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ABSTRACT

This paper reviews the rights of children as defined by the Constitution of the United States and summarizes a series of Supreme Court decisions which have defined the protections afforded to children by the Constitution. A short historical overview of the legal status of children is provided as background for the report. It is suggested that the determination of children's rights is complicated by litigation holding that the interests of parents in guiding and directing their minor children are also protected by the Constitution. Most of the recent Supreme Court decisions, however, have dealt with the power of the government as it affects the rights of children and their parents. These decisions suggest that children in juvenile delinquency proceedings are granted considerable due process and that students are to enjoy freedom of speech and press as long as the educational process is not disturbed. Decisions regarding school disciplinary actions, however, are less consistent. Current litigation involving areas such as abortion, contraception, and institutionalization will help to clarify children's rights in cases involving parent-child conflicts. In analyzing the future of children's rights litigation, the government's greater authority over children in comparison with adults, is emphasized. The paper suggests that children's rights cases will continue to be decided on an issue-by-issue basis rather than through a more unified or synthesized approach. (BD)

95th Congress
2d Session
COMMITTEE PRINT

CONSTITUTIONAL RIGHTS OF CHILDREN

PREPARED FOR THE

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[1] Senator James B. Allen died on June 1, 1978, while serving on the Committee on the Judiciary.
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FOREWORD

During my seven years as chairman of the Senate Judiciary Subcommittee to Investigate Juvenile Delinquency and presently as chairman of the Subcommittee on the Constitution, there has been a growing demand for an overview of the constitutional rights of children.

This overview, completed by the Library of Congress, is not a comprehensive treatise on the constitutional law relating to children nor should it be considered an exhaustive analysis of constitutional controversies. Rather, it attempts to provide the reader with a review of a series of recent Supreme Court decisions that have defined protections that are afforded to children by the Constitution. This review is with regard to particular rights and not a discussion of general terms.

The Library of Congress' first responsibility is service to Congress. Over the years the range of services has come to include the entire governmental establishment in all its branches and the public at large, so that it has become a national library for the United States. The Subcommittee gratefully acknowledges the contribution of Daniel J. Boorstin, Librarian, Library of Congress and Gilbert Gude, Director of the Congressional Research Service. Special acknowledgement is deserved by Johnny H. Killian, Assistant Chief of the American Law Division, of the Library of Congress, in recognition of his exceptional work, valuable assistance, and precise legal research in preparing this overview of the constitutional rights of children.

The Constitution of 1789 has served as the fundamental instrument of our Government for almost all of our country's history as an independent nation. The Constitution has proved a durable and viable instrument of government despite enormous changes in America's political, social, and economic environment. The framework for democratic government set out in the Constitution in 1789 has remained workable and progressive today. However, that children should be protected by the Constitution, and in particular the Bill of Rights, is a new frontier of social, philosophical, and legal thought. The aim of the children's rights movement is not to let children exclusively determine their own destiny; adults must ultimately be responsible. Rather, those of us who support this movement hope to establish that a child has the right to a safe home; to be supported; to adequate nutrition and medical care; to a reasonable education; to freedom from abuse and neglect; to treatment when institutionalized; to due process of law; to equal protection of the laws; and to privacy.

Ten years ago, the Supreme Court declared that children are "persons" under the Constitution and that the Bill of Rights is not for adults alone. The 1960's and 1970's saw unusual activity in the Supreme Court in the area of children's rights. Legal questions brought to the attention of the Supreme Court had a profound impact on the cultural and political norms of our country.

The Supreme Court, however, has not been alone in providing the opportunity for children and young people to claim numerous Federal and State rights. A large step was taken by the 26th Amendment to the Constitution of the United States, which I am proud to have introduced. That amendment lowered the voting age to 18 years. The States responded, generally, in kind by lowering voting and other age standards.

We in Congress have forged ahead in the area of civil rights and women's rights. Yet, we have still not secured the fundamental rights of institutionalized persons, especially children. Whether they be mentally ill, retarded, chronically disabled, or incarcerated in private and public detention or correctional facilities, our responsibility is to see that they too are guaranteed the constitutional protection that all citizens of this country are entitled. These have not yet been available. This is the last great frontier of civil rights legislation. Congress should move swiftly to enact the "Civil Rights of Institutionalized Persons" bill, which will be a step in the direction of protecting the fundamental constitutional rights of institutionalized children.

We also must not lose sight of the conditions of the billions of children in other countries. In this regard, I want to take the opportunity to note that we as a nation will soon celebrate the twentieth anniversary of the 1959 United Nations Declaration of the Rights of the Child. (*See* Appendix 1.) On December 21, 1976, the General Assembly of the United Nations passed a Resolution declaring 1979 the International Year of the Child. The United Nations, by placing the child in the center of world attention, invites the world community to renew and reaffirm its concern for the present condition and the future of its children.

The rights and problems of the child are in many instances intimately related to the family. However, children have distinct needs and deserve distinct attention. I am especially pleased that the International Year of the Child Activities sponsored by the Federal Government will focus specifically on the child as an individual rather than as an appendage of others. Yet, I also want to emphasize that the United States participation in the Year of the Child is not just an endeavor of the Federal Government alone. Over 200 national voluntary labor, industrial, civic, professional, and local groups within the United States have endorsed the International Year of the Child and have requested to work with the United States National Commission during the Year. (*See* Appendix 2.).

Jean Childs Young has been appointed by President Carter (*see* Appendix 3) to be the chairwoman of the 24-member United States Commission for the International Year of the Child in 1979. (*See* Appendix 4.) She not only encourages the Commission to highlight positive contributions young people make to society, but she urges that its members emphasize the need to deal more effectively with problems such as discrimination against children because of age, race and sex; child abuse; violence and drug use among people; and substandard education. Her commission will report its findings and recommendations to the White House by March 1980. In the meantime the group intends to act as a catalyst, encouraging others to develop and fund programs to help children.

In observance of the International Year of the Child, the Department of Justice Office of Juvenile Justice and Delinquency Prevention established under my Juvenile Justice and Delinquency Prevention Act of 1974, has funded a program with the Department of State to undertake an international study of the rights of children. The Office of Juvenile Justice has a particular interest in improving and protecting the rights of children. The Office will focus on four issues in the coming year: children and youth in custody; children and youth as victims of violence; the effects of advertising and programming on violence and drug use among youth; and, the general exploitation of our children and youth. (*See* Appendix 5.)

I am proud to be associated with the children's rights movement. The Juvenile Justice Act announced to the youth of our country that they have an advocate in the Federal Government for their constitutional, legal, and human rights. We must never lose sight of the principle that when the rights of one are suppressed, the freedoms of all are jeopardized.

I sincerely hope that this report will be widely disseminated and read throughout the United States and in other parts of the world as well during the International Year of the Child in 1979. I invite articles from interested scholars and spokespersons for the rights of the child, both nationally and internationally, in response not only to this report, but also to issues raised in the United Nations' Declaration of the Rights of the Child. It is my hope that these articles will be reviewed during 1979 and published during 1980 as a result of the Subcommittee on the Constitution's Oversight of the Constitutional Rights of Children.

BIRCH BAYH.
Chairman, Subcommittee on the Constitution.

December 22, 1978

SUMMARY OF PAPER

The expansion of constitutional liberties achieved through judicial action in the 1960's and 1970's did not stop with the rights of adults. Children were held protected to some degree by the Constitution as well. Determination of what that degree is, however, is complicated by a line of Supreme Court cases holding that the interests of parents in guiding and directing their minor children are themselves protected by the Constitution. The cases so far decided involving claimed rights of children have for the most part not dealt with the conflict between parents and children in assertions of claimed rights but rather have turned upon the power of government to do certain things in certain ways to and with children. Thus, a series of cases has circumscribed governmental authority to act without observance of procedural regularity in juvenile delinquency proceedings and it seems clear that children in these circumstances enjoy considerable due process protection. With respect to the rights of students, they have been held to enjoy substantial rights of speech and press, at least until they reach the boundaries of disturbance of the educational process. What procedural protections students enjoy in terms of disciplinary actions by school authorities cannot be stated with any certainty; a landmark decision holding that "rudimentary" due process attaches may have now been undermined. The beginnings of an approach to parent-child conflicts is evident in cases dealing with parental-consent-to-abortion requirements and the access of minors to contraceptives and in a pending case that asks whether minors who are being institutionalized by their parents have any due process protections. It is concluded that no overall constitutional challenge to the treatment of children as a special class is likely to succeed but that it is likely that a case-by-case approach is likely to see children accorded additional rights consistent with the recognition that they do in fact lack the full capacity of adults.

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CONSTITUTIONAL RIGHTS OF CHILDREN: AN OVERVIEW

Introduction

During the 1960's there developed in the United States a variety of social trends that taken together constituted a rejection of settled and traditional ways of viewing social relationships. This development has had wide ramifications, including the altering of constitutional doctrine. Beginning with the *School Desegregation Decision*[1] in 1954 the Supreme Court moved, at first haltingly, and then in impressively sweeping terms, to implement a substantive view of the equal protection clause of the Fourteenth Amendment. While the *Brown* decision represented but a modest extension of the intent of the framers and ratifiers of the Amendment and but little if any extension of the constitutional language itself,[2] subsequent decisions are more problematical in these respects. Substantive equal protection[3] was developed by the Court into the suspect classification—fundamental interest branch of the equal protection doctrine and through it the Justices required the reapportionment of the legislatures of all 50 States and of all legislative bodies having general governmental powers in the subunits of State governments, the redistricting in every State having more than one U.S. Representative of the congressional districts, and the opening up to both many hitherto excluded persons and movements of access to the political arena both as voters and as candidates.

Wealth classifications, which were largely *de facto*, in the criminal law field were voided and a vaguely defined but potent right to travel doctrine upset numerous restrictions on newly-arrived citizens. Moreover, members of groups that had traditionally been disfavored in legal classifications began to assert claimed rights and in decision after decision were accorded doctrinal protection by being made the recipient of a suspect classification designation under which governmental restrictions had to be justified by compelling interests which in practice meant they could not be justified at all. Race was the paradigmatic suspect classification but nationality and alienage soon followed and gender and illegitimacy classifications have more recently been granted positions requiring somewhat less strict judicial scrutiny but nonetheless entitled to substantial judicial protection.[4]

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[1] *Brown* v. *Board of Education*, 347 U.S. 483 (1954).

[2] These propositions have recently been strongly attacked in R. Berger, *Government by Judiciary—The Transformation of the Fourteenth Amendment* (1977), but evaluation of the argument is beyond the scope of this paper.

[3] The phrase was originated in the classic article of Tussman & tenBroek, "The Equal Protection of the Laws," 37 Calif. L. Rev. 341, 361-365 (1949). Its present currency was established in Karst & Horowitz, "*Reitman* v. *Mulkey*: A Telophase of Substantive Equal Protection," 1967 Sup. Ct. Rev. 39.

[4] Documentation of these statements would overlengthen this paper but see *The Constitution of the United States of America—Analysis and Interpretation*, (hereinafter *Constitution Annotated*) Senate Document No. 92-82 (1972), 1470-1477, 1493-1527, and Senate Document No. 94-200 (1976 Supp.), 8166-8182. In the last Term, the Court solidified its position with respect to gender and illegitimacy. See *Craig* v. *Boren*, 429 U.S. 190 (1976), and *Califano* v. *Goldfarb*, 430 U.S. 199 (1977) (gender); *Trimble* v. *Gordon*, 430 U.S. 763 (1977) (illegitimacy). For a largely successful effort to conceptualize the judicial formulation of doctrine, see L. Tribe, *American Constitutional Law* (1978), ch. 16.

Simultaneously, the Supreme Court utilized the due process clauses of the Fifth and Fourteenth Amendments to require of governmental dealings with people the observance of a fairly high standard of procedural regularity before individuals may be disadvantaged. Here, again, traditionally disfavored groups, prisoners, involuntary inmates of institutions, welfare recipients, for example, were the beneficiaries of a judicial move to expand the circumstances under which due process had to be observed, primarily through the vitiation of the "right-privilege" distinction and the formulation of an "entitlements" doctrine under which State-fostered and justifiable expectations were accorded protection. Under the conjunction of the two elements, welfare recipients were thus to be accorded hearings before they were deprived of assistance and prisoners were afforded a somewhat truncated hearing before the imposition of disciplinary penalties.[6] But, more important in some respects, the Court in more recent years has resurrected the formerly discredited doctrine of substantive due process that imposes not procedural regularity upon government but rather barriers to governmental action at all. The doctrine was originally developed to protect property rights against governmental regulation but it is now employed in the protection of certain personal rights, the parameters of which remain undefined, characterized in the group as basically familial but which gives some indication of spreading to a more general personal interest in privacy.[6] Both elements of due process have had their applications to children.

A third strand deserving of mention was the primacy accorded the First Amendment guarantees of speech and press by the Supreme Court during the 1960's. No attempt will be made here to characterize the case law but it must be noted that this line of cases had an inevitable effect upon decisionmaking with respect to children, especially in the educational context.

Any effort to delineate the cause and effect relationship between the social conditions of the decade of the 1960's and the judicial decisions briefly alluded to here would be complex and perhaps frustrating. What is important for our purposes is that for whatever reason and in whatever causative context, children began to assert claims of rights and these assertions were largely successful in the courts; moreover, there developed a school of thought that would have accorded to children rights largely equivalent to adult rights, that in effect and sometimes expressly denied the separate and unique status of childhood.[7] That school of thought has had no observable effect in the courts and little likelihood exists of its judicial acceptance. But the children's rights cases in themselves raise interesting issues respecting

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[5] *Constitution Annotated*, *op. cit.*, n. 4, 1429–1439, 1454–1455, and (Supp.), 8136–8144; 8149–8150. And see L. Tribe, *op. cit.*, n. 4, 501–522.

[6] *Constitution Annotated*, *op. cit.*, n. 4, 1310–1335, 1403–1406, and (supp.), 8120–8136; L. Tribe, *op. cit.*, n. 421–455, 886–990. For the recent manifestations, see *Moore* v. *City of Cleveland*, 431 U.S. 494 (1977) (sanctity of family); *Zablocki* v. *Redhail*, 98 S. Ct. 673 (1978) (marriage); *Whalen* v. *Roe*, 429 U.S. 589 (1977) (intimations of protected privacy rights against governmental dissemination of personal information). But see *Paul* v. *Davis*, 424 U.S. 693 (1976). The most well known of the recent substantive due process decisions are of course the abortion cases. *Roe* v. *Wade*, 410 U.S. 113 (1973); *Doe* v. *Bolton*, 410 U.S. 179 (1973).

[7] E.g., R. Farson, *Birthrights* (1974); J. Holt, *Escape from Childhood* (1974). Farson considers children as "powerless, dominated, ignored, invisible." His thesis is: "The move for children's rights comes across from the realization on the part of lawyers and judges, psychiatrists and educators, social workers and political reformers, parents and children that freedom and democracy are not the rights of adults only. Concerned people in every institution are becoming aware of the heavy reliance on power and authority by which adults impose excessive and arbitrary controls on children. In the developing consciousness of a civilization which has for four hundred years gradually excluded children from the world of adults there is the dawning recognition that children must have the right to full participation in society, that they must be valued for themselves, not just as potential adults." *Id.*, 2-3. But see *contra*, Hafen, "Children's Liberation and New Egalitarianism: Some Reservations About Abandoning Youth to Their 'Rights,'" 3 Brig. Young U.L. Rev. 605 (1976).

the status of childhood and the traditional role of parental autonomy insofar as children are concerned.

This paper attempts a very modest overview of the judicial developments of the past decade-and-a-half, a short look ahead, and a brief speculative raising of questions about the continued state of parent-child-governmental relationship.

The Legal Tradition

"The existing generation is master both of the training and the entire experience of the generation to come." [8] When he uttered these words more than a century ago John Stuart Mill thought the expression both true and proper and so it was. The classic liberal thinkers provided the principles for alleviating the repressed social conditions of the slave, the serf, the woman, for, in effect, assertion of individualism and equality of opportunity. But children were not to be included within these principles. Sir Henry Maine was sure that "they do not possess the faculty of forming a judgment on their own interests; in other words . . . they are wanting in the first essential of an engagement by Contract." [9] And John Locke was clear that the limited capacity of children necessarily excluded minors from participation in the social contract. "Children . . . are not born in this state of equality, though they are born to it." Although Adam was "created" as a mature person, "capable from the first instant of his being to provide for his own support and preservation . . . and govern his actions according to the dictates of the law of reason," children lacked a "capacity of knowing that law." Parents were therfore under an obligation of nature to nourish and educate their children to help them attain a mature and rational capacity, "till [their] understanding be fit to take the government of [their] will." "And thus we see how natural freedom and subjection to parents may consist together and are both founded on the same principle." [10]

There is of course no unalterable legal boundary between childhood and adulthood. In different societies and at different times, young people have been accepted into adult society at different ages and children have been variously viewed, [11] and law has differently regulated familial relations at different times. One writer has noted the changing from the early colonial days of this country to the present of the legal regulation of the assumption by the child of an adult economic role. [12] Thus, from the early days till near the end of the 19th century, the economic needs of communities and families in America necessitated early entry of children into the work force. At first, these children were closely restrained by law and custom, whether they lived at home or in an apprentice system in a master's home, and they worked not for their own account but for the account of family or master. Gradually, the law imposed upon parents some regard and

[8] J. Mill, *On Liberty* (D. Spitz ed. 1975), 77. Excepting children from the operation of the libertarian principle, Mill said: "It is, perhaps, hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children or of young persons below the age which the law may fix as that of manhood or womanhood. Those who are still in a state to require being taken care of by others must be protected against their own action as well as against external injury. . . . Liberty, as a principle, has no application to any state of things anterior to the time when mankind have become capable of being improved by free and equal discussion." *Id.*, 13-14.

[9] H. Maine, *Ancient Law* (1st Amer. ed. 1870), 163-164.

[10] J. Locke, *The Second Treatise of Government*, (P. Laslett ed., *Two Treatises of Government*, 1967)

[11] E.g., P. Aries, *Centuries of Childhood* (1962).

[12] Marks, "Detours on the Road to Maturity: A View of the Legal Conception of Growi
Co," 39 L. & Contemp. Prob. 78 (1975).

consideration for the child's welfare, especially the obligation to prepare him for assumption of full adult responsibilities. But in the post-Civil War industrialization and the social dislocation accompanying it social custom and supporting law shifted to a greater requirement of retention of parental control over children for a longer period and to greater protection of family life. Three major institutional changes were legislatively implemented, the juvenile court system, the prohibition of child labor, and compulsory education, all looking toward "external support of the family as the ideal way additionally to prepare children to face life. . . . bolster the family, leave even the delinquent child in the family—where possible, shield the child from adult roles and responsibilities, and formally educate him, and upward movement could be expected." [12]

The result was an "extension of childhood," with the State "enjoining longer supervision, more protracted education, and the postponed assumption of adult economic roles." [14] The writer notes some elements of a reversal of the trend in the second half of this century, in the context of the middle and late adolescent in particular. The waning of parental immunity from a personal tort action brought by an unemancipated child is one example and another is the passage by many States of medical emancipation laws by which minors are enabled to receive medical treatment without parental consent.[15] These changes significantly have had some parallels in constitutional litigation and will be noted *infra*. But it is important to note that they reflect changes of degree, altering of the age limits at which the child for some matters is deemed to have the capacity to make informed judgments of his own, and do not constitute the more radical development of denial of childhood as a separate status.

Concomitant with the increased emphasis upon family control and responsibility, common law judges viewed parental rights "as a key concept, not only for the specific purposes of domestic relations law, but as a fundamental cultural assumption about the family as a basic social, economic, and political unit. For this reason, both English and American judges view the origins of parental rights as being even more fundamental than property rights." [16] Parental power has been deemed primary, prevailing over the claims of the State, other outsiders, and the children themselves, unless there is some compelling justification for interference. The primary compelling justification is the protection of children from parental neglect, abuse, or abandonment; statutes proscribing various forms of parental misconduct are found in every State.[17] The power of government to protect children by removing them from parental custody has roots deep in American history; by the *parens patriae* doctrine, equity courts early in the 19th century assumed the power to remove a child from parental custody and to appoint a suitable person to act as guardian.[18] The role of the State then

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[12] *Id.*, 86.
[14] *Id.*, 88.
[15] *Id.*, 88–92. On parental tort immunity, see "Child v. Parent: Erosion of the Immunity Rule," 10 Hast. L. J. 201 (1967). With respect to parental consent, see *T. H. b. Jones*, 425 F. Supp. 873 (D. Utah, 1975) (state requirement of family consent before minor may receive birth control information under AFDC invalid under both Social Security Act and Constitution), *aff'd* 425 U.S. 986 (1976) (passing on Social Security Act conclusion only).
[16] Hafen, op. cit., n. 7, 615–616.
[17] Katz, Howe & McGrath, "Child Neglect Laws in America," 9 Family L. Q. 1 (1975).
[18] Mnookin, "Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy," 39 L. & Contemp. Prob. 226, 240 (1975). See, e.g., 2 J. Story, *Commentaries on Equity Jurisprudence* (7th ed. 1857), 702. On the related doctrine of *in loco parentis* which gives government the authority and the responsibility of the parent during the time in which the child is in its care, as in, e.g., the schools. see Goldstein, "The Scope and Sources of School Board Authority to Regulate Student Conduct and Status: A Nonconstitutional Analysis," 117 U. Pa. L. Rev. 373, 377–384 (1969).

was supplementary to that of the parents and supportive until there arose evidence of abuse of parental responsibility.

The Constitutional Primacy of the Parent

Starting point for an assessment of the constitutional rights of children must be, in light of the American tradition summarized above, with the constitutional rights of parents. A series of Supreme Court decisions appears in a number of contexts to accord primacy to parental rights *vis-a-vis* the power of the State to intervene in non-abuse situations to reorder or to deflect parental choice in child rearing. Exclusion of the State, however, does not, except to the extent that judicial rhetoric is suggestive, dispose of the issue of the conflict between parent and child; only recently has the Court addressed this conflict and its efforts at resolution are at best tentative.

In *Meyer v. Nebraska*[19] the Court struck down a State law forbidding the teaching in any school in the State, public or private, of any modern foreign language other than English, to any child who had not successfully finished the eighth grade; in *Pierce v. Society of Sisters*[20] it declared unconstitutional a State law which required public school education of children aged eight to sixteen. Although both cases involved property rights which the Court deemed to be protected, those persons adversely affected in their property interests were permitted to represent the interests of parents and children in the assertion of the [illegible] "liberty" [illegible] which they could not be denied.[21] The right of parents to have their children instructed in a foreign language, the Court said in *Meyer*, was "within the liberty of the Fourteenth Amendment." [illegible] the theory [illegible] Plato's *Republic* [illegible] family life would be replaced entirely by State child rearing [illegible] the [illegible] parent is to know his own child nor any child his parent," the Court set its face against such a system.[22]

[illegible]

[illegible]

but have been extended; additionally, other strands of constitutional doctrine have come together to enforce them. Thus, in *West Virginia State Bd. of Educ.* v. *Barnette*,[24] the Court struck down as a free speech violation the compulsion of school children to salute the flag; but insofar as the opinion of the Court permits a judgment it was the free speech rights of the *parents* which were being protected.[25] And in *Wisconsin* v. *Yoder*,[26] the Court combined parental rights and religious freedom into a powerful barrier against enforcement of compulsory attendance laws to require Amish children to be sent to public schools after they graduated from the eighth grade but before they turned sixteen.[27]

[I]t seems clear that if the State is empowered, as [illegible] to [illegible] a child from himself or his Amish parents by requiring an additional two years of compulsory formal high school education, the State will in large measure influence, if not determine, the religious future of the child. . . . [T]his case involves the fundamental interest of parents as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary rule of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

. . . . . .

[illegible] direct the religious upbringing of their children. And, since the interest of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a "reasonable relation to some purpose within the competency of the State" is required to sustain the validity of the State's requirement under the First Amendment.

For the first time [illegible] the question of the rights of the child involved in the case. Justice Douglas protested that the desires of the children might not coincide with those of the parents and that the rights of the children should be protected.[28]

. . . . . .

[illegible] entitled to have the Amish way of life and religious beliefs universally accepted. For the entire family, the education of the child in a manner in which the child will often have decided views [illegible] at to the future of the student not the future of the parents that is imperiled by today's decision. If a parent keeps his child out of school beyond the grade school, then the child will be never barred from entry into the new and amazing world of diversity that we have today. It is the student's judgment, not his parents' that is essential if we are to give full meaning to what we have said about the Bill of Rights and the rights of students to be masters of their own destiny.

Chief Justice Burger for the [illegible] and indicated a divergence of [illegible] that it was the interests [illegible] that [illegible] noting [illegible] noted

[illegible]

[illegible] been brought [illegible] [illegible] [illegible] that the salute requirements [illegible] directions in the upbringing of their children." [illegible] *West Virginia State Bd of Educ.* v *Barnette*, *supra*. Justice Frankfurter [illegible] as the line as a conflict between the parents and the state. *Id.*, 607. His note that *Pierce* v *Society of Sisters*, *Ind. Community School Dist.*, 393 U.S. 503, 506-507 (1969), the Court viewed *Barnette* as having been about the children's First Amendment rights. For a suggestion that *Pierce* too is really about the rights of parents, see Burt, "Developing Constitutional Rights of, in, and for Children," 39 L. & Contemp. Prob. 118, 122-124 (1975).

[24] 406 U.S. 205 (1972).

[25] *Id.*, 212-233.

[26] *Id.*, 244-246 (dissenting opinion).

because the parents were subject to criminal prosecution under the attendance laws. But the Court did not stop there.[29]

Removal of the religious context does not alter the court's conclusion. When Illinois provided that upon the death of the mother illegitimate children became the wards of the State and their father had no right to custody and no say in the State's treatment of the children, the court struck the statute down, and held that before a father of illegitimate children could be deprived of his parental interest the State would have to give him a fitness hearing just as it would have been required to under State law for the father of legitimate children.[30]

[illegible]

cases with strong rhetorical flourishes,[33] the protection is not absolute. Thus, in *Prince* v. *Massachusetts*,[34] the Court sustained the conviction of a Jehovah's Witness for violating a law prohibiting street solicitation by minors because she permitted her nine-year old niece, who desired to accompany her, to help her sell religious literature on the street. Acknowledging the conflict between the governmental claims and the "sacred private interests" associated with Mrs. Prince's claims, the Justices pointed to the government's duty to limit parental control by requiring school attendance, regulating child labor, and otherwise protecting children against the evils of employment and other activity in public places.[35]

> The zealous though lawful exercise [illegible] right [illegible] engage [illegible] propagandizing the community, whether in religious, political or other matters, may and at times does create situations difficult enough for adults to cope with and wholly inappropriate for children, especially of tender years, to face. Other harmful possibilities could be stated, of emotional excitement and psychological or physical injury. Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.

[illegible] ... the needs or ... making ... parents. The reforms of the early ... from ... [illegible] ... due process ... [illegible] ... and as not ... the State ... [illegible]

[illegible]

[illegible]

interests of the young and society. It has not, however, achieved any unified view of what the process is in very concrete terms.

Observing that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone," the Court imposed substantial due process observance on a delinquency proceeding in its first encounter with the constitutional aspects of the juvenile delinquency process.[37] [illegible]

tionally associated with a criminal prosecution". The child faced in the juvenile adjudication the risks of the stigma inherent in the determination of delinquency and the deprivation of liberty for many years. Further, the Court found little to distinguish the potential consequences involved in juvenile adjudicatory hearings and in criminal proceedings. Given the identity of risks faced in the juvenile court and in subsequent criminal prosecution, the Court ruled that the task of twice marshaling resources and twice being subjected to the heavy personal strain of trial was constitutionally forbidden.[42] But since under *Gault* the juvenile must be given a hearing before being transferred to adult proceedings, the Court did observe that "nothing decided today forecloses States from requiring, as a prerequisite to the transfer of a juvenile, substantial evidence that he committed the offense charged, so long as the showing required is not made in an adjudicatory proceeding."[43]

There at present the matter rests, [illegible] further elaboration by the Court of the procedural protections to be observed in juvenile proceedings adjudicating questions that would in the adult world be criminal proceedings. But still to be considered at all by the Court are such questions as the substantive and procedural guarantees to be applied in proceedings when the matter at issue is not essentially criminal [illegible] uncontrollability requiring application of legal sanctions. Being labeled a PINS, a MINS or a CHINS [illegible] stigmatizing [illegible] liberty [illegible]

[illegible]

in Viet Nam. Reversing the refusal of lower courts to reinstate students who had been suspended for violating the ban, the Court set out the balance to be drawn.[47]

> First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school house gate . . . On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.

[illegible] on expression by school authorit[illegible] to prevent [illegible] of educational discipline.[48]

> [illegible] the State [illegible] of school officials [illegible] particular expression of opinion, it must be able to [illegible] that [illegible] was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the schools," the prohibition cannot be sustained.

Tinker [illegible] *Healy* [illegible] *James* [illegible] withholding of recognition [illegible] a public college [illegible] student organization [illegible] the students' right of association [illegible] First Amendment liberties. Denial of recognition [illegible] Court held [illegible] permissible [illegible] it had been based on the [illegible] S.D.S. [illegible] with the organization's philosophy [illegible] of disruption, with [illegible] unsupported.[49]

[illegible]

[illegible] affirming the con[illegible] [illegible] school offi[illegible] consistent with [illegible] the school [illegible] First Amendment [illegible]

[illegible]

As the case law shows, the idea of a wide continuum of student free expression is not an accepted fact among school administrators but the courts have voided far many more restraints than they have accepted. Save for some expectable grotesqueries,[53] the cases show a generally responsible exercise of rights of expression and a fair measure of accommodation between students and school administrators. But significant issues remain and perhaps the most uncertain involves the extent to which high school students are as protected as college students, especially in the context of the high school press.[54]

Aside from speech and press rights, students have achieved at most a mixed record in asserting other substantive rights. The most disputed, and still unsettled, assertion has been with respect to student dress codes, particularly in terms of hair length standards, which has involved an incredible amount of court time, has divided the courts of appeals,[55] and has failed to get the attention of the Supreme Court.[56]

[illegible] DUE PROCESS RIGHTS OF STUDENTS FACING DISCIPLINE

[illegible] constitutional rights of children [illegible] narrow the [illegible] to students and consider what rights to procedural due process and perhaps to substantive due process they have when faced with discipline by school authorities. The seminal decision here is *Goss v. Lopez*.[57] Prior to *Goss*, lower courts were virtually unanimous in holding that expulsions and lengthy suspensions must be accompanied by procedural due process.[58] *Goss* was both an affirmance of this case law and an extension striking down an Ohio statute that authorized school authorities to suspend students for up to ten days without notice or hearing. Suspension even for such a short period the Court found to affect "property" and "liberty" interests protected by the Fourteenth Amendment and that public school students were protected in the enjoyment of both.[59] Inasmuch as due process is a flexible concept to be applied as interests balance differently, the Court in recognition of the nature of the educational situation did not require the application of the full panoply of due process rights but rather "rudimentary" procedural protections

[illegible] extent to comm[illegible] and finally [illegible] (1973) (expulsion of student for wearing Mickey Mouse [illegible] Mickey Mouse cap is expressive activity)

[54] E.g. [illegible]

[55] [illegible]

[56] [illegible]

[57] 419 U.S. [illegible] (1975). [illegible]

[58] [illegible]

[59] *Id.* [illegible]

necessitated "*some* kind of notice" and "*some* kind of hearing." Thus there was to be no necessary "delay between the time 'notice' is giv and the time of the hearing."

clinical ability to perform adequately as a medical doctor and was making insufficient progress toward that goal. Such a judgment is by its nature more subjective and evaluative than the typical factual questions presented in the average disciplinary decision. Like the decision of an individual professor as to the proper grade for a student in his course, the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision-making.

[illegible] the Court [illegible] "The [illegible] that a school system need not afford a student [illegible] any form of hearing prior to a similar temporary corporal punishment not because the student's interest in being free from wrongfully administered corporal punishment was not a liberty [illegible] safeguarded by the due process clause the Court expressly held that it is [illegible] that a state law [illegible] have been wrongfully [illegible] and excessively punished by teachers and school officials have a common law tort remedy. The existence of this remedy not only [illegible] to deny relief when they were wronged but it operates [illegible] the [illegible] settlement of such punishment would [illegible] [illegible] [illegible] hearing could achieve."[69]

[illegible]

is unconstitutional,[67] the Court failed to analyze the matter beyond a fairly cursory statement of the holding and rejection of the proferred State interests. Because the State had no power to veto the decision of a woman and her physician with respect to an abortion the State had no power to delegate to "a third party an absolute, and possibly arbitrary veto" over the decision. Children are protected by the Constitution [illegible] but it was [illegible] that State power to regulate [illegible] from the power to delegate absolute [illegible] and that interest [illegible] the [illegible] of

statute. Justice Stevens thought it a legitimate governmental interest to deter sexual conduct by minors but it was "irrational and perverse" to seek to accomplish that interest through denial of contraceptives. Justice Powell's concurrence was much more narrow, faulting the statute because it denied contraceptives to married minors and because it prohibited parents from giving contraceptives to their minor children.[73]

Whatever the doctrinal shortcomings in the foregoing cases, it can be hoped that the issues involved in a case currently before the Supreme Court will enable the Justices to agree upon a reasonably formulated constitutional standard to be applied when children seek rights that would undeniably be theirs if they were only adults. Lacking are those aspects that perhaps skew the line drawing, such as abortion and contraceptives access, that were present in *Danforth* and *Carey*, but there is present a potentially disruptive and skewing factor, the existence of parental rights previously deemed by the Court to be entitled to constitutional protection also.

The case[74] concerns the due process standards to be applied when the State affords procedures by which parents or guardians may commit minor children to institutions.[75] Distinguishable from the involuntary commitment process that the Court has only recently surrounded with constitutional safeguards is the "voluntary admission", the procedure used to enter a mental or other facility that is commenced by the affirmative action of the patient himself or by one empowered by law to act in the patient's behalf.

In the case of a non-emancipated minor, application [illegible] ly by a parent, guardian, or individual standing *in loco parentis* to the [illegible] of initial patient, the child, acting on his own, may institute the admission for himself. In most States children may be admitted without any form of judicial involvement. Typically, a legal hearing is not required, and representation for the child is not provided. There is virtually no opportunity for judicial review once the child's institutionalization. Moreover, the child, seeking his own release will quickly discover that he cannot be discharged without the authorization of the parent who originally admitted him. A passive process in institutionalizing the minor hinges solely on being able to secure medical admitting physician that the child is in need of treatment, and in many States the physician may not be a psychiatrist.[76]

In an appeal the State of Georgia argued that to require [illegible] parents upon the decision of parents to cause their children to undergo treatment in State institutions, to subject that decision to [illegible] judicial proceedings, would [illegible] the [illegible] of the parent [illegible] to and authority over their

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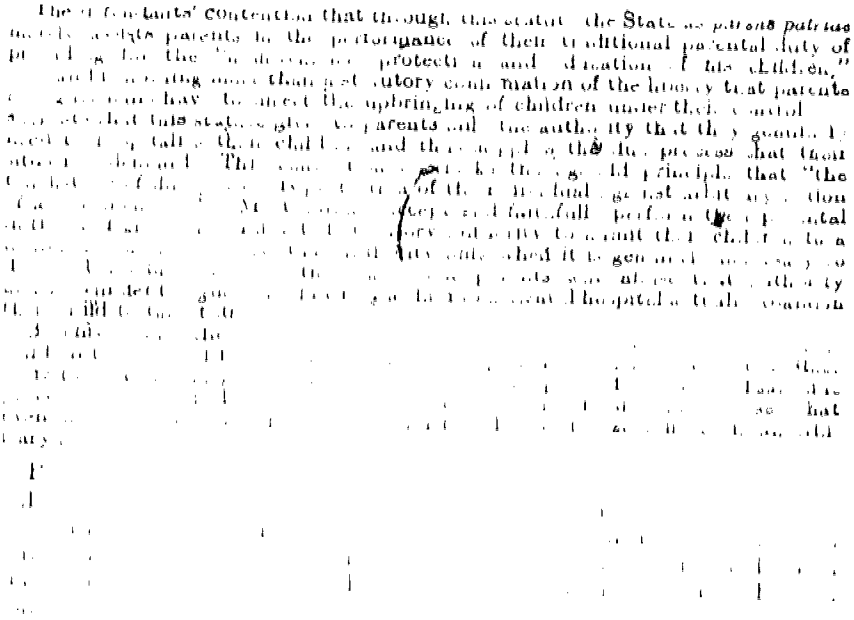
[illegible] Bremond v. [illegible] 412 U.S. [illegible] aff'g [illegible] 340 F. Supp. 1067 (D. Md. 1975), *dismissed as moot*, 421 U.S. 919 (1975).

[74] The Constitutionality of [illegible] was briefly raised [illegible] Constitution, [illegible] that the State involvement here was sufficient to trigger the protections of the Due Process Clause of the Fourteenth Amendment. *Parham v. J.R.*, 442 U.S. 584 (1979).

[75] Parmelee, "Children, Commitment and Consent: A Constitutional Analysis of Family Participation in Voluntary Admissions," 62 Calif. L. Rev. 1687 (1974). The commitment of adults has been surrounded with strict standards. *Humphrey v. Cady*, 405 U.S. 504 (1972); *Jackson v. Indiana*, 406 U.S. 715 (1972). See *O'Connor v. Donaldson*, 422 U.S. 563 (1975). ("A State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.")

children in a fashion which is inconsistent with the Court's prior decisions; the State also argues that such a process would be inconsistent with the deference owing to the judgment of physicians.[77] Rejecting this argument below and declaring the statute unconstitutional, the district court said:[78]



express recognition that the law properly regards minors as having a lesser capacity for making decisions than adults have with the consequent result of the State having much greater latitude to regulate the conduct of children than it has with respect to adults.[83] Combined with the constitutional status of parental rights to guide, direct, and control their children, this recognition suggests that the Constitution will not be deemed to enact the views of these proponents.[84]

"[T]he power of the State to control the conduct of children reaches beyond the scope of its authority over adults" [85] For example, minors can be denied access to books, magazines and motion pictures that may not be obscene under constitutional standards and thus are accessible to adults, without a showing that children would necessarily be harmed by such exposure.[86] Whatever degree of protection the Court eventually holds adults entitled to with respect to governmental regulation of their private sex lives, it seems clear that minors may be barred from extramarital sexual activity legitimately enforced.[87] And furthermore, the *Danforth* holding voiding parental consent preconditions to minors' rights to abortion cautioned that no suggestion was warranted "that every minor, regardless of age or maturity may give effective consent for termination of her pregnancy" [88]

It would not be useful to prolong this paper by [illegible] principles of the way the Court has permissibly treated minors differently than adults. Suffice it to say that the Court has recognized that it is legitimate to consider minors as being less capable than adults to exercise certain adult rights. Therefore, the question becomes one of the permissibility of claims that are drawn from issues are newly [illegible] question.

[illegible]

The Fourteenth Amendment guarantee of equal protection is a particularly troublesome provision. It does not state an intelligible principle on its face. Thus, a demand for equal protection cannot be a demand that laws apply universally to all persons. All laws classify, make distinctions. The legislature if it is to act at all must impose burdens upon or grant benefits to groups or classes of individuals. The demand for equality confronts the right to classify. "It is of the essence of classification that upon the class are cast . . . burdens different from those resting upon the general public. . . . Indeed, the very idea of classification is that of inequality. . . ." [89] Resolution of this dilemma is the doctrine of reasonable classification. The Constitution does not require that things different in fact be treated in law as though they were the same, only that those who are similarly situated be similarly treated. What is therefore barred are "arbitrary" classifications or discriminations. Determination of "arbitrariness" is primarily a two-step process: (1) the identity of the discrimination is determined by the criterion upon which it is based, and (2) the discrimination is arbitrary if the criterion upon which it is based is unrelated to the State purpose. But unrelatedness is not a dichotomous quality; the question is not whether criterion and end are related or unrelated, but rather how well they are related or how poorly. [90]

This brief description is of the "traditional" doctrine of equal protection analysis. It is the analysis used to review most classifications made by government and it is unusually easy to pass. So long as there is some reasonable basis for the classification, the equal protection clause is not offended because the classes are not exactly corresponsive with the criterion used or because there results some inequality. "[T]he classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike." [91] Inasmuch as minors are universally recognized as having less capacity than adults have, a governmental decision to draw a line for particular purposes at 17, or 18, or 21 may well have little difficulty in passing this traditional test.

In recent years, the Court has developed a doctrine of "suspect classifications" which merits active review when challenged. That is, the Court exercises "strict scrutiny" and government must demonstrate a high degree of need on its part to so classify, resulting in the reversal of the traditional presumption in favor of the validity of the governmental action.

The principal characteristic of a "suspect class" is that it constitutes a "discrete and insular" minority peculiarly susceptible to disadvantaging by the predominant majority in society and with a record of having been disadvantaged. Race and alienage are primary examples of suspect classifications and women and illegitimates have

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[89] *Atchison, T. & S.F.R. v. Matthews*, 174 U.S. 96, 106 (1899).
[90] *Constitution Annotated*, op. cit., p. 1470-1477. See P. Brest, *Processes of Constitutional Decisionmaking* (1975), ch. 5.
[91] *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). *See City of New Orleans v. Dukes*, 427 U.S. 297 (1976).

been accorded only slightly less favored judicial status.[92] If minors could be so denominated, if age classifications were suspect, government would be required to draw age lines more finely, to evaluate with care and diligence the determination of minority status and to refrain from broad and general classifications affecting all minors. But it does not appear that age may be so denominated. In a case dealing with the mandatory retirement of police officers at age 50, the Court held that the aged or older persons did not qualify as a "discrete and insular" group and indicated rather strongly that age classifications were not suspect.[93]

While there are significant differences, of course, between minors and persons at the other end of the age scale, it does not seem likely that, given the context of judicial cognizance of the incapacity of minors, children will be held to constitute either a suspect class or a group entitled to intermediate scrutiny.[94] Applying equal protection standards vigorously, either through strict scrutiny or an intermediate one, would lead toward a "child-blind" society that would not only cause the removal of some undoubted injustices but would also deny the undoubted distinctiveness of children.

The irrebutable presumption doctrine of due process analysis sprang to life almost entirely during the early 1970's and was sharply reined in within a quite short time. Briefly stated, the doctrine requires that when the legislature confers a benefit or imposes a detriment depending for its application upon the establishment of certain characteristics, the legislature may not conclusively presume the existence of those characteristics upon a given set of facts to disqualify someone from the benefit or to subject someone to the detriment, unless it can be shown that the defined characteristics do in fact encompass all persons and only those persons that it was the purpose of the legislature to reach. The operation of the principle can be simply illustrated.

Thus, while a State may require that nonresidents must pay higher tuition charges at State colleges than residents pay, and while it can be assumed that a durational residency requirement would be permissible as a prerequisite to a new resident to qualify for the lower tuition, it was impermissible for the State to presume conclusively that because the legal address of a student was outside the State at the time of application or at some point during the preceding year he was a nonresident as long as he remained a student; due process requires that the student be afforded the opportunity to show that he is or has become a *bona fide* resident entitled to the lower tuition.[95]

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[92] E.g., *McLaughlin* v. *Florida*, 379 U.S. 184, 192, 194 (1964)(race); *Graham* v. *Richardson*, 403 U.S. 365 371–372 (1971) (aliens); *Craig* v. *Boren*, 429 U.S. 190 (1976) (gender); *Trimble* v. *Gordon*, 430 U.S. 762 (1977) (illegitimates). The quoted phrase in the text is from *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152 n. 4 (1938). In *San Antonio School Dist.* v. *Rodriguez*, 411 U.S. 1, 28 (1973), the Court said that a suspect class is one "saddled with such disabilities or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." While superficially the description may fit minors, the recognized limitation of capacity of minors makes it unwise so to place them.

[93] *Massachusetts Bd. of Retirement* v. *Murgia*, 427 U.S. 307, 312–314 (1976).

[94] The result in *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), necessarily must stand for the proposition that age classifications affecting minors are not suspect. It is of course true that some such age classifications have been struck down but only in the context of differential age settings for males and females. *Craig* v. *Boren*, 429 U.S. 190 (1976); *Stanton* v. *Stanton*, 421 U.S. 7 (1975). But see L. Tribe, op. cit., n. 4, 1077–1082; Tribe, "Childhood, Suspect Classifications, and Conclusive Presumptions: Three Linked Riddles," 39 L. & Contemp. Prob. 8 (1975).

[95] *Vlandis* v. *Kline*, 412 U.S. 441 (1973). See also *Dept. of Agriculture* v. *Murry*, 413 U.S. 508 (1973) (denying food stamps to any household containing a member over 18 who had been claimed the previous year as a tax dependent by one not eligible for food stamps); *Cleveland Bd. of Educ.* v. *LaFleur*, 414 U.S. 632 (1974) (requiring pregnant teachers to take maternity leave on presumption of incapacity to work). Forerunner of the doctrine was *Carrington* v. *Rash*, 380 U.S. 89 (1965).

As applied to minors, the doctrine would insist that if age distinctions are premised on the assumption of incapacity of minors, then some minors of a certain age will not be so lacking in capacity as others and government is required to give each person so affected the opportunity to rebut the presumption of incapacity.[96] To presume that this 17 year old is unfit to vote, to work, to choose his own school because most persons of like age have certain characteristics is to class by statistical stereotype.

Two responses can be made to such an argument. First, the Court has sharply curtailed the doctrine, warning that extension of it to all governmental classifications would "turn the doctrine of those cases into a virtual engine of destruction for countless legislative judgments which have heretofore been thought wholly consistent with the Fifth and Fourteenth Amendments", and limiting its application to those areas which involve fundamental rights or suspect classifications that would in equal protection analysis give rise to strict and perhaps intermediate scrutiny.[97] It may thus be that the equal protection analysis suggested above and the analysis of such cases as the abortion parental consent and the access to contraceptives decisions will be susceptible to some form of irrebutable presumption analysis.

Second, it cannot be overlooked what as a practical matter would be the burden of ascertaining in what would undoubtedly be millions of instances who has the characteristics generally associated with a particular age and who does not. Further, to tailor all determinations to the individual case would be to encourage the danger of arbitrary choices, that depart from the goal of treating similar cases similarly, and choices that could well conceal substantively impermissible grounds of decision. And to an uncertain degree the privacy of many would necessarily have to give way to the requisite degree government would have to be informed to decide individually.[98] Little doubt exists that extension of the doctrine very far could make substantial inroads on the rule of law itself.[99]

Hundreds of years ago in England, before Parliament came to be thought of as a body having general law-making power, controversies were determined on an individualized basis without benefit of any general law. Most students of government consider the shift from this sort of determination, made on an *ad hoc* basis by the king's representative, to a relatively uniform body of rules enacted by a body exercising legislative authority to have been a significant step forward in the achievement of a civilized political society. It seems to me a little late in the day for this Court to weigh in against such an established consensus.

Conclusion

We have seen that the Supreme Court has been groping toward some doctrinal enunciation for the treatment of children's rights cases. For the most part, however, the decisions are still best analyzed in terms of the underlying right claimed than as a separate children's issue, and it may well be that this is the most we can hope for. Childhood is a separate and unique status and the place of children in this society perhaps does not admit of an overall synthesizing theory. But if the Court does continue in cases involving substantial claims, most especially those of speech and the guarantees of procedural regularity,

[96] Tribe, *op. cit.*, n. 94; L. Tribe, *op. cit.*, n. 4, 1077–1082, 1092–1097.
[97] *Weinberger* v. *Salfi*, 422 U.S. 749 (1975). The quoted phrase is *id.*, 772. See also *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 23-24 (1976).
[98] L. Tribe, *op. cit.*, n. 4, 1078, 1097.
[99] *Cleveland Bd. of Educ.* v. *La Fleur*, 414 U.S. 632, 657 658 (1974) (Justice Rehnquist dissenting).

to decide to a great extent by balancing the interests claimed against the governmental assertions of justification in restricting them, a fairly high standard of justice and fairness can be attained even in the absence of a unifying theory.

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APPENDIXES

APPENDIX 1

UN DECLARATION OF THE RIGHTS OF THE CHILD

The right:

To affection, love, and understanding.
To adequate nutrition and medical care.
To free education.
To full opportunity for play and recreation.
To a name and nationality.
To special care, if handicapped.
To be among the first to receive relief in times of disaster.
To learn to be a useful member of society and to develop individual abilities.
To be brought up in a spirit of peace and universal brotherhood.
To enjoy these rights, regardless of race, color, sex, religion, national, or social origin

APPENDIX 2

The following organizations, as of August, 1978, have endorsed the International Year of the Child and have requested to work with the United States National Commission on the International Year of the Child:

Action for Child T.V.
Afro Arts Culture Center, Inc.
AFL-CIO.
African Methodist Episcopalian Church.
Alan Guttmacher Institute.
Alexander Graham Bell Association for the Deaf, Inc.
Alpha Kappa Alpha Sorority.
Altrusa International, Inc.
American Academy of Child Psychiatry.
American Academy of Pediatrics.
American Association for Maternal and Child, Inc.
American Association of University Women.
American Baptist Women.
American Bar Association.
American College of Nurse-Midwives.
American College of Obstetricians and Gynecologists.
American Council of Voluntary Agencies for Foreign Service, Inc.
American Freedom from Hunger Fund.
American Friends Service Committee.
American Heart Association.
American Humane Association.
American Leprosy Missions, Inc.
American Lung Association.
American Lutheran Church.
American Medical Association.
American Montessori Society.
American Nurses Association.
American Optometric Association.
American Orthopsychiatric Association, Inc.
American Parents Committee, Inc.
American Personnel and Guidance Association.
American Psychological Association.
American Public Welfare Association.
American School Counselor Association.
American School Health Association.
American Theater Association.

American Vocational Association, Inc.
Archdiocese of the Syrian Orthodox Church in the U.S. and Canada.
Association for Childhood Education International.
Association for Children with Learning Disabilities.
Association of Junior Leagues, Inc.
Association of State and Territorial Maternal and Child Health and Crippled Children's Directors.
Baptist World Alliance.
Big Brothers and Big Sisters of America.
Birthright, Inc.
Boys Clubs of America.
Bread for the World.
Campfire Girls, Inc.
CARE.
Carnegie Council on Children.
Catholic Relief Services.
Center for Peace and Conflict Studies.
"Check-Up" for Emotional Health.
Child Welfare League of America, Inc.
Children's Book Council.
Children's Bureau-National Center for Child Advocacy.
Children's Defense Fund.
Children's Foundation.
Children's Theatre.
Christian Children's Fund.
Christian Church (Disciples of Christ).
Christian Life Commission of the Southern Baptist Convention.
Church Women United.
Church World Service.
Coalition for Children and Youth.
Commission on Christian Literature for Women and Children in Mission Fields.
Concerns of Children (division-Odyssey Institute).
Council for American Private Education.
Council of Chief State School Officers.
Council for Exceptional Children.
Council on Religion and International Affairs.
CROP.
Day Care and Child Development Council of America.
Department of Health, Education, and Welfare—United States Office of Education.
Diocese of the Armenian Church of America.
Education Commission of the States.
English Speaking Union.
EVAN-G (End Violence Against the Next Generation).
Family Service Association.
Farm and Garden Association.
Federally Employed Women.
Foster Parent's Plan.
Friends United Meeting.
Future Homemakers of America.
General Federation of Women's Clubs.
Girl Scouts of the U.S.A.
Green Circle Program, Inc.
Grolier Educational Corporation.
Hadassah.
Harry S. Truman Children Neurological Center.
Helen Keller International Incorporated.
Holt International Children's Society.
International Association of Chiefs of Police.
International Committee Against Mental Illness.
International Cultural Centers for Youth.
International Federation of Anti-Leprosy Associations.
International Human Assistance Corporation.
International Reading Association.
International School Psychology Committee.
International Society for Education through Art.
Institute for Family Development.

La Leche League.
Leadership Conference of National Jewish Women's Organizations.
Leadership Conference of Women Religious.
League of Women Voters of the United States.
Lutheran Church in America.
Lutheran Church Women.
Maternity Center Association.
Muscular Dystrophy Association, Inc.
Music Educators National Conference.
National Association for the Advancement of Colored People.
National Association of Childern's Hospitals and Related Institutions.
National Association for Education of Young Children.
National Association of Elementary School Principals.
National Association of Negro Business and Professional Women's Clubs.
National Association of Secondary School Principals.
National Barristers' Wives, Inc.
National Center for the Study of Corporal Punishment and Alternatives in the Schools.
National Committee for Citizens in Education.
National Committee for Prevention of Child Abuse.
National Conference of Catholic Charities.
National Congress of Parents and Teachers.
National Consortium for Child Mental Health Services.
National Center on Child Abuse and Neglect.
National Council for Children and Television.
National Council of Catholic Women.
National Council of Churches.
National Council on Crime and Delinquency.
National Council of Jewish Women.
National Council of Juvenile Court Judges.
National Council for the Social Studies.
National Council of Women of U.S.
National Council of State Communities, Children and Youth.
National Council Boy Scouts of America.
National Education Association.
National Extension Homemakers Council.
National Federation of Temple Sisterhoods.
National Foundation—March of Dimes.
National 4-H Council.
National Indian Education Association.
National Institute of Child Health and Human Development.
National Organization for Non-Parents.
National Reves Syndrome Foundation.
National Right to Life Commission, Inc.
National Safety Council.
National Safety Town Center.
National School Boards Association.
National Science Teachers Association.
National Society for Prevention of Blindness.
National Society of the Volunteers of America.
National Spiritual Assembly of the Bahais of the U.S.
National Women's Political Caucus.
New Future Foundation.
North American Baptist Alliance.
North American Branch of International Movement for Fraternal Universe Among Races and Peoples.
Odyssey Institution.
Overseas Development Council.
Overseas Education Fund of League of Women Voters.
Parents Anonymous.
Parent Cooperative Preschools International.
Parents Without Partners.
Pearl S. Buck Foundation.
Philadelphia Yearly Meeting of Friends.
Planned Parenthood Federation of America, Inc.
Planetary Citizens.
Play School Association.
PWB Moravian Church.

Reformed Church in America.
Rehabilitation International.
Reorganized Church of Jesus Christ of Latter Day Saints.
Saint Jude Children's Research Hospital.
Salvation Army.
Save the Children.
Social and Educational Association for Seafarers.
Society for the Propagation of the Faith.
Society for Public Health Education.
Society for Research and Child Development.
Soroptimist International of the Americas.
The Farm.
The Girls' Clubs of America.
The Holy Childhood Association.
The Women's National Farm and Garden Association.
United Church Board for Homeland Ministries.
United Church of Christ.
UNA/USA.
United Methodist Church: Women's Division, Board of Church and Society, Board of Discipleship, Board of Global Ministries, Services in Children's Ministries.
United Presbyterian Church.
United Presbyterian Women.
U.S. Coalition for Life.
U.S. Commission for UNESCO.
U.S. Commission for OMEP (World Organization for Early Childhood Education).
United Way of America.
Women's Equity Action League.
Women for Racial and Economic Equality.
Women's International League for Peace and Freedom.
Women's League for Conservative Judaism.
Women's National Book Association.
Women for Racial and Economic Equality.
Women United for the UN.
World Education.
World Federation of Public Health Associations.
World Union of Progressive Judaism-North American Board.
YMCA—National Council of the Young Men's Christian Association of the United States of America.
Young Mothers Council of Services.
YWCA—National Board of the Young Women's Christian Association of the United States of America.

APPENDIX 3

[Administration of Jimmy Carter, 1978]

NATIONAL COMMISSION ON THE INTERNATIONAL YEAR OF THE CHILD, 1979

(Executive Order 12053. April 14, 1978)

By virtue of the authority vested in me by the Constitution of the United States of America, in accordance with the Federal Advisory Committee Act (5 U.S.C. App. I) and the United Nations General Assembly resolution of December 21, 1976 which designated the year 1979 as the International Year of the Child, and as President of the United States of America, in order to provide for the observance of the International Year of the Child within the United States, it is hereby ordered as follows:

SECTION 1. *Establishment of Commission.* (a) There is hereby established the National Commission on the International Year of the Child, 1979, hereafter referred to as the Commission.

(b) The Commission shall be composed of not more than 25 persons appointed by the President from among citizens in private life. The President shall designate the Chairman and two Vice Chairmen.

(c) The President of the Senate and the Speaker of the House of Representatives are invited to designate two Members of each House to serve on the Commission.

SEC. 2. *Functions of the Commission.* (a) The Commission shall plan for and promote the national observance in the United States of the year 1979 as the International Year of the Child. The Commission shall coordinate its efforts with local, State, national, and international organizations, including the United Nations Children's Fund (UNICEF).

(b) In promoting this observance, the Commission shall foster within the United States a better understanding of the special needs of children. In particular, the Commission shall give special attention to the health, education, social environment, physical and emotional development, and legal rights and needs of children that are unique to them as children.

(c) The Commission shall keep informed of activities by organizations and groups in the United States and abroad in observance of the Year. The Commission shall consult with, and stimulate activities and programs through, community, civic, State, regional, national Federal and international organizations.

(d) The Commission may conduct studies, inquiries, hearings and meetings as it deems necessary. It may assemble and disseminate information, issue reports and other publications. It may also coordinate, sponsor, or oversee projects, studies, events and other activities that it deems necessary or desirable for the observance of 1979 as the International Year of the Child.

(e) The Commission shall make recommendations to the President on national policies for improving the well-being of children; shall issue periodic reports on discrete areas of the rights and needs of children; and shall submit, no later than November 30, 1978, an interim report to the President on its work and tentative recommendations.

SEC. 3. *Resources, Assistance, and Cooperation.* (a) The Commission may establish subcommittees. Private citizens who are not members of the Commission may be included as members of subcommittees.

(b) The Commission may request any Executive agency to furnish such information, advice, services, and funds as may be useful for the fulfillment of the Commission's functions under this order. Each such agency is authorized, to the extent permitted by law and within the limits of available funds, to furnish such information, advice, services, and funds to the Commission upon request of the Chairman of the Commission.

(c) The Commission is authorized to appoint and fix the compensation of a staff and such other persons as may be necessary to enable it to carry out its functions. The Commission may obtain services in accordance with the provisions of Section 3109 of Title 5 of the United States Code, to the extent funds are available therefore.

(d) Each member of the Commission and its subcommittees may receive, to the extent permitted by law, compensation for each day he or she is engaged officially in meetings of the Commission or its subcommittees at a rate not to exceed the daily rate now or hereafter prescribed by law for GS-15 of the General Schedule; and, may also receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703) for persons in the government service employed intermittently.

SEC. 4. *Coordination.* (a) The heads of Executive agencies shall designate an agency representative for purposes of coordinating agency support for the national observance of the International Year of the Child, 1979. The Co-Chairmen, designated by the Secretaries of State and Health, Education, and Welfare, of the Interagency Committee for the International Year of the Child should act as advisers to, and coordinate activities with, the Chairman of the Commission.

(b) The General Services Administration shall provide administrators services, facilities, and support to the Commission on a reimbursable basis.

(c) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Administrator of General Services as provided by Executive Order No. 12024 of December 1, 1977.

SEC. 5. *Final Report and Termination.* The Commission shall conclude its work and submit a final report to the President, including its recommendations for improving the well-being of children, at least 30 days prior to its termination. The Commission shall terminate on April 1, 1979.

JIMMY CARTER.

The White House, April 14, 1978.

[Filed with the Office of the Federal Register, 12:07 p.m., April 14, 1978]

APPENDIX 4

[Administration of Jimmy Carter, 1978]

NATIONAL COMMISSION ON THE INTERNATIONAL YEAR OF THE CHILD, 1979

(Appointment of 23 Members, June 28, 1978)

The President today announced 23 persons whom he will appoint as members of the National Commission on the International Year of the Child, 1979. They are:

Marjorie C. Benton, of Evanston, Ill., active in civic affairs and currently serving as U.S. Alternate Representative to the 32nd Session of the United Nations General Assembly;

Unita Blackwell, mayor of Mayersville, Miss.;

Eddie Lee Brandon, of Aurora, Colo., chairman of the board of directors of Child Opportunity Programs;

Jose A. Cardenas, of San Antonio, Tex., executive director of the Intercultural Development Research Association;

Bill Cosby, the comedian and actor, active in children's causes;

Marian Wright Edelman, founder of the Washington Research Project, which became the Children's Defense Fund in 1973;

Rev. Austin Ford, director of a downtown community center, Emmaus House, in Atlanta;

Mrs. Orville L. (Jane) Freeman, a member of the national board of directors of the Girl Scouts of America;

Frederick C. Green, professor of child health and development at George Washington University School of Medicine and associate director of Children's Hospital National Medical Center;

Robert L. Green, dean of the College of Urban Development at Michigan State University;

Carroll M. Hutton, of Highland, Mich., director of the United Auto Workers Education Department;

Bok-Lim C. Kim, of Champaign, Ill. associate professor of social work at the University of Illinois;

Gordon J. Klopf, of New York City, provost and dean of the faculties at Bank Street College of Education;

Sherill Koski, of Iron, Minn., national youth chairman for the March of Dimes and member of the Task Force for Maternal and Infant Health Care for Minorities and the Poor;

Rev. Eileen W. Linder, of Alpine, N.J., staff associate for youth concerns in the National Council of Churches' Division of Church and Society;

Steven A. Minter, of Shaker Heights, Ohio, program officer for the Cleveland Foundation, handling grants in health and social services;

Judith D. Moyers, of Garden City, N.Y., a member of the board of trustees of the State University of New York and a founding director of Educational Products Information Exchange Institute;

Marie M. Oser, of Houston, Tex., founder and executive director of Texas Child Care '76, Inc.;

Lola Redford, of Provo, Utah, president of the board of directors of Consumer Action Now;

Winona E. Sample, of Santa Clara, Calif., chief of the Indian health section for the California Department of Health;

Nancy Spears, of Auburn, Ala., a former kindergarten teacher and active in educational and community development activities in Auburn;

Marlo Thomas, the actress, also honorary chairwoman of the Children's Television Project of the Educational Foundation of American Women in Radio and Television;

Carol H. Tice, of Ann Arbor, Mich., project director of Teaching-Learning Communities for the Elementary and Secondary Education Association.

International Year of the Child, 1979

(Remarks on U.S. Participation in the Program, June 28, 1978)

The President. This afternoon, as far as the United States of America is concerned, we're beginning to emphasize and hopefully even to dramatize our own commitment to making the International Year of the Child a success.

In December of 1976, the United Nations passed a resolution setting aside a special period for a worldwide assessment of the problems, the needs, the opportunities of children. There are 1½ billion children in the world. And although our own country has been blessed with, I'd say, at least adequate material needs to make our lives certainly more pleasant and more prosperous than most, even in the United States we have serious problems among our children.

We had, last year, a million children whose rights were abused, who suffered physical abuse from their parents. And I don't think there's an adequate understanding yet in our societal structure of this devastating demonstration of carelessness or cruelty, quite often perpetrated against a young person who has very little voice to express pain or suffering or displeasure.

In our rich country, we have 10 million children who have never had any medical care at all, and about half the children in this country have never seen a dentist.

I believe that most Americans are unaware of these few statistics. And I would hope that next year, as the world focuses its attention upon children, that all of us could become much more knowledgeable about the need, much more willing to assume responsibility for correcting and meeting those needs, and that we might in a positive way assess the unique opportunity to broaden the horizon of growth and enjoyment and the productivity of our children's lives, both now and in the future.

I've asked Jean Young, Mrs. Andrew Young, to be the chairman of the American committee for the International Year of the Child. She's in a special place, associated intimately with the families of representatives of almost every nation on Earth. She's a mother herself. Her husband and she have been involved in the correction of a very serious deprivation of rights because of racial discrimination. And I think she has both the knowledge, the influence, the prestige, the courage, and the commitment to lead our own effort here in the United States well and effectively.

I'll be working closely with this group and hope to add the prestige and the influence of the Presidency itself to making this a successful effort.

We will be eager to help others, children in nations not quite so blessed with the material benefits of life in this next year. This effort will encompass almost every aspect of humanitarian service. Working through UNICEF and other United Nations agencies, through the leaders of other nations, I think we can enhance the opportunity for better clothing, housing, food, medical care, education, and the protection against suffering on the part of children in all nations.

So, I'm very eager to be a part of it. It's a sobering prospect to know that perhaps once in a lifetime we have an opportunity to focus attention on such a neglected group in the world's population.

And I for one, along with Jean Young, the Commission members, and I hope you and all the people in our Nation, will help the United States to set an example of a country whose actions can be equal to the bigness of our hearts and whose minds will be attuned to the analysis of problems and the resolution or solution of them.

I want to thank all of you for coming here this afternoon to begin preparations to make 1979 a successful period in the study and enhancement of the lives of children everywhere.

Thank you very much.

Mrs. Young. *Mr. President, distinguished guests and visitors:*

We are gathered here representing many facets of America. Our common bond is our love and concern for children. During International Year of the Child, we want to affirm children. The needs that you have so vividly portrayed are diverse and intense within the world arena. Within our own Nation, the needs are complex and difficult. But if we affirm children, we are on the road to effecting change.

Children are resilient, tenacious, and adaptable. Many survive in the most deplorable conditions. They are also vulnerable, defenseless, and powerless. With a little help from us, they can develop into the beautiful, loving, confident, contributing human beings they were meant to be.

Mr. President, the commitment and sensitivity that you have expressed can help this to happen along, of course, with the cooperation of all the concerned organizations, the governmental agencies, and the dedicated private citizens throughout this Nation.

Certainly, if we mustered the mighty forces of this great Nation to protect the tiny snail darter, certainly our court systems can protect our most valuable natural resource, our children. As the entire world is focusing on children, we call on all the voices of concern in every community throughout this Nation to examine itself, determine the needs of its children, and seek remedies through all resources available—whether private, corporate, or governmental.

As we affirm children, enjoy them, listen to voices of concern, seek solutions, we must not forget the most important voice in all, the voice of our children themselves. Regina and Scott, please come forward and share with us a couple of the thousands of letters expressing the concerns of the children of this country.

Mr. President, would you come forward?

Scott Higell. "Dear Sir, I am just saying one thing, I wish that all the children in the whole world would have a good parent and a nice home and have peace. Sincerely yours, Chucky D. Perry."

Regina Higgins. "Dear Sir, our class is talking a lot about the world and peace. We want to know how to get it. Your friend, Roxanna Floris."

Mrs. Young. Thank you very much.

The President. I want all of you to go to work, too. We can't do it just for the Commission. So, we're all in the same boat. We're all partners in a very worthy concern—*[inaudible]*—for our country and for a better life throughout the world.

Senator Sparkman just came in. I wanted to recognize him. Senator, would you stand up? Virginia—thank you very much—and Congresswoman Virginia Smith. We are very eager and pleased to have the Members of Congress participate thoroughly, because there could not possibly be a more representative group. And their voice can be heard almost immediately over the country collectively, and they can also give us what these children have just given us, a very good feedback from the children around the Nation. We're not just teachers but we are also students.

Both these letters, I notice, express the children's hope for peace, which is obviously the prime hope of all of us.

Thank you very much.

NOTE. The President spoke at 1:35 p.m. in the Rose Garden at the White House.

The Weekly Compilation of Presidential Documents, Volume 14, Number 26.

APPENDIX 5

[LEAA Newsletter, May 1978]

UNITED NATIONS TOLD 'PROTECT CHILD'S RIGHTS'

The United Nations General Assembly has proclaimed 1979 the International Year of the Child (IYC) and called upon its member states to renew their commitment to improving the status of children.

John M. Rector, Administrator of LEAA's Office of Juvenile Justice and Delinquency Prevention (OJJDP), has been appointed by Attorney General Griffin B. Bell to serve as the official Department of Justice IYC representative.

Noting his strong support for the objectives of the IYC, the Attorney General directed that the Justice Department's observance lead to significant improvements in the rights and status of young people.

In his capacity as IYC representative, Mr. Rector will sponsor and coordinate all Department activities which support the IYC.

LANDMARK COMMITMENT

The year 1979 will mark the 20th anniversary of the United Nations Declaration of the Rights of the Child, a landmark international commitment to the protection and improvement of the rights of all children. One important purpose of the IYC is to reaffirm the intent of that Declaration.

"The IYC is to be a year of action rather than discussion" Mr. Rector said. He noted that there will be no large scale international conference as has been the case with other specially designated years.

"Instead," he said, "the main objective of the IYC is to increase significantly the number and quality of services available for young people."

All participating countries have been asked to review their policies and programs affecting children and adopt specific measures to benefit children.

FOCUS ON NEEDS

"The focus of activities is the child as an individual with special needs and rights," said Mr. Rector. "While the important role of the family is recognized, the child is not to be regarded as merely an appendage or extension of the family unit," he emphasized.

Mr. Rector is a member of the IYC Interagency Committee and its executive steering committee. The Interagency Committee is composed of top level representatives of 16 Federal departments and agencies and is responsible for developing and supporting IYC activities within the Federal government.

The Department's observance of the IYC will focus on four issues: children in custody; children and youths as victims of violence; sexual exploitation of children and youth; and, the effects of advertising and electronic media programming on violence and drug use among children and youth.

RESPONSIBILITY TO PROTECT

In addition to these four specific issues, the Department of Justice, and OJJDP in particular, have special interests and responsibilities in the broader issues of protecting and improving children's rights.

OJJDP will be providing the funds necessary to enable the State Department to conduct an international survey and analysis of children's rights, with special attention to the rights of children in questions of custody and institutionalization.

The litigation program of the Justice Department's Civil Rights Division now includes 23 cases designed to vindicate the rights of persons institutionalized for the purpose of care and treatment.

Two cases have focused on the rights of juveniles not to be incarcerated in jails. In 1979, OJJDP will sponsor a judicial implementation program to insure that orders of the court relating to children in custody are carried out.

OTHER ACTIVITIES PLANNED

OJJDP will work in cooperation with the Civil Rights Division in this and other areas related to children's rights. Other Justice Department agencies have underway or are planning additional IYC-related activities.

For example, the Drug Enforcement Administration (DEA) sponsors school drug abuse prevention policy development conferences for local and State officials that encourage schools to cooperate with criminal justice agencies and the community.

DEA also published drug abuse prevention materials, including a coloring book for very young children that has been translated by other countries for use abroad.

INMATES HELP CHILDREN

The Bureau of Prisons has joined with Children's Television Workshop to co-sponsor the Seasame Street Prison Project in which prison inmates work as volunteers helping educate and entertain children visiting inmates.

A documentary film, "Seasame Street Goes to Prison," was produced and is available to State and local governments interested in developing similar programs.

Throughout the International Year of the Child OJJDP will be the IYC information clearinghouse for the Justice Department.

INTERNATIONAL YEAR OF THE CHILD 1979

FOUR ISSUES

Children in Custody

In passing the Juvenile Justice and Delinquency Prevention Act and its recent amendments, Congress established as a top priority the ending of wholesale and inequitable institutionalization of juveniles.

Specifically, the Act requires that juveniles be separated from adult offenders in correctional facilities and that certain categories of non-offenders (dependent and neglected children and status offenders) be removed from detention and correctional institutions altogether.

The Act reflects the judgement of most professionals in the juvenile delinquency field, as well as concerned citizens, that far too many juveniles are locked up.

Although some youthful offenders must be removed from their homes, detention and incarceration should be reserved for those who commit serious, usually violent crime, not those who are classified as non-offenders.

A Children in Custody Task Group was established within OJJDP and soon will be announcing a three-pronged attack on the problem. Plans are to provide:

Supplemental funds to states participating in the Formula Grant program for projects geared to deinstitutionalize non-offenders.

Special assistance to state juvenile justice and delinquency advisory groups to help them monitor the deinstitutionalization and separation mandates of the Act.

Identification and "showcasing" of the efforts of a small number of states that have successfully deinstitutionalized non-offenders.

Also, OJJDP is sponsoring 11 special action projects which in a period of 20 months have diverted about 18,000 status offenders out of the traditional juvenile justice system.

The office has recently announced a $30 million restitution program for adjudicated delinquents designed to develop sentencing alternatives in the juvenile court. There will be 30–40 separate projects funded under this initiative.

Children and Youth as Victims of Violence

Adolescents are the most frequent victims of violence.

Victimization studies sponsored by LEAA have shown that youth aged 12 to 19 years are consistently victimized at a rate higher than the general population.

A study sponsored by OJJDP on the problem of gang violence estimated that in six major cities alone, gang membership numbered some 81,500. The study indicates that approximately 72 percent of the victims are young people aged 10 to 21.

In some cities gang members commit one-third of all violent crime attributed to juveniles.

And violence has spilled over into the nation's schools where students of all ages are the victims of exploitation, intimidation and assault.

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