attacks. *Notre Dame Journal of Law, Ethics & Public Policy*, 37(2), 397–492. <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1924&context=ndjlepp>
- Moschella, M. (2025, March 1). *Do parental rights extend beyond the schoolhouse door? Correcting misinterpretations of Pierce in light of history and tradition*. SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5173067
- Moschella, M. (2023b). Natural law, parental rights, and the defense of “liberal” limits on government: An analysis of the *Mortara* case and its contemporary Parallels. *Notre Dame Law Review* 98, 1559–1594. <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=5069&context=ndlr>

- Moschella, M. (2016). *To whom do children belong? Parental rights, civic education, and children's autonomy*. Cambridge University Press.
- Neb. Dist. of Evangelical Lutheran Synod v. McKelvie*, 104 Neb. 93, 175 N.W. 531 (1922). <https://case-law.vlex.com/vid/neb-dist-of-evangelical-889558095>
- Newman, J., Gozu, H., Guan, S., Lee, J. E., Li, X., & Sasaki, Y. (2015). Relationship between maternal parenting style and high school achievement and self-esteem in China, Turkey and U.S.A. *Journal of Comparative Family Studies*, 46(2), 265–288. <https://www.jstor.org/stable/43613115>
- Pierce v. Society of Sisters*, 268 U.S. 510 (1925). <https://supreme.justia.com/cases/federal/us/268/510/>
- Rawls, J. (1993). *Political liberalism*. Columbia University Press.
- Regernus, M. (2012). How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structure Study. *Social Science Research*, 41(4), 752–770. <https://doi.org/10.1016/j.ssresearch.2012.03.009>
- Reid, C. J., Jr. (2004). *Power over the body, equality in the family: Rights and domestic relations in medieval canon law*. William B. Eerdmans.
- Rudy, D., & Grusec, J. E. (2006). Authoritarian parenting in individualist and collectivist groups: Associations with maternal emotion and cognition and children's self-esteem. *Journal of Family Psychology*, 20(1), 68–78. <https://pubmed.ncbi.nlm.nih.gov/16569091/>
- Steinberg, L. (2001). We know some things: Parent–adolescent relationships in retrospect and prospect. *Journal of Research on Adolescence*, 11(1), 1–19. <https://psycnet.apa.org/record/2001-06237-001>
- Steinberg, L., Lamborn, S. D., Darling, N., Mounts, N.S., & Dornbusch, S.M. (1994). Over-time changes in adjustment and competence among adolescents from authoritative, authoritarian, indulgent, and neglectful families. *Child Development* 65(3), 750–770. <https://www.jstor.org/stable/1131416>
- Strasser, M. (2019). Yoder's legacy. *Hofstra Law Review*, 47(4), 1335–1376. <https://www.hofstralawreview.org/wp-content/uploads/2020/01/bb.5.strasser.pdf>
- Suárez, F. (1612/2015). *A treatise on laws and God the lawgiver* (selected translations). Liberty Fund. <https://oll.libertyfund.org/titles/selections-from-three-works>
- Suldo, S. M., & Huebner, E. S. (2004). Does life satisfaction moderate the effects of stressful life events on psychopathological behavior during adolescence? *School Psychology Quarterly*, 19(2), 93–105. <https://doi.org/10.1521/scpq.19.2.93.33313>
- Texas Constitution*, Tex. Const. (1876). <https://tllc.texas.gov/docs/legref/TxConst.pdf>
- Troxel v. Granville*, 530 U.S. 57 (2000). <https://supreme.justia.com/cases/federal/us/530/57/>
- Veerman, P. E. (1992). *The rights of the child and the changing image of childhood*. Martinus Nijhoff.
- Vitoria, F. de. (1991). *Political writings* (A. Pagden & J. Lawrance, Eds.). Cambridge University Press.
- Washington v. Glucksberg*, 521 U.S. 702 (1997). <https://supreme.justia.com/cases/federal/us/521/702/>
- Watabe, A., & Hibbard, D. R. (2014). The influence of authoritarian and authoritative parenting on children's academic achievement motivation: A comparison between the United States and Japan. *North American Journal of Psychology*, 16(2), 359–382. <https://psycnet.apa.org/record/2014-20190-014>

- Wilcox, W. B., Brown, A. C., Zill, N., Armstrong, N., Torres, N., Welton, C., & Smith, A. (2024). *For the sake of the kids: Strengthening families in the Lone Star State*. Texas Public Policy Foundation. https://www.texaspolicy.com/wp-content/uploads/2024/09/2024-09-CHF-Sake-of-the-Kids-WilcoxBrownZill_FINAL-1.pdf
- Witte, J., Jr. (2011). *From sacrament to contract: Marriage, religion, and law in the Western tradition* (2nd ed.). Westminster John Knox Press.
- Witte, J., Jr. (2019). *Church, state, and family: Reconciling traditional teachings and modern liberties*. Cambridge University Press.
- Yang, P., Lippold, M. A., Schlomer, G. L., Feinberg, M. E., & Fosco, G. M. (2024). Protective effect of parental monitoring on early-to-mid adolescents displaying high-level and increasing aggressive behavior. *Applied Developmental Science*, 28(3), 375–390. <https://pmc.ncbi.nlm.nih.gov/articles/PMC11245172/>
- Ziegler, M. E., Eichner, M., & Cahn, N. R. (2023, August 25). *The new law and politics of parental rights*. SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4552363
- Zimmermann, R. (1996). *The law of obligations: Roman foundations of the civilian tradition*. Oxford University Press.

ABOUT THE AUTHOR



Noah Torres is the Policy Director of the Family Success Project at the Texas Public Policy Foundation, where he focuses on state, federal, and international family law, child welfare, artificial intelligence regulation, and human services & welfare reform for the sake of promoting the flourishing of all Texans and the common good of Texas. Additionally, Noah previously worked on antitrust and competition law enforcement in healthcare during his tenure at the Foundation.

Prior to joining TPPF, Noah earned his B.A. in politics and theology ('21) and M.A. in politics ('23) at the University of Dallas. During his graduate studies, Noah worked within the Cambridge School tradition of intellectual history and authored his M.A. thesis on the 16th and 17th century political, legal, and ecclesiological thought of Francisco de Vitoria, Robert Bellarmine, Giovanni Botero, Paolo Sarpi, and Niccolo Machiavelli and their respective influences on the relationship between law and conscience as mediated by interpretations of the concepts of right, justice, sovereignty, and "reason of state" in Papal governance, canon law, and Scholasticism. Noah remains an active participant in conversations relating to Scholastic political and legal thought, continuing to publish both on its intellectual history and its relevance to contemporary questions in academic journals such as *American Affairs* and the *Angelicum's Forum*. Additionally, Noah is an advocate for the Tribunal of the Diocese of Austin, where he represents petitioners' arguments in cases relating to the canonical status of marriages.

Noah is an active member in several political theory organizations, including *Escuela Hispanica* in Spain and *Academia Tocqueville* in France, as well as in public policy organizations dedicated to AI law and philosophy, child protective services, religious liberty and welfare reform.



901 Congress Avenue | Austin, Texas 78701 | (512) 472-2700 | www.TexasPolicy.com