

COMMENTS

FOSTERING MOTHERHOOD: REMEDYING VIOLATIONS OF MINOR PARENTS' RIGHT TO FAMILY INTEGRITY

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INTRODUCTION

Ariella¹ came to this country at a young age and experienced domestic violence throughout her life—“rape resulting in her [young] motherhood, forced marriage to her rapist, sexual abuse by [her] family members, [severe] beatings, and burnings.”² After being left for dead, she escaped her abusive husband, only to be placed in foster care because she was a minor with no other family in the country.³

Once in the foster care system, Ariella did not receive adequate physical or mental health treatment.⁴ She was denied appropriate foster placement and placed in a home without a separate bed for her child.⁵ Ariella’s foster mother would withhold welfare funding designated for Ariella and her son, and then demand that Ariella pay the foster mother for babysitting the child while Ariella worked.⁶ Ariella found work at a bar to support herself and her son since the foster care agency did not provide monetary support but expected her to pay for the baby’s basic necessities like food and diapers.⁷ Working in a bar was both illegal and inappropriate for a minor; it required

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1 “Ariella” is a pseudonym, and this story is taken from a case study in Rebecca Bonagura, Comment, *Redefining the Baseline: Reasonable Efforts, Family Preservation, and Parenting Foster Children in New York*, 18 COLUM. J. GENDER & L. 175, 183 & n.34 (2008).

2 *Id.* at 184.

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

Ariella to leave her foster home in the middle of the night and left her exhausted all day.⁸

As evidence of Ariella's need for therapy, services, and a supportive home environment, Ariella made a "suicide attempt"—small cuts on her wrists that required a cold compress and band aids.⁹ The state used this opportunity to remove her son, and the foster care agency filed a neglect petition against her.¹⁰ In proving she was an unfit mother, the agency used the foster mother's complaints about Ariella's work place, her work attire, and her late hours against her.¹¹ The job Ariella was forced to have to provide for her son was used by the agency to prove her inability to parent. As a result of being a young mother in foster care and largely due to the inadequacies of the foster care system, Ariella was not provided court-ordered services like child care and parenting classes or the resources to take care of herself or her son, resulting in her child's removal.¹²

Teenage parents, as both minors and parents, are strangely situated when it comes to the fundamental right to family integrity. Minors have full parental autonomy over their children but are constrained as minors from signing leases, applying for public benefits, and even opening checking accounts. Interfering with the rights of young mothers to make parenting decisions is prohibited, but restrictions associated with foster care placements often infringe on this right and impair parenting wards' freedom to control the care of their children.

Parenting wards¹³ face infringements on their right to family integrity that raise two types of constitutional issues: due process and equal protection claims. The due process problems take on multiple forms. Since family integrity is a fundamental right, the state has to have a compelling interest—such as protection of the child—to interfere with family life.¹⁴ When a foster care placement restricts the childrearing decisions of young mothers in foster care, it is an unjust infringement on their right to family integrity. Also, when the state meddles in the young mother's life and separates the parent and child without threats to the safety or well-being of the child, the mother's due process rights are violated.

Equal protection claims arise because parenting wards meet differential treatment as a group from all other mothers when it comes to the threshold for removal of their children and the standards used in court proceedings.

8 *Id.*

9 *Id.* at 185.

10 *Id.*

11 *Id.*

12 *Id.*

13 "Parenting wards" is the term commonly used to refer to minor parents in foster care.

14 ERWIN CHERMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 792 (3d ed. 2006).

Due to the disadvantage of their age and the nature of foster care placements, parenting wards have a greater risk of facing allegations of abuse and neglect against their children.¹⁵ Dependency proceedings often hold young mothers accountable for harm to their babies that is not their fault and rebellious behaviors that do not create any risk of harm to their children,¹⁶ while similar behaviors are not held against other mothers.

Part I of this Comment provides background information on pregnant and parenting teens. Part II evaluates the rights of minor parents to family integrity and the intergenerational implications of their rights. That Part explains that although minor parents are given parental rights in name, being a parent does not cure their minority. Due to their age, young parents have limited access to resources they need to parent their children, such as housing, appropriate medical care, employment, and welfare benefits.¹⁷ However, minors' full access to parental autonomy limits the adult parents'¹⁸ authority to control their minor parenting child. The inability to interfere with the minor's parenting decisions ultimately restricts the adult parents' rights to family integrity and removes any obligation on them to provide additional help to the young mother.

Part III of this Comment lays out the constitutional right to family integrity and the standards the state is required to meet for interfering with that right. The Part begins by outlining the historical application of the fundamental right to family integrity given to adult parents. Then, this Comment examines the traditional framework and justification for curtailing the rights of adolescents. Minors' right to bodily integrity in the abortion context is used as an example to demonstrate the standard interplay between the rights of parents and the rights of minors. Extending the traditional analysis, this Comment argues that adolescents' right to family integrity is anomalous and could be curtailed according to the justifications used in the abortion context. The Part concludes with an explanation of the "conditional curtailment" test that can be used as a tool to protect minors' interests if their rights are curtailed, by imposing obligations on the adult parents to act in the minor's best interest, provide support and resources, and play a critical role in her development.

Part IV explains the structure of the foster care system and dependency court proceedings, specifically for young mothers. This Part provides

¹⁵ AMY DWORSKY & JAN DECOURSEY, PREGNANT AND PARENTING FOSTER YOUTH: THEIR NEEDS, THEIR EXPERIENCES 34 (2009).

¹⁶ Rebecca Horwitz et al., *Protection v. Presentment: When Youths in Foster Care Become Respondents in Child Welfare Proceedings*, 2012 J. POVERTY L. & POL'Y 421, 426.

¹⁷ These are de jure restrictions that vary from state to state.

¹⁸ Throughout the Comment, the parents of young mothers will be referred to as "natural parents," "adult parents," and "natural adult parents."

background information on the different types of child welfare court proceedings and the different types of foster care placements for young mothers. This Part also outlines the changes that occur after a ward has a baby and what protections are in place for the young mother and her child.

Part V explores the duties of foster care agencies to young mothers in their care. Because the state stands in the place of the natural adult parent due to no fault of the young mother, foster agencies should not be allowed to infringe on the minor's parenting decisions. However, child welfare agencies have two specific obligations to children in their care: to prepare minors for life after foster care and to protect children in care from foreseeable harm.

Part VI explores the due process and equal protection violations that face young mothers in foster care. Due process problems first arise when foster care placements restrict the parenting decisions of young mothers. The second type of due process claims arise from the unwarranted separation of parenting wards from their babies. This Comment demonstrates that parenting wards may first face separation from their babies after birth due to placement shortages. Then, they encounter a high risk of removal of their children caused by problematic placements. In addition, the nature of the placements dispose parenting wards to greater scrutiny, penalties for typical teenage behaviors that do not endanger their children, and coercion by social workers to place their children in care.

The Part then explores the possible equal protection problems that arise. This Comment argues that the nature of foster care placements means that the actions of parenting wards have different ramifications than the same actions taken by other mothers, so the threshold for government interference is lower for young mothers in care. Once parenting wards are subject to dependency and termination proceedings, equal protection problems arise because they face adult standards without access to adult rights. As a result, they are held to standards of "fitness" that are almost impossible to meet, effectually establishing a higher standard in court proceedings for teen mothers than for adult parents.

In Part VII, this Comment advocates for a restructuring of adolescents' parental rights by proposing a trade-off between young mothers and their caregivers supported by the "conditional curtailment" test: adult parents and child welfare agencies can infringe on immature young mothers' parenting decisions, but then there is an obligation to provide additional resources and support to the young mothers. If the minor mother is mature enough that her rights should not be curtailed, she should be granted adult access to all other rights. Even if the minor mother meets the maturity prong, she should be able to waive the full protection of her rights in exchange for the provision of enhanced services. In Part VII, this Comment also examines possible legislative remedies and effective court rules that can alleviate some of the problems.

The Conclusion reiterates that the baby's interests are furthered by improving the young mother's interests. The young mother's interests are improved through restructuring the framework of minors' parental rights and eliminating the constitutional violations that young mothers in foster care face.

I. BACKGROUND INFORMATION

Teenage pregnancy has become a common part of our culture. The prevalence of teenage girls¹⁹ becoming pregnant and carrying their babies to term has even led to widespread depiction in the media. From movies like *Juno* to television shows like *Sixteen and Pregnant* and news stories about pregnancy compacts, pregnant teens are portrayed in the media as a fixture of current society. Teenage mothers are no longer sent away to have their babies, place them for adoption, and then reintegrate into daily life.²⁰ Instead, high schools have day cares,²¹ and maternity clothes come in teen fashions. The majority of teenagers are sexually active before they reach age 19,²² which results in "almost 1 million teenage women . . . becom[ing] pregnant per year,"²³ about half of whom give birth.²⁴ Most young women who give birth elect to keep their children.²⁵ Teen pregnancy is here to stay,

19 Though minor fathers are undoubtedly a part of teenage pregnancy and parenting, teen couples "are rarely married and the father's involvement is generally minimal," so discussions about minor parenting become discussions about "minor mothering." Emily Buss, *The Parental Rights of Minors*, 48 BUFF. L. REV. 785, 788 (2000) (internal footnotes omitted). The concepts and legal analyses presented will usually apply to fathers, but where the analyses differ, the focus will be on the young mother. See Eve Stotland & Cynthia Godsoe, *The Legal Status of Pregnant and Parenting Youth in Foster Care*, 17 U. FLA. J.L. & PUB. POL'Y 1, 8 n.20 (2006), for a discussion on how the rights of biological mothers and biological fathers differ in the eyes of the law.

20 This was never the widespread reality for young mothers of color. See generally RICKIE SOLINGER, BEGGARS AND CHOOSERS: HOW THE POLITICS OF CHOICE SHAPES ADOPTION, ABORTION, AND WELFARE IN THE UNITED STATES (2001).

21 See Nancy Zuckerbrod, *Schools offering day care centers*, USA TODAY (Aug. 25, 2007, 12:13 PM), available at http://usatoday30.usatoday.com/news/nation/2007-08-25-2005188448_x.htm, for just one account of how high schools around the country are starting daycares on school grounds.

22 ALAN GUTTMACHER INST., FACTS IN BRIEF: FACTS ON AMERICAN TEENS' SEXUAL AND REPRODUCTIVE HEALTH (2013), available at <http://www.guttmacher.org/pubs/FB-ATSRH.html> ("By their 19th birthday, seven in 10 female and male teens have had intercourse.").

23 *Id.*

24 *Id.*

25 Anjani Chandra et. al., *Adoption, Adoption Seeking, and Relinquishment for Adoption in the United States*, CTRS. FOR DISEASE CONTROL & PREVENTION NAT'L CTR. FOR HEALTH STATISTICS, 306 ADVANCE DATA FROM VITAL & HEALTH STATISTICS, at 9 (1999), available at <http://www.cdc.gov/nchs/data/ad/ad306.pdf>.

so the question becomes—how do these young mothers fit into our established legal and constitutional framework?

The rate of pregnant and parenting teens in foster care is almost twice the rate of teens not in care.²⁶ “Little data is available on the number and demographics of pregnant and parenting wards,”²⁷ so anecdotal evidence is necessary to identify and address their needs. The federal government collects and publishes data on children in the foster care system, but it does not include data on this “crucial subclass.”²⁸ “[T]he vast majority of girls and young women who enter foster care pregnant or become pregnant, while in foster care, are survivors of child sexual, physical and emotional abuse or persistent neglect.”²⁹ When abuse and neglect proceedings are initiated *against* these young parents in the foster care system, it means that they are defending themselves against the same type of charges that resulted in their own placement.³⁰ Due to their childhood experiences of abuse and neglect, many parenting wards do not have the knowledge or resources to break the cycle of abuse, so they need help learning effective parenting practices.³¹ This cycle of abuse and neglect results in a higher likelihood for parents who have been in foster care to have their child removed than minor parents without a history of state involvement.³²

II. RIGHTS OF MINOR PARENTS AND INTERGENERATIONAL IMPLICATIONS

Troxel v. Granville and its progeny have been interpreted to give minors the full rights to family integrity afforded to adult parents, not inhibited by their own adult parents’ interest in family autonomy.³³ However, a minor parent’s status as a parent does not grant her access to other rights limited by her age just because she has a child. This results in a gap in rights where minor parents are allowed to make important legal decisions on behalf of their children without the ability to make the same types of decisions for themselves. There is little guidance on how to navigate this legal

26 MARK E. COURTNEY & AMY DWORSKY, CHAPLIN HALL CTR. FOR CHILDREN, MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 19, at 11 (2005), *available at* http://www.chapinhall.org/sites/default/files/ChapinHallDocument_3.pdf.

27 Stotland & Godsoe, *supra* note 19, at 5.

28 *Id.*

29 NAT’L CRITTENTON FOUND., PROCEEDINGS: YOUNG MOTHERS IN FOSTER CARE CONVENING 1 (2011) [hereinafter CRITTENTON FOUND.].

30 Stotland & Godsoe, *supra* note 19, at 3.

31 CRITTENTON FOUND., *supra* note 29, at 1.

32 DWORSKY & DECOURSEY, *supra* note 15, at 26.

33 *Troxel v. Granville*, 530 U.S. 57, 72 (2000) (affirming strength of parent’s right to family integrity regardless of individual situation).

conundrum. Because no state has enacted laws to limit the rights of minor parents, the Supreme Court has not ruled on this issue.³⁴

In this Part, this Comment will discuss the full scope of rights afforded to minor parents, the impact of minor parents' rights to family integrity on their adult parents, and considerations for the baby.³⁵

A. *The Scope of Minor Parents' Rights*

There is a double standard and a duality of roles where minor parents are adults for the purposes of pregnancy and parenting but children for all other purposes. Minor parents have the same rights to control the care and custody of their children as adult parents.³⁶ This means that young parents have full legal custody of their children³⁷ and the ability to make decisions on their behalf in every arena of life: to consent to medical care, to apply for benefits, to make choices about education, and to make all other decisions that fall under the umbrella of family integrity. However, a minor parent still faces legal incapacity due to her age; pregnancy and parenting do not cure a minor's incapacity.³⁸ Becoming a parent does not emancipate minors, and even if it did, emancipation relinquishes an adult parent's duties to her child, but does not afford a minor the full rights of majority.³⁹ After giving birth, a minor parent still does not have the ability to make basic decisions that affect her quality of life and future success, such as entering into legally binding contracts (like a lease), consenting to medical procedures, and enrolling in school.⁴⁰ This strange juxtaposition of rights and limitations results in situations that seem paradoxical. For instance, without a law providing otherwise (medical emancipation), a minor parent can consent to an appendectomy for her child, but not for herself.⁴¹ The young mother would need her parent's permission for her own appendectomy. Some states allow a minor parent to apply for public assistance, like cash benefits or Medicaid; the state may protect her right to privacy in the application but then insist on sending the check to her

³⁴ Buss, *supra* note 19, at 787 n.6.

³⁵ For ease and clarity of discussion, this Comment will refer to the minor parent's child as "the baby."

³⁶ *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (affirming the right to control care as a fundamental right).

³⁷ *See* Buss, *supra* note 19, at 787 ("[N]o state has enacted laws to effect any limitations on parental rights when exercised by minors.")

³⁸ *See* Stotland & Godsoe, *supra* note 19, at 14–15 (noting that marriage cures incapacity, but a minor can only get married with parental or judicial approval, leaving "the key to the minor's emancipation . . . in the hands of adult authorities").

³⁹ *Id.* at 2.

⁴⁰ *Id.* at 2–3.

⁴¹ *Id.* at 3.

parents.⁴² She is considered responsible enough to seek assistance but not to spend the money wisely.⁴³

The minor is allowed to make the decision to have and keep her child without interference from the state or any consideration of her parents' interest in her decision. Nowhere is a pregnant teenager required to consult with her parents or obtain parental consent before having or keeping her baby.⁴⁴ Nowhere are minors' legal rights regarding the upbringing of their children limited, "even if they give birth at the age of eleven."⁴⁵ In many states, minors are not required to obtain parental consent before they terminate their own parental rights or give their baby up for adoption.⁴⁶ Minors are allowed to make these important decisions with the same impaired judgment, immaturity, and lack of foresight that prohibits them from unilaterally obtaining an abortion, consenting to medical procedures, or getting a tattoo.

Paradoxically, the freedom to be a parent also means that young mothers are expected to fulfill adult parental responsibilities without the benefits and freedoms of being an adult.⁴⁷ Young mothers are expected to fully meet the needs of their children and their parental obligations in the same manner as adult parents but with fewer available resources. Housing, employment, access to medical care, and financial benefits are all resources that are necessary to raise a child.⁴⁸ As minors, they do not have the ability to obtain independent housing, they cannot consent to their own medical care, they are not eligible for many vocational programs—or many jobs for that matter—and their receipt of benefits is contingent upon living with an adult.⁴⁹ Young mothers who are prevented from obtaining resources necessary to maintain the welfare of their children are more likely to qualify as "unfit" parents. Even if the young mother is a "god" parent and tries

⁴² *Id.* at 52.

⁴³ See Marie A. Failing, *Ophelia with Child: A Restorative Approach to Legal Decision-Making by Teen Mothers*, 28 LAW & INEQ. 255, 256–57 (2010) (discussing how this contrasting structure of rights is manifested in Minnesota).

⁴⁴ Buss, *supra* note 19, at 792.

⁴⁵ *Id.*

⁴⁶ See *id.* at 807 (discussing the important state interest in having minors seek parental consent prior to abortion); see also Failing, *supra* note 43, at 258–59 (explaining how minors' rights in Minnesota are different from those in other states and illuminating further the interplay of rights in Minnesota: a young mother may keep her child over the opposition of her parents but cannot have an abortion without parental notification or court order, cannot terminate her own parental rights without her parents' approval, and cannot give her child up for adoption without parental consent).

⁴⁷ Bonagura, *supra* note 1, at 177.

⁴⁸ These resources are considered "necessary resources" throughout the Comment.

⁴⁹ See also Buss, *supra* note 19, at 805 (explaining the Supreme Court's reasoning for disallowing these rights).

hard to provide for her child, she may not be able to meet the needs of her baby due to the limitations of her age.

B. The Impact of These Rights on Adult Parents

Adult parents have no voice in a minor's decision to have and keep her baby.⁵⁰ Once she decides to keep the baby, the adult parents have no say in how she parents the child and no direct authority over their child's child.⁵¹ Nowhere are they given any special standing or shared authority over their grandchild.⁵² Adult parents have no right to the custody and control of their adolescent child in these decisions, but they are still responsible to the minor parent in every other way. Affording minor parents the full scope of parental rights interferes with their own parents' ability to fulfill parental responsibilities.⁵³

Parents have the right to control the upbringing of their children, and this right includes an *obligation* to serve an important function to guide children in decisions that may greatly impact their lives.⁵⁴ In the context of teenage pregnancy and parenting, the state has removed the parental obligation to guide the decisions of children. By both restricting the adult parent's interference with the minor parent's decisions and affording the minor parent full access to the protections of family integrity, adult parents are both absolved of certain responsibilities and limited in their own realization of family integrity. In the other constructions of parent-child rights, it is the adult parent's rights that curtail and limit the full exercise of the child's rights; here, there is an opposite effect. The right of the teenage parent to mother her child becomes more important than her parents' rights to control her upbringing, curtailing her parents' rights to family integrity.

C. Considerations for the Minor's Child

The baby has the right to the protections of general welfare and well-being that all children should be entitled to. While it may be instinctual to assume babies would be better off with a non-parent adult than with a minor

50 *Id.* at 792.

51 *Id.* at 808.

52 *Id.* at 792.

53 *Id.* at 806–07. *See also* Failinger, *supra* note 43, at 276–77, 282–83 (discussing different ways rights of teen mothers impact their parents' rights).

54 *See* Meyer v. Nebraska, 262 U.S. 390, 400 (1923) (discussing parental obligations in the context of education). *See also* Bellotti v. Baird, 443 U.S. 622, 637–38 (1979) (discussing parental duty to guide child development).

parent,⁵⁵ this is not necessarily the case. Research shows that outcomes for children are better if they remain in their home with their biological parents.⁵⁶ Removal is traumatic for children, regardless of the situation, and can have long-term negative effects.⁵⁷ Even accounting for the current harm or limitations the child faces in the home, removal often results in a worse outcome and always takes a negative emotional toll on the child.⁵⁸

There may be a real psychological value to the baby remaining in the home and growing up with a sense that she belongs.⁵⁹ In fact, “[t]he young child has at least as strong an interest as the minor parent in the proprietary conception of parental rights”⁶⁰ since the baby may benefit more from remaining with her biological mother than the young mother benefits from raising a child at such a young age.

III. CONSTITUTIONAL ANALYSIS OF RIGHTS

Almost one hundred years ago, *Meyer v. Nebraska* determined that parents have a fundamental right to control the care and custody of their children.⁶¹ This has been widely interpreted to mean that parents have great leeway to guide the upbringing of their children and to make parenting decisions that impact their children’s life trajectory. While this freedom is not absolute since the state can interfere with this right to protect the welfare of the child,⁶² the right to family integrity has become one of the most recognized and highly protected fundamental rights.

In this Part, the Comment will outline the Fourteenth Amendment right to family integrity and explain different ways to analyze adolescent rights. The complexity of adolescent rights will be examined under the traditional

55 See Stotland & Godsoe, *supra* note 19, at 61 (“[I]t is possible that a narrow focus on children’s rights has led advocates to overlook the plight of parenting wards.”).

56 There is a huge school of thought behind this research that promotes preserving the family over removing the child due to the long-term traumatic effects of removal. Florida has recently reformed its foster care system to ameliorate the traumatic effects of removal. See generally JOSEPH GOLDSTEIN ET AL., *THE BEST INTERESTS OF THE CHILD: THE LEAST DETRIMENTAL ALTERNATIVE* (1996), for the leading arguments in this area.

57 *Id.* at 19–20 (stressing the importance of continuity of relationships and the problems associated with discontinuities. A child’s removal from her biological parents to a foster home is a type of “discontinuous” relationship that has negative implications.).

58 *Id.* at 11–12 (This is true particularly in the context where the child is removed from the “psychological parent” with whom they share an emotional bond.).

59 Buss, *supra* note 19, at 825.

60 *Id.* at 826.

61 *Meyer v. Nebraska*, 262 U.S. 390, 400–01 (1923) (holding that parents have a fundamental right to direct upbringing of their children by controlling their education).

62 See generally *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (deciding that the state could interfere with a parent’s control of their child when they force a child into labor).

analysis, in the abortion context, with regards to family integrity, and utilizing the “conditional curtailment” test.

A. *Protection of Family Integrity and Parental Rights*

A parent’s right to raise her children in the manner she sees fit has been protected as a fundamental right for almost a century.⁶³ It has become one of the strongest rights implied from the Due Process Clause of the Fourteenth Amendment, and interference with the right to family integrity requires intermediate scrutiny analysis where the government must show a compelling interest in protecting the welfare of children.⁶⁴ If the government has a compelling interest to infringe on a parent’s right, the means of infringement must be necessary to achieve the compelling goal.⁶⁵

The freedom to regulate the upbringing of one’s children allows parents to make decisions affecting almost every area of their children’s lives with great latitude and few restrictions.⁶⁶ Thus, “[t]he primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”⁶⁷ The most recent delineation of these rights came in *Troxel v. Granville*. In *Troxel*, the grandparents of the Troxel children wished to have increased visitation with their grandchildren, but Tommie Granville, the children’s biological mother, would not allow the liberal visitation they desired.⁶⁸ The Washington Superior Court granted the Troxels visitation with the children over Granville’s express objection.⁶⁹ The Supreme Court held that decisions such as who the children could visit with and when fell within the protected category of family integrity and that the judgment was an unconstitutional infringement on Tommie Granville’s

⁶³ *Meyer*, 262 U.S. at 402 (contrasting the Spartan child-rearing system of removing boys from their parents at age seven with the American system and noting that “[a]lthough such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest.”).

⁶⁴ *Troxel v. Granville*, 530 U.S. 57, 68–69 (2000) (shaping the standard for governmental interference with the right to family integrity).

⁶⁵ The typical four-prong analysis asks (1) Is there a fundamental right? (2) Is the constitutional right infringed? (3) Is there sufficient justification for the government’s infringement of the right? (4) Is the means sufficiently related to the purpose? CHEMERINSKY, *supra* note 14, at 794–97.

⁶⁶ See *Wisconsin v. Yoder*, 406 U.S. 205, 234 (1972) (allowing parents to educate their children outside of state-approved schools); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925) (holding that parents may choose to enroll their children in nonpublic education); *Meyer*, 262 U.S. at 400–02 (allowing parents to enroll their children in foreign language instruction).

⁶⁷ *Stotland & Godsoe*, *supra* note 19, at 8 n.25 (citing *Yoder*, 406 U.S. at 232).

⁶⁸ *Troxel*, 530 U.S. at 61.

⁶⁹ *Id.* at 62.

fundamental right to make decisions concerning the care, custody, and control of her two daughters.⁷⁰ In addition, the plurality ruled that the biological mother's decision should receive deference in accordance with the assumption that parents act in the best interests of their children.⁷¹ Courts generally assume that parents make decisions with their children's welfare in mind and that parents are better situated than other individuals to make decisions that will positively impact their children's growth and development.⁷²

The *Troxel* Court found that the intermediate scrutiny test should be applied to balance a parent's right to raise her child with the state's role as *parens patriae* in protecting the welfare of children without requiring a narrow tailoring of the means like strict scrutiny.⁷³ The plurality in *Troxel* held that

so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.⁷⁴

Though the *Troxel* Court was split in its decision, every Justice affirmed the "long-standing jurisprudence" that the Due Process Clause of the Fourteenth Amendment precludes undue interference in raising, nurturing, and educating children.⁷⁵

Though the Court has been liberal in its provision of autonomy to parents, the right of family integrity is not absolute or without review. The state may interfere with and abrogate that right where necessary to protect children from harm.⁷⁶ If a parent's decisions or inaction pose a serious threat to the welfare of the child, a higher degree of governmental intrusion is warranted.⁷⁷

Because a "natural parent's desire for and right to the companionship, care, custody, and management of his or her children is an interest far more

⁷⁰ *Id.* at 72.

⁷¹ *Id.* at 68.

⁷² Buss, *supra* note 19, at 805 (interpreting *Parham v. J.R.*, 442 U.S. 584, 602 (1979)).

⁷³ *Troxel*, 530 U.S. at 67–73. Note that Justice Thomas, concurring in the judgment, advocated for a strict scrutiny analysis of laws infringing on the fundamental rights of parents. *Id.* at 80 (Thomas, J., concurring). Though the Supreme Court has ruled that the constitutional standard for infringement on family integrity is intermediate scrutiny, that is the minimal standard allowed, and many states require heightened scrutiny for infringement. Stotland & Godsoe, *supra* note 19, at 20.

⁷⁴ *Troxel*, 530 U.S. at 68–69.

⁷⁵ Stotland & Godsoe, *supra* note 19, at 9 (citing *Troxel*, 530 U.S. at 95 (Kennedy, J., dissenting)).

⁷⁶ See *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944) (holding that the state can encroach on First Amendment religious liberties of children further than those of adults).

⁷⁷ *Santosky v. Kramer*, 455 U.S. 745, 767 (1982).

precious than any property right,”⁷⁸ parents have a right to a hearing on parental fitness and cannot be denied custody based solely on a presumption or stereotype.⁷⁹ The state is allowed to completely sever the highly protected right of family integrity only if it finds the custodial parent unfit by a clear and convincing standard of evidence.⁸⁰ The state has a high bar to meet to justify intrusion into the sacred realm of family life. Unless a parent’s actions are egregious or pose considerable harm to the child, the state affords her autonomy and exclusive control over decisions dictating the child’s upbringing.

B. Adolescents’ Rights

To better understand minors’ rights as parents and how these rights compare to other adolescent rights, Section B will explore the traditional analysis of adolescent rights, minors’ rights to abortion, the uniqueness of minors’ rights to family integrity, and the “conditional curtailment” test that arises in this context.

1. Traditional Analysis

It is widely known and easily recognized that minors are not afforded the same rights as adults. Age limitations impact even some of the most routine activities: driving a car, getting into “R”-rated movies, purchasing alcohol, and voting. The complete realization of rights does not come until an individual achieves the age of majority. Young people do have rights of their own, including due process rights, but even these are limited.⁸¹ The curtailment of these rights is usually justified by children’s minority.⁸² Age-based distinctions are only justified if they serve important state interests and the state interest is linked to children’s special development status.⁸³ The

⁷⁸ *Id.* at 758–59 (internal quotation marks omitted).

⁷⁹ *Stanley v. Illinois*, 405 U.S. 645, 657–58 (1972) (finding that a biological father could not be presumed an unfit parent simply because he was a man).

⁸⁰ *Santosky*, 455 U.S. at 769–70.

⁸¹ See *In re Gault*, 387 U.S. 1, 30 (1967) (granting minors the right to due process and the right to an attorney in criminal proceedings); Sarah Katz, *When the Child Is a Parent: Effective Advocacy for Teen Parents in the Child Welfare System*, 79 TEMP. L. REV. 535, 542 (2006) (elaborating further to explain that “[r]ather than carving out affirmative rights for children, the United States Supreme Court has carved out a series of protections”).

⁸² *Carey v. Population Servs. Int’l*, 431 U.S. 678 (1977) (justifying restrictions on contraceptive access to minors and reaffirming that minors are not entitled to the same rights as adults).

⁸³ *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74–75 (1976) (holding that the “state has somewhat broader authority to regulate the activities of children than of adults” where the state has a “significant state interest” that is “not present in the case of an adult”).

Court has continually held that the constitutional rights of minors can be curtailed due to three governmental interests: to protect minors from vulnerability, to help minors make critical and mature decisions, and to defer to the parents' important role in guiding the minors' upbringing.⁸⁴

The Court often cites minors' impaired decision-making capacity when curtailing their rights,⁸⁵ but the Court cannot limit minors' rights solely because it has concerns about their capacity to make decisions. The long-term implications of a minor's decisions also come into consideration; restrictions on rights are accepted when a minor's decision could have a severe, long-term impact on her or someone else. Because the Court is concerned with the ability of minors to make informed, mature, and reasoned decisions, the state acts in a paternalistic capacity by limiting minors' freedom of choice when "bad" decisions could have negative ramifications long into the future. Emily Buss clarifies the state's interest in preventing minors' exercise of these rights:

[T]he state has a particularly strong interest in preventing minors from exercising decision making authority over the very issues for which adults are afforded the greatest constitutional protection. We protect the right of an adult to make autonomous decisions about the matters that will most affect the course of his life, but it is precisely those decisions that we fear entrusting to children.⁸⁶

In addition, parents' fundamental right to control the custody and care of their children comes with an obligation to provide for and protect the rights of their children. Without the strong interest in development and the guiding role of parents, the justification for restricting minors' rights and the framework of restrictions would fall apart. Without an obligation on parents to fill the gaps between restricted adolescent rights and the full realization of rights, curtailments would end up being deprivations instead of simply restrictions.

It is these three major concerns—minors' vulnerability to pressure, inability to make critical decisions, and need for guidance in the decision-making process—that lead courts to decide that minors may only make decisions that have short-term implications.

84 This three-pronged justification was first articulated in *Bellotti v. Baird*, 443 U.S. 622 (1979).

85 See Buss, *supra* note 19, at 799–805 (discussing differences in cognitive development between adolescents and adults and how the Court has used the assumption of impaired decision making to justify the curtailment of rights based on age).

86 *Id.* at 802.

2. *Minors' Rights in the Abortion Context*

Abortion is one of many contexts where minors' rights are curtailed. While the Court has held that all females have a right to abortion and bodily integrity regardless of age,⁸⁷ a minor's full realization of that right cannot be obtained solely through her independent decision. Adolescent girls' rights are restricted due to their minority status because (1) the decision has a long-term impact, (2) the adult parents' right to family integrity entitles them to guide the upbringing of their daughters and thus the decision whether or not to have an abortion, and (3) the parents are expected and obligated to act in their daughters' best interest due to the limitation of rights.⁸⁸ Since adolescent rights to abortion fit neatly into the standard framework of adolescent rights and the traditional application of the right to family integrity, it is a valuable springboard for evaluating and comparing minors' parental rights.

The right of minors to obtain abortions is an area where a fundamental liberty interest of a minor is mitigated by a fundamental liberty interest of her parent. The competing right of the parent to family integrity and the state's interest in making sure parents are notified of the abortion weigh against her right.⁸⁹ In the abortion context, the compelling interest of the state is closely connected to parental rights to family integrity. Since the parents have a constitutional right to raise their children as they see fit, the state has an interest in making sure parents are aware of their daughter's decision to have an abortion.⁹⁰

The Court is also concerned about the impaired decision-making ability of the young mother and the serious, long-term implications of her decision.⁹¹ The Court compromises minors' rights to bodily integrity due to the weight of the decision and the need for parental involvement in this type of decision. The substantial justification results in curtailment of the young girl's rights. Along with the curtailment comes an obligation on the parents to provide for the child (inherent in the right to family integrity).⁹²

This is a strong example of the traditional construction of adolescents' rights. The curtailment is based on the impaired decision-making capacity of the minor, the respect for an adult parent's interest in family integrity, and the prominent role parents are expected to play in their children's life-

87 *Roe v. Wade*, 410 U.S. 113 (1973) (providing for the fundamental right to bodily integrity for women).

88 *Bellotti v. Baird*, 443 U.S. 622, 634–37 (1979).

89 *Id.* at 637.

90 *Id.*

91 *Id.* at 635–36.

92 *Id.* at 634–37.

shaping decisions. The parent's right to raise her children does not trump the minor's fundamental right, but only curtails it.⁹³

3. *Family Integrity in the Adolescent Rights Framework*

Under the three justifications typically used to curtail adolescents' rights, infringement on the right to family integrity is justified. Under the first justification, a minor's decision to have a child of her own falls into the category of far-ranging consequences that the Court typically does not leave to minors.⁹⁴ Arguably even more than the decision not to have a child would impact the rest of her life, the decision to have a child has long-reaching implications for both a young mother and her baby. Under the second thread of reasoning, the minor's adult parents have an interest in controlling the upbringing of their child, including whether or not the child becomes a parent. Indeed, the adult parents are allowed to exercise some control over the minor's decision to have (or not to have) a child. Under the final justification for curtailment, the role of the adult parents once their child has a baby is at least as important as before the birth, and their role is no less important than during their daughter's decision whether to have an abortion. Indeed, the adult parents' role and obligation in guiding the child's transition to adulthood and parenthood seem as important, if not more important, than their role in the abortion decision. Due to these justifications, under the traditional application of adolescent rights, a minor's right to family integrity would be curtailed, but her parents would be expected to fill any gaps that might result.

4. *"Conditional Curtailment" Test*

The traditional analysis courts engage in to justify restricting adolescent rights while protecting minors through obligations on the parents can be distilled into a "conditional curtailment" test: (1) *if* minors are not mature enough to make decisions that will impact the rest of their lives, (2) *then* parents have an obligation to act in the best interest of their children and play a critical role in filling any gaps the curtailment might leave. The

⁹³ Since teen girls have the right to abortion, there must be a judicial bypass procedure to circumvent parental consent or notification if necessary. See *Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502 (1990); *Bellotti*, 443 U.S. at 649–50. See also *H.L. v. Matheson*, 450 U.S. 398 (1981) (clarifying that as long as parents do not have veto power over the abortion decision, mandatory parental notification for minors is acceptable).

⁹⁴ Buss opines that this differing allocation of rights and the ability to decide to bear a child may be because parenting goes to the question of personhood, though it seems that abortion and the right to bodily integrity would also speak to personhood. Buss, *supra* note 19, at 823.

justification is strengthened if the parents' right to family integrity cannot be fulfilled without curbing the minor's rights. This analysis holds true for other contexts involving minors' rights such as commitment to a mental institution and enrolling in school. In contrast, a minor's rights as a parent are not curbed according to the "conditional curtailment test"; even if the first prong is fulfilled, curtailment and the resulting obligations on the parents do not follow. This test is helpful in understanding what concurrent obligations would have to be imposed to protect young mothers if their rights to family integrity were curtailed under the traditional justifications.

IV. FOSTER CARE AND THE DEPENDENCY SYSTEM FOR YOUNG MOTHERS

With a foundational understanding of the rights of young mothers and how rights to parental integrity are situated among other adolescent and fundamental rights, it is important to understand how the foster care system impacts minor parents' enjoyment of these rights. In order to fully explore the challenges presented to parenting wards, this section will explain the two major systems at play: dependency courts and foster care agencies.

A child alleged to be abused or neglected goes through court proceedings to enter foster care. Once the child is under the court's supervision, the court holds regular hearings to review the case.⁹⁵ While the child is in foster care, the child welfare agency may provide a place for the child to live and provides services to address any needs of the family.⁹⁶ Ideally, these two systems work together to support the best interests of the foster child and protect her from unnecessary harm. Though the exact nature of the proceedings, the process for removal, and the detailed functioning of the child welfare agency vary from state to state, the same basic format is used nationally.⁹⁷

In this Part, this Comment will outline the standards and general processes of dependency courts. Then, this Comment will explain foster care placements and what happens when a ward of the state has a baby.

A. *Dependency Court Proceedings*

Families become involved in the child welfare system after an individual or a "mandated reporter" places a report of suspected child abuse or

⁹⁵ *How the Child Welfare System Works*, CHILD WELFARE INFO GATEWAY 7 (May 2012), available at <https://www.childwelfare.gov/pubs/factsheets/cpswork.pdf> (these hearings are typically referred to as "permanency hearings").

⁹⁶ *Id.*

⁹⁷ *Id.* (laying the framework for nationally required guidelines and notes where procedures vary according to state).

neglect.⁹⁸ Child welfare agencies investigate the allegations, but the expediency of these investigations depends on the nature of the allegations.⁹⁹ If the agency has genuine concerns about the welfare of the child and evidence to support its concerns, the agency can file a dependency petition with the court.¹⁰⁰ Some children are removed from their homes during the investigation due to concerns that the children are being harmed or because there is a threat of immediate harm.¹⁰¹ If the child is not removed because the risk is not immediate, the court will hold an adjudication hearing after proper notice is given to the parents.¹⁰²

The state must have a compelling interest to interfere with a parent's right to family autonomy under *parens patriae* to protect the welfare of children.¹⁰³ Since this is an interference with a fundamental right, there are processes in place to protect parents' rights.¹⁰⁴ Even though a fundamental right is at stake, parents are not guaranteed representation¹⁰⁵ in the two types of dependency proceedings—adjudication and termination.¹⁰⁶

At an adjudication hearing, a child can be adjudicated "dependent" based on a finding of abuse or neglect.¹⁰⁷ This is a full, adversarial proceeding that follows the rules of evidence. Each state has grounds for finding a child "dependent," such as abandonment, physical abuse, and failure to provide basic life necessities.¹⁰⁸ Most importantly, adjudication

98 *How the Child Welfare System Works*, CHILD WELFARE INFO. GATEWAY, at 2–3 (May 2012), available at <https://www.childwelfare.gov/pubs/factsheets/cpswork.pdf>. A "mandated reporter" is someone such as a teacher or doctor who is required by law to report suspected instances of abuse or neglect when they encounter it in their profession.

99 *Id.* at 3–4.

100 *Id.* at 4–5.

101 *Id.* at 4.

102 Kathleen G. Noonan et al., *Legal Accountability in the Service-Based Welfare State: Lessons from Child Welfare Reform*, 34 LAW & SOC. INQUIRY 523, 540 (2009).

103 *Troxel v. Granville*, 530 U.S. 57, 88 (2000) (Stevens, J., dissenting).

104 *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 28–30 (1981).

105 After *Lassiter*, parents are not guaranteed representation under federal law, but many states have enacted laws to guarantee counsel to parents during these proceedings under the belief that protecting family interests is just as important as the protection of bodily freedom that guarantees adults the right to counsel in criminal proceedings. *Id.* at 32–34.

106 Noonan et al., *supra* note 102.

107 See *How the Child Welfare System Works*, *supra* note 95 (stating that if the judge finds at the adjudication hearing that maltreatment occurred, the child comes under jurisdiction of the court, which makes the child a "dependent" child in most states).

108 See *Definitions of Child Abuse and Neglect*, CHILD WELFARE INFO. GATEWAY, available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/define.pdf (Feb. 2011) [hereinafter *Definitions*] (presenting civil definitions that determine grounds for intervention by state child protective agencies); see also *Grounds for Involuntary Termination of Parental Rights*, CHILD WELFARE INFO. GATEWAY, available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/groundtermin.pdf (Feb. 2010) [hereinafter *Grounds*] (discussing process by which state ends parent-child relationship).

hearings do not use a best interest standard where the judge has discretion to decide what would be best for the child.¹⁰⁹ There must be some clear level of harm or risk of harm to the child at the hands of the parents that warrants the state's interference.¹¹⁰

If a child is adjudicated dependent, the child welfare agency assumes supervision of the child and sets goals for the parents to help remedy the problems found in the home.¹¹¹ The disposition phase of the adjudication hearing determines where a dependent child will live. Adjudicating a child dependent does not mean she is automatically removed from the home; in fact, many children remain with their parents under state supervision with services in place.¹¹² However, many courts remove the dependent children to place them in foster homes or with relatives.¹¹³

Once a child is considered dependent, the parents have less than two years to meet the goals set by the child welfare agency to restore their rights before a petition to terminate their rights is filed.¹¹⁴ These goals often include completion of drug and alcohol treatment, maintaining stable housing, and securing gainful employment.¹¹⁵ If the child is under the child welfare agency's supervision for fifteen out of twenty-two months, the agency must file to terminate the parent's rights unless the parent meets one of the exceptions set by federal law.¹¹⁶ Parents have a right under *Stanley v. Illinois* to a hearing on parental fitness before their rights can be terminated.¹¹⁷ At a termination hearing, the state has to show by clear and convincing evidence that the parent is unfit.¹¹⁸ Each state has its own grounds for termination. Many grounds include failure to address the root problems that brought the child into care and failure to maintain a relationship with the child.¹¹⁹ The grounds are often proven by the parent not meeting state-mandated goals.¹²⁰ If the state proves the grounds, the parent's rights to family integrity with regard to this particular child or children are permanently terminated.

109 The Adoption and Safe Families Act, 45 C.F.R. § 1356.21(b) (requiring "reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured." The "reasonable efforts" provision and other aspects of ASFA emphasize the safety of the child and make safety the standard for dependency court proceedings, not best interests.).

110 *See id.*

111 *See How the Child Welfare System Works, supra* note 95, at 5 (laying the framework for nationally required guidelines and notes where procedures vary according to state).

112 *Id.*

113 *Id.*

114 *Id.*

115 *Id.*

116 45 C.F.R. § 1356.21(c) (2002).

117 *Stanley v. Illinois*, 405 U.S. 645, 649 (1972).

118 *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982).

119 *See Definitions, supra* note 108, and *Grounds, supra* note 108.

120 *See Grounds, supra* note 108.

Termination of parental rights is, of course, the ultimate infringement. “The Court has repeatedly characterized state interference with parental rights in dependency proceedings as compromising a liberty interest so important as to guarantee heightened due process.”¹²¹ Though adjudication is not as severe or permanent as termination, all dependency proceedings interfere with a parent’s right to control the custody of her child and young mothers’ rights must be protected in these processes.

B. Foster Care Placement

If a dependent child is placed into foster care, there are varying types of placements she could enter depending on her needs that get progressively more restrictive in nature. Foster homes and kinship care (living with a relative or family friend) allow her to live in a traditional family setting. Congregate care facilities include group homes, which are residences with up to twelve children and a few foster care providers, and residential treatment facilities that are more institutionalized and comparable to boarding schools. The highest level of care is for children with severe emotional or behavioral problems similar to a mental health hospital.¹²² The child welfare agency must try to place the child in the least restrictive setting possible, or in the setting that is the most home-like.¹²³ This means that a young child with no behavioral or mental health problems should be placed in a foster home instead of a residential treatment facility, while a child who continues to run away from placement should be placed in a residential treatment facility. As the child’s problems or needs increase, she may need a more restrictive placement.

If a young girl becomes pregnant while in care, it is likely that her foster home or group home is not a mother-child placement. In that case, she must be moved to a placement that will allow her and the baby to live together.¹²⁴ During her pregnancy she may be transferred to a maternity group home, which is not a mother-baby placement but is only a temporary placement that offers prenatal care and support. This means that where an expectant mother is placed in anticipation of her baby’s birth is usually not where she will be placed with her baby.¹²⁵ Also, though agencies usually

121 Katz, *supra* note 81, at 540. See also *Santosky*, 455 U.S. at 747–48 (requiring clear and convincing evidence to terminate parental rights).

122 FORDHAM INTERDISCIPLINARY PARENT REPRESENTATION PROJECT, GUIDE TO WORKING WITH YOUNG PARENTS IN OUT OF HOME CARE 9 (2012).

123 *Id.* at 6.

124 CRITTENTON FOUND., *supra* note 29, at 8.

125 See YOUTH ADVOCACY CTR., INC., CARING FOR OUR CHILDREN: IMPROVING THE FOSTER CARE SYSTEM FOR TEEN MOTHERS AND THEIR CHILDREN 11–15 (1995), available at

strive to transfer the expectant mother almost immediately when the pregnancy begins, the transfer often happens several months into the pregnancy with little time to get settled before the young mother has to move again.¹²⁶

C. *When the Ward Has a Baby*

Since young mothers enjoy the protections of family integrity, their babies cannot be removed from their custody and placed into foster care simply because the mother is a minor or in foster care herself. Removing the baby based solely on the mother's age or status as a ward would result in infringement of parental rights based on both a stereotype and status, and *Stanley* requires an underlying basis beyond status or stereotype to justify infringement.¹²⁷ The federal government makes retaining the baby in the custody of the parenting ward a primary goal and provides incentives not to infringe on her rights.¹²⁸ The babies of teenagers in foster care are not automatically under the care of the dependency system¹²⁹ and are not themselves considered wards of the state upon birth. Federal law mandates that "only in situations where the baby is found dependent [through the abuse or neglect of the parent] is it appropriate for the teen parent and child to be separated."¹³⁰

Federal law and regulations regarding Title IV-E funds, the federal funding stream for foster care agencies, provide that when an infant is born to a teen in foster care, not only should the child not be removed without evidence of child maltreatment, but the young mother and the child should reside together.¹³¹ Then, payments made by the state to the foster home or residential facility must include maintenance for the infant's support.¹³² If the state removes the baby, the state may not use federal foster funds to

<http://www.youthadvocacycenter.org/pdf/CaringforOurChildren.pdf> (discussing placement options and procedures for teen mothers in foster care).

¹²⁶ *Id.* at 7 (quoting from the experiences of a task force of teen mothers in foster care).

¹²⁷ See Katz, *supra* note 81, at 536 (relaying the story of W.B. and her child's automatic removal upon birth). See also *Stanley v. Illinois*, 405 U.S. 645, 654–58 (1972) (asserting that there must be an underlying basis beyond status or stereotype to justify infringement of parental rights).

¹²⁸ See Stotland & Godsoe, *supra* note 19, at 10–13 (discussing federal law and policy designed to encourage continued physical custody for mothers in foster care).

¹²⁹ Katz, *supra* note 81, at 550.

¹³⁰ *Id.* at 551. See also Stotland & Godsoe, *supra* note 19, at 12 (explaining that states jeopardize their federal subsidies if they separate mothers in foster care from their children for reasons other than voluntary placement or finding that remaining in a young mother's care is contrary to infant's welfare).

¹³¹ See Stotland & Godsoe, *supra* note 19, at 10–11 (analyzing provisions in 42 U.S.C. § 675(4)(B) (2006); 45 C.F.R. § 1356.21(j) (2011)).

¹³² Stotland & Godsoe, *supra* note 19, at 10.

support the baby unless the separation is sanctioned by a court order through a finding that the baby is dependent.¹³³ Children of teen mothers in foster care are also eligible for other assistance that incentivizes keeping the mother and baby together, such as Medicaid and Title XX Social Services Block Grant funds.¹³⁴

In addition, the Child Welfare Act of 1980 conditions funding for foster care reimbursements on the federal requirement of “reasonable efforts.”¹³⁵ The “reasonable efforts” provision requires that when the state is administering child protective services it must either (1) “prevent or eliminate the need for removal of the child from his home,” or (2) if removed, “make it possible for the child to return home” as soon as possible.¹³⁶ The effort made toward the goal of prevention or reunification needs to be “reasonable.”¹³⁷ This means that if a young mother in foster care faces allegations of abuse or neglect, she is entitled to efforts by the child welfare agency to keep the baby with her in the home prior to removal or reunification services immediately upon removal.¹³⁸

Dependency courts provide legal oversight when foster care agencies intrude on parents’ rights to protect children from harm. Adjudication, disposition, and termination proceedings include protections for parental rights while also maintaining the safety of children. When a young mother is in foster care, her placement situation becomes particularly challenging, but the state cannot remove the baby from her care without a finding of abuse or neglect. Not only does the child welfare agency have to respect a young parenting ward’s right to family integrity, but there are many resources available to support the mother and baby while in placement.

V. THE STRUCTURE OF RIGHTS IN THE FOSTER CARE SYSTEM

The structure of parent-child rights becomes even more complicated when the adult parent is not actually a parent, but the state.¹³⁹ According to the *parens patriae* doctrine, once the state becomes the custodian and guardian of a minor who lacks proper care and custody from her parents, the foster care agency must ensure that decisions are made with the child’s

¹³³ *Id.* at 12.

¹³⁴ See *id.* at 10–12 for a discussion of federal funding streams and their availability to children of minor parents in care.

¹³⁵ Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State’s Burden Under Federal Child Protection Legislation*, 12 B.U. PUB. INT. L.J. 259, 270 (2003).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ When discussing a minor’s rights in the foster care system, “the state” refers to the appropriate county or state foster care agency with jurisdiction over the child.

best interests in mind. The foster care agency stands in the place of the natural parents and should act as an adult parent would.¹⁴⁰

The legal relationship between the foster care agency and the minor parent mirrors the relationship between the natural adult parents and their minor parenting child. The foster care agency has control over the care and custody of the minor parent, but not over the baby. The state may limit the parenting ward's freedom in ways that natural adult parents can, including setting curfews and selecting medical providers for the ward, but it is not supposed to impose on the minor's parenting decisions.¹⁴¹

While there are many parallels between the state's role as *parens patriae* and the adult parents', there are two additional obligations placed on foster care agencies. Foster care agencies are required by law to help older youth in foster care prepare for life after they leave care,¹⁴² and the state has a duty to prevent harm to children in its care.¹⁴³

A. *Preparing the Minor Parent for Life After Foster Care*

Federal law creates an affirmative duty on the state to provide services and a plan to help young mothers live on their own after they transition out of foster care.¹⁴⁴ According to the usual analogy, foster care agencies have the same limits and obligations as natural adult parents, but here, an additional obligation is placed on the state.¹⁴⁵

Many young parents do not have the information, education, or experience necessary to be good parents and depend on the state to provide those resources to them.¹⁴⁶ The child welfare system often sets up teenage mothers for failure by not providing emotional support, information on parenting, and adequate preparation for independent living.¹⁴⁷ Federal law

140 Bonagura, *supra* note 1 at 186–87 (describing New York's approach to minor children in its care and its role as *parens patriae*).

141 *Id.* at 188–89.

142 See 42 U.S.C. § 677 (2006); *Palmer v. Cuomo*, 503 N.Y.S.2d 20, 21–22 (App. Div. 1986) (affirming a successful claim on the part of former foster youth that the state held a duty to provide them services and that failure to teach appropriate independent living skills resulted in harmful outcomes, such as homelessness).

143 See *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195, 199–200 (1989) for a discussion of when the state has a duty to protect a child from reasonably foreseeable harm.

144 45 C.F.R. § 1357.15 (2002).

145 Bonagura argues that, outside federal law, even though the baby may not be in the care of the state, it is an affirmative duty of the state to protect the parenting ward as a child in its care and an implicit duty to protect the baby, so the foster care agency should provide the resources necessary for the mother and child to thrive as a unit. Bonagura, *supra* note 1, at 183.

146 *Id.*

147 Katz, *supra* note 81, at 536–37.

requires foster care agencies to provide Independent Living Services and Independent Living Plans to children in foster care over sixteen years old to help them transition to living on their own once they leave care.¹⁴⁸ When the child receiving Independent Living Services is also a parent, it would be most helpful for her future success if her plan encompassed services that would enable her to care for her child independently.¹⁴⁹ Those types of services could include child care to allow the young mother to pursue an education, drug and alcohol treatment, a job search, or vocational training.¹⁵⁰ In the case of parenting wards, *successfully* living on their own includes independently caring for a child, so they are entitled to services that will result in that success.

B. State's Duty to Prevent Harm and Protect Child Welfare

“Because parenting wards *are* in the care and custody of the state, the state has an affirmative duty to protect them”¹⁵¹ By contrast, when the baby lives with the parenting ward and is not a dependent child themselves, under *DeShaney v. Winnebago County*, the foster care agency does not have a duty to protect the baby.¹⁵² *DeShaney* holds that a foster care agency only has a duty to protect children in its care (children adjudicated dependent) from harm that is reasonably foreseeable.¹⁵³ The babies of parenting wards are not automatically in the state’s care as dependent children, so the state can deny responsibility for preventing any foreseeable harm to the young child.¹⁵⁴ Though it goes against natural sensibilities, the agency has no obligation to protect the baby and there are no legal ramifications for refusal to help the baby.

The state, “as the caretaker of foster children and the enforcer of child welfare laws, . . . has a heightened duty to families of parenting wards before and after removal proceedings begin.”¹⁵⁵ Child welfare agencies should be responsible for situations where harm to the baby was caused by the agency’s own failures, which occurs most often when a parenting ward has an

148 42 U.S.C. § 675(1)(D) (2006).

149 Katz, *supra* note 81, at 551.

150 *Id.*

151 Bonagura, *supra* note 1, at 194 (emphasis in original).

152 See *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 195, 199–200 (1989) (explaining that state’s duty to protect only arises after it has exerted some control).

153 The *DeShaney* Court did not want the Due Process Clause of the Fourteenth Amendment to be construed as holding the state accountable for reasonably foreseeable harm to all children. *Id.* at 199–200.

154 Bonagura, *supra* note 1, at 194.

155 *Id.* at 176.

inappropriate foster care placement.¹⁵⁶ If the source of the maltreatment is outside of the mother's control, there does not seem to be a compelling state interest to interfere with *her* rights. The welfare of the baby may have been compromised, but the source of the harm should be responsible for the harm.

VI. CONSTITUTIONAL CLAIMS

Young mothers in foster care face infringements that provide two types of constitutional claims: due process and equal protection. Due process is implicated because the right to family integrity is a fundamental right, and unjust intrusion into the sphere of parenthood requires due process analysis.¹⁵⁷ Equal protection issues are raised when parenting wards are treated differently than other types of mothers.¹⁵⁸

Though the child welfare agency may not always overtly prohibit a parenting practice or require certain actions by the young mother, the nature of foster care placements puts undue limitations on a parenting ward's decisions. A parenting ward may also face unjustified separation from her child due to removal of the baby without a finding of abuse or neglect, separation of the mother and baby after birth, inappropriate placements, the scrutiny of mandated reporters, and the pressure on young mothers to "voluntarily" place their children into care.

The last section of this Part explores the possible equal protection claims arising from the heightened scrutiny in foster care placements and differential treatment of parenting wards in court proceedings. A young mother in care faces a lower threshold for removal of her children as well as standards of care and fitness that are difficult to meet due to her age and status as a foster child.

A. *Due Process Implications*

The circumstances of foster care result in rigorous scrutiny of parenting wards' behaviors, and this scrutiny often produces allegations against young mothers for child maltreatment. In the United States, roughly half of all

¹⁵⁶ *Id.* at 194–95. Bonagura also presents an interesting argument that the state has a duty to the baby as a third party based on the law of torts. *Id.* at 187 (citing RESTATEMENT (SECOND) OF TORTS § 316 (1965)). Since, under tort law, "a custodial parent has a duty to prevent reasonably foreseeable harm caused to a third party by his or her child," the state has an implied duty to prevent reasonably foreseeable harm by its child, the ward, to a third party, the baby. *Id.* Bonagura posits that this includes a duty to provide an environment in which a parenting foster child can safely and effectively parent, so as not to cause harm to the baby, the third party. Bonagura, *supra* note 1, at 187.

¹⁵⁷ CHEMERINSKY, *supra* note 14, at 792, 794–97.

¹⁵⁸ *Id.* at 668.

teen mothers are investigated for child maltreatment.¹⁵⁹ When young mothers are parenting wards who live with mandatory reporters and confront biases within the system, the numbers are likely higher.

When the state unjustly interferes with a young mother's right to control the care or custody of her baby, she faces due process violations. This Part will examine unjust interferences with both parenting wards' care of their children and the custody of their children.

1. Interference With Parenting Practices

Foster care agencies have a duty not only to protect the parenting wards but "not to impinge on their parental rights."¹⁶⁰ Despite the theoretical protection of family integrity, parenting wards have little flexibility in how to raise their children due to strict rules in the foster care system, such as curfews, leave restrictions, limitations on visitors, and mandatory feeding schedules.¹⁶¹ In practice, the state often utilizes its parental role to dictate matters inherently part of the young mother's fundamental right to parent her child, such as whether she can breast-feed or when she can take the baby to the doctor.¹⁶²

For example, Joelle¹⁶³ had her baby with her while she was in care. One night her baby got very sick, and Joelle wanted to take the baby to the hospital. However, the supervisors in her group home said she would have to wait until the next morning because it was past curfew. The situation required a judgment call that Joelle, as the baby's mother, was entitled to make; she never should have been prohibited from taking actions she believed to be in her child's best interests. In the end, Joelle made the decision to take her child to the hospital, and as a result, she was kicked out of her group home. These types of rules and restrictions limit a minor's ability to parent and are infringements on family integrity. Parenting decisions, regardless of the mother's status as a ward of the state, are protected by her right to family integrity unless she is found to be unfit.

¹⁵⁹ CRITTENTON FOUND., *supra* note 29, at 6.

¹⁶⁰ Bonagura, *supra* note 1, at 194.

¹⁶¹ See YOUTH ADVOCACY CTR., *supra* note 125, for several different accounts from parenting wards that detail specific rules on bottle feeding and limitations on how often babies could see their fathers, in addition to other rules that infringe on the mothers' parenting.

¹⁶² *Id.* at 8, 31–33.

¹⁶³ "Joelle" is a pseudonym. This story came from a conversation with a former foster youth in Philadelphia.

2. *Inappropriate Separation*

When a young mother is separated from her child for any reason except to protect the baby's safety, it is an interference with her right to control the custody of her child. Parenting wards face several types of inappropriate separations: when the baby is placed into foster care simply because the mother is a minor, when the mother is awaiting an appropriate placement for both her and the baby after birth, when the mother is coerced to "voluntarily" place the baby into care, when circumstances of the placement are held against the mother, and when mandated reporters overly scrutinize her behavior.

a. *Unjustified Removal of the Baby*

Over and over again, young girls report that they were unlawfully separated from their children at birth without any allegations of abuse or neglect.¹⁶⁴ Despite provisions and the explicit position of the federal government that the mother and baby should be placed together after birth, many agencies immediately place the babies into foster care after they are born, disregarding the fundamental interest of young mothers to retain custody of their children and sidestepping all of the protections in place.¹⁶⁵ In fact, many states are not even aware that Title IV-E funds can be leveraged to aid the babies of young mothers in their care.¹⁶⁶ For many agencies, the motivation behind placing the babies into foster care is to receive separate funding for the baby. Ironically, these actions are actually grounds for the agency to *stop* receiving federal reimbursements for the baby.

¹⁶⁴ YOUTH ADVOCACY CTR., *supra* note 125, at 8.

¹⁶⁵ See *R.F. v. State Dep't of Human Res.*, 740 So.2d. 1093, 1095 (Ala. Civ. App. 1999) ("[T]his case does not involve neglect or child abuse by the mother. In fact, the record indicates that the mother has expressed only love and concern for her child and that the child was placed in [state] custody solely because the mother herself had been placed in foster care . . ."); *In re Tayquon H.*, 821 A.2d 796, 799 (Conn. App. Ct. 2003) (stating that when an eleven-year-old girl in foster care gave birth, only her age was listed as the reason she could not care for her child); *In re Inez*, 704 N.E.2d 509, 511 (Mass. 1999) (explaining that the state took custody of a child immediately following birth based on a teen mother's history of running away from her foster placements); *In re Brown*, No. 293045, 2010 WL 481025, at *1 (Mich. Ct. App. Feb. 11, 2010) (explaining that the state filed a removal petition because the teen mother was in foster care with too little income to obtain her child's medication); *In re Interest of Hall*, 703 A.2d 717, 718 (Pa. Super. Ct. 1997) ("The apparent reason for the action on the part of [the state] to adjudicate the child dependent was that K.A.H. was born to a minor child who herself was adjudicated dependent.").

¹⁶⁶ See generally Stotland & Godsoe, *supra* note 19, at 5–6 & n.11, for a survey of four states that illustrates the low level of attention afforded to the parenting ward population, regardless of the possible funding implications.

Agencies have concerns about the possible harm young mothers may cause when the baby resides with the young mother in placement, but the agency does not have any supervisory authority. Placing the baby under the supervision of the foster care agency allows the provider to intervene on behalf of the baby when necessary. However, under *DeShaney*, foster care agencies are not legally responsible to children not under their supervision, so any liability concerns are unfounded.¹⁶⁷

b. Separation After Birth

Part of the problem may be that the law only requires joint placement after birth but makes no recommendations on where the pregnant teen should be placed before birth. Pregnant wards spend much of their pregnancy in a temporary placement waiting to find out where they will be placed after the baby arrives and then experience separation from the baby after the birth while the agency searches for an appropriate placement for them both.¹⁶⁸ Since there is a shortage of mother-child placements, including both foster families and group homes,¹⁶⁹ finding an appropriate placement can take several weeks. During the wait, the baby remains in the hospital, separated from her mother, and at considerable cost to the foster care agency, and the mother and baby may have to go to the first-available placement instead of a placement that suits them best.¹⁷⁰

c. Pressure to Voluntarily Place the Baby

One of the most concerning issues young mothers in care encounter is “voluntary” separation as a result of coercive measures used to pressure parenting wards to give up their children.¹⁷¹ Foster parents, social workers, or staff in group homes may exert pressure on parenting wards to place their babies in care or may even use threats of maltreatment allegations to get mothers to comply.¹⁷² In Illinois, social workers were using threats of false reports of abuse and neglect to pressure the parenting ward to cooperate with placement or to punish them for complaining about the quality of

167 *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 191 (1989).

168 Bonagura, *supra* note 1, at 202; Katz, *supra* note 81, at 550.

169 Bonagura, *supra* note 1, at 202.

170 YOUTH ADVOCACY CTR., *supra* note 125, at 23–26.

171 See Bonagura, *supra* note 1, at 181–82, for discussion of a situation in New York where mothers may have to give up their children due to a lack of available services and funding. The relinquishment is considered “voluntary,” but it is not actually a result of the mother’s free will and volition.

172 *Id.* at 182.

placement services.¹⁷³ The problem in Illinois was demonstrated by the numbers; over a five year period, the number of parenting teens in care decreased as the number of children removed increased.¹⁷⁴ Illinois remedied the problem of social workers using coercive measures through remedial legislation.¹⁷⁵ In Florida, the problem of coercion was manifested as a pattern of removing children of teen wards just as the young mother was about to age out of foster care.¹⁷⁶ Accusations of abuse and neglect were often initiated by foster parents who wanted to retain care of the baby.¹⁷⁷

Social workers and foster parents, acting vicariously as the state, who coerce mothers to place their children into foster care are inappropriately meddling with their rights to the companionship and care of their child. If the young mother decided to sign her baby into care “voluntarily,” she likely did not come to that decision on her own and would not have done so without the internal and external pressures of her placement.

d. Placement-Created Problems

Even when the mother and child are finally placed together, there may not be appropriate provisions in the home for a parenting ward and her baby, like an age-appropriate bed, and money is usually not provided for the young mother to secure the necessary food and clothing for her baby.¹⁷⁸ These types of inappropriate living conditions and lack of resources for the parenting ward and her child would be considered abuse or neglect if they happened in the home of the natural adult parents.¹⁷⁹ When they occur in the foster home, the agency does not accept liability; instead, these circumstances are cited against the young mothers as neglect.¹⁸⁰ It is highly problematic for the foster care system to create inappropriate home environments, compromising the welfare of the baby, and then to hold the young mother accountable.

173 See Stotland & Godsoe, *supra* note 19, at 21–23 (noting that threats by foster care staff may be more widespread than previously imagined).

174 *Id.* at 24.

175 *Id.* at 22–23.

176 *Id.* at 25 (evaluating operating procedures of the Florida Department of Children and Families).

177 *Id.*

178 Since few states appropriately utilize Title IV-E funds to provide financial support for the baby, it is the *young mother's* responsibility to buy food, diapers, and clothing. See Bonagura, *supra* note 1, at 183–86 (telling the story of Ariella, who is highlighted in the introduction of this Comment).

179 *Id.* at 188.

180 *Id.*

Parenting wards may also be responsible for the lack of resources provided by the foster care agency,¹⁸¹ or other situations that are beyond the minor's control. Parenting wards should only be held responsible for abuse and neglect of their children that directly results from their actions or situations within their control; to hold them responsible otherwise is a violation of their right to family integrity and an unwarranted intrusion of the state.

e. Mandated Reporters in the Home

Another obstacle unique to parenting wards is that they often live in group homes or facilities with mandated reporters.¹⁸² Mandated reporters are required by law to report actions of the young mother or circumstances that may threaten the welfare of the baby. The culture of the placements can also be highly problematic for parenting wards and threaten their right to family integrity. Young mothers in foster care often live with staff members, caseworkers, and foster parents who are willing to get authorities involved, so they are more likely to be over-scrutinized and less likely to have a chance to learn from their mistakes.¹⁸³

Parenting wards are often reported for actions that could be considered "normal" teenage behavior where their child is not harmed or facing threat of harm.¹⁸⁴ Although missing curfew or AWOLing¹⁸⁵ may be rebellious behaviors that break the rules and require punishment, these behaviors do not rise to the level of abuse, neglect, or even threat of harm.¹⁸⁶ Though leaving the baby for a period of time under any circumstances may be considered a threat of harm to the baby, taking the baby to a doctor of the mother's choosing or attending an appointment when she is not allowed to be off campus can result in initiation of proceedings against the young mother even though she is not leaving the child unattended.¹⁸⁷ If a parenting ward engages in typical teenage behaviors or breaks the rules of her placement while ensuring her child is safe, the state has no grounds to infringe on her rights to the care and custody of her baby.

181 *Id.*

182 Horwitz, *supra* note 16, at 426.

183 *Id.* at 426-27.

184 See the full discussions and stories throughout Horwitz, *supra* note 16. These types of stories are common anecdotes told by former foster youth and child advocate attorneys.

185 "AWOL" is a military term meaning "absent without leave," but it is used in foster care when a child runs away from or leaves placement without authorization. See MARNI FINKELSTEIN ET AL., VERA INST. OF JUSTICE, YOUTH WHO CHRONICALLY AWOL FROM FOSTER CARE: WHY THEY RUN, WHERE THEY GO, AND WHAT CAN BE DONE 1 (2004).

186 Horwitz, *supra* note 16, at 421.

187 *Id.*

There are two types of due process problems parenting wards encounter: limitations on their ability to care for their children and improper interference with maintaining the custody of their children. The varying layers of infringements demonstrate the young mothers' struggle to maintain family autonomy while living in foster care.

B. Equal Protection Claims

Disparate treatment between young mothers who are in care and all other mothers, both adults and teens not in foster care, raises possible equal protection claims. Young mothers in foster care are impacted differently when it comes to both the care and custody of their children. Under an equal protection analysis, two similarly situated groups cannot be treated differently without appropriate justification by the state, especially when a fundamental interest is at stake.¹⁸⁸ There is no appropriate justification for treating teen mothers in foster care differently than other mothers. This Part will explore both the differential treatment of young mothers that arises from the foster care placement and differential treatment in dependency court proceedings.

1. In Foster Care Placement

If the level of scrutiny a young mother in the foster care system faces is not the same as it is *for all other parents*, she has an equal protection claim when the different treatment is not justified. Other mothers, regardless of age, do not face coercion to “voluntarily” place their children into care. Other mothers are not held responsible for inappropriate placements or failures of case workers—circumstances outside of their control that result in violations of their right to family integrity. Parenting wards live with mandated reporters, and they would not face the same level of scrutiny of their everyday lives if they were not in a foster placement, so young mothers end up penalized for being in foster care. The state should simulate the role of natural parents and apply the same level of scrutiny to parenting wards as to other parents so as not to disadvantage teen parents placed in its care.

Parenting wards are also penalized for being teenagers when typical teenage behaviors are held against them.¹⁸⁹ In such situations, it seems clear

¹⁸⁸ CHEMERINSKY, *supra* note 14, at 668, 675.

¹⁸⁹ This unwarranted punishment may be a more widespread problem that falls outside the scope of this Comment. For instance, older foster youth may be heavily penalized for smoking marijuana or skipping school—behaviors, which while not acceptable, are typical amongst teenagers. However, the ramifications for foster youth engaging in these behaviors are more severe than for teenagers outside the dependency system. Foster youth may face the removal of services, a new placement, or an increase in the restrictive

that if the parenting ward were a parent in any other context, her actions would not be held against her in a maltreatment investigation. If an adult parent or a non-ward teenage mother arranged for a babysitter and went out for the evening, it would be considered completely appropriate behavior. If a non-ward parent engaged in typical teenage rule-breaking and broke curfew while ensuring her child was safe, the state would have no grounds to infringe on her rights.

It is not acceptable for a young mother to be held responsible for the failings of the foster care system when other mothers are not subject to the same liabilities. It is also not acceptable for the same actions to have different ramifications for parenting wards than they do for other mothers. The threshold for removal of a parenting ward's baby should not be lowered because she is in foster care.

2. *In Dependency Proceedings*

Young mothers start their journey as parents at a disadvantage because achieving the standard of fitness requires more work and perseverance than is required of adult parents. The minor is held to the same standards as adult parents but not given the same freedoms and ability to parent. This is true with regard to the limited access minors have to necessary resources like housing, employment, and welfare benefits discussed earlier, but it is especially true in the foster care setting when placement rules often severely limit the ability of parenting wards to make decisions regarding the upbringing of their children. These disadvantages make it more likely that the young mothers' rights to family integrity will be infringed upon or severed; parenting wards do not have the same chances of success as adult parents or young parents in natural homes.

When a minor parent faces allegations that she abused or neglected her own child, there are some judges who are quick to validate the allegations due to the parent's status as a ward of the state.¹⁹⁰ This ultimately holds parenting wards to a different threshold for validating allegations of maltreatment than all other parents because the decision is not based on a showing of abuse or neglect. A minor's status as a ward alone is not evidence that she committed maltreatment. If the proceedings progress to a

level of care. Youth outside the system may only face a citation. Due to the nature of foster care and the struggle of agencies to provide education, vocational training, and assistance in housing applications, foster youth may be held to higher expectations—with higher stakes—than youth outside of care.

¹⁹⁰ See Bonagura, *supra* note 1, at 177–78 (describing a problem in New York Family Courts that agencies responsible for parenting wards “take a policing approach . . . that is adversarial and punitive, rather than supportive, educational, and preventative” (internal quotation marks omitted)).

termination hearing, severing the right to family autonomy is based on *unfitness*. The court should apply the same standards of safety and fitness to parenting wards as to other parents so as not to disadvantage young mothers in foster care. Children should absolutely be protected from abuse and neglect at the hands of their parents, and courts should not institute a lower threshold for the baby's welfare due to the mother's age, but the threshold for government intrusion into the family unit should be adjusted so one group of parents is not at a greater risk of governmental intrusion than another.

The equal protection problems arising from foster care placements and in dependency court proceedings go hand-in-hand with the due process considerations. While in placement, young mothers are treated differently than all other mothers. This differential treatment results in unjust interference with their ability to parent and oftentimes with their ability to retain custody of their children. Once the baby is removed, parenting wards face different standards in court proceedings that place them at a greater likelihood for the ultimate infringement of their parental rights: termination.

VII. RECOMMENDATIONS

Two things are clear: (1) young mothers have full rights to parent their children as they see fit, and (2) the ability to fully exercise that right is inhibited by their age and often by their status as a ward of the state. Instead of curtailing the rights of minor parents to family integrity under the traditional framework of adolescent rights, the Court has nominally given young mothers full parental rights. In practice, though, young mothers are not fully able to realize their parental rights. Family integrity is dangled like a carrot on a stick in front of minor parents, a goal they may never fully be able to achieve. Allowing adolescents to be *adults* in the context of parenting is uncomfortable to many individuals, causing the state to respond with paternalism and penalization. In the current structure of adolescent rights, granting full rights of parenthood to "kids" may seem counterintuitive, especially since there are limits both on the minor's parenting resources and the adult parent's ability to intervene.

To solve some of these problems, the state could infringe on minors' rights to family integrity under the "conditional curtailment" test. If minors fulfill the first prong of the test and are sufficiently mature, young mothers could be granted full adult rights that allow access to necessary resources. The process would be like granting majority status to young mothers on a conditional basis after they demonstrate maturity. If the minor parent does not fulfill the maturity prong, the state could curtail her right to family

integrity and obligate the natural adult parents or the state to provide additional support to the young mother.

To address the problems with removal and assessing parental fitness in court proceedings, states should model the legislation put in place by California or adopt New York's family court standards.

A. *Curtailing Rights Under the "Conditional Curtailment" Test*

There is proper justification for the infringing on a young mother's right to family integrity by analyzing minor parents' rights through the existing framework of adolescent rights. Minors' rights would receive *greater* protection from the adolescent rights framework under the "conditional curtailment" test than by providing provisional rights to family integrity without means to protect young mothers from unjust infringement.

Whether the young mother is mature enough to make life-altering decisions varies by age and individual. Deciding whether or not an expectant mother is mature enough to make the life-altering decision to have a child would require individualized assessment. The two-part analysis of the "conditional curtailment" test would allow a mature mother to preserve her right to family integrity without interference from her parents or the state, but neither her parents nor the state would be obligated to provide additional guidance or support. This process of deciding which mothers meet the maturity prong could mirror or build upon the case-by-case analysis that happens through the judicial bypass procedures with abortion.¹⁹¹

If an expectant mother is not mature enough to make life-altering decisions like the decision to have a child, fulfilling the first prong of the analysis, the adult parents or the state would be obligated to guide the decision-making processes of their pregnant child. This would *not* allow a parent to force her child to have an abortion or give the baby up for adoption,¹⁹² but would give the adult parents a voice in weighty decisions and allow the natural parents to help guide their child's parenting practices. The curtailment affords the adult parents full protection of their rights to family autonomy and places on them an *obligation*—as in other contexts where there is a gap between the rights afforded to minors and the rights afforded upon majority—to act in their daughter's best interest and provide

¹⁹¹ *But see* Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 561 (2000) (arguing against an intermediate classification and approach that confers adult legal rights or responsibilities based on individualized assessments of maturity because it is too costly and burdensome).

¹⁹² The state has an interest in the young mother carrying her child to term, and the decision to have a family is also protected under the right to family integrity, though it falls outside the scope of this Comment.

the resources and support necessary for her to parent her child. This obligation could include being the payee for welfare benefits for both their daughter and the baby, providing appropriate housing, ensuring the young mother has proper medical care, and helping the teenager navigate her new role as a parent. Allowing the curtailment of rights based on the immaturity of the teen mother would especially benefit very young mothers who have the least access to resources and need the most help. Young mothers ages eleven, twelve, or thirteen cannot drive let alone secure the monetary resources required to be the primary provider for their children.

If a minor qualifies as mature and thus infringement is not justified, the mature minor could be given the full rights of majority upon becoming a parent. This goes beyond emancipating minors and includes actually allowing them to enter into contracts, make medical decisions, receive public assistance checks, and in all other ways engage in the legal aspects of life as if they were adults. If there is not a concern about a minor's ability to make rational, mature, and informed decisions, granting her these rights should not pose serious problems. If young parents are afforded rights, and there is no justification for infringing upon them, they should be given the vehicles to access and realize their rights. The most reasonable and effective way to do that is to expand their rights in other arenas.

The two-part analysis would justify the restrictions placed on minors' parenting by foster care placements if the young parent meets the immaturity requirement. These restrictions bring affirmative *obligations* on the agency to provide any resources the young mother needs to effectively parent. Just as with the natural adult parents when the adolescent rights are curtailed, the obligation to fill any gaps, guide the decision-making process, and provide resources to the young mother carries over to the state. Assistance would include things like parenting classes, financial support to help provide for the baby, and appropriate housing accommodations.

There is a benefit of curtailment that might be appealing to parenting wards who are mature enough to make long-term decisions and for whom infringement is not justified. There could be an option for a mature parent to opt out of her full rights in order to receive the benefits of state resources. With the "conditional curtailment" test, the foster care agency would need a finding of the parenting ward's immaturity to justify intrusion into the minor's parenting practices, but the minor could waive her full right to family integrity to reap the benefits of additional support and resources. While actively infringing on a fundamental right is greatly prohibited, an individual could elect to have her rights infringed upon to reap a benefit. Infringement and the obligation to provide additional assistance go hand-in-hand—the agency cannot infringe on the parenting ward's rights without providing additional assistance to be effective parents, but the additional assistance is not required without infringement. While there may be some

concern about foster care workers coercing young mothers to curtail their rights, the curtailment comes with an added burden on the state that should curb undue influence. This may also mean that child welfare agencies may begin engaging in a balancing test to determine if limiting a parenting ward's ability to control the upbringing of her children is worth the price of additional assistance the agency will be obligated to provide.

B. Legislation and Court Standards to Remedy Infringements on Minors' Right to Family Integrity

Beyond offering services pursuant to the "conditional curtailment" test, there are legislative measures that states can take to protect the rights of parenting wards. California has legislation to protect parenting wards from some of the problems they face in foster care, and New York's court rules provide protections for parents who are minors. In addition, child welfare agencies could more effectively carry out the federal mandate for Independent Living Services.

The state of California recently passed legislation specifically addressing the problems young mothers face in the foster system: the increased likelihood of removal, reduced access to traditional support systems available to other minor and first-time parents, unrealistic expectations of parenting wards inconsistent with their age and development, and shortages in placements resulting in separation and thus disrupting the parent-child bond.¹⁹³ At the very least, all states should accept measures like these to cure the problems and inequalities that parenting wards face.

Proceedings should be adjusted so the law impacts all mothers equally. This would require the court to take into account the complications of a parenting ward's placement, removal of biases in court proceedings, and standards of parental fitness that young mothers can achieve given the resources available to them. In New York, the parent's age must be taken into account in determining whether there has actually been neglect.¹⁹⁴ The rationale is that a minor cannot be expected to provide the standard of care for their child as well as an adult parent; the minor "cannot be penalized for not acting like an adult."¹⁹⁵ This may make it seem that minors have a lower threshold of care and fitness to meet than adult parents, but in reality, it adjusts the standard to meet the level of care a minor can reasonably be expected to provide.

193 Teen Parents in Foster Care Act § 2, S.B. 1178, 2004 Cal. Stat. c. 841.

194 Bonagura, *supra* note 1, at 214.

195 *Id.* (citing *In re Lawrence Children*, 768 N.Y.S.2d 83, 92 (Fam. Ct. 2003)).

In *In re Barnett*, a minor parent's rights were terminated, in part because she could not obtain employment.¹⁹⁶ While the court normally took lack of employment into consideration when terminating an adult parent's rights, the court overturned the termination after considering the minor's age.¹⁹⁷ More courts should factor these kinds of considerations into their decisions. A minor should not be considered "unfit" for not providing housing when they cannot sign a lease or for not purchasing appropriate clothes when they cannot get benefits and are not eligible for employment. Adults, however, have access to those resources and therefore can be held accountable for not providing them. Adjusting the standard of care does not adjust the showing of "clear and convincing evidence" that must be demonstrated for a finding of parental unfitness; it merely changes the type of evidence that demonstrates parental unfitness.

CONCLUSION

The interests of the young child are protected when the minor's rights are protected; babies would benefit from the certainty and consistency of remaining in their mother's care.¹⁹⁸ "[R]emoval without a true attempt to rehabilitate the minor parent or address any of the issues causing concern perpetuates a cycle of removal and does harm to all of the parties involved."¹⁹⁹ If the minor's parenting practices are the "issues causing concern" that lead to removal, "rehabilitating" the issues requires restructuring minors' rights to family integrity to either (1) obligate the adult parent or state to provide additional assistance to the young parent, or (2) increase her access to adult rights. If the issues that lead to removal are outside of the young mother's control and are instead violations of her constitutional rights, immediate remedies to eliminate or alleviate the problems would serve both the minor mother and the baby. The positive policy implications of these measures are resounding: not only would rethinking the structure of minor parents' rights and preventing constitutional violations help stop the cycle of foster care, but the babies would greatly benefit from these changes.

196 *In re Barnett*, 450 A.2d 1356, 1362 (Pa. Super. Ct. 1982).

197 *Id.*

198 Buss, *supra* note 19, at 829.

199 Bonagura, *supra* note 1, at 202–03.