I. Six Basis of Parents Rights
   a. Natural law – natural for parents to have domination
   b. Proprietarian – Locke – work product of parents and you are your own product
   c. Caretaker – a) blood ties, ability to bond with your children 2) Fried’s expression of autonomy
   d. Intimacy – Schoeman – basic part of being human is to form bonds and the state should not regulate it or else it will erode it.
   e. Right to be surrogates – children not legally competent and parents are better than state to make decisions
   f. Child Focus – Goldstein – parents want to help child and needs rights to do so.

II. Right to Education
   a. Not like the right to free speech or other enumerated rights
   b. Phylor v. Doe
      i. Education of children is crucial to our society and nation so excluding a group of children from education can injure the nation as a whole
         1. Court use intermediate scrutiny.
            a. Strict scrutiny needs fundamental right or suspect class, neither the class nor the right meets that requirement here.
         2. Education is a welfare right.
            a. Court looks to determine if education is the same as other welfare rights and determines it is different than other rights.
               i. Education allows people to better themselves and educated people benefit society.
         3. Court looks for a substantial goal of the state.
            a. Here the burden is on the state to show that there is a substantial goal.
            b. Court says that there is no reason to keep children out of the schools b/c the costs to the nation, state and children is too great if these children are not educated.
      ii. Phylor gives every child access to education. It does not speak to other restrictions on education.
   c. Kadramas v. Dickenson Public Schools
      i. Distinguished from Phylor b/c complete access is not denied here.
         1. Children also punished for parents crimes in Phylor.
         2. Parents had an opportunity to voice opinion on the matters.
   d. Board of Education v. Rawley
      i. Education for All Handicapped Children Act requires free appropriate education
         1. There is no level of education for the students required by the act
         2. Not guaranteed to produce a particular outcome but only open the door of public education to handicapped children.
         3. Need to see if “meaningful access” has been provided to students
            a. Have the procedures in the act been followed
               i. IEP reasonably calculated to enable the child to receive educational benefits.
ii. School in general is not designed to maximize anyone’s ability.
   1. Looking at Rawley there is no guarantee of quality.
      a. Confusion on this issue since in Phyler the court talks about
         the importance of education to society

e. Cedar Rapids v. Garrett F.
   i. IDEA requires “related services”
      1. Related services has a broad definition. Generally it is services that
         will allow a disabled child to remain in school during the day and
         receive meaningful access to education as congress envisioned it.
         a. Tatro found that medical services refer only to those that
            must be performed by a physician, not a student health rep.
         b. Though the educational opportunity does not need to be
            maximized for all students, the door must be opened to all
            students with disabilities as Congress intended. For Garrett
            to attend school this service must be offered and therefore
            the school must provide the related services so he can
            attend.
            i. Access is not just an open door, but being able to
               stay long enough to receive an education.

III. States Interests as Proxies for Children’s Rights
a. State has duty to protect children’s interests – prevent harm (mental and physical)
   to children
b. Meyer v. Nebraska
   i. Parents have a right to control their children
      1. The court gives no authority for this right, just lays it out there
      2. Not enumerated in the Constitution
c. Pierce v. Society of Sisters
   i. Sets forth a rational basis test for state regulations concerning education.
      1. Can infringe on parent’s rights of upbringing if there is a
         reasonable basis
   ii. Court used 14th Amendment Due Process analysis
      1. Schools are being deprived of their property without DP
      2. Parents are being deprived of their liberty interest w/o DP
d. Wisconsin v. Yoder
   i. Court uses balancing test and decides that the religious rights outweighed
      that of the state’s interest in educating the student.
      1. Though no on its face preventing the Amish from practicing their
         religion, it did interfere with their development in the religion
   ii. The Court focused on
      1. Only two more years for compulsory education being fought over
      2. Children are ready to be a productive member of their religious
         community
      3. In many contexts other parents control the education of their
         children
         a. Sending them to religious schools
e. Swanson v. Guthrie Ind. School District
i. A law effecting religion that is neutral and generally applicable it does not need to meet strict scrutiny. Here the policy is neutral and therefore does not violate free exercise.
   1. The right to education is limited to a point and the state can require that children do something in schools that their parents disapprove of.
      a. Court said that the school has a right to determine how to allocate their resources and that the no opt in provision was allowed.
   2. Parents are not losing control in Swanson, they are just being made to make a decision – home schooling or public schooling but not both

IV. Parents Interests as Proxies for Children’s Right
a. Rights for parental control is not enumerated but has its foundations in natural law
b. Prince v. Massachusetts
   i. To impinge on parent’s interest here, state must show that it is a necessity for children’s protection b/c of a clear and present danger
      1. May have been dangerous and parents cannot make martyrs of their children before children can make the choice for themselves
      2. Major differences between this and Yoder
         a. Jehovah’s Witness
         b. Child Labor Laws
         c. Happening in public at night
   ii. Court recognizes the rights of the child and then subsumes them into the rights of the parents. The state has a right to protect the child, but it cannot affect the religious teaching of the children unless there is a clear and present danger, which they do find here. However, they find the behavior to be harmful.
   c. Duro v. District Attorney
      i. Yoder exception is
         1. Is there a sincere religious belief
         2. Are the state’s interests in compulsory education sufficient to override the parents Free Exercise interests?
      ii. State’s interests are to “prepare citizens to participate effectively and intelligently in our political system” and make them “self-reliant and self-sufficient participants in society”
      iii. Prince is the first case where the state can trump the interests of the parents (child). The difference in Duro is that the religion and the children will not be completely private from society.

V. Abuse of Children
a. State v. Kaimimoku
b. Looks to whether the physical force is about punishment or only anger
   i. The statute allows for force between caregiver and receiver in some situations. Giving deference to parental control
ii. Parental control gives way to parental privilege to be able to discipline. Privilege is present if there is reason to punish and it does not cause serious harm.
   1. The statute has no necessity or reasonableness requirement, which makes it difficult to draw lines.

iii. Factors looked to may be
   1. Where was the child hit
   2. Where did it occur (in public, home, etc)
   3. Age
   4. Sex
   5. Size of child
   6. Looking for reasonable relationship between the force used and a legitimate purpose for such

   c. John D. v. Dept. of Social Services
      i. The court uses a broad definition of contact and also takes into account the purpose of the interaction and its potential effect on the child
      ii. Sexual information should be to provide information or direction, otherwise it may be abuse
         1. Adopts a non-physical definition of contact

   d. In the Interest of NMW
      i. Doesn’t have to be a showing of actual harm, but only the potential for harm.
         1. Physical abuse is not just risk of harm but there needs to be substantial harm shown. In this neglect there needs only be a risk of harm
            a. Child’s best interest is included as part of corporal punishment

   e. In the Matter of Glenn G
      i. The standard should look at the passive parent’s knowledge or awareness of the actions of the abusive parent and also the passive parent’s actual ability to intervene to protect the child
      ii. The abused should not be branded the abuser. However, the statute is strict liability and therefore there must be a neglect charge against the mother.

VI. Removal of Children
   a. Once the state gains jurisdiction over a child, the child is either left at home with services or the child is removed. Could be placed in an institution, family placement or foster care. State must provide services to fix whatever the problem was that caused the jurisdiction and make reasonable efforts to reunite the family.
      i. The goal of the state is to achieve a safe permanent home for the child without services (828)
      ii. The court determines what the permanency plan will be and to determine what the safe, stable environment for the children will be but agency has over sight.
      iii. There is no private right of action for reasonable efforts or the lack of

   b. Tannenbaum v. Williams
      i. Procedural and substantive due process for removal of child
1. Court says that it can only be done without a court order if there is an “imminent risk of harm”. If there is time to get a warrant, there is no emergency.

c. In Re Smith
   i. Dealing with circumstances of a situation that may lead the child to harm
      1. State says that there doesn’t need to be a direct risk of harm, but a risk of harm if the child remains in the situation
      2. Holds that legislative intent was to protect the child’s interest and wanted it to be a very subjective standard for the court to decide what is best.

d. Standards for removal (IJA-ABA)
   i. Generally the law is that you must use reasonable efforts to prevent removal and if the child has already been removed, there must be reasonable efforts for reunification

e. In The Interest of NMW
   i. Reasonable efforts for reunification
      1. Here provided services and goals to be able to regain custody.

f. Rights of Foster Parents
   i. Smith Org. of Foster Families for Equality and Reform – foster parents claimed that the system was denying them due process and that they had a constitutionally protected interest in their foster children and the relationship developed with them.
      1. Court held that there were sufficient safeguards for the foster families. In dicta the court said a lot about the nature of families and that a state created family is not the same as a natural family.

g. Termination of Parental Rights
   i. Grounds under which state can move for TPR (841)
      1. chronic abuse or neglect
      2. Abuse of neglect of other children
      3. Abandonment
      4. Mental illness
   ii. AFSA says that there should be a TPR when 15 of the last 22 months were spent in foster care

   iii. G.B. v. Dearborn County
      1. Due Process for TPR is not required if the parental rights have previously been terminated involuntarily for previous child

   iv. Santosky v. Kramer
      1. Court examined the standard of proof used for TPR. It was a preponderance of the evidence.
         a. Using Matthews v. Eldridge test the court finds that a higher standard should be used
            i. Private interest
               1. Natural parent has a fundamental interest to be able to raise their own children. Parents and children’s interests are treated as the same
ii. Risk of error
   1. State holds huge power so the risk of error is quite high

iii. State’s Interest
   1. Promoting the welfare of the child.
   2. Preserving natural families.
   3. Fiscal and administrative interest in reducing the cost of proceedings.
      a. Found it wouldn’t cost the state more

v. Sindin article
   1. Parents have a lack of power relationship with the state but are encouraged to cooperate for the best interests of the child
   2. Cooperation signals that people are equalsm but in fact the parents are far from equals here.
      a. Seems at odds with what the law is.

h. Alternatives to the Current System
   i. Gelles and Schwartz – Best interests of the children need to be given more weight. Need a more child focused approach
      1. Should not be afraid of TPR and adoption. Reunification is not always the best option.
   ii. Roberts – criticizes increased adoption.
      1. Says TPR outpaces the rate of adoption
      2. Blacks suffer more TPRs than whites.
      3. Wants to focus on the whole family.

i. Barrett v. State
   i. District court held that battered women’s syndrome could not be used as a defense when the perpetrator of the abuse was a third party, not the alleged victim of the abuse. Only for self defense.

VII. Juvenile Court Proceedings
   a. In re Gault
      i. Should there be protections for minors within the juvenile court system?
         1. State is parens patriae and can intervene if the child is delinquent. However due process is indispensable freedom. It is clear that his due process here was violated because of the huge punishment may have wrongly been placed on him. The parental function does not mean the state can act arbitrarily.
         2. Notice
            a. Must have written notice that would be constitutionally adequate in a civil or criminal proceeding – therefore the same as adults
         3. Right to Counsel
            a. Child must have representation if the child can be sent to detention. This is a different standard than is used for adults. The court is leaving room for a lot of formality when not talking about detention.
         4. Confrontation and Self-Incrimination
a. Protection against self-incrimination is the same for juveniles as it is for adults.
   i. Must have sworn testimony, same as with adults
5. Gault is limited to the adjudication part of the process.
6. Used fundamental fairness as a test

b. In Re Winship
   i. Does reasonable doubt apply to juvenile court?
      1. Yes, for criminal situations.
      2. Sees that it will not harm the process and goals of the juvenile court.
         a. Similar to Santosky analysis
      3. Not changing the nature of the process, just ensuring there is adequate protection

c. McKeiver v. PA
   i. Jury not necessary for juvenile courts
      1. Judges have discretion to use if they want
      2. Said that the juvenile system is not the same as adult or real court.
      3. Fact finding not part of the juvenile system
         a. Need more knowledge of children, not just elements of the crime

d. Schall v. Martin
   i. Can a child be held in pretrial detention for preventive reasons?
      1. Need to strike a balance between the formality and flexibility needed for the juvenile system.
      2. Said that there was a legitimate state interest
         a. Designed to protect the child
         b. Protect society against future crime
         c. Juveniles interests are substantial but are subordinate to the state’s parens patriae function
         d. Children have no freedom, they are always in some form of custody

e. State v. Griffith
   i. Adult court lacks jurisdiction and to hold the proceedings it must go through process to do so and the judge must determine that the defendant should be waived to adult court.
      1. Court is triggered by the age at the time of the crime committed.
   ii. Age is a jurisdictional requirement for juvenile court, but it is not one for adult court. A judge can rule that a certain case or Δ should move to adult court.
      1. Easy for Δ to raise it as a defense and if he does not, it is lost.

f. In Re Devon T
   i. Tried to use infancy as a defense
      1. Must show that there is not an absence of understanding from the Δ (affirmative defense)
a. Here the state did that b/c there was an active attempt by the Δ to keep his actions hidden and that he knew it was wrong
   i. Defense is not traditionally available at the juvenile court b/c whether the child is morally responsible or not, the child needs to be rehabilitated and therefore the infancy defense is irrelevant.
   ii. Court calls juvenile court the junior varsity court system.

g. Commonwealth v. Wayne W
   i. There is a rebuttable presumption that some crimes are so terrible that juveniles would not be rehabilitative and should be transferred to the adult court.
      1. Preponderance of the evidence standard for probable cause that the juvenile committed the crime and therefore should be transferred to adult court.
      2. Due Process challenge
         a. Juveniles have the burden to show non-dangerousness
            i. Court uses essential fairness test
               1. Court said that it makes sense b/c the juveniles are in the best position to show that they are not dangerous b/c they have the most evidence to show such.

h. In the Interest of CAH and BAR
   i. Protection of society must consider the deterrence and punishment and protection of harm by the offender.
      1. If there is reasonable prospects of rehabilitation the need for deterrence cannot outweigh the evidence for rehabilitation.
      2. If there is no hope for rehabilitation, the juvenile needs to be in adult court b/c it is not the same to have life imprisonment in the juvenile system.
   i. To transfer a case to adult court
      i. Under Kent there are due process rights before the juvenile court can give up their jurisdiction.
         1. Hearing
         2. Counsel
            a. With access for attorney to any records considered by the court
         3. Statements of reasons from juvenile court for giving up jurisdiction

j. Status Offense
   i. Conduct that is wrongful only for minors. Status offenses have been treated the same as delinquency b/c the goal is rehabilitation. The concern that being branded a delinquent was a problem for children and now there is more of an aim to rehabilitate.
1. Infancy defense can be used for delinquency but not status b/c the delinquency hearings provide sort some of moral blameworthiness on the part of the child.

ii. DC v. BJR
1. It must give fair notions of warning and have reasonable guidelines set to prevent “arbitrary and discriminatory enforcement”
   a. Court said that there was fair warning to the child as well. Obey your parents.
2. Law allows parents to retain control if they can control their children with reasonable commands and only invokes the statute if children repeatedly refuse these commands.
   a. Court says that the “reasonable” requirement of statute allows for the court to use discretion b/c it does not need to invoke the statute if it is unreasonable.

iii. In the Matter of Lori M
1. Where a parental edict affects a substantial right of the child and the child objects, the court looks to the maturity of the child and the nature of their right asserted.
   a. Court said that it was similar to a child’s right to have an abortion or use contraception
   b. Court also compares it to the adult right to privacy in sexual matters.
2. Is she substantially mature?
3. Court says yes. Talks about the choices she’s made following running away. Discuss her grades and her approach to her choice to be a bi-sexual.

VIII. Safeguards for Children
a. Faye v. Michael C.
   i. He was advised of his Miranda rights. Asked for his probation officer, it was refused. He continued to answer questions. Now asks that the statements be suppressed b/c it was a violation of Miranda to refuse the probation officer and that he exercised his right to remain silent.
1. Miranda was based on the Court’s perception that the lawyer occupies a special place in the legal system and that he plays a special role in interrogations. Probation officer does not hold this same role or have the ability to offer legal assistance.
   a. The request to see the probation officer is not a per se request to remain silent b/c it is not the same as asking for a lawyer.
2. Gov’t has the heavy burden of showing that the defendant knew his rights and intelligently waived them in answering questions. Court uses the totality of the circumstances approach to determine if this is so and they said it should be used the same way for adults and juveniles b/c the totality approach would take into consideration the age, intelligence, experience, etc of the juvenile.