People v. Olivas: The Concept of "Personal Liberty" as a Fundamental Interest in Equal Protection Analysis

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Introduction

Under the leadership of Chief Justice Donald R. Wright, the California Supreme Court consistently confronted and resolved many difficult and often controversial constitutional issues during the decade of the 1970's. In a number of instances,[1] the decisions rendered by the Wright court were necessitated by the action and, in some cases, the inaction of the legislative and executive branches of the California state government. As a result, the court was often criticised by those in society and high office who perceive the judiciary as being subservient to co-ordinate branches of government. Notwithstanding such criticism of its assertive stance, the Wright court compiled an impressive record in resolving such formidable constitutional problems as the death penalty,[2] equal educational opportunity in a school financing system based upon local property taxes,[3] preferential minority admission programs at state-operated educational institutions,[4] and the permissible scope of full body searches when incident to arrests for minor offenses.[5]

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1. See notes 2-5 *infra*.

2. People v. Anderson, 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (1972) (death penalty held invalid under cruel and unusual punishment clause of California Constitution).

3. Serrano v. Priest, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976) (school financing system held unconstitutional); Serrano v. Priest, 5 Cal.3d 584,487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

4. Bakke v. Regents of the Univ. of Cal., 18 Cal. 3d 34, 553 P.2d 1152, 132 Cal. Rptr. 680 (1976), *cert. granted*, 429 U.S. 1090 (1977) (No. 76-811) (medical school admission program for minorities held unconstitutional in absence of previous intentional discrimination against minorities).

5. People v. Brisendine, 13 Cal. 3d 528, 531 P.2d 1099, 119 Cal. Rptr. 315 (1975) (limitation on scope of search incident to arrest for minor offenses established under California

That the California Supreme Court chose to review and resolve such difficult and controversial issues is largely attributable to the influence of Chief Justice Wright and his view of the judiciary's role in our tripartite system of government. In contrast to some members of the judiciary who have exhibited reticence to exercise the full extent of their power to review legislative enactments or executive actions,[6] Chief Justice Wright demonstrated a firm belief that in order to discharge its constitutional responsibilities, the judiciary must act when necessary both to curb the excesses of the legislature and the executive and to rectify unjust situations that these branches of government either refuse or are unable to remedy. The Chief Justice expressed this judicial philosophy, which was implicit in his many opinions, in an address he delivered shortly after the California Supreme Court rendered its landmark death penalty decision in *People v. Anderson*:[7]

> The Constitution . . . is an enduring but evolving statement of general values designed to limit governmental action and protect individual rights. After the nonjudicial branches of government enact and enforce a law, thereby demonstrating their belief that the law is constitutional or that constitutionality is not their concern, the court must review the law to determine whether it does, in fact, meet constitutional standards. By observing this cautious, often burdensome and sometimes unpopular procedure, the courts can often prevent the will of the majority from unfairly interfering with the rights of individuals who, even when acting as a group, may be unable to protect themselves through the political process. In this way, judicial review assures a government under the laws.[8]

Although Chief Justice Wright's opinion for a unanimous court in *People v. Olivas*[9] concerned an issue less controversial than those in many other decisions rendered by the Wright court,[10] the constitutional analysis adopted in *Olivas* could have a major impact on legislation regarding the institutionalization and control of criminal offenders in California. This

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Constitution and *Robinson-Gustafson* doctrine repudiated).

In both United States v. Robinson, 414 U.S. 218 (1973), and Gustafson v. Florida, 414 U.S. 260 (1973), the United States Supreme Court held that the defendants' Fourth Amendment rights had not been violated by searches incident to lawful custodial arrests. Under the *Robinson-Gustafson* approach, individuals arrested for relatively minor offenses such as traffic infractions could be subjected to a full body search even if they were entitled to post bond and secure immediate release without stationhouse confinement. 414 U.S. at 266. Under the *Brisendine* approach, however, such individuals could only be subjected to a pat-down search for weapons, and then only if necessary to ensure the safety of the arresting officers. 13 Cal. 3d at 547, 531 P.2d at 1111, 119 Cal. Rptr. at 327.

6. *See, e.g.*, Carter v. United States, 306 F.2d 283 (D.C. Cir. 1962); Smith v. State, 444 S.W.2d 941 (Tex. Civ. App. 1969).

7. 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (1972).

8. Wright, *The Role of the Judiciary: From Marbury to Anderson*, 60 CALIF. L. REV. 1262, 1268 (1972) [hereinafter cited as *The Judiciary*].

9. 17 Cal. 3d 236, 551 P.2d 375, 131 Cal. Rptr. 55 (1976).

10. See notes 2-5 *supra*.

commentary will focus on the equal protection analysis employed in the *Olivas* opinion. After first reviewing the historical and factual background of that decision, the impact and implications of the court's holding that "personal liberty" is a fundamental interest for purposes of equal protection analysis will then be discussed. The analysis concludes with the observation that the future impact of the *Olivas* decision will ultimately depend upon the extent to which members of the judiciary adhere to the judicial philosophy of Chief Justice Wright as demonstrated in the spirit as well as the letter of his opinion for the court.

I. Factual Background

As part of a national movement to address the growing problem of youthful criminal offenders, California enacted the Youth Authority Act[11] in 1941 and codified it in the Welfare and Institutions Code.[12] The purpose of the Act was to provide youthful offenders of the criminal law, who had not yet attained adult status, with an opportunity to receive specialized "treatment" that might prevent them from following a life of crime.[13] The need for a separate agency to handle such individuals had already been perceived by many in the juvenile justice field who recognized that most local facilities available to the county juvenile court system were unsuited for handling these older and more sophisticated offenders.[14] Prior to the adoption of the Act an older juvenile arrested for violation of a penal statute faced one of two dispositional alternatives. He could be processed through the juvenile court system with the possibility of committment to a local juvenile detention facility, or he could be certified to the superior court for processing through the adult criminal courts with the possibility of prosecution and eventual sentencing to either county jail or state prison.[15] The Youth Authority Act provided a third or middle-ground alternative: even if an older juvenile between the ages of sixteen and twenty-one was certified to the criminal courts and subsequently convicted, the sentencing court could exercise its discretion[16] and commit the juvenile to the Youth Authority,

11. 1941 Cal. Stats., ch. 937, at 2522. The act was entitled the "Youth Authority Correction Act" until 1943 when "correction" was deleted, 1943 Cal. Stats., ch. 690, § 2, at 2442.

12. CAL. WELF. & INST. CODE §§ 1700-1861 (West 1972).

13. "The purpose of this chapter is to protect society more effectively by substituting for retributive punishment methods of training and treatment directed toward the correction and rehabilitation of young persons found guilty of public offenses." CAL. WELF. & INST. CODE § 1700 (West 1972).

14. *See generally* Bennett, *Indeterminate Control of Offenders: Realistic and Protective*, 9 LAW & CONTEMP. PROB. 616 (1943); Holton, *Youth Correction Authority in Action: The California Experience*, 9 LAW & CONTEMP. PROB. 655 (1943) [hereinafter cited as *The California Experience*]; MacCormick, *Existing Provisions for the Correction of Youthful Offenders*, 9 LAW & CONTEMP. PROB. 588 (1943); Sellin, *Youth and Crime*, 9 LAW & CONTEMP. PROB. 581 (1943).

15. *See* 1915 Cal. Stats., ch. 631, §§ 4d, 6-8, at 1228-33 (repealed 1947).

16. *See* CAL. WELF. & INST. CODE § 1731.5 (West 1972).

where he would, in theory if not in practice, receive rehabilitative treatment rather than penal confinement. For this reason, the California Youth Authority system was viewed as a progressive innovation to meet the problem of youthful criminal offenders.[17]

In order to ensure that the Youth Authority would have sufficient time to rehabilitate youthful offenders, the California legislature placed a provision in the Act that created the distinct possibility that juveniles convicted of a crime in adult courts could be committed to the Youth Authority for far longer periods of time than other juveniles or adults convicted of the identical crime could be committed to county jail. This provision, section 1770 of the Welfare and Institutions Code, still provides that: "Every person convicted of a misdemeanor and committed to the authority shall be discharged upon the expiration of a two-year period of control or when the person reaches his 23d birthday, whichever occurs later."[18] Whereas a sixteen year-old juvenile, for example, could be committed following conviction of a misdemeanor to an institution of the Youth Authority and held for "rehabilitative treatment" for a period of six years, the maximum penal sentence that could be imposed on a similarly convicted adult or juvenile was one year in county jail.[19]

The constitutionality of section 1770 was first tested by the California Supreme Court in 1943. In an opinion by Justice Traynor, the court unanimously held in *In re Herrera*[20] that the statutory scheme complied with the equal protection provisions of both the United States and California Constitutions because it was reasonably related to the rehabilitative purposes of the Youth Authority Act.[21] Six years after *Herrera* was decided, the constitutionality of section 1770 was again challenged by a youthful misdemeanant who, notwithstanding the alleged rehabilitative purposes of the Act, had been incarcerated in San Quentin Prison where no adult misdemeanant could be sentenced. In an opinion authored by Justice Raymond E. Peters, who was later to gain prominence as the liberal conscience of the California Supreme Court under Chief Justice Traynor, the District Court of Appeal held in *People v. Scherbing*[22] that neither the extended term of confinement permitted by section 1770 nor the ward's incarceration in state prison rendered the Youth Authority Act unconstitutional.[23]

17. *Compare* People v. Scherbing, 93 Cal. App. 3d 736, 740-41, 209 P.2d 796, 798-99 (1947) *with The California Experience*, *supra* note 14, at 662.

18. CAL. WELF. & INST. CODE § 1770 (West 1972).

19. *See, e.g.*, CAL. PENAL CODE § 19a (West 1977).

20. 23 Cal. 2d 206, 143 P.2d 345 (1943).

21. *Id.* at 213, 143 P.2d at 348.

22. 93 Cal. App. 2d 736, 209 P.2d 796 (1949).

23. *Id.* at 741-42, 209 P.2d at 799.

Few, if any, challenges to the commitment provisions of the Youth Authority Act were noted in the published opinions of the California appellate courts during the twenty-five year period following the *Scherbing* decision. It was not until 1976 that evolving standards of constitutional analysis led to the disapproval of the outrageous inequality permitted by section 1770. In that year, the California Supreme Court was once again approached by a youthful misdemeanant who challenged the constitutionality of section 1770. Jesus Olivas was nineteen years old when he was arrested and charged with the criminal conduct that subsequently resulted in his conviction for simple assault, an offense normally punishable under the Penal Code by a maximum sentence of six months in county jail.[24] Because the sentencing court exercised its discretionary sentencing powers and committed him to the Youth Authority,[25] however, Olivas faced the possibility of four years in confinement, the maximum length of his commitment being limited only by attainment of his twenty-third birthday.[26] To make matters worse, by the time of sentencing, Olivas had already been confined in the county jail for approximately ninety days.[27] Had he been sentenced to the maximum jail term for adults not committed to the Youth Authority, the back-time credit provisions of the Penal Code would have limited the period of additional incarceration to ninety days.[28] Olivas contended that the disparate length of commitment permitted by section 1770 constituted a blatant violation of his right to equal protection of the law. Fully aware that the same statutory scheme had passed constitutional muster in *Herrera* and *Scherbing*, the court granted Olivas' petition for a hearing and proceeded to reconsider the validity of section 1770 in *People v. Olivas*.[29]

Unlike the circumstances that existed at the time of the *Herrera* and *Scherbing* decisions, youthful misdemeanants committed to the Youth Authority and held by it pursuant to section 1770 at the time Olivas was committed fell within two distinctly identifiable sub-groups. These groups were created when the California legislature reduced the age of majority from twenty-one to eighteen years in 1971.[30] The reduction in the age of majority meant that certain *adult* misdemeanants, that is, those between the

24. CAL. PENAL CODE § 241 (West 1970) (amended 1977).

25. 17 Cal. 3d at 239, 551 P.2d at 376, 131 Cal. Rptr. at 56. *See* CAL. WELF. & INST. CODE § 1731.5 (West 1972).

26. *See* 17 Cal. 3d at 241, 551 P.2d at 378, 131 Cal. Rptr. at 58 (citing CAL. WELF. & INST. CODE § 1770 (West 1972)).

27. 17 Cal. 3d at 242 n.9, 551 P.2d at 378 n.9, 131 Cal. Rptr. at 58 n.9.

28. 1971 Cal. Stats., ch. 1678, § 1, at 3604-05 (current version at CAL. PENAL CODE § 2900.5 (West Supp. 1977)).

29. 17 Cal. 3d 236, 551 P.2d 375, 131 Cal. Rptr. 55 (1976).

30. "Adults" are defined in California as individuals who have attained eighteen years of age. CAL. CIV. CODE § 25.1 (West Supp. 1977).

ages of eighteen and twenty-one, could be committed to the Youth Authority and held for longer terms of confinement than older adults who were sentenced to county jail. Thus, in 1976, the individuals confined in institutions of the Youth Authority pursuant to section 1770 were both juveniles between sixteen and eighteen years of age and adults between the ages of eighteen and twenty-one.[31] It was in this somewhat different factual context that the Wright Court considered Olivas' equal protection claim.

II. Personal Liberty as a Fundamental Interest

In attacking the length of his possible term of confinement pursuant to section 1770, Olivas faced two major obstacles. First, Justice Traynor's holding in *Herrera* that the statutory scheme did not violate equal protection principles still stood as valid precedent. Second, the California Supreme Court had more recently held that the Youth Authority Act was not susceptible to attack on cruel and unusal punishment grounds because it served a rehabilitative rather than penal function.[32] On the other hand, at least two factors appeared to weigh in Olivas' favor. First, the court had deliberately exercised its discretion by granting Olivas' petition in order to reconsider an issue that had been resolved over twenty years before. Second, in contrast to the demonstrated reticence of the Burger Court to continue the expansion of equal protection concepts begun by the Warren Court, the California Supreme Court under the leadership of Chief Justice Wright continued to enlarge the scope of protection under the equal protection clauses of the California constitution.[33] Thus, while a majority of the Burger Court refused to hold either that education was a fundamental interest[34] or that wealth[35] and sex were suspect classifications,[36] the California Supreme Court reached the opposite conclusion in each instance based upon its independent review of the issues and policy considerations involved.[37] As a consequence of the active role pursued by the Wright court in defining new fundamental interests and suspect classifications, there was a strong possibility that the court would consider a new fundamental interest approach in *Olivas*.

31. 17 Cal. 3d at 240 n.5, 551 P.2d at 377 n.5, 131 Cal. Rptr. at 57 n.5.

32. *In re* Gary W., 5 Cal. 3d 296, 301, 486 P.2d 1201, 1205, 96 Cal. Rptr. 1, 5 (1971) (concluding that the Youth Authority Act was rehabilitative and not penal in nature).

33. CAL. CONST. art. I, § 7(a,b); *id.* at art. IV, § 16.

34. San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973).

35. *Id.*

36. Frontiero v. Richardson, 411 U.S. 677 (1973).

37. *See* Serrano v. Priest, 5 Cal. 3d 584, 604-10, 487 P.2d 1241, 1255-59, 96 Cal. 601, 615-19 (1971) (education is a fundamental interest); *id.* at 597-604, 487 P.2d at 1250-55, 96 Cal. Rptr. at 610-15 (wealth is a suspect classification); Sail'er Inn, Inc. v. Kirby, 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971) (sex is a suspect classification).

The proposition that personal liberty should be considered a fundamental interest for purposes of equal protection analysis may, at first impression, seem unassailable. Nevertheless, prior to *Olivas*, no court of last resort in the United States had made such a determination. Several lower federal courts had addressed the issue with conflicting results.[38] That the status of personal liberty as a fundamental interest was the subject of dispute when the California Supreme Court considered Olivas' equal protection claim may have been due, in part, to a lack of appellate challenges to statutory schemes affecting liberty interests and, in part, to the ongoing development of equal protection analysis. At the same time, the justifications set forth by those courts that have rejected the concept of personal liberty as a fundamental interest provide another explanation, namely, the belief that legislative bodies should have unfettered discretion to specify the manner in which criminal offenders should be handled following conviction.[39] The assertive role taken by the California Supreme Court under Chief Justice Wright's leadership demonstrated, however, that it recognized its constitutional responsibility to check legislative excesses when such action was necessary.[40]

In assessing Olivas' equal protection claim, Chief Justice Wright began by defining the limits of personal liberty. He rejected the suggestion that personal liberty should merely include the individual's interest in freedom from incarceration, noting that wards on parole from the Youth Authority were still subject to a significant number of restraints on their freedom of movement.[41] Taking a broader view than the state would have preferred, Chief Justice Wright concluded instead that an individual's constitutional interest in personal liberty must include freedom from all forms of control by the Youth Authority.[42]

Having defined the limits of the constitutional interest that was affected by section 1770, Chief Justice Wright turned to the most important aspect of Olivas' equal protection claim, the question whether personal liberty should be considered a fundamental interest for purposes of equal protection analysis. Because the paucity of significant precedent on that subject pre-

38. *Compare* Bolling v. Manson, 345 F. Supp. 48 (D. Conn. 1972) *and* United States *ex rel.* Robinson v. York, 281 F. Supp. 8 (D. Conn. 1968) (holding that personal liberty is a fundamental interest) *with* Sero v. Oswald, 351 F. Supp. 522 (S.D.N.Y. 1972), *aff'd in part and remanded in part sub nom.* United States *ex rel.* Seró v. Preiser, 506 F.2d 1115 (2d Cir. 1974), *cert. denied*, 421 U.S. 921 (1975) (holding that personal liberty is not a fundamental interest).

39. *See, e.g.*, Smith v. State, 444 S.W.2d 941 (Tex. Civ. App. 1969).

40. *See, e.g.*, *In re* Foss, 10 Cal. 3d 910, 519 P.2d 1073, 112 Cal. Rptr. 649 (1974); *In re* Lynch, 8 Cal.3d 410, 503 P.2d 921, 105 Cal. Rptr. 217 (1972); People v. Anderson, 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (1972).

41. 17 Cal. 3d at 245, 551 P.2d at 380-81, 131 Cal. Rptr. at 60-61.

42. *Id.*, 551 P.2d at 381, 131 Cal. Rptr. at 61.

cluded reliance upon prior decisional law, the Chief Justice reviewed the significance given to the concept of personal liberty throughout Anglo-American legal history.[43] That review revealed elaborate due process guarantees, developed to protect individuals against unjust deprivations of such liberty. As a result, Chief Justice Wright concluded that personal liberty is "a fundamental interest, second only to life itself, as an interest protected under both the California and United States Constitutions."[44]

Upon concluding that personal liberty is a fundamental interest for purposes of equal protection analysis, the court subjected section 1770 to the test of strict scrutiny.[45] Although the burden of proving a statute unconstitutional is customarily placed upon the party making such a claim, once the court reached its fundamental interest determination, the burden then shifted to the state to establish that it had a compelling interest justifying treatment of youthful offenders in a manner different from adults over the age of twenty-one, and that this distinction was necessary to further that interest.[46] The state was, however, unable to bear its burden of justifying section 1770. Even when the court conceded for the sake of argument that the rehabilitation of youthful offenders was compelling, the state failed to show that youthful misdemeanants necessarily required a longer term of confinement or control for rehabilitative treatment than the maximum penal term that could be imposed for the same offense.[47] The court was also unpersuaded by the state's suggestion that the longer term of control by the Youth Authority could be justified because a ward who successfully completed his commitment was entitled to have his conviction expunged from the public record. In response to that justification, Chief Justice Wright noted that individuals who successfully completed probation from a criminal court were similarly

43. *Id.* at 248-51, 551 P.2d at 382-84, 131 Cal. Rptr. at 62-64.

44. *Id.* at 251, 551 P.2d at 384, 131 Cal. Rptr. at 64.

45. The two-tiered approach to equal protection claims involves the application of two considerably different standards of judicial scrutiny depending upon the court's perspective of the interests affected by the challenged legislation. If the statutory scheme is seen as simply regulating economic relationships, the court will exercise restraint. Under such a view, the legislation bears a presumption of constitutionality and needs only some rational relationship to a conceivable legitimate state purpose in order to be upheld. If, however, the court determines that the legislation affects "fundamental interests" or involves "suspect classifications," it will be strictly scrutinized; the state must affirmatively carry the burden of demonstrating that it has a compelling interest that will justify the law *and* that the classifications created by the law are necessary to further that interest. 17 Cal. 3d at 243-44, 551 P.2d at 379, 131 Cal. Rptr. at 59. The vast difference between these two standards of review means, of necessity, that the court's final conclusion as to the constitutionality of a statute will quite often be determined by the standard of review that the court chooses to apply in any given case. As a consequence, the court's conclusion as to what interests are to be deemed "fundamental" and what classifications are to be deemed "suspect" is of critical importance.

46. *Id.*, 551 P.2d at 385, 131 Cal. Rptr. at 65.

47. *Id.* at 255, 551 P.2d at 387, 131 Cal. Rptr. at 67.

entitled to expungement but were not required to undergo longer periods of confinement in exchange for that benefit.[48] Having thus addressed the state's arguments, the court unanimously concluded that no sound rationale existed that could justify the unequal deprivations of personal liberty made possible by the statutory scheme and, therefore, held that section 1770 was constitutionally invalid.[49]

III. Impact and Implications

In spite of the fact that the statutory scheme declared invalid in *Olivas* permitted, and, in fact, resulted in the imposition of significantly longer and thus manifestly unjust terms of commitment, some may claim that the court overstepped the proper bounds of judicial restraint. There are those, even among the judiciary, who hold to the belief that a court acts improperly when it subjects legislative enactments or executive actions to strict scrutiny, particularly when the matter in question involves the length of time that criminal offenders can be controlled by the state following conviction.[50] At least one author has already suggested that the court's decision to treat personal liberty as a fundamental interest planted the seed for the eventual destruction of the juvenile justice system, because the state will never be able to demonstrate a compelling interest that would justify *any* differential treatment of juveniles and adults.[51] In the same vein, it might also be argued that the court's fundamental interest approach to personal liberty will subject *all* penal statutes to strict scrutiny and thereby result in an intolerable limitation on legislative prerogatives in that field. Such claims and fears are, however, groundless; those who espouse such arguments overlook one crucial element in the court's equal protection analysis: the first prerequisite to a meritorious claim of unconstitutionality is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner.[52]

48. *Id.* at 256, 551 P.2d at 388, 131 Cal. Rptr. at 68.

49. *Id.* at 257, 551 P.2d at 389, 131 Cal. Rptr. at 69.

50. *See, e.g.*, Sero v. Oswald, 351 F. Supp. 522 (S.D.N.Y. 1972), *aff'd in part and remanded in part sub nom.* United States *ex rel.* Sero v. Preiser, 506 F.2d 1115 (2d Cir. 1974), *cert. denied*, 421 U.S. 921 (1975); Smith v. State, 444 S.W.2d 941 (Tex. Civ. App. 1969).

51. Note, *Extended Incarceration of Youth Offenders*, 65 CALIF. L. REV. 345, 353 (1977).

52. *See, e.g., In re* Roger S., 19 Cal. 3d 655, 668, 566 P.2d 997,1005,139 Cal. Rptr. 861, 869 (1977); People v. Olivas, 17 Cal. 3d 236, 240-43, 551 P.2d 375, 377-79, 131 Cal. Rptr. 55, 57-59 (1976); Westbrook v. Mihaly, 2 Cal. 3d 765, 782-83, 471 P.2d 487, 498-99, 87 Cal. Rptr. 839, 850-51 (1970), *vacated on other grounds*, 403 U.S. 915 (1971). *See also* CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, ANALYSIS AND INTERPRETATION 1471-72 (L. Jayson ed. 1973). As Justice Frankfurter once wrote, "The Constitution does not require things which are different in fact to be treated in law as though they were the same." Tigner v. Texas, 310 U.S. 141, 147 (1940).

In the context of the juvenile justice system, the detractors must bear in mind the significant differences between juvenile status and adulthood. By definition, the most conspicuous disparity between a juvenile and an adult is the greater liberty interest and freedom of action possessed by the adult upon attainment of majority. Although juveniles possess important personal liberty interests,[53] those interests are limited by the qualified right of a parent to direct the actions of his or her child[54] and by the state's "somewhat broader authority to regulate the activities of children than of adults."[55] Thus, when the state steps into the shoes of the parents through the vehicle of the juvenile justice system, it assumes the authority to limit the juvenile's freedom of action. By contrast, there are few, if any, circumstances in which the *in loco parentis* rationale can be used to justify state impingement on an adult's personal liberty interest.

In fact, while sitting by assignment after retirement from the court, Chief Justice Wright recently authored an opinion in which he made this very distinction between adults and juveniles. In *In re Roger S.*,[56] the California Supreme Court considered the issue of a juvenile's right to challenge his parents' decision to "voluntarily" commit him to a state hospital for treatment of a mental disorder. Although the court concluded that the fourteen year old juvenile was entitled to certain procedures designed to protect his due process interests,[57] the court rejected the companion equal protection claim that the minor was entitled to receive the same procedural guarantees afforded other individuals who were involuntarily committed for evaluation and treatment pursuant to a statutory scheme that did not encompass "voluntary" parental commitments.[58] Significantly, Chief Justice Wright justified the court's refusal to accept the equal protection claim on the ground that juveniles in the circumstances of Roger S. were not "similarly situated" with adults and wards of the juvenile court who had already been granted the statutory due process guarantees.[59] In reaching this conclusion, Chief Justice Wright relied on the qualitative difference between the personal liberty interests of a juvenile and an adult, as well as the "compelling" right of the parent to direct his or her child's upbringing.[60]

The court's decision in *Roger S.*, and in particular Chief Justice Wright's reliance on the basic requirement that a challenged statute be

53. 19 Cal. 3d at 661-62, 566 P.2d at 1000-01, 139 Cal. Rptr. at 864-65.
54. *Id.* at 668, 566 P.2d at 1001-02, 139 Cal. Rptr. at 865-66.
55. Planned Parenthood of Mo. v. Danforth, 428 U.S. 52, 74 (1976).
56. 19 Cal. 3d 655, 566 P.2d 997, 139 Cal.Rptr. 861 (1977).
57. *Id.* at 671, 566 P.2d at 1006-07, 139 Cal. Rptr. at 870-71.
58. *Id.* at 666-68, 566 P.2d at 1004-05, 139 Cal. Rptr. at 868-69.
59. *Id.* at 668-69, 566 P.2d at 1005, 139 Cal. Rptr. at 869.
60. *Id.* at 668, 566 P.2d at 1005, 139 Cal. Rptr. at 869.

shown to affect two similarly situated groups in an unequal manner, clearly demonstrates that the court's earlier holding in *Olivas* that personal liberty is a fundamental interest will not necessarily result in the wholesale invalidation of California's juvenile or criminal justice systems. At the same time, *Roger S.* illustrates the shift in emphasis that can be expected to take place in future cases involving assertions that unequal deprivations of personal liberty have resulted from the operation of a challenged statute. Instead of focusing on the issue of personal liberty as a fundamental interest, the outcome of future personal liberty cases will most probably be determined by the ability of the individual or group raising the equal protection claim to demonstrate that they are similarly situated with another group that receives different treatment as a consequence of the challenged statute.

In view of this shift in focus, it will be the responsibility of the California judiciary carefully to evaluate claims of similar situation. In *Olivas*, Chief Justice Wright and the court faced just such a task. The court could conceivably have chosen to analyze the statutory scheme by differentiating between the two groups of individuals most directly affected by section 1770, namely, juveniles and adult misdemeanants, all of whom could be held under the control of the Youth Authority pursuant to section 1770. It would have been a relatively simple matter for the court to have limited its personal liberty holding to adults like Olivas who were confined in the Youth Authority for longer periods of time than other adult misdemeanants who could not be committed because they had attained twenty-one years of age prior to arrest. Instead, when defining the group of individuals to be compared with these older adults, Chief Justice Wright included the juveniles who were also controlled by the Youth Authority pursuant to section 1770. Having made the decision to proceed against such juveniles in the criminal courts rather than through the juvenile court system, the state, observed the Chief Justice, had decided that the juveniles were similarly situated with those adults also convicted of misdemeanor offenses.[61] Accordingly, juvenile misdemeanant Youth Authority wards were included in the court's constitutional evaluation. In essence, Chief Justice Wright and the court looked beyond the label of "juvenile" and concluded instead that the actual class of persons similarly situated for purposes of the equal protection challenge consisted of all misdemeanants, whether juvenile or adult, who had been prosecuted and convicted as "adults in adult courts."[62]

The realistic approach taken by Chief Justice Wright in defining the class of similarly situated persons in *Olivas* exemplifies the type of analysis that should be employed if personal liberty as a fundamental interest is to

61. 17 Cal. 3d at 242-43, 551 P.2d at 379, 131 Cal. Rptr. at 59.
62. *Id.*

have any lasting impact and meaning. It is hoped that when faced with similar issues, the California courts will adhere to the spirit as well as the letter of Chief Justice Wright's opinion in *Olivas*.

Conclusion

Under the leadership of Chief Justice Donald R. Wright, the California Supreme Court confronted the pressing questions of the day. In choosing to follow its own course, the Wright court rendered decisions involving complex and controversial issues, often drawing itself into conflict with other branches of government and, in some instances, with the expressed will of the majority. At all times, however, the court was guided in its actions by Chief Justice Wright's philosophy that the judiciary must act when necessary to curb legislative and executive excesses that have resulted in the deprivation of those values that form the basis for our legal system of government. As the Chief Justice observed on a prior occasion,

> A democratic government must do more than serve the immediate needs of a majority of its constituency—it must respect the "enduring general values" of the society. Somehow, a democracy must tenaciously cling to its long-term concepts of justice regardless of the vacillating feelings experienced by a majority of the electorate.
>
> In my opinion, in our system only the judiciary can guarantee that "general values" will endure and that the rights of all, including those of politically impotent minorities, will be protected as the Constitution requires.[63]

Through his words and deeds, Chief Justice Donald R. Wright has thus left a rich legacy not only for future members of the California Supreme Court but for all who would don judicial robes.

63. *The Judiciary*, *supra* note 8, at 1267 (footnote omitted).