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frequent now, the three cases of last summer indicate that long detentions and protracted examinations are not yet unknown. It has often been argued that such practices are necessary to law enforcement.[40] But England and those American cities which are almost completely free of the third degree provide a powerful counterargument.[41] What the third degree gains in the immediate case it seems to lose in the long run. When illegal procedures are adopted to achieve a worthy end, not only are the liberties of the individual infringed, but the police sacrifice some of the public's respect and willingness to co-operate. Secret detention naturally tempts to a distortion in Court of the facts of the detention. The end result is that the police are demoralized, and the public, suspecting abuse, fails to hold the police in the high esteem which proper enforcement of the law demands.[42] It seems logical to assume, moreover, that the possibilty of illegal detention and questioning discourages scientific investigation and leads to reliance on "unimaginative crude force."[43]

It is not within the scope of this note to say what the precise limitations on pre-arraignment police practices should be. But surely detention on mere suspicion of from five to seven days, deprivation of counsel and friends, and intensive questioning through the detention are an unjustifiable invasion of the liberty of one who is presumed to be innocent. Furthermore such practices, it is believed, are harmful in the long run to the police departments and to the cause of efficient law enforcement. Civil suits and criminal prosecutions against the officers have proved ineffective.[44] The exclusion of confessions obtained by such extreme abuses seems a salutary development in criminal law.

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Domestic Relations—Child's Interest in the Parental Relation—Suit by Infant for Enticement of Mother

One of the ideas most often asserted and most generally accepted in the field of jurisprudence in recent years is that law should be squared with the knowledge developed by the social sciences.[1] This does not

[40] For an excellent recent statement of this argument see Inbau, *The Confession Dilemma in the United States Supreme Court*, 43 ILL. L. REV. 442 (1948).

[41] See survey of third degree practices in fifteen representative cities, National Commission on Law Observance and Enforcement, *op. cit. supra* note 32, at 83-152, 188-189.

[42] *See* Chambers v. Florida, 309 U. S. 227, 240 n. 15 (1940).

[43] Haley v. Ohio, 332 U. S. 596, 606 (1948) (Mr. Justice Frankfurter concurring). See National Commission on Law Observance and Enforcement, *op. cit. supra* note 32, at 187-189; 8 WIGMORE, EVIDENCE §2251.

For a delightful discussion of the whole problem of police abuse see Warner, *How Can the Third Degree Be Eliminated?*, 1 BILL OF RIGHTS REV. 24 (1940). Also McCormick, *Admissibility of Confessions*, 24 TEXAS L. REV. 239 (1946).

[44] ORFIELD, CRIMINAL PROCEDURE FROM ARREST TO APPEAL 28-31, 66 (1947).

[1] POUND, INTRODUCTION TO THE PHILOSOPHY OF LAW 98 (1922); CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 75 (1921).

mean that the law should bend and sway with every new theory in a field where many theories and theorists compete for attention; it does mean that social sciences bring to light a solid body of factual information, and that, to the extent that the law rests upon fact, it should take into account facts as they are demonstrated by the social sciences. A case which raises a problem upon which the social sciences shed genuine light is *Henson v. Thomas.*[2]

In that case two minor children, suing by their father as next friend, asked for damages from a third person, alleging that from time to time that person enticed their mother from the family home for the purpose of engaging in criminal conversation with her, thereby goading their father into leaving home. The alleged results of these acts were to disgrace the children socially, and to deprive them of the parental affection, training, and care of both their father and mother. From the trial court's overruling of a demurrer *ore tenus* to the complaint, the defendant appealed. In a 5-2 decision the Supreme Court of North Carolina reversed the trial court, declaring that no such cause of action is recognized in North Carolina.[3]

Mr. Justice Barnhill for the majority reasoned that: (1) Such a cause of action was not known at common law, and since no statute creates such a cause of action the court is "not permitted to find *a way out* [italics added] for plaintiffs by engaging in judicial empiricism," and (2) "It is not for the courts to convert the home into a commercial enterprise in which each member of the group has a right to seek legal redress for the loss of its benefits."[4]

"No one would question the fact that a child has an interest in all the benefits of the family circle," acknowledges the majority,[5] but any consideration of those interests in reaching the instant decision is neglected. The interests of the child in an undisturbed home include those of an economic nature, such as food, clothing, and physical care; those of the personality, such as psychologic support, affection, and moral training; those in the nature of honor, such as social acceptability, and a name free from the taint of immorality.

The child's economic interest in the parental relationship goes beyond the bare minimum of support. The maximum benefits from the family income are realized only when both parents are present in the home. Where the mother is absent, part of the income is used to provide substitutes for her care, management, and service. Each member of the family suffers a proportional economic loss. Where the father is absent but is meeting the obligation of support, an economic loss is sus-

[2] 231 N. C. 173, 56 S. E. 2d 432 (1949).
[3] Henson v. Thomas, 231 N. C. 173, 176, 56 S. E. 2d 432, 434 (1949).
[4] *Ibid.*
[5] Henson v. Thomas, 231 N. C. 173, 175, 56 S. E. 2d at 434 (1949).

tained through similar considerations. The division of income between two households prevents the family members from receiving benefits equal to that of an undisturbed family unit. Where the father is absent and the burden of support is shifted to the mother, a greater economic loss is sustained by each family member.

In a study in North Carolina of the income of families supported solely by wage or salary in 1939, the following results were obtained: The median income of such families was $1,360. The one-child families having a male head and the wife present had an income of 92.6 per cent of the median; such families with the wife absent had an income of 78.7 per cent, and where such families had a female head, the income was only 65 per cent of the median.[6] The composition of the family group has a marked bearing on the adequacy of the income for the benefit of the family members.

The child has an interest in the support and care of its parents because of their effect on his physical and mental health. Common sense and the conclusions of psychologists' studies agree that the child's sense of security and well-being is based upon its early experience of parental care and affection.[7]

In the following summation from the work of an eminent psychiatrist and physiologist[8] it will be noted that it is not the overt "breaking" of the home that affects the child so much as the disharmony, resentment, contempt, and conflicts in the relations of the parents. In the instant case such strained relations are aggravated, if not initiated by the defendant's wrongful interference.

The family structure is the continuing solid support which is necessary to the child's physical existence. The loss of such support arouses fear in the child just as the loss of the support of *terra firma* during an earthquake may cause insane fright in adults. The initial physical support is from the mother's feeding, clothing and nursing. Later, the father and siblings contribute to the life of the child. The child directly experiences the loss of support by separation from the parents, discord and quarrels, and feelings of insecurity from disharmony between the parents. The deprivation of assistance can only arouse anxiety and feelings of insupport in the helpless child. The breaking up of parents is likely to divide the child's loyalties within himself and produce feelings of insecurity. "Thus 'growing-up' involves a graded series of removals of support, and if a firm, resilient structuration of personality is to result, these removals should not be too alarming or too abruptly imposed."[9]

[6] *What of Children in North Carolina,* Report of a Study by The Committee on Services for Youth, State of North Carolina State Planning Board, 1947, p. 20.

[7] Shirley and Poyntz, *The Influences of Separation from the Mother on Children's Emotional Responses,* 12 JOURNAL OF PSYCHOLOGY 251 (1941).

[8] MURRAY, EXPLORATIONS IN PERSONALITY 292 (1938).

[9] *Ibid.*

A study of these matters from another perspective corroborates these observations. In a comparison of the backgrounds of 56 psychotic children from Massachusetts' mental hospitals with those of 56 average children of the same age and sex, thirty of the psychotic group, as compared with 10 in the average group, had lost either father or mother by death, divorce, separation or desertion. The study concludes: ". . . it can be stated without qualification that children have the right to expect of their homes and society the same privileges that we as adults, demand in our lives, namely, security, justice, love and opportunity."[10]

The home is the child's primary and continuing source of training in the traits of honesty and acceptable social conduct. The loss of parental care and affection deprives the child of essential emotional nourishment. The parent's sympathy is the child's first lesson in kindness and consideration of the interests of others.[11] Parental aid in adversities is the child's source of encouragement to renewed confidence and courage.

From the standpoint of pride and honor, the child also has an interest in a life of normal social relations, free from the stigma of immorality and disgrace brought about by the acts of an intruder in the family group. There can be no other conclusion than this, that the intruder who lures away a parent and breaks up the home has committed an offense inflicting a grievous injury upon the innocent child. There is no reason why such a wrongdoer should not bear the financial consequences of his misdeeds.

Consideration of the interests of society in the fostering of undisturbed family units leads to the same conclusion. The interests of society are not thwarted, but are furthered by securing the interests of the child in this situation. Society has an interest in being free from the shifted economic burden of care and support of the children, in having mentally mature and psychologically adjusted citizens, and in having citizens instilled with moral consciousness and ethical conduct.

Increasingly the burden of support in the broken home is shifted to society. North Carolina, recognizing the need to conserve and strengthen family life, assumed the burden of financial assistance in 1937 by its *Aid to Dependent Children Act*.[12] The appropriations of the state alone for this service increased from $520,000 in 1944-1945 to $1,467,500 in 1949-1950.[13] In 1942 the number of children in families receiving grants in aid was 21,950; at the close of 1948 the number had increased

[10] Yerbury and Newell, *Genetic and Environmental Factors in Psychoses of Children*, 100 AMERICAN JOURNAL OF PSYCHIATRY 599 (1944).

[11] Bridges, *Factors Contributing to Juvenile Delinquency*, 17 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 351 (1926).

[12] N. C. GEN. STAT. §108-44 (1943).

[13] Linquist and Woodson, *Families Receiving Aid to Dependent Children in North Carolina*, North Carolina State Board of Public Welfare, Information Bulletin No. 14 (1949) p. 5. In 1944-1945 funds from federal sources were $956,381 and from county sources were $432,460.

to 29,388. More than half these families were headed by the mother, and "[a]lmost 20 per cent of the mothers were carrying on alone because their husbands were absent from the home and providing no support for the family. Divorce, separation, or desertion was the explanation for most of these broken homes."[14] Where the maintenance of any semblance of a family unit is not possible, the economic cost of support is shifted to society through state services and private charities.[15]

Society has an interest in having a maximum of emotionally stable and mentally healthy individuals in its composition. This interest goes beyond the mere public expense of those children requiring institutional care. It goes to society's interest in being free from the offenses of juvenile delinquents and adult criminals. Here the home is the first line of action for producing morally, as well as emotionally, adjusted citizens.

Studies of the backgrounds of juvenile delinquents reveal a persistently prominent frequency of broken homes.[16] In a 1923 study of 1,649 boys in New York state correctional institutions, 45.2 per cent came from broken homes. The study and its comparison with a control group showed "an intimate association between abnormal marital relations of parents, i.e., death, divorce, or separation among parents, and juvenile delinquency."[17] Of the 12,052 delinquency cases handled by the North Carolina juvenile courts from 1939 to 1944, 49.5 per cent of the children were reported as from broken homes.[18] One writer, viewing similar results, remarks, "We need not repeat the truism that adult crime is to a large degree rooted in the delinquency of early life."[19]

Not only should law be squared with facts revealed by the social sciences, but law should also take morality into account. The majority opinion in the instant case avoids any intimation that justice according to law should bear a relationship to moral principles. By man's inherent moral discernment the act here complained of is immoral and constitutes a grievous wrong. Of all his physical desires man perceives none to have a higher value or produce a higher good than those resulting in the creation of the family and parent-child relationships.[20] The instant decision "finds a way out" for one who has violated these morally valu-

[14] *Id.* at 10.

[15] *What of Children in North Carolina, op. cit. supra* note 6, at 11. Private finances furnish 94 per cent of total expenditures for institutional care of children in North Carolina.

[16] A representative selection from the many studies on this matter is summarized in TAPPAN, JUVENILE DELINQUENCY 134 (1949).

[17] Slawson, *Marital Relations of Parents and Juvenile Delinquency,* 8 JOURNAL OF JUVENILE DELINQUENCY 278, 285 (1923).

[18] SANDERS, JUVENILE COURTS IN NORTH CAROLINA 94, 98 (1948). In the delinquency cases where the marital status of the parents was known, the home was broken by divorce, separation, or desertion in 13.4 per cent of the cases handled by courts in rural counties, and in 19.2 per cent of the cases handled by courts in cities.

[19] Henting, *Juvenile Delinquency and Adult Disorganization,* 35 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 87 (1944).

[20] 6 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 65 (1931).

able desires of man and turned them to the satisfaction of his own lust.

Possibly because of the reasons underlying the generally halting development of family law[21] the securing of the interests of children has been the most belated. The right of the child to its very life was secured only after centuries of crusading and education by the Judaic, Christian, and Mohammedan religions.[22] The Roman father could kill or sell his child into slavery at his will.[23] In English common law the father could not kill or sell his child, but in other matters his power was unquestioned. The courts would not interfere with his custody of the child, despite the father's open dereliction, and the child had no right to enforce parental care or support.[24] In America, the child's right to support is made a legal duty of the parent by statute, and it is not dependent upon the parent's custody or moral inclinations.[25] Recent legal history has been one of increasing legislative and judicial concern with the welfare and the rights of children.[26] Some courts recognize that the early common law concept of the family unit, wherein all rights were vested in the husband and father, has through centuries of change in social structures been replaced by the concept of the family as a cooperative unit with mutual rights and duties among all the members. In viewing this change as reflected in modern legislation and judicial rules, these courts hold that the minor child has legally protected rights in the family relationship against interference by outsiders, and that such an interference as an enticement of a parent from the home is an invasion of the child's rights for which the child can maintain a suit for damages.[27]

In refusing the child's cause of action in the instant case, the court referred to the decision in *Small v. Morrison*.[28] That case held that

[21] COOLEY, TORTS 464 (3d ed. 1906); HARPER, TORTS 553 (1933); POLLOCK, TORTS 225 (12th ed. 1923); Pound, *Individual Interests in the Domestic Relations*, 14 MICH. L. REV. 177, 187 (1916).

[22] Fisher, *Pater Familias—A Cooperative Enterprise*, 41 ILL. L. REV. 27 (1946). Literature of early ages offers the accounts of Agamemnon who sacrificed Iphigenia to procure a fair wind for Troy, of Jephthah who slew his daughter pursuant to a vow made before battle, and of Virginius who killed his only child rather than surrender her into the wardship of the unjust judge.

[23] 3 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 375 (1931).

[24] Wellesley v. Duke of Beaufort, 2 Russ. 1, 38 Eng. Rep. 236 (1827).

[25] 4 VERNIER, AMERICAN FAMILY LAWS 18 (1936).

[26] Fisher, *Pater Familias—A Cooperative Enterprise*, 41 ILL. L. REV. 35-46 (1946). A recent judical enlargement of such rights is that of the child to recover for a prenatal injury in Williams v. Marion Rapid Transit, Inc., 152 Ohio St. 114, 87 N. E. 2d 334 (1949), 28 N. C. L. REV. 245 (1950).

[27] Daily v. Parker, 152 F. 2d 174 (7th Cir. 1945); Russick v. Hicks, 85 F. Supp. 281 (W. D. Mich. 1949); Johnson v. Luhman, 330 Ill. App. 598, 71 N. E. 2d 810 (1947); Miller v. Monsen, 228 Minn. 400, 27 N. W. 2d 543 (1949). *Contra:* Edler v. MacAlpine-Downie, 180 F. 2d 385 (D. C. Cir. 1950); McMillan v. Taylor, 160 F. 2d 221 (D. C. Cir. 1946); Rudley v. Tobias, 84 Cal. App. 2d 454, 190 P. 2d 984 (1948); Taylor v. Keefe, 134 Conn. 145, 56 A. 2d 768 (1947); Morrow v. Yannantuono, 152 Misc. 134, 273 N. Y. Supp. 912 (Sup. Ct. 1934); Garza v. Garza, 209 S. W. 2d 1012 (Tex. Civ. App. 1948).

[28] 185 N. C. 577, 118 S. E. 12 (1923).

an unemancipated minor child, living as a member of the family, may not maintain an action against its father for a negligent injury. There, the court felt that the interests of society in the preservation of the family as an economic and educational institution, and the interests of the other family members in these same benefits forbade such an intra-family lawsuit.[29] The reasons underlying this policy are lacking in the instant case. Indeed, a situation more violently dissimilar is difficult to picture! Here the family is already disrupted.[30] Here the action is not against a parent but against one, not only a stranger to the family relationship, but an intruder whose very act was the causal force in destroying the home.

Precedents in North Carolina decisions recognize principles which would have sustained allowing the cause of action in the instance case.[31] A minor child living in the family home has been allowed to sue its father's employer for an injury inflicted by the father's negligence. The policy protecting the father did not extend to insulate the employer from such an action.[32] A minor child has been allowed to sue its parent directly for support,[33] although the child could not maintain such an action at common law[34] and no statute creates such a cause of action in the child. In the light of these decisions the court's contention in the instant case that it is powerless to provide a remedy is not persuasive.

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Eminent Domain—Principles and Procedure—Power to Condemn Dwelling-houses and Surrounding Premises for Highway Purposes

Eminent domain[1] is the power of the sovereign to take and use, alienate, or destroy for the benefit of the public any species of property whatsoever lying within its territorial jurisdiction.[2] It is, in effect, a funda-

[29] *Accord,* Villaret v. Villaret, 169 F. 2d 677 (D. C. Cir. 1948); Mesite v. Kirchenstein, 109 Conn. 77, 145 Atl. 753 (1929); Hewellette v. George, 68 Miss. 703, 9 So. 885 (1891); Roller v. Roller, 37 Wash. 242, 79 Pac. 788 (1905); Wick v. Wick, 192 Wis. 260, 212 N. W. 787 (1927). *Contra:* Dunlap v. Dunlap, 84 N. H. 352, 150 Atl. 905 (1930); Lusk v. Lusk, 113 W. Va. 17, 166 S. E. 538 (1932).

[30] The policy preventing a minor child from suing its parent has been held inapplicable when the family unit was already disrupted. Green v. Green, 210 N. C. 147, 185 S. E. 651 (1936); Pickelsimer v. Critcher, 210 N. C. 779, 188 S. E. 313 (1936).

[31] For a discussion of the legal bases of such a cause of action and analagous North Carolina decisions see Note, 28 N. C. L. REV. 113 (1949).

[32] Wright v. Wright, 229 N. C. 503, 50 S. E. 2d 540 (1948).

[33] Green v. Green, 210 N. C. 147, 185 S. E. 651 (1936); Pickelsimer v. Critcher, 210 N. C. 779, 188 S. E. 313 (1936).

[34] Huke v. Huke, 44 Mo. App. 308 (1891); Mortimore v. Wright, 6 M. & W. 481, 151 Eng. Rep. 502 (1840); Shelton v. Springet, 11 C. B. 452, 138 Eng. Rep. 549 (1851).

[1] Grotius, an eminent publicist of the seventeenth century, originated the phrase. See Wissler v. Yadkin River Power Co., 158 N. C. 465, 74 S. E. 460 (1912).

[2] Griffith v. Southern Ry., 191 N. C. 84, 131 S. E. 413 (1926); Clifton v. Duplin Highway Comm'n, 183 N. C. 211, 111 S. E. 176 (1922); Jeffress v. Greenville, 154 N. C. 490, 70 S. E. 919 (1911).