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Status Offenses and the Status of Children’s Rights: Do Children Have the Legal Right To Be Incorrigible?

Comment*

Supreme Court decisions1 and a constitutional amendment2 have recently modified the legal status of children. Changes in that status, however, need not be conspicuous to be effective. Shifts in the policies of state agencies, coupled with judicial acquiescence, may just as effectively modify the de facto legal status of children without any observable de jure change. The use by state agencies and courts of conventional legal doctrines to reach unconventional results may, upon analysis, reveal that such a change is taking place.

Juvenile law is especially amenable to significant, yet inconspicuous, change. Juvenile court judges have long been vested with broad procedural and dispositional discretion;3 moreover, extensive informal involvement between troubled families and state agencies associated with the juvenile court frequently precedes or replaces formal court action. Thus, not only judges, but also nonjudicial state officials and employees have a strong impact in molding the legal status of minors.

* This comment originated in the research done for the article by Professor Bruce C. Hafen appearing in this issue, Children’s Liberation and the New Egalitarianism—Some Reservations about Abandoning Youth to their “Rights.” The Review gratefully acknowledges the assistance and contributions of Professor Hafen.


2. See U.S. CONST. amend. XXVI (suffrage extended to those 18 years and older).

3. This discretion has been noted by both courts and scholars:

[The juvenile] court is rightly vested with a broad range of discretion in light of its professional expertise. The essence of expertise and discretion is an informed choice between alternatives. When the expert discretion of the Juvenile Court is exercised with knowledge of the salient facts, its exercise of discretion will not be disturbed absent clear abuse.

Rodham, Children Under the Law, 43 HARV. EDUC. REV. 487, 490 (1973). The broad range of dispositional alternatives is illustrated by Utah Code Ann. § 55-10-100 (1953), which allows the juvenile court to order any one of 17 dispositions.
This comment uses as an illustration of the potential for this kind of change the case of In re Snyder.4 Snyder does not involve a flagrant abuse of discretion by a juvenile court judge or, arguably, a deliberate change in the law by an appellate court. Rather, it presents challenging legal and practical problems that demonstrate the need for a clear understanding of the policies that should guide state agencies and juvenile and appellate courts in the formidable task of readjusting the legal relationships between children, their parents, and the state. Snyder raises significant questions and may portend an important trend in the law of children's rights.

I. In re Snyder

In June 1973, Paul Snyder took his 15-year-old daughter, Cynthia, to the Youth Service Center of the local juvenile court. Cynthia had rebelled against her parents’ restrictions on her smoking, dating, and other activities. She was temporarily placed in a “receiving home,” her father expecting that after a short stay she would be returned to the family home.

In July, in an attempt to avoid returning home, Cynthia filed a petition through a caseworker associated with the county juvenile court alleging that because of the unfitness of her parents she was a “dependent child,” and therefore a “ward of the court.”5 Pending a hearing on her petition, Cynthia was placed in a foster home for 3 months. At a hearing in October, a juvenile court commissioner found no parental unfitness under the statutory standards and concluded that he was without jurisdiction in the case. Cynthia returned home and remained until mid-November, when she left home and returned to the Youth Service Center.

At her request, a second petition was filed by an officer of the Center, alleging that she was “incorrigible”6 and should therefore


(2) Who has no parent, guardian or other responsible person; or who has no parent or guardian willing to exercise, or capable of exercising, proper parental control; or

(3) Whose home by reason of neglect, cruelty or depravity of his parents or either of them, or on the part of his guardian or on the part of the person in whose custody or care he may be, or for any other reason, is an unfit place for such child . . . .

6. Wash. Rev. Code Ann. § 13.04.010(7) (1962) provides that a child under 18 is “dependent” if the child “is incorrigible; that is . . . beyond the control and power of his parents, guardian, or custodian by reason of the conduct or nature of said child . . . .”
be placed in a foster home. At hearings conducted 3 weeks later, the juvenile court found Cynthia incorrigible and, after a 1-week continuance, ordered that she be placed in a foster home under the continuing jurisdiction of the juvenile court. Seeking to regain custody, Mr. and Mrs. Snyder filed a motion for revision of the order. The motion was denied by the Superior Court in August 1974. On appeal, the Supreme Court of Washington unanimously affirmed the decisions of the lower courts.

*Snyder* raises two broad questions that bring into focus important aspects of the law of children's rights. First, is the result reached in *Snyder* congruent with the traditional purposes and policies of relevant juvenile law? Second, if *Snyder* represents a departure from normal practice or policy, what are its implications for the law of children’s rights?

II. *Snyder* In Light of Existing Juvenile Law

The most conspicuous aspect of *Snyder* is the alignment of the parties: *state and child vs. parents*. This raises the question of what conditions should exist before the state will intervene in a family conflict on the side of a minor child and take custody against the wishes of natural parents who have been found legally fit.

Under the facts, *Snyder* might have been considered under either of two categories of juvenile law statutes in current use: (1) early emancipation, or (2) status offenses—especially incorrigibility and runaway provisions. The question to be kept in mind is whether statutes in either category would normally yield the result reached in *Snyder*—an indefinite termination by the state of parental custody at the request of a minor child who is objecting to parental discipline. If not, the case may well reflect an increased state deference to juvenile lifestyle preferences.

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7. The commissioner originally intended to have Cynthia return home. However, upon hearing the opinions of the counseling psychiatrist after the 1-week continuance, the commissioner decided to place Cynthia in a foster home.


9. The classic case for such intervention, the neglected, abused, or dependent child, is clearly inapplicable to *Snyder*. In the first action filed by Cynthia, the Juvenile Court found that Mr. and Mrs. Snyder were not unfit parents and that Cynthia was therefore not a dependent child.

10. As used in this article, "status offenses" refers to such uniquely juvenile offenses as truancy, running away, incorrigibility or ungovernability, and curfew violation. A status offender is sometimes referred to as a nondelinquent; such a child is "the truant, the runaway, the incorrigible, the unmanageable child, the loiterer, the curfew violator; he is caught drinking, 'associates with immoral persons,' is found in 'a situation dangerous to the morals of himself or others.'" P. Wald, *The Changing World of Juvenile Law—New Vistas for the Nondelinquent Child—Alternatives to Formal Juvenile Court Adjudication*, 40 Pa. Ass'n Q. 37 (1968).
A. Status Offenses

An evaluation of Snyder in light of traditional juvenile status offense laws requires analysis of two issues. The first is whether Cynthia's conduct fell within the statutory definition of incorrigibility applicable in her case or met the requirements of other related statutes that might have been applied. The second is whether the result is consistent with the policies underlying juvenile status offense statutes.

1. Incorrigibles

Under the Washington Code, an incorrigible child is one who is "beyond the control and power of his parents, guardian, or custodian by reason of the conduct or nature of said child." 11 Although Washington case law defining more precisely the kind of conduct that constitutes incorrigibility is limited, the accepted view in most jurisdictions is that a pattern of misconduct by a child is necessary to sustain a finding of incorrigibility; a single act of disobedience or even of criminal conduct has been held insufficient. 12 That this requirement of repeated misconduct was considered applicable in Washington is evidenced by the reference of the state supreme court in Snyder to "a pattern of refusing to obey her parents." 13


"Child in need of supervision" is a child who needs guidance, treatment, or rehabilitation because . . . (2) [h]e is habitually disobedient, ungovernable and beyond the control of the person having custody of him without substantial fault on the part of that person . . .


13. 85 Wash. 2d at 281.

It is significant that Washington itself, in Blondheim v. State, 84 Wash. 2d 874, 529 P.2d 1096 (1975), appears to have relied upon the "pattern" requirement in successfully defending the constitutionality of the statute. Brief for Petitioners at 11, In re Snyder, 85 Wash. 2d 182, 532 P.2d 278 (1975). In Blondheim, the court indicated that, although incorrigibility is commonly referred to as "status," it requires "conduct or a pattern of behavior proscribed by the statute." 84 Wash. 2d at 880, 529 P.2d at 1101. Somewhat ambiguously, the court also seems to suggest, in language echoing Washington's incorrigibility statute, that incorrigibility may arise from either the "conduct or nature of the child." Id., cf., Wash. Rev. Code Ann. § 13.04.010(7) (1962). It is difficult to see how the "nature" of a child could be such as to make him incorrigible, absent an actual pattern of conduct or behavior. Basing a finding of incorrigibility on stated intentions rather than
The testimony in Snyder did not reveal a typical pattern of disobedience. While Cynthia remained home, she was generally obedient. Her most conspicuous act of disobedience was that she left home the day before she appeared at the Youth Service Center. In light of standard policy for dealing with runaways, it is doubtful that a single instance of running away would normally be sufficient to constitute incorrigibility. The juvenile court commissioner conceded that the case for incorrigibility was questionable:

I am inclined to think, from what evidence has been presented to the Court, that there is some question as to whether this matter meets the test of incorrigibility in its traditional sense. Indeed there are some elements that are incompatible, at least with traditional notions of incorrigibility, school records, lack of contact with law enforcement agencies, lack of any deviant behavior other than perhaps some smoking in violation of parental rules, things of a rather minor nature.

The commissioner's further comments demonstrate that the grounds for his finding were more pragmatic than legal:

actual conduct seems especially risky in a family dispute where tempers flare easily and threats are often made that are not, in fact, carried out. See text accompanying notes 101-102 infra.

14. Although evidence as to the extent Cynthia had disobeyed certain rules was conflicting, it was admitted that she had conformed, albeit resentfully, to the general demands of her parents:

The state does not take issue with the implicit (if not express) assertion by petitioners that Nell and Paul Snyder are able to physically control Cynthia. When she is in the home, she does not smoke and she does not date.

Brief of State Respondent at 10, In re Snyder, 85 Wash. 2d 182, 532 P.2d 278 (1975) [hereinafter cited as Brief of State Respondent].

15. The Supreme Court of Washington paints a rather vivid picture of the conflict in the Snyder home:

The record shows that as Cynthia entered her teen years, a hostility began to develop between herself and her parents. This environment within the family home worsened due to a total breakdown in the lines of communication between Cynthia and her parents... These hostilities culminated in a total collapse of the parent-child relationship.

85 Wash. 2d at 279.

It cannot be denied that the Snyder family faced a difficult problem, but the state of affairs existing between the times of the parental unfitness hearing and the incorrigibility hearing, note 14 supra, and a general heading of the record of the incorrigibility hearing, Record, vol. 1, Statement of Facts, In re Snyder, 85 Wash. 2d 182, 532 P.2d 278 (1975) [hereinafter cited as Record], suggest that such phrases as "a total collapse of the parent-child relationship" may be somewhat exaggerated. Significantly, the court went outside the record in looking for evidence of Cynthia's incorrigibility. Note 127 infra. The observations of the juvenile court commissioner discussed in the text accompanying notes 17 and 18 infra give, perhaps, a more objective picture of the basis for the incorrigibility finding.

16. See note 28 and accompanying text infra.

17. Record at 78.
I do find that Cynthia is incorrigible, despite some very compelling indications to the contrary as we view it in a traditional sense. I say that because of her announced intention and apparent resolve not to go home and because of what seems to me to be a lack of consideration on the part of the parents as to what we are all going to do if she really acts on that resolve.\[18\]

It was not Cynthia's absence for one day, but rather her resolve not to remain at home that formed the basis of the commissioner's finding. This was not evidence of past misconduct, however, but instead pointed to possible future behavior. If Cynthia's statement that she was unwilling to remain at home was credible, it seems likely that a true runaway or incorrigibility case could have soon developed. But it must also be remembered that the Snyders had been successful in controlling their daughter\[19\] and were asserting that if the juvenile court personnel would refrain from giving her encouragement and support,\[20\] they could continue to exercise that control successfully. Thus, while the Snyder family problem was serious, it had not yet developed into a case of traditional incorrigibility.\[21\]

Snyder is an anomalous incorrigibility case because the child initiated the proceeding and the state gave her full support. Usually, when incorrigibility or ungovernability is involved, the parent or guardian initiates or cooperates in state initiation of the action alleging incorrigibility.\[22\] The state then steps in to reinforce or assume parental authority. In Snyder, rather than being disciplined for uncontrollable conduct, it appears that Cynthia successfully invoked the power of the state as a means of avoiding the custody of her parents and establishing her personal lifestyle preference.

Incorrigibility and ungovernability statutes do not require an admission by the parents of loss of control before an affirmative

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18. Record at 81.
19. Note 14 supra.
20. Mr. Snyder believed that Cynthia's decision to seek assistance from the juvenile court was directly attributable to the encouragement she received from state social workers. Record at 63-64.
21. For a discussion of the dangers of premature intervention by the courts in family disputes see text accompanying notes 98-100 infra.
22. In New York, for example, parents or their surrogates initiate 59 percent of PINS (see notes 39-41 and accompanying text infra) petitions, which often are based on incorrigible behavior by the child; school officials bring 25 percent of the petitions; unrelated individuals, such as the police, bring the remaining 16 percent. Note, Ungovernability: The Unjustifiable Jurisdiction, 83 YALE L.J. 1383, 1385 nn.20-21 (1974). In some cases both parent and child have opposed an allegation of incorrigibility. See Kahm v. People, 83 Colo. 300, 264 P. 718 (1928). But Snyder is the rare, and perhaps unique, case where the child and the state sided against the parents.
finding of incorrigibility can be made. Indeed, although such parental admissions are the rule rather than the exception,\textsuperscript{23} such a requirement could allow the obstinance of a parent to prevail over convincing evidence of incorrigibility. But in a case like Snyder, where there has not been a pattern of misconduct, but rather a “lack of any deviant behavior other than . . . things of a rather minor nature,”\textsuperscript{24} where parents who have been found legally fit are actively asserting their ability to control their child, and where the incorrigibility finding is admittedly based on the child’s “announced intention and apparent resolve not to go home” and on “a lack of consideration on the part of the parents,”\textsuperscript{25} the circumstances suggest that a valid case for statutory incorrigibility has not been made. Although a self-imposed claim of incorrigibility makes a teenager’s preference clear, enforcing even well-documented juvenile preferences has hardly been the objective of incorrigibility law.

2. Runaways

Although Washington has no statute dealing specifically with runaways,\textsuperscript{26} some states expressly extend the reach of their status offense provisions to include them.\textsuperscript{27} It is the act of leaving home, rather than the pattern of disobedience and misconduct, that gives the juvenile court jurisdiction over the child. Had such a provision been available, Snyder might well have been litigated in that context, since Cynthia had left home without her parents’ permission.

The runaway analogy, however, is only partially applicable, since Snyder is distinct from the typical runaway case. When parental fitness is not at issue, the state’s well-established policy

\textsuperscript{23} Since parents initiate most incorrigibility proceedings, note 22 supra, it is self-evident that they generally do not contest the allegations that the child is beyond their control.

\textsuperscript{24} Record at 78.

\textsuperscript{25} Id. at 81.

\textsuperscript{26} Washington is, however, a party to the Interstate Compact on Juveniles, which provides for the return of runaways from another state. WASH. REV. CODE ANN. § 13.24.010, art. IV (1962).

\textsuperscript{27} E.g., Miss. CODE ANN. § 43-23-3(g) (1972).
is to exhaust every possible means of returning runaway children to their homes.\(^{28}\)

The state in *Snyder* seems to have taken quite the opposite approach by declaring its intent to support Cynthia against her parents. The state made it clear before the trial that if Cynthia decided not to return home, it would attempt to retain custody rather than consent to her parents' demand that their daughter be returned to them.\(^{29}\) Although the disposition of the case (state custody of a runaway child) may not be unique, the pretrial handling of the matter by the state distinguishes it from the policies and practices regularly associated with runaway child cases.\(^{30}\)

3. *Children's rights and status offenses generally*

Perhaps more important than a comparison of the *Snyder* facts with the typical patterns in incorrigibility and runaway cases is an examination of the general legislative history and broad policies of status offenses and what they reveal about the rights of children vis-à-vis their parents.

Children's rights questions may be viewed with respect to three general categories of juvenile law: juvenile delinquency, parental fitness, and status offenses. Juvenile delinquency typically involves criminal code violations by minors,\(^{31}\) where the state-child relationship is central to both the offense and the litigation.\(^{32}\) Parental fitness laws deal with neglected, abandoned,
or abused children. In these, the parent-child relationship is at issue, but the child’s rights are limited to the receipt of such fundamentals as the physical necessities of life, freedom from physical injury, and basic supervision—care so essential that it is outside the realm of parental discretion. The category to which Snyder belongs includes status offenses such as incorrigibility, running away, and truancy. Status offense statutes require an

the right of the child to his parents’ presence in court proceedings, the possible liability of the parent for the conduct of his child, and the role of the parent in the disposition of the case of a child found to be delinquent.

33. E.g., N.Y. FAMILY CT. ACT § 1012(e) (McKinney 1975), which defines an “abused child” as one whose parent or legal guardian

(i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(iii) commits, or allows to be committed, a sex offense against such child as defined in the penal law, provided, however, that the corroboration requirements contained therein shall not apply to proceedings under this article.

A “neglected child” is defined at id. § 1012(f) as one less than 18 years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by using a drug or drugs; or by using alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; or

(ii) who has been abandoned by his parents or other person legally responsible for his care.

34. The proscribed behavior is variously defined as “behaving in an incorrigible . . . manner,” Me. REV. STAT. ANN. tit. 15, § 2552 (1964), being “habitually disobedient, ungovernable, and beyond the control of the person having custody,” Md. CODE ANN. tit. 8, § 801(f)(2) (1974), or repeatedly disobeying “the reasonable and lawful commands of [one’s] parents, guardian, or other custodian,” Mich. COMP. LAWS ANN. § 712A.2(a)(2) (Supp. 1975). Related provisions grant juvenile court jurisdiction over a child “who has deserted his home without sufficient cause,” id., or who is an habitual truant, Me. REV. STAT. ANN. tit. 15, § 2552 (1964), or a drug addict, Ill. REV. STAT. ch. 37, § 702-3(c) (1973). Unlike delinquency cases, there need be no violation of criminal law.
inquiry into the parent-child relationship, focusing on the child's willingness to submit to parental demands that do not constitute abuse or otherwise evidence unfitness. This categorization of juvenile law is useful because it makes clear that Snyder deals with that part of the parent-child relationship that has traditionally fallen within the realm of parental discretion.

The history of status offense law reveals two intertwined strands of policy: punishment and rehabilitation. These policies involve either reinforcing or finding substitutes for parental authority when such authority is found insufficient to control a child properly. The kinds of problems involved in status offenses were originally dealt with by the criminal law of some states—disobedient children could be punished by the state when parental discipline was insufficient. With the advent of the juvenile law movement at the beginning of this century, many states combined both delinquency and status offenses under the single heading of juvenile delinquency law. A major purpose of the movement was to substitute the rehabilitative objectives of the parens patriae philosophy for the direct punishment of the criminal law. As was expressly recognized in In re Gault and related United States Supreme Court decisions, however, a penal element was inherent in juvenile delinquency proceedings that could result in commitment to state institutions, and guarantees of procedural due process were therefore required. Thus, it was acknowledged that while the state was ostensibly attempting to rehabilitate and reform juvenile delinquents (who often included incorrigible children and other status offenders), it had not, in fact, ceased to punish them. In any event, the conduct of a child falling under status offense definitions was officially labeled as “delinquent,” a title scarcely suggesting an intent to secure the rights of a child against his or her parents.

35. The first statutes were explicitly penal in nature. As early as 1646, the Puritans of the Massachusetts Bay Colony enacted a statute allowing capital punishment for a “stubborn or rebellious son of sufficient years of understanding, viz. sixteen; which will not obey the voice of his father or the voice of his mother.” 1 CHILDREN AND YOUTH IN AMERICA 38 (R. Bremner ed. 1970). The punishment was reduced to whipping in 1654. Katz & Schroeder, Disobeying a Father's Voice: A Comment on Commonwealth v. Brasher, 57 MASS. L.Q. 43 (1972). Until 1973, Massachusetts penal law continued to provide for fine and/or imprisonment for “stubborn children” and “runaways.” MASS. GEN. LAWS ANN. ch. 272, § 53 (1970), as amended, ch. 272, § 53 (Supp. 1975).

36. For examples of states including incorrigible children within the definition of delinquency see ALA. CODE tit. 13, § 350(3) (1959); CONN. GEN. STAT. ANN. § 17-53(c) (Supp. 1976); DEL. CODE ANN. tit. 10, § 901(7) (1974).

37. 387 U.S. 1 (1967).

Many state juvenile laws have recently been overhauled to distinguish clearly between delinquency and status offenses and to deal more appropriately with the latter category. Recent statutes creating a distinct category for status offenses have commonly used the terms “Persons in Need of Supervision” (PINS) or “Children in Need of Supervision” (CHINS).39

PINS and CHINS laws purport to deal only with children who are not abused, neglected, or delinquent, but who are “otherwise in need of [court] supervision”40 for reasons such as disobedience to parents, truancy, and drug addiction. Such statutes are also commonly the source of jurisdiction over runaways, even when running away is not part of the statutory language.41

PINS and related statutes have been severely criticized in recent literature. The main thrust of this criticism is that, despite all the rhetoric about protection and rehabilitation, the statutes are inevitably penal in nature.42 Further attacks on the statutes


40. ILL. REV. STAT. ch. 37, § 702-3 (1973). A renewed attempt to make the original parens patriae philosophy of the juvenile court work with status offenders is reflected in extensive pretrial procedures, see Comment, The Consent Decree and New York Family Court Procedure in “JD” and “PINS” Cases, 23 SYRACUSE L. REV. 1211, 1214-17 (1972), and in requirements that minors institutionalized under PINS statutes must be kept separate from juvenile delinquents, see, e.g., In re C., 32 N.Y.2d 588, 300 N.E.2d 424, 347 N.Y.S.2d 51 (1973) (prohibiting the incarceration of PINS in training schools for juvenile delinquents).

41. For example, California’s “beyond-control” provision, CAL. WELF. & INST’NS CODE § 601 (West 1972) is used to obtain jurisdiction over runaways. Telephone interview with officer of San Francisco County Juvenile Court, Nov. 14, 1975.

42. Some commentators fail to see why such laws should escape the effects of Supreme Court cases since the possibility of incarceration, the touchstone in Gault for providing due process guarantees, is also present in PINS dispositions.

In Gault, 387 U.S. at 27-28, the Court stated:

Ultimately, however, we confront the reality of that portion of the Juvenile Court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. ... In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase “due process.”

For typical PINS statutes allowing the possibility of incarceration see D.C. CODE ANN. § 16-2320 (1973); CAL. WELF. & INST’NS CODE §§ 625 & 730 (West 1972); N.Y. FAMILY CT. ACT § 754 (McKinney 1975).

Typical arguments for due process guarantees based on Gault are raised in Stiller & Elder, supra note 39, at 42-51;
find a denial of equal protection or claim that the provisions are void for vagueness.43 Others question the wisdom of the statutes on the ground that the state is unable to benefit those who fall within the statutory jurisdiction.44 Finally, some are critical of the way in which PINS-type statutes allow parents to wield the club of state discipline over their children.45 Much of this criticism has merit—even from a point of view that generally considers the reinforcement of parental authority to be in the best interests of children.46

The important point to be made from this criticism is that it has never been suggested that PINS-type statutes, which represent the most recent and comprehensive attempts to isolate and deal with the problems of status offenders, were ever intended to undermine parental authority, whether that authority is exercised by the parent or by the state standing in loco parentis. Clearly, it is contrary to the history and purpose of juvenile law statutes dealing with status offenders to use the statutes as vehicles for allowing minors to avoid rather than be subject to non-abusive (although strict) discipline by fit (although imperfect) parents. The policy of the states toward minors falling under


44. This is a conclusion of the REPORT OF THE CAL. ASSEMBLY INTERIM COMM. ON CRIMINAL PROCEDURE, JUVENILE JUSTICE PROCESSES 30-31 (1971):

[There is no significant evidence that the juvenile court's beyond-control jurisdiction has been effective in turning runaways, truants, promiscuous girls or other incorrigibles into the kind of children whose behavior patterns satisfy adult expectations. There is even less evidence that [CAL. WELF. & INST'NS CODE] Section 601 has produced happier, healthier children who go on to become better adults because of their court, probationary or institutional experience. Time after time, during its hearings on the subject, members of the Committee asked witnesses appearing on behalf of Section 601 for proof that any significant number of minors had ever benefited from its provisions. None was produced. Nor are there any studies, statistics or other evidence that even suggest such a conclusion.


46. If state support for parental authority is made too easily available, many of the values that flow from family autonomy may be undermined. See text accompanying notes 99-100 infra.
status offense jurisdiction, then, has been both to discipline and to reform children who are not responding to the non-abusive discipline and correction of their parents.

Juvenile law statutes are often explicit about the custody rights of parents as against the state and other outsiders. California, for example, provides that only under certain limited circumstances may a child be taken from his parents. With respect to "dependent" children (which include incorrigibles), the Washington juvenile court law provides that no such child shall be taken from the custody of its parent, parents, or legal guardian, without the consent of such parent, parents, or guardian . . . unless the court shall find that the welfare of said child requires that his custody shall be taken from said parent or guardian.

The well-established judicial attitude also provides that the right of parents to the custody of their children may be disturbed only in relatively extreme cases. Pro-parental policy, which is believed concomitantly to be in the child's best interest, dictates that state intervention would run counter to the state's objectives if the intervention came prior to the exhaustion of parental resources.

The statutory language, history, and available case law indicate that Washington's incorrigibility law is a fairly typical

49. Most judicial expression on this point arises in cases where parental fitness is at issue. In In re Lusciel, 84 Wash. 2d 135, 524 P.2d 906 (1974), the court reversed a lower court decision permanently depriving a father of all parental rights:

[A] parent's interest in the custody and control of minor children [is] a "sacred" right and recognized at common law. The Court of Appeals has characterized the right of a parent to their [sic] child as "more precious to many people than the right of life itself."

84 Wash. 2d at 137, 524 P.2d at 908 (citation omitted).

In In re Sego, 7 Wash. App. 457, 499 P.2d 881 (Div. 1, 1972), the court reversed a lower court decision permanently depriving a father of all parental rights where the father had been convicted of murdering the mother:

The natural parent's right to the custody and control of his minor child is a "sacred right." It is a right protected by the state and federal due process clauses. It is a right to be abridged only "for the most powerful reasons."

7 Wash. App. at 467, 499 P.2d at 887-88 (citations omitted).

In normal incorrigibility or runaway cases, parental control is relinquished voluntarily or the evidence is strong enough that the parents choose not to contest the allegations against their child.

status offense statute.\textsuperscript{51} The comments of the juvenile court commissioner in \textit{Snyder} show his awareness that the case before him did not fall within the pattern contemplated by such a statute.\textsuperscript{52} The statute was not improperly invoked merely because the facts of the case did not fit squarely the definition of "incorrigibility," but because of the essential inapplicability of the policies behind status offenses generally.\textsuperscript{53} Thus, even if Washington had had a runaway or general PINS statute, the result reached in \textit{Snyder} would have been questionable.

The actions of the commissioner are understandable in light of the fact that he faced the very real possibility that, should he return Cynthia to the custody of her parents, she would eventually end up in the juvenile court again under similar, and possibly aggravated, circumstances. But since there was insufficient proof that Cynthia actually "required,"\textsuperscript{54} rather than preferred, supervision from someone other than her parents, \textit{Snyder} was not a proper case to invoke the incorrigibility jurisdiction of the juvenile court.

\textbf{B. Early Emancipation}

In its brief to the Supreme Court of Washington, the State suggested that \textit{Snyder} presented particularly troubling questions because Washington had "no statute permitting early emancipation."\textsuperscript{55} A typical early emancipation statute, however, is not likely to have affected the outcome of the case since the change in custody did not relieve Cynthia of any of the duties or disabilities of minority status. But because the custodial rights of her natural parents were temporarily terminated at her request, perhaps the case has some overtones of emancipation.

\textsuperscript{51} Washington's incorrigibility provision was originally included as part of the definition of delinquency. Law of Mar. 17, 1909, ch. 190, § 1, [1909] Wash. Laws 668 (amended 1911, repealed 1913). In 1913, a distinction was drawn between delinquent and dependent children, the incorrigibility provision being reclassified under the latter category. Law of Mar. 22, 1913, ch. 160, § 1(11) & (12), [1913] Wash. Laws 521 (amended 1961). The statute applied in \textit{Snyder} is almost identical to the 1913 statute. There is a paucity of case law invoking the incorrigibility statute in Washington, probably because most cases fall under the traditional delinquency and dependency headings. Existing cases reflect the traditional alignment of parent and state alleging incorrigibility, the child either denying it or contesting the constitutionality of the statute. The statute has withstood several constitutional challenges. \textit{See}, \textit{e.g.}, Blondheim v. State, 84 Wash. 2d 874, 529 P.2d 1096 (1975).

\textsuperscript{52} \textit{See} text accompanying note 17 supra.

\textsuperscript{53} Consider the statement of the \textit{Snyder} juvenile court commissioner quoted in the text accompanying note 104 infra.

\textsuperscript{54} WASH. REV. CODE ANN. § 13.04.140 (1962).

\textsuperscript{55} Brief of State Respondent at 12.
Early emancipation was a relatively rare phenomenon until the beginning of the 20th century, when the general trend toward protective legislation for children and other shifting attitudes combined to make the idea more acceptable. Although complete judicial emancipation has been possible (usually through an express or implied parent-child agreement, the marriage of the child, or his entry into the armed services), most cases have involved only partial emancipation from the traditional disabilities of minors.

Statutory (as distinguished from judicial) emancipation removes legal disabilities such as contractual incapacity from a minor. Some statutes relieve all minors below a certain age of specific disabilities. Others allow case-by-case treatment in an equitable proceeding in which the minor or his next friend petitions the court for emancipation. Very few states have such statutes, and all but two or three strictly require consent of the parent or guardian.

Lack of parental consent has been held to constitute a failure of jurisdiction. In general, "the utility of [early emancipation] statutes is limited by the restrictions placed on young people seeking to avail themselves of the procedures and by a judicial hostility toward emancipation reflected in the courts' strict construction of the statutes." The parental consent requirement has been labeled "[p]erhaps the most formidable impediment to obtaining a decree of emancipation." One court justified the "impediment" in the following language:

[O]ur law does not favor the displacement of parental authority without the consent of the parents. . . . [P]arental control is the fundamental principle that lies at the foundation of society . . . .


57. Judicial emancipation has been defined as "the termination of certain rights and obligations attaching to the parent-child relationship during the child's minority." Katz, supra note 56, at 214.

58. Typically, the issue is raised in such contexts as attempts by minors to avoid the strictures of intrafamily tort immunity, claims to recover a minor's wages or damages for the loss of his services, and actions for child support. Id. at 219-27.


60. See Emancipation of Dupuy, 196 La. 439, 199 So. 384 (1940).


62. Id. at 234.

63. Emancipation of Dupuy, 196 La. 439, 444, 446, 199 So. 384, 386 (1940).
Early emancipation procedures and practices, then, have not provided a general theory upon which a minor could initiate a termination of parental rights or otherwise be relieved of legal subjection to parental discipline. This is particularly true where, as in Snyder, parental consent is lacking. Furthermore, neither Cynthia nor the court seem to have sought her emancipation from minority status generally, but only the transfer of her custody from her natural parents to court-appointed foster parents.

The case still leaves one wondering, however, what the court's attitude would be if it later appeared that Cynthia were unwilling to submit to the limitations on her hours and personal habits imposed either by the court or by her foster parents. The same reasoning that led to relieving her of the duty to obey her natural parents might well require that she be relieved of the duty to obey any substitute parents, since there was evidently nothing peculiar about what her parents asked of her.\footnote{See notes 123-25 and accompanying text infra.} In that sense, perhaps the case does smack of a kind of emancipation. If so, it hints at a new judicial policy that would permit emancipation when the minor appears to be a mature adolescent and strongly prefers to be relieved of a duty to conform to parentally imposed discipline.

The foregoing evaluation of Snyder in relation to existing juvenile law is presented not merely to criticize the findings of the juvenile court, but to establish that a minor's right to avoid the custody of legally fit natural parents is quite foreign to the premises of current juvenile law. The continuing tradition of the juvenile law relative to early emancipation and status offenses is scarcely compatible with a right of minors to terminate the custody of their parents merely because they disagree with their parents' style of childrearing.

III. PREMISES AND IMPLICATIONS OF Snyder

Snyder's apparent lack of congruity with traditional juvenile law does not necessarily discredit the result. Indeed, there is a point of view from which the decision seems quite rational. Here was a young woman, 3 years shy of majority, who experienced nothing but conflict and misery in her home. She had a very different philosophy about the appropriateness of her behavior than did her parents. What she chose to do violated no law or community-wide standard of morality. Although her parents were not forcing her to accept strange or potentially harmful ideas...
or conduct, they were trying to impose upon her their personal value system against her will. Since she was purportedly mature and well informed and could at least seek guidance from other adults, she had no insurmountable need to look to her parents for physical or emotional protection and guidance. Under the law, then, she was apparently faced with the dilemma of either blindly obeying her parents or defiantly committing some act or series of acts that would give the juvenile court jurisdiction. Thus, her course of action was analogous to the decisions of many married adults who, because of serious differences in lifestyle preferences, petition the court for dissolution of their marriages.

In the light most favorable to Cynthia Snyder, placing her in a foster home where she would be permitted to live more as she chose seems quite reasonable. And if, in order to reach this result, the juvenile court is faulted for stretching the concept of incorrigibility, that is no scathing indictment. Common law courts have often expanded prior rules and even statutes in order to achieve desirable results. Such a course of action is particularly understandable for a juvenile court since it is charged with the discretionary role of helping youth and their families work out problems in the most practicable and reasonable way. While it is true that this discretionary role ordinarily arises only when the court is invited by parents to render assistance, or when the parents or children become serious risks to themselves or others, it is arguably fair to permit a teenager who is in the middle of a family crisis to invite and expect to receive the court's help.

That view of Snyder has a certain internal rationality. But it proceeds from two related premises that have simply not been accepted by the vast majority of American courts. The first premise is that when a serious parent-child disagreement arises, court supervision of discipline by legally fit parents is appropriate. The second is that children have a right to effect changes in their personal custody even when their parents meet all legal standards of parental fitness. Since the validity of the favorable view of Snyder rests upon these premises, they deserve some discussion.

A. Court Supervision of the Conduct of Legally Fit Parents

Although the legal fitness of the Snyders had already been

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65. The brief submitted to the state supreme court by Cynthia's attorney stated that giving her only these two options would place "the child in an impossible position" in which "the welfare of the child is not served, nor is the parent-child relationship strengthened." Brief of Child Respondent at 7, In re Snyder, 85 Wash. 2d 182, 532 P.2d 278 (1975) [hereinafter cited as Brief of Child Respondent].
judicially established, the court, rather than focusing on Cynthia's conduct, focused increasingly on the reasons for her rebellion. The reasonableness of the demands made by her parents were therefore placed in issue. In stating the reasons for his finding of incorrigibility, the judge cited "a lack of consideration on the part of her parents." Although the unreasonableness of parental demands may help explain why a child is beyond control—it does not prove loss of actual control—the real issue in incorrigibility cases. If Snyder is viewed as an attempt by a minor to defeat the custody of her parents, however, the inquiry into parental demands becomes understandable. Perhaps without fully realizing it, the commissioner tried the issue of whether Mr. and Mrs. Snyder somehow "deserved" to lose the custody of their daughter. In any event, there are serious legal and policy barriers to court supervision of the conduct of legally fit parents.

1. Legal barriers

The common law of the 19th century, both in England and in the United States, valued highly the right of parents to the custody of their children. Although modern observers often characterize the traditional common law custodial right as an interest in chattels, it is clear that a parent's legal interest in his children was considered to be broader than a property right alone. It was sometimes referred to as "sacred," the father's knowledge of what was best for his children being a matter of "natural law."

Significantly, however, common law judges did not rely solely upon these abstract concepts, but employed the basic pol-

66. 85 Wash. 2d at _, 532 P.2d at 280.
67. Very little about Cynthia's conduct was in dispute at the hearing. She had done some smoking and dating in violation of parental rules; she had left home to seek assistance from the juvenile court; and she maintained that she would not remain with her parents if sent back. These facts were uncontested. The hearing inquired more into the attitudes and practices of the parents. For example, the court seemed convinced that the Snyders were being unjustifiably persistent in their own defense. At one point, the judge said, "She is feeling that she is going to be in the home, exposed to, if not continually, at least the possibility all of the time of your wanting to use something the counselor says to corroborate your own feelings about what is right and wrong and to reinforce your views toward her." Replied Mr. Snyder, "May I ask you a question? What in the world is wrong with that? That is really a parent's time-honored prerogative to raise their [sic] kids the way they should be raised." Record at 109.
68. Id. at 81.
69. See text accompanying notes 19-21 supra.
70. For example, Poe v. Gerstein, 517 F.2d 787, 789 (5th Cir. 1975) states that the common law treated both infants and mature teenagers as "the property of their parents."
icy arguments in favor of parental custody that are commonly argued today. For example, in the leading English case of In re Agar-Ellis,\textsuperscript{73} decided in 1883, the court observed that the state was poorly qualified to perform the functions of a parent:

Fancy the position of a child, with its father living, which the Court endeavours to bring up by judicial machinery, instead of leaving it to be brought up by parental care. Judicial machinery is quite inadequate to the task of educating children in this country.\textsuperscript{74}

The court was aware that mere disagreement on childrearing practices was not a suitable standard for intervention.\textsuperscript{75} It also recognized that children, as well as parents, could benefit under a parental rights doctrine.\textsuperscript{76} Despite language that cast the parent's custodial right in near absolute terms,\textsuperscript{77} however, the court acknowledged that the custodial right of parents was not absolute, but could be interfered with because of unfitness.\textsuperscript{78}

The common law of parental rights has not remained unchanged during the last 100 years.\textsuperscript{79} Indeed, a great deal of legislative and judicial action in this area has fostered what has been termed "the waning of parental rights."\textsuperscript{80} The most visible prog-

\textsuperscript{73} Id. (court upheld father's right to prohibit daughter from visiting or corresponding with mother).
\textsuperscript{74} Id. at 337.
\textsuperscript{75} "[I]t is not mere disagreement with the view taken by the father of his rights and the interests of his infant that can justify the Court in interfering. If that were not so we might be interfering all day and with every family." Id. at 338.
\textsuperscript{76} "[I]t is for the general interest of families, and for the general interest of children, and really for the interest of the particular infant, that the Court should not, except in very extreme cases, interfere with the discretion of the father . . . ." Id. at 334.
\textsuperscript{77} One court has stated:

Appeals have been made to the principles of the law which have been settled for centuries. Those principles have never been called into question. One of those principles (and it is the prominent one) is, that this court, whatever be its authority or jurisdiction, has no right to interfere with the sacred right of a father over his own children.

\textsuperscript{78} Intervention would be justified

[as] soon as it becomes obvious that the rights of the family are being abused to the detriment of the interests of the infant, [when] the father shews that he is no longer the natural guardian—that he has become an unnatural guardian—that he has perverted the ties of nature for the purpose of injustice and cruelty.

ress has been made in the area of child abuse and neglect; legislation designed to deal with these problems now exists in every state.81 Significantly, it has not been the structure of the law that has changed as much as the definitions and emphases within the structure. That is, although broadened definitions of parental unfitness make it considerably easier today than 100 years ago for the state to take custody of a child, there remains the basic requirement that unfitness be found. Except for the juvenile delinquency-status offense jurisdiction,82 there appear to be no legal categories under which legally fit parents may be deprived of the custody of their children against the parents' will.83 Rather, the general rule favoring parental custody continues to be reaffirmed in both statutory84 and case law.85

In addition, lower court86 and Supreme Court87 cases suggest that the right of parents to the custody of their children may be of constitutional dimensions. The import of these decisions for the parent-child relationship is not clear, since courts have been primarily interested in the parent-state relationship where the preferences of the child were not in issue.88 In fact, the Supreme Court has made it clear that it has not attempted to analyze the "totality of the relationship of the minor and the State,"89 which would almost necessarily involve a general statement on the legal parent-child relationship. A detailed analysis of the relevant Supreme Court cases is beyond the scope of this comment. But these decisions appear to produce, at the very least, a strong parental rights tradition that parallels and reinforces the common law position.90

82. This jurisdictional grant has not been intended or used to allow a child to avoid the custody of fit parents. See text accompanying notes 31-53 supra.
83. This assumes the absence of an interparent custody dispute. Also, there are other situations in which some deprivation of custody can occur even where the parents are legally fit. Compulsory education, for example, involves a partial infringement of parental custody, even where the parents are fit.
84. See, e.g., notes 47-48 supra.
85. See, e.g., People ex rel. Portnoy v. Strasser, 303 N.Y. 5e9, 104 N.E.2d 895 (1952); In re Luscier, 84 Wash. 2d 135, 524 P.2d 906 (1974).
86. See, e.g., In re Hudson, 13 Wash. 2d 673, 126 P.2d 765 (1942).
89. In re Gault, 387 U.S. 1, 13 (1967).
90. See Hafen, supra note 50, at 632-37.
2. **Policy barriers**

Substantial policy underpinnings for strong parental rights arise from the nature of contemporary American society. These underpinnings may be considered from the perspectives of the parent, the child, and the larger society.

The activity of raising a family is heavily value-laden. The existence of a broad discretion in parents to express strongly felt preferences and values in the context of the family unit is consistent with our society's commitment not only to tolerating and protecting, but also to encouraging ideological diversity and freedom. It is especially fitting to respect that freedom in the case of the rights of parents since reasonable men and women differ, often to great extremes, on the question of what constitutes optimal child-rearing practices. This does not ignore the fact that a great many parents are inept, ill-informed, and in some ways unreasonable and incompetent. Not surprisingly, children of such parents, not to mention juvenile court personnel and social workers, are not enthusiastic about these poor qualities. But it is also true that children (and their advocates) are often vehemently unenthusiastic about the qualities of quite competent parents. That being the case, it would be improper to judge the merits of parental conduct by a standard that would reflect the particular values of the court or a segment of the community, rather than by standards of neglect or abuse.

Distinct from the interests of the parents, it is argued that the welfare of the child is best served when parental discretion is left largely unfettered. Professor Michael Wald has pointed out that the state’s inadequacy as a parent becomes an argument for preserving the autonomy of the natural parents in order to benefit the child:

> [T]here is substantial evidence that, except in cases involving very seriously harmed children, we are unable to improve a child’s situation through coercive state intervention. In fact, under current practice, coercive intervention frequently results in placing a child in a more detrimental situation than he would

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91. This point is well made by Professor Michael Wald:

> Our political commitment to diversity of views, lifestyles, and freedom of religion is promoted by allowing families to raise children in a wide variety of living situations and with diverse child-rearing patterns. It is unlikely that such diversity would be encouraged in state-run child-care programs, or in a system that held parents merely as trustees for their children.

be in without intervention. This is true whether intervention results in removal of the child from his home or "only" in mandating that his parents accept services as a condition of continued custody. 92

Reasoning from broader premises about the nature of positive law generally, legal philosopher Lon Fuller similarly suggests that "the intimate relations of marriage and parenthood" 93 place the detailed regulation of parenthood beyond the capacity of the state.

The authors of Beyond the Best Interests of the Child 94 favor a policy protecting parental autonomy not only because parental autonomy is probably the least detrimental alternative for the child, but also because children urgently need continuity in the parent-child relationship: "To safeguard the right of parents to raise their children as they see fit, free of government intrusion, except in cases of neglect and abandonment, is to safeguard each child's need for continuity." 95 It is not only intervention in fact that can disrupt this continuity, but also the effect that the lurking possibility of coercive intervention can have on parents, since many of the qualities essential to good parenthood, such as "parental tolerance, endurance, and devotion," are based upon the right to be "the undisputed sole possessor of the child and the supreme arbiter of his fate." 96

Another argument, perhaps especially applicable to adolescents, focuses on the "right" of children to be subject to parental discipline. It is inherent in the concept of discipline that the one subject to it does not regard it as being in his or her interest. For that reason, an acceptance of the idea of discipline is practically synonymous with some degree of authoritarianism. Unless one rejects the idea that being subject to some restrictions and disci-

92. Id. at 993. Wald argues that the threshold for interruption of parental custody should be the occurrence of basic harms that society agrees will justify intervention. Id.
93. Fuller writes that both enacted law and contractual law share an ineptitude for attempting anything like an internal regulation of the family. If a contract of the parties themselves is too blunt an instrument for shaping the affairs of a family, the same thing could be said with added emphasis if any attempt were made to impose detailed state-made regulations on the intimate relations of marriage and parenthood.
95. Id. at 7.
96. Id. at 25.
pline can be a healthy part of a child's upbringing, some concession in favor of parental authority is inescapable. State intervention that tends to weaken parental discipline or encourage its disregard by a child would thus not necessarily be a service to the child, even if welcomed by the child at the time it occurred.

Finally, almost as a restatement of the arguments that both parental interests and the welfare of the child are protected by a strong parental rights doctrine, it has been concluded that society generally is also benefitted thereby. As one court has expressed it:

Immemorially the family has been an important element of our civil society, one of the supports upon which our civilization has developed. Save as modified by the legislature, in domestic affairs the family has remained in law a self-governing entity, under the discipline and direction of the father as its head. . . . Anything that brings the child into conflict with the father or diminishes the father's authority or hampers him in its exercise is repellent to the family establishment.97

The peculiar role of the family arises because the family is a unique source of values essential to the maintenance of a democratic system but which that system does not itself generate:

In democratic theory as well as in practice, it is in the family that children are expected to learn the values and beliefs that democratic institutions later draw upon to determine group directions. The immensely important power of deciding about matters of early socialization has been allocated to the family, not to the government.98

Premature state intervention in a family dispute may undercut the incentive for the family to resolve its problems internally. If the state intervenes too hastily, particularly when it is siding with one party or the other rather than encouraging voluntarily accepted counseling, the effect may be to increase rather than mitigate a family dispute.99

Intervening at the stage of mere

99. The concern about aggravating rather than soothing a family conflict is involved in the widespread criticism of the premature use of status offense statutes generally, although in most cases the concern is with the state being too freely available as a weapon for the parents. See note 45 supra. Consider also this observation:

Whatever motivates parents to bring their children before the court, the courtroom experience does not generally ameliorate existing animosities, despite the supposedly "protective" nature of the proceeding. To the contrary, able
stated intentions, which is essentially what happened in *Snyder*, is especially risky since the intervention itself may be the most significant factor in moving intentions toward conduct. As stated by another court in a somewhat different context:

> It may well be suggested that a court of equity ought to interfere to prevent such a direful consequence as divorce or separation, rather than await the disruption of the marital relationship. Our answer to this is that intervention, rather than preventing or healing a disruption, would quite likely serve as the spark to a smouldering fire.100

3. *The state intervention in Snyder*

*Snyder* illustrates what tends to happen when the state prematurely becomes a major factor in a parent-child dispute. When the Snyders first took Cynthia to the Youth Service Center, they expected a brief "detention"101 that would reinforce their authority and discipline in her eyes. When the brief detention turned into extended periods during which they were deprived of custody, they felt the state had encouraged their daughter's rebellion to her detriment in violation of their parental function.102 The caseworkers seem to have concluded within a matter of days that the child's view of the situation was the more reasonable. After that view did not prevail under the standards governing parental fitness and Cynthia returned for further help, the caseworkers continued to search for alternatives, leading to the novel applica-

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defense attorneys become surrogate parents and necessarily proceed to "destroy" the natural parents verbally on cross-examination before the defendant-child.


*Snyder* demonstrates that a defiant child, as well as an angry parent, is capable of misusing the incorrigibility jurisdiction.


101. Transcript of hearing on September 28, 1973 at 20 (testimony of Cynthia's mother). Paul Snyder has indicated that he took Cynthia to the Youth Service Center to have a conference with one of the commissioners; however, the hearing was denied and the juvenile authorities took custody of Cynthia against her father's wishes. Telephone conversation with Paul Snyder, May 18, 1976.

102. Typical of Mr. Snyder's comments to the juvenile court are the following:

> [S]he . . . is convinced by her success in putting this over that she can in fact do as she pleases. When she is 18 she won't have the protection of this court, nor will she have the protection of the Department of Social and Health Services, nor foster parents nor anybody else, and she will not have learned that basic lesson that you cannot do as you please in a civilized society or any other one.

> . . . .

Cindy's attitude has been progressively hardening in the time since this began and what you have given her is 60 days more of that process . . . .

Record at 116, 118. *See also id.* at 62-64, 70.
tion of the incorrigibility statute. Without a thorough knowledge of the facts, it may be unfair to assume too much about whether the caseworkers' taking a position firm enough to encourage early litigation was premature. One is left with the impression, however, that their sympathetic attitude toward a teenager's "rights" encouraged them to side with Cynthia early enough that they may have exacerbated the family's conflicts. Even the juvenile court's decision to invoke jurisdiction and terminate parental custody in order to avoid a threatened runaway may well have been premature.

Both the caseworkers' activities and the court's rather questionable conclusion about incorrigibility may have contributed materially to creating the very incorrigibility that they are charged to remedy or prevent. If this reading of Snyder is valid, the intervention by the state on Cynthia's "behalf," even though welcomed by her at the time, was in neither her nor her family's best interest.

B. A Child's Right to Avoid the Custody of Legally Fit Parents: A Question of Capacity

One of the arguments advanced by counsel for Cynthia before the state supreme court was that "a child has a right independent of its parents to seek the assistance of the Juvenile Court Act and to have her custody determined by the Juvenile Court."

This right, it is important to remember, was being asserted in a setting in which the parents had been found legally fit. The expected reaction to that argument from the traditional family law perspective was nicely set forth by the juvenile court commissioner in the early stages of his thinking about the case:

I cannot believe that the function of this Court is to accommodate a girl of this age, no matter how bright, well behaved in the past, who might see fit to simply declare on her own that she is incorrigible and thereby disassociate herself from her family, from her parents, who are making an honest and genuine attempt, albeit I think sometimes a bit inflexible, to allow her to

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103. Brief of Child Respondent at 2. A similar proposal is found in Foster & Freed, A Bill of Rights for Children, 6 FAMILY L.Q. 343, 347 (1972):

A child has a moral right and should have a legal right:

8. To emancipation from the parent-child relationship when that relationship has broken down and the child has left home due to abuse, neglect, serious family conflict, or other sufficient cause and his best interests would be served by the termination of parental authority . . . .
grow up in a proper type of environment. That is their responsibility. I think it would be improper, as I have said before, for me to simply accommodate her by her just saying “I am incorrigible and I want out.” I do not think it works that way yet.\textsuperscript{104}

The doctrine upon which the commissioner’s statement ultimately rests is one deeply imbedded in our legal system, namely that children are presumed to be incapable of exercising many of the rights enjoyed by adults. Under the common law inherited from England, the general rule was that “an infant [could] neither alien his lands nor do any legal act, nor make a deed, nor, indeed, any manner of contract that will bind him.”\textsuperscript{105} In recent years, however, the presumption of legal incapacity has been limited in various specific settings.\textsuperscript{106} But this is far from saying that the presumption itself has been abandoned. On the contrary, at the heart of virtually all laws dealing specially with children is the premise that children lack the competence to make important judgments about their lives and conduct.\textsuperscript{107}

The presumption of incapacity of minors must answer to the criticism of all legal line drawing: it is “artificial and simplistic; it obscures the dramatic differences among children of different ages and the striking similarities between older children and adults.”\textsuperscript{108} For this reason, several commentators are calling for a reversal of the presumption of incapacity.\textsuperscript{109} Some, including the State of Washington in its Snyder brief,\textsuperscript{110} interpret certain Supreme Court decisions as having reversed the presumption, at least with respect to the exercise of First Amendment rights.\textsuperscript{111} A careful reading of these cases, however, reveals that they do not lead to such a conclusion.\textsuperscript{112}

\textsuperscript{104} Record at 82.
\textsuperscript{105} 1 W. BLACKSTONE, COMMENTARIES *465.
\textsuperscript{106} For example, the Twenty-sixth Amendment to the Constitution has lowered the minimum voting age to 18 years, and many states allow minors to obtain certain forms of medical treatment without parental consent. See Katz, supra note 56, at 238-39.
\textsuperscript{107} This philosophy is reflected in such limitations as age restrictions on voting, on driving automobiles, and on the availability of certain kinds of entertainment. It also lies behind the rules in tort law applicable to child trespassers, the rule of voidability of contracts made by minors, and the structure and purpose of the entire juvenile court system.
\textsuperscript{108} Rodham, Children Under the Law, 43 HARV. EDUC. REV. 487, 489 (1973).
\textsuperscript{109} See id.; R. FARSON, BIRTHRIGHTS (1974).
\textsuperscript{110} This seems to be the import of the statement in Brief of State Respondent at 23 that: “The case of In re Gault . . . suggested, however, vaguely that children are autonomous individuals, entitled to the same rights and privileges before the law as adults.”
\textsuperscript{112} See Hafen, supra note 50. Significantly, the Supreme Court has frequently indi-
Perhaps the threshold question in determining the *viability* of the presumption of incapacity (as contrasted with its extent) is whether the fundamental realities of the parent-child relationship are better reflected by its preservation than by its reversal. The question almost answers itself. As is most obvious during infancy, the capacities of children are severely limited. Were control of children's actions and choices not vested in parents, such control would necessarily come to rest with the state or some other third party. Responsible scholars recognize, of course, that if the presumption were reversed, exceptions would have to be made to the general rule granting full adult status to minors. But even then, some advocate other than the parent might have to speak for the child where a choice would be likely to have "irreversible consequences" and a potential conflict of interests exists between parent and child. The child's interest is admittedly in jeopardy when a parent-child conflict of interests exists. But the thought of an "extrafamilial decision" on such issues as, for example, whether to send a young child to a private, religious school is scarcely encouraging. What is ultimately at stake in critical decisions about an individual's childhood is the question of what values shall be taught him. There is no reason to pretend that the state in any given case is capable of choosing better values than the parents. In fact, it has been suggested that the state is manifestly incapable of any such choice.

Even with the presumption of incapacity intact, it has been argued that state support of parental prerogatives constitutes

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113. E.g., "The abolition of minority . . . need not mean that children become full-fledged miniature adults before the law. Their substantive and procedural rights could still be limited or modified on the basis of supportable findings about needs and capacities at various ages." Rodham, supra note 108, at 508.

114. Id. at 510.

115. Id. See also P. Wald, Making Sense Out of the Rights of Youth, 4 HUMAN RIGHTS 13 (1974).

116. Referring specifically to the federal government, Professor Theodore Caplow has stated:

> The government is likely to corrupt the family whenever it attempts to improve it because it has no legitimate authority to set moral goals for individuals . . . . The government has not place from which to draw the moral sentiments that would make it possible for it to say anything meaningful on the subject. There is no breath to sound that voice.

"state action." This reasoning is dubious as long as the choices of the parent are presumed to be identical with the best interests of the child. If, however, children were generally credited with adult legal capacity, any legal enforcement of parental choice in contravention of an expressed preference of the child would constitute state intervention into family life. Similarly, presuming that children are capable of exercising all constitutional rights would mean that "parental prerogatives . . . must yield to fundamental rights of the child . . . ." By this reasoning, public, law-regulated citizen-citizen and citizen-state relationships would be imposed upon the parent-child relationship, posing a fundamental threat to the concept of the family as a private, self-governing entity.

It appears, then, that the law best deals with the presumption of incapacity of minors by accepting two basic ideas. The first is that the realities of the parent-child relationship require a preservation of the presumption itself, since the presumption reflects the initial, natural status of children beginning life almost totally dependent on someone else for survival. Second, granting that the presumption must be limited, tailored, and made rebuttable to conform as far as possible to the actual capacities of children as they grow older, the ability of a child to express a preference is not synonymous with his ability to recognize his own best interest. Beyond the age of total physical dependence, there remains a need for someone to make decisions for the child, at least to some extent, until the proper age for emancipation. The state seems more poorly equipped to be the final arbiter of value-laden choices of great consequence for the child than are legally fit parents, even if a potential parent-child conflict of interests exists.

117. Note, supra note 111, at 1013.
118. If the parent is presumed to speak for the child, it becomes pointless to find state action in the enforcement of what are constructively the child's own choices. Although this identity of interest has been criticized, see, e.g., dissenting opinion of Justice Douglas in Wisconsin v. Yoder, 406 U.S. 205, 24e (1972); Rodham, supra note 108, at 510, it is still applied in some contexts. See Armstrong v. Armstrong, 544 P.2d 941, 944, 126 Cal. Rptr. 805, 810 (1976) (mother who was granted custody of children in divorce action deemed to have spoken for children with respect to source of child support payments from father, although her choice was later shown not to have been in their best interests).
119. State v. Koome, 84 Wash. 2d 901, 907, 530 P.2d 260, 264 (1975) (declaring unconstitutional a state statute making abortions performed on minors without consent of parent or legal guardian a criminal offense). See also Note, supra note 111, at 1017.
120. As critics point out, this "proper age" may vary significantly among individuals. This is perhaps an argument for a revitalization of early emancipation laws, but it is a poor argument for reversing the presumption of incapacity itself.
The view of Snyder most favorable to Cynthia, and that argued by the State before the state supreme court, has curious implications for the presumption of incapacity of minors. Without specifically dealing with the presumption per se, the State maintained that Cynthia's actual capacity was one of the major reasons she should be allowed to avoid the discipline of her parents. Cynthia was characterized as being, in contrast to most children involved in dependency cases, "a bright, capable, relatively mature young person who is, in fact, the initiator of the court proceedings and who has called on the court for assistance and support." Further, the State asserted that "it is precisely because Cynthia is bright and able that her act of leaving the home and her refusal to return home are significant in terms of the definition of an incorrigible dependent . . . ." If Cynthia were mature and self-reliant enough to decide against her parents' particular style of childrearing, however, it is inconsistent that she should still remain subject to a similar degree of discipline from the juvenile court and her foster parents. While the State did not explicitly reject the presumption of incapacity, its position seems to have been that the presumption either should have been abandoned or was in fact rebutted as between Cynthia and her natural parents, but was still effective as between Cynthia and her foster parents or the state.

121. Brief of State Respondent at 22.
122. Id. at 10.
123. In particular, the commissioner ordered that Cynthia refrain from smoking, one of her parents' requirements to which she objected. Record at 117. Were this a classic case of incorrigibility, i.e., ungovernable conduct, that would not be surprising. But the state conceded that it did not take issue with the implicit (if not express) assertion by petitioners that Nell and Paul Snyder are able to physically control Cynthia. When she is in the home, she does not smoke and she does not date.

Brief of State Respondent at 10.
124. But see Brief of State Respondent at 23: The case of In re Gault, 387 U.S. 1 (1966) was a landmark case not just in terms of constitutional law but also because it suggested, however vaguely, that children are autonomous individuals, entitled to the same rights and privileges before the law as adults.

125. From a remark in the State's brief, one wonders whether the State would have liked to emancipate Cynthia. "The present case . . . raises many troubling questions particularly in a jurisdiction such as ours which has no statute permitting early emancipation." Brief of State Respondent at 12. If this was indeed the State's objective, its position with respect to the capacity issue is not so paradoxical. But it does not appear that the contention of Cynthia or the State, either in the juvenile court or on appeal, was that she ought to be emancipated. Rather, the issue was whether custody should rest with the natural parents or with someone else.
C. Snyder on Appeal to the Supreme Court of Washington

The Supreme Court of Washington identified as the only issue on appeal whether there was sufficient evidence to sustain the lower court’s finding of incorrigibility. The court concluded that there was sufficient evidence, although it expressly supported that conclusion by referring to extra-record facts and by relying on the trial judge’s opinion about the “weight” to be given Cynthia’s testimony. The court did not deal with the notion that a child’s defiant attitude, absent actual incorrigible behavior, cannot itself prove a loss of parental control but merely portends its future possibility.

The court said disappointingly little about the broader questions of policy, and essentially ignored the assumption of each party’s brief that, rather than being a typical incorrigibility case, the litigation involved significant issues about the rights of minors to choose their own lifestyles and environments. The two brief references the court made to the policy of the incorrigibility statute and of the juvenile court fail to shed much light on the issues raised by the parties. First, the court noted that the “paramount consideration, irrespective of the natural emotions in cases of this nature, must be the welfare of the child.”

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126. The court stated: “The sole issue presented by these facts is whether there is substantial evidence in the record, taken as a whole, to support the juvenile court’s determination that Cynthia Nell Snyder is incorrigible.” 85 Wash. 2d at , 532 P.2d at 280.

127. In looking for the required pattern of disobedient behavior, the court considered the events connected with the hearing on parental fitness. These facts, however, were not found in the record before the court. The court also found “paramount importance,” 85 Wash. 2d at , 532 P.2d at 281, in the opinion of a psychiatrist involved in the case. The psychiatrist, however, never testified at the hearing, and references to his opinion entered the juvenile court record only after the finding of incorrigibility had been made and disposition was being discussed. Thus, the commissioner, himself, could not consider the psychiatrist’s opinion in making his finding. Rather, he based his finding specifically on Cynthia’s “announced intention and apparent resolve not to go home” and on “a lack of consideration on the part of the parents,” Record at 81, at the same time acknowledging that outside of these factors were “very compelling indications . . . contrary” to the finding. Id.

128. See text accompanying note 18 supra.

129. Brief of State Respondent at 10-11, for example, states that, “Cynthia Snyder is not a chattel and the test for control by the parents is not physical possession. . . . Cynthia . . . is a person who has apparently made a decision about her life.” Elsewhere the brief ascribed to Gault the proposition that “children are autonomous individuals, entitled to the same rights and privileges before the law as adults.” Id. at 23. In Brief of Child Respondent at 1-2, the state supreme court is told that it “will have to decide whether there are conditions under which a child may cause a change of custody,” and whether “a child has a right independent of its parents to seek the assistance of the Juvenile Court Act and to have her custody determined by the Juvenile Court.”

130. 85 Wash. 2d at , 532 P.2d at 281.
maxim is of questionable value here, however, because the meaning of Cynthia's "welfare" was clouded by the issue of her rights against her parents. Second, the court recognized that

the petitioner parents believe the juvenile court has given sympathy and support to Cynthia's problems in disregard of their rights as parents, and that the juvenile court has failed to assume its responsibility to assist in the resolution of the parents' problems with their minor child.

The court found this contention "to be unsupported by the evidence," pointing to the attempts by the juvenile court commissioner to work out a reconciliation. "[W]e are satisfied," the court continued, "that the juvenile court, in exercising its continuing jurisdiction, will continue to review the progress of the parties to the end of a hoped for reconciliation."

In spite of the court's hopes, however, it was precisely the exercise by the juvenile court of its "continuing jurisdiction," construed by the court as a support for the parents, that was the basis of the parents' complaint. The alleged disregard of parental rights consisted of the lower court's refusal to relinquish its jurisdiction when the facts did not constitute statutory incorrigibility. The court's implication that parental rights are to be protected is notable because, while it reflects the traditional perspective of the statutory policy, it is contrary to the holding in the case. Thus, the court's opinion gives no real explanation why the novel implications of the lower court decision were allowed to prevail over the traditional policy favoring parental rights.

Upon seeing how the court restricted its inquiry to a narrow evidentiary issue and declined to confront the more fundamental questions that make the case noteworthy in the first place, one is tempted to conclude that the court committed an oversight; that

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131. The welfare of a child has traditionally been defined, at least in part, in terms of the care and protection that may not be denied by the parent in the proper exercise of his discretion: "... a child has no higher welfare than to be reared by a parent who loves him and who has not forfeited the right of custody." In re Faust, 239 Miss. 299, 307, 123 So. 2d 218, 221 (1960). There had been a specific finding that Cynthia's parents were legally fit, and there was no renewed allegation of unfitness in the incorrigibility proceeding. By affirming the finding of incorrigibility while purportedly being governed by the "welfare of the child," the court seems to have broadened the traditional meaning of a child's welfare to encompass the child's objections to his parents' discipline. If the court's decision is read as a statement that Cynthia's welfare was served by allowing her to avoid the custody of her parents, a redefinition of a child's "welfare" is implicit in the holding.

132. 85 Wash. 2d at —, 532 P.2d at 282.

133. Id.

134. Id.
it simply did not perceive the uniqueness of the case. This explanation is belied, however, by the briefs of the parties, where the significant policy questions were vigorously argued. Also, at the same time the decision in Snyder was under consideration, the Supreme Court of Washington was considering a relatively extreme extension of children's rights in State v. Koome, in which the court declared unconstitutional a criminal statute under which a physician was convicted for performing an abortion on a minor without the consent of her parent or legal guardian. It seems unlikely that the court that decided Koome would not have been sensitive to the children's rights issues in Snyder. Koome suggests, therefore, that the Supreme Court of Washington may be taking a dim view of the traditional doctrines of parental rights and the legal incapacity of minors. If so, Koome may be a philosophical predecessor of Snyder, illuminating the willingness of the court to reach the latter decision.

IV. CONCLUSION

Snyder was not an easy case for an appellate court. Realistic hopes for salvaging the parent-child relationship had been severely damaged by the nearly 2 years of proceedings that had occurred by the time the court rendered its opinion. Cynthia was almost 17, 1 year short of majority, when the court's decision was handed down. The troublesome legal questions could be glossed

135. See note 129 supra.
136. 84 Wash. 2d 901, 530 P.2d 260 (1975).
137. In a 5-4 decision, the court held that the statute, WASH. REV. CODE. ANN. § 9.02.070 (Supp. 1975), infringed, without sufficient justification, on the constitutional right to privacy established by Roe v. Wade, 410 U.S. 113 (1973). To extend the "fundamental" rights found in Roe to minors, something the Supreme Court itself had declined to do, 410 U.S. at 165 n.67, the Washington court found it necessary to assume that "[p]rima facie, the constitutional rights of minors, including the right of privacy, are coextensive with those of adults," 84 Wash. 2d at 914, 530 P.2d at 263, and that "[p]arental prerogatives . . . must yield to fundamental rights of the child . . . ." 84 Wash. 2d at 907, 530 P.2d at 264. In further holding that the equal protection clause of the Fourteenth Amendment was violated because women over 18 were not subject to a parental consent requirement, the court rejected the argument that the insufficient capacity of minors to make crucial decisions about their lives justified the age classification:

In the case of the capacity to consent to abortion . . . [the] reasons for setting arbitrary age requirements are not present. The age of fertility provides a practical minimum age requirement for consent to abortion, reducing the need for a legal one.

84 Wash. 2d at 911, 530 P.2d at 267. A careful reading of relevant Supreme Court cases reveals that the conclusions of the Koome court do not necessarily follow from those decisions. An analysis of these cases is beyond the scope of this comment. For a discussion of the impact of Supreme Court cases on the question of abortions performed on minors see Hafen, supra note 50.
over by focusing on the evidentiary issue, so that the opinion would not seem to establish a precedent for the unusual propositions being asserted. Moreover, the state’s action was theoretically only a temporary change of custody rather than a permanent termination of parental rights.\textsuperscript{138} For these reasons, perhaps the approach of the Washington court reveals a certain pragmatic soundness.

One can no longer be sure, however, just what is meant in Washington by “incorrigibility.” Because of the ambiguous treatment by the court, the role of Snyder as a legal precedent for children’s rights is uncertain. Self-proclaimed incorrigibility, fostered by Snyder, may now be a viable option to children who reject their parents’ discipline.

Perhaps most significantly, Snyder suggests something about the sensitivity the government must possess in dealing with family relationships. No one really believes that the state should refrain completely from sustaining and adjusting these relationships. But when, as in Snyder, a family conflict arises—not from problems of abuse or neglect, but from disagreement about issues of values and parental authority—state intervention cannot be neutral as to those issues. Even without explicit judicial language, the result of government intervention can carry a distinct message. When the state shows a willingness to represent children against their parents in a case such as Snyder, and the courts are willing to acquiesce in, if not expressly endorse, that position, the practical result may be nearly as effective as an express judicial precedent in significantly altering the legal relationship between parent and child.

\textsuperscript{138} Significantly, however, Cynthia never returned to her family home after the finding of incorrigibility. She has now turned 18, the age of majority in Washington. Cynthia’s parents have filed a claim against the State of Washington for alienation of affection. Telephone conversation with Paul Snyder, May 5, 1976.