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Taking a Lesson from England: The Contraceptive Controversy

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Taking A Lesson From England: The Contraceptive Controversy

I. INTRODUCTION

In England, the House of Lords1 settled the question of whether minors can receive confidential contraceptive care.2 The Lords decided the question pragmatically, basing their decision upon public policy for contemporary society and leaving aside questions of moral right and wrong.3 In England, with forty-five out of one thousand teenage girls becoming pregnant each year4 and 17,000 girls under the age of sixteen taking the Pill in 1984,5 the court recognized that the problem would not just disappear by ignoring it or by imposing parental consent requirements which could possibly only increase the problem.6 The value of education and accessibility to contraceptive treatment has been proven in Sweden and Holland: their incidences of pregnant teens are substantially lower than in England.7 This difference can probably be explained by the demystification of sex in Sweden and Holland through public education by the schools and the media.8

In comparison to England, the statistics from Holland and Swe-

1. This reference is to the “Law Lords,” the highest judicial court which is similar to our Supreme Court. It is not the Parliamentary House of Lords.
2. Gillick v. W. Norfolk & Wisbech Area Health Auth., [1985] 3 W.L.R. 830 (all references to the Gillick case will be to the House of Lord’s decision, unless stated otherwise). In this case, the mother of minor daughters sought declaratory relief and criminal prosecution of the national health authority. She challenged guidelines promulgated by the health authority which allowed doctors to administer contraceptives to children under sixteen without parental consent. This was a case of first impression.
3. Id. This Comment will also leave aside important questions of morality (i.e., whether it is “wrong” for a child under sixteen years to be engaging in sexual activity) in recognition of the reality that children under sixteen already are sexually active. As Children’s Defense Fund President Marian Wright Edelman stated at the second Annual Conference on Adolescent Pregnancy in Washington, “[m]oralizing will not solve the teen pregnancy problem . . . [m]oral adults will.” Los Angeles Times, March 6, 1986, Part V (View), at 18, col. 2.
7. TIME, supra note 4, at 84 (thirty-five per thousand in Sweden and fifteen per thousand in Holland).
8. Id. at 82.
den look good. However, compared to the United States' statistics, the European figures look fantastic. Ninety-five out of one thousand teen girls get pregnant every year in the United States, which adds up to more than a million teens yearly.\textsuperscript{9} Researchers predict that if this trend persists, 40\% of today's fourteen-year-old girls will be pregnant at least once by the time they are twenty years old.\textsuperscript{10} Although polls show that adults in the United States do recognize teen pregnancy as a serious national problem,\textsuperscript{11} counter to this awareness is the Reagan Administration's stance of restricting the availability of family planning services.\textsuperscript{12} The United States' law on a minor's right to confidential contraceptives is in limbo, because the United States Supreme Court has not yet decided whether parental consent or notice is required before minors can receive family planning assistance.\textsuperscript{13} As one commentator has suggested, given the political climate and a growing movement concerned with returning to the "traditional" family unit, the controversy is not over.\textsuperscript{14}

This Comment will explore the United States and English law regarding minors and contraceptives, arguing that the English approach is better reasoned and should be followed in the United States because it addresses the issue pragmatically and recognizes it as a serious human problem which stretches across the Atlantic Ocean.

\section*{II. The English Law}

\subsection*{A. The English Legal Tradition}

The political attitudes and values of the British people have

\textsuperscript{9} Id. at 84.
\textsuperscript{10} Id. at 79.
\textsuperscript{11} Id. The Harris Poll released in November 1985 showed that 84\% of American adults considered teen pregnancy a "serious national problem". Id.
\textsuperscript{12} See generally, Time, supra note 4, at 82.
\textsuperscript{13} The United States Supreme Court has not addressed this issue. However, two 1983 federal circuit cases permanently enjoined the enforcement of a federal law requiring family planning centers to notify the minor's parents when the minor seeks contraceptive advice. New York v. Heckler, 719 F.2d 1191 (2d Cir. 1983); Planned Parenthood Fed'n of Am., Inc. v. Heckler, 712 F.2d 650 (D.C. Cir. 1983). Although the law was enjoined, the courts' decisions were based on the holding that the Secretary of the Department of Health exceeded her authority in promulgating the law. The decisions did not answer the fundamental question of whether minors have a right to contraceptives without the consent of, or notice to, parents. Therefore, variations of the law might possibly pass judicial scrutiny in the future.
\textsuperscript{14} Squealing on Kids: HHS's Controversial New Regulation on Confidentiality and Contraception, 44 CHILDREN'S LEGAL RTS. J. 8, 12 (1983) [hereinafter Squealing on Kids].
shaped their system of government. The monarch wields little power, even though the monarchy has an almost unbroken history dating from before the Norman conquest. Parliament controls the government by making laws, controlling expenditures, and watching over the nation. Parliament consists of two Houses. The House of Commons is the center of power and members have to answer to the electorate. The House of Lords revises bills sent to it by the Commons and hears non-controversial bills first (before the Commons) to save the Commons both time and argument. On the other hand, the third government body, the judiciary, is largely insulated from the influence of the monarch and Parliament. The courts discover and develop laws and, when invited to do so by Parliament, render opinions on a statute's validity. The three major courts are the High Court, the Court of Appeals and the House of Lords.

16. See infra note 30.
20. A. Birch, supra note 15, at 196. Parliament is the only institution which has the power to control the actions of government departments, provided the government officials do not break the law. Id. Government departments can basically do as they like, as long as their actions are approved by Parliament and are within the letter of the law. Id.
21. Members of the House of Commons are elected by the people and the House of Lords are the peers. Id. at 23.
22. Id.
23. Id. at 56. In order for a law to be enacted by Parliament, a majority of both Houses and the monarch must assent to the bill. Id. at 212. Occasionally the Lords will refuse to pass a bill they believe has no public support. Id. at 56.
24. P. Dalton, supra note 18, at 33. Judges can only be removed by both Houses and the Queen. See infra note 30. Judges' salaries are not annually reviewed and therefore salaries are not discussed by Parliament as a matter of course. P. Dalton, supra note 18, at 32.
25. P. Dalton, supra note 18, at 43. There is no British equivalent to the United States Supreme Court's power to declare executive actions contrary to constitutional principles. A. Birch, supra note 15, at 196.
26. There are a number of local-level courts. Also, a large number of disputes with a judicial element are entrusted by Parliament to Special Tribunals, which are part of the executive machinery. P. Dalton, supra note 18, at 32.
27. The High Court hears both civil and criminal cases, with original and appellate jurisdiction. There is no financial limit for court access, but the Court is divided into three divisions (generally the cases are assigned by corresponding subject matter): Queen's Bench, Chancery, and Family. Id. at 173.
28. The Court of Appeals has two divisions: civil and criminal. Id. at 174.
29. The House of Lords is the highest Court of Appeal in the United Kingdom, taking authority from the High Court of Parliament. A case can only be heard by the House of Lords if the Court of Appeal, the House of Lords (judicial), or either House of Parliament grants
Although Parliamentary Acts through the years have delineated the duties of the monarchy, Parliament and the judiciary, no written constitution sets out the nature and duties of these government institutions. The law of Britain is both unwritten (constitutional conventions) and written (common law and statutory law). Constitutional conventions, which emerge after "constant political practice in obedience to some constitutional inspiration lying outside the law, which moderates or nullifies the effect of a legal rule," pre-

30. The monarch's power was limited by the Bill of Rights of 1689. Politicians invited William of Orange (husband to James II's daughter, Mary) to bring an invading army to England to depose James II. Thus was the "Glorious Revolution" born. The Revolution ended without bloodshed in 1688 when James' army refused to fight. William traded co-monarchy status, with Mary, for the Bill of Rights. The Bill of Rights limited the monarch's power in four ways: the monarch could neither make nor suspend laws without the consent of Parliament; the monarch could not raise money without Parliamentary grant; the monarch could not maintain a standing army without Parliamentary authority; and the monarch could not restrict the right of free speech within Parliament. A. Birch, supra note 15, at 21, 31.

The Act of Settlement of 1701 further reduced the monarch's power. The Act decided immediate succession to the throne which had been in doubt because William and Mary were childless and it was possible that there was a royal Roman Catholic illegitimate child. The Settlement Act also stipulated that no future monarch could either be, or marry, a member of the Roman Catholic Church. The Settlement Act also deprived the monarch of the power to dismiss judges. Id.

The Reform Act of 1832 was the beginning of modern Parliamentary reform. This Act increased the electorate and changed the voting system. The problem of burgeoning industry and classes of people dependent on industry led to this reform. The previous system denied wealthy merchants, mill owners, and artisans adequate representation in Parliament and in local government. Id. at 31-36.

The 1867 Reform Act doubled the electorate, but complete manhood suffrage was not achieved until 1918. Women over thirty years old could vote in 1918, but it was not until 1928 that women under thirty were given the same right. Id. at 37-38. The Parliament Act of 1911 abolished the House of Lords' right to veto legislation and shortened the maximum amount of time between general elections from seven years to five years. Id. at 21, 53.

The Supreme Court of Judicature (Consolidation) Act of 1925 and Appellate Jurisdiction Act 1876 ensured that judges would hold office during good behavior, removed only on the address of both Houses to the Queen. This power was only used once in 1830. P. Dalton, supra note 18, at 53.

31. A. Birch, supra note 15, at 21. There is no documentary and authoritative statement of government institutions. Id. The "constitution" has never been wholly reduced to writing because Britain has not gone through the experience of overthrowing an oppressive system of government by force and therefore had no need to commit in writing a constitutional regime. Id. at 236.

32. Id. at 196, 212.

33. P. Dalton, supra note 18, at 24. Conventions arise from usage or agreement (tacit or express). Once the convention is developed, it is adhered to even though the court will not enforce the convention. P. James, supra note 19, at 118.
suppose the legal rules and regulate how the rules work.\textsuperscript{34} In courts of law, conventions cannot be cited as prevailing precedent.\textsuperscript{35} The British legal system also consists of statutory and common law.\textsuperscript{36} Statutory law is enacted by Parliament.\textsuperscript{37} Common law is the judges' interpretation of law over the centuries.\textsuperscript{38} Since the availability of contraceptives to minors under sixteen discussed in this Comment has not been addressed and resolved by Parliament, case law (common law) is the source of constitutional law.\textsuperscript{39}

But any rule of the British constitution, no matter how fundamental, can be changed by a Parliamentary Act passed by the usual majority of both Houses and assented to by the Queen.\textsuperscript{40} Even though the rights to personal liberty,\textsuperscript{41} to property, to free speech, to assembly, to association, and to equal treatment may be termed "constitutional rights,"\textsuperscript{42} there are no "guaranteed" rights for individuals because Parliament can change the laws at any time.\textsuperscript{43} The presumption of individual liberty rests on age-old assumptions by British courts that a person is free to do as he or she pleases as long as there is no specific breach of law.\textsuperscript{44} Also, once the courts have decided that a right exists, a remedy is implied even if one is not expressly granted.\textsuperscript{45}

\textsuperscript{34} P. James, \textit{supra} note 19. Conventions also govern relationships between different parts of government. For example, convention dictates that Ministers must account for their executive acts to Commons and answer the Members questions. \textit{Id.} Conventions also help solve the problem of how the people can control executive power. For example, under the Meeting of Parliament Act of 1694, Parliament must be summoned at least once every three years. But by convention, Parliament must be summoned at least once a year. \textit{Id.} at 23.

\textsuperscript{35} P. Dalton, \textit{supra} note 18, at 15.

\textsuperscript{36} A. Birch, \textit{supra} note 15, at 212.

\textsuperscript{37} \textit{Id.} Bills can originate in either House, but a majority of both Houses and the monarch must agree to pass the bill. At each House, a bill must pass through three readings before it passes to the other House. \textit{Id.}

\textsuperscript{38} \textit{Id.}

\textsuperscript{39} P. Dalton, \textit{supra} note 18, at 16. Even if a particular topic is governed by a statute, judicial precedent can play an important role in interpreting the statute's language, when the meaning of the words are in dispute. \textit{Id.} at 17.

\textsuperscript{40} \textit{Id.} at 28.

\textsuperscript{41} No right to privacy is found under English law, although the right might receive incidental protection through the laws. \textit{Id.} at 238. This right to privacy focuses on the potential use by the executive of information about an individual for purposes other than those for which it was obtained, rather than an individual's privacy to receive family planning assistance without the interference of the government. \textit{Id.}

\textsuperscript{42} P. James, \textit{supra} note 19, at 158.

\textsuperscript{43} \textit{See supra} notes 30-34 and accompanying text.

\textsuperscript{44} A. Birch, \textit{supra} note 15, at 236. The limits of freedom are known only after they have been transgressed. \textit{Id.}

\textsuperscript{45} P. Dalton, \textit{supra} note 18, at 212. The implied remedy does have limitations, such as certain judicial and diplomatic immunities and statutory duties. \textit{Id.}
At the local level, city government is subject to control by the national government. For example, each city may have its own constitution, but local governments cannot change their constitutions without Parliamentary authority. Furthermore, each city must provide the minimal standard, determined by Parliament, of education, police, sanitation, and public health services. If the city fails to meet the minimum requirements, then the appropriate Parliamentary minister will act for the city and send them the bill. Control over local administration rests on the fact that these authorities receive over half of their income from revocable national government grants.

B. The Gillick Case

Before 1980, no British case or statute had ever considered a minor's right to confidential contraceptives. The contraceptives controversy began in December 1980, when the Department of Health and Social Security (DHSS) issued guidance on family planning services for young people. The DHSS emphasized that doctors, relying on their own discretion, could prescribe contraceptives for a girl under sixteen, without parental consent or notice. Responding to this circular, Mrs. Gillick, a mother with minor children, wrote to the area health administrator in March, 1981 to forbid the prescription of any contraception treatment to her daughters who were under sixteen. The health authority maintained that the treatment decision was left

46. A. BIRCH, supra note 15, at 223.
47. Id. In other words, each city has only those powers given to it by Parliament.
48. Id.
49. Id.
50. Id. at 225.
51. Gillick v. W. Norfolk & Wisbech Area Health Auth., [1985] 3 W.L.R. 830, 834. The notice included this: "It is, however, widely accepted that consultations between doctors and patients are confidential; and the department recognizes the importance which doctors and patients attach to this principle... To abandon this principle for children under 16 might cause some not to seek professional advice at all." Id. at 835 (quoting Memorandum of Guidance (H.S.C.(I.S.)32), "The Young."). The first statutory provision regarding contraceptive advice and treatment which allowed local health authorities to make their own arrangements for giving advice and treatment was the Family Planning Act 1967, subsequently amended to the National Health Service Act 1977. Neither the original Act nor its amendments limited the contraceptive advice and treatment by age. Gillick v. W. Norfolk & Wisbech Area Health Auth. (C.A.), [1985] 2 W.L.R. 413, 416-17.
52. Gillick, 3 W.L.R. at 834-35.
53. Id. at 835-36. The House of Lord's opinion was careful to point out that Mr. Gillick was in full agreement with his wife's suit and secondly, that there was no suggestion that Mrs. Gillick's daughters would seek contraceptive advice without their mother's consent. Id. at 834.
to the doctor's discretion. A year later, Mrs. Gillick sued the area health authority and the DHSS, seeking a declaration that the guidance was unlawful and that no doctor or other professional person employed by the health authority treat her children under sixteen without her knowledge and consent.

The case was dismissed in 1984 by the Queen's Bench. However, the Court of Appeals allowed Mrs. Gillick's appeal and granted the declarations. The House of Lords heard arguments in June and July of 1985, and decided the case in October 1985. Three Lords voted in favor of upholding the guidance and two Lords dissented. Although the matter was closely decided, a majority of the Lords decided the case in favor of the DHSS.

Three issues were raised in the House of Lords: (1) does a girl under the age of sixteen have the legal capacity to give a valid consent for contraceptive advice and treatment, which includes a medical examination; (2) does giving such advice and treatment to a girl under sixteen, without her parents' consent, infringe on the parents' rights; and (3) does a doctor who gives such advice or treatment to a girl under sixteen, without her parents' consent, incur criminal liability for aiding and abetting the unlawful sexual intercourse of a minor?

On the issue of a child under sixteen having the capacity to consent to medical treatment, the court decided that since no statutory provision required an opposite finding, consent was legal if the child had sufficient understanding and intelligence to know what "consent" entailed. Whether the child is mature enough to understand all the implications of consent is a question of fact. Prior to this decision, the ability of a minor under sixteen to consent to treatment had been

54. Id. at 836.
55. Id.
57. Gillick (C.A.), 2 W.L.R. at 413.
58. Gillick, 3 W.L.R. at 830. The dissenting Lords were Lord Brandon of Oakbrook and Lord Templeman.
59. Id. at 837.
60. Id. at 839. The five conditions which allow doctors to prescribe contraceptives without parental notice are: (1) the child must understand the advice and treatment; (2) the doctor is unable to persuade the child to inform the parents or allow the doctor to inform the parents of the contraceptive treatment; (3) the child is likely to have or continue to have sexual encounters without contraceptives; (4) the child's mental and physical health will suffer if she does not receive contraceptive advice; and (5) the child's best interests require contraceptive advice with or without parental consent. Id. at 844.
61. Id. at 858.
uncertain. But Lord Fraser removed this uncertainty by deciding, for practical reasons, that children under sixteen could consent legally to medical treatment if the child understood the full implications of the consent given. Therefore, a minor can consent to medical treatment at the age of sixteen and the minor's parents do not have the authority to invalidate this consent.

Secondly, on the issue of whether the parents' rights would be infringed if a child under sixteen received contraceptive treatment without parental consent, the court decided that the parent does not have an absolute right to veto the child's decisions. In general, a parent's rights, appropos his or her child, are extremely difficult to define because the term "rights" encompasses both explicit legal rights, such as the right to withhold consent to marriage, and also implied social rights, including the right to control the child's movement. Parental authority is merely incidental to the ordinary responsibility of parents in raising children and this authority can be delegated to others in certain circumstances, such as to school authorities and to court officials. Parents' rights are shared concurrently

62. *Id.* at 837. Lord Fraser examined several statutes to determine whether a child under sixteen did have the capacity to consent. *Id.* at 837-40. He discussed National Health Service, Mental Health, and Education Acts which implied that children under sixteen could not consent to medical services. *Id.* Specifically, the Act Mrs. Gillick was relying on the most was the Family Law Reform Act 1969:

1. Consent of a minor who has attained the age of sixteen years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian. . . ; (3) Nothing in this section shall be construed as making ineffective any consent which would have been effective if this section had not been enacted.

Family Law Reform Act 1969. Mrs. Gillick construed the Act as lowering the age for medical consent to sixteen, but for any lesser age, consent must be given by the parents or guardian. But the Act was interpreted by the DHSS and health authority as not only making sixteen the age of consent for medical treatments, but ensuring that a consent by a minor under sixteen which would have been valid before the Act (here, consent for contraceptives) could still be relied upon. *Gillick* (C.A.), 2 W.L.R. at 421. But Lord Fraser dismissed the implications of these Acts as "absurd," since he could find no good reason that a fifteen year old, who is capable of understanding what is proposed and can express this understanding, does not have the capacity to express his/her understanding validly and effectively and therefore authorize medical treatment. *Gillick*, 3 W.L.R. at 839-40.

64. *Id.* at 837, 852; see also supra note 62 and accompanying text.
67. See P. DALTON, supra note 18, at 212.
by the mother and the father, but these rights are not absolute in themselves because disputes between the parents as to how a child should be raised are subject to court adjudication. In fact, the parents' right "is a dwindling right which the courts will hesitate to enforce against the wishes of the child and the more so the older he is. [The parents' right] starts with a right of control and ends with little more than advice." Parents' rights are not rigid and do not exist for the benefit of the parent; parents' rights exist for the benefit of the child, for as long as the child needs to be protected. The decision to give contraceptive treatment without parental consent must be based on what is best for the particular child's welfare. Therefore, although in most cases the parents would be in the best position to determine the child's best interest, it would be possible, but unusual, for a doctor to treat the child at his or her own discretion.

A doctor would be justified in treating a child under sixteen without parental consent by meeting five conditions. First, the child, despite her age, must understand the doctor's advice. Second, the doctor must be unable to persuade the child to either tell her parents or allow the doctor to inform them of the treatment. Third, the child is likely to have sexual intercourse whether or not she receives the contraceptives from the doctor. Fourth, the child's mental or physical health will suffer if she does not receive the contraceptives. Finally, receiving contraceptives must be in the child's best interests.

In other words, parental power to control the child is based upon the principle that the parent maintains, protects, and educates the child until the child can look after herself and make her own decisions.

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68. Previously, only the father had guardianship rights over legitimate children. P. James, supra note 19, at 528.

69. Id.

70. Hewer v. Bryant, [1970] 1 Q.B. 357, 369 (Lord Denning). Hewer expressly overruled a 19th Century decision (In re Agar-Ellis, [1883] 24 Ch.D. 317, a case where a father was allowed to restrict communications between his daughter and her mother, based on his absolute control over his children.). This view is exactly opposite that which was expressed by Parker at the Court of Appeals. "The repudiation of the notion that intellectual precocity can hasten the age at which a minor can be considered to be of sufficient discretion to exercise a wise choice for its own interests . . . is to be noted." Gillick (C.A.), 2 W.L.R. at 426. Here, Lord Fraser agreed with the view of the parents' rights expressed in Hewer. Gillick, 3 W.L.R. at 840-46.

71. Gillick, 3 W.L.R. at 854.

72. Id. at 843.

73. Id. at 843-44.

74. Id. at 844.

75. Id. at 855.
Since no case law or statute had previously determined the duration or extent of parental control over children under sixteen, this issue was open for the House of Lords to formulate their own rule.\textsuperscript{76}

Finally, on the matter of the doctor's criminal liability for treating the child without parental consent, the court decided that the doctor's state of mind or intent in prescribing the contraceptives to a child would control the issue of criminal liability.\textsuperscript{77} As long as the doctor satisfied himself that the child understood his advice and the doctor's "clinical" advice was based on an honest belief that the treatment was necessary for his patient's physical, mental and emotional health, then there would be no question of the doctor having the "guilty mind" necessary to aid and abet the instance of unlawful sexual intercourse of the child.\textsuperscript{78} At the same time though, the court did not mean for this decision to be interpreted as a license for doctors to disregard the parents' wishes.\textsuperscript{79} Any doctor irresponsibly discharging his duties would be subject to the discipline of his professional body (i.e., the British Medical Association).\textsuperscript{80}

As a result of this decision, the DHSS immediately reinstated its guidance, although it was to be "fully reviewed" in accordance with the House of Lords' opinion.\textsuperscript{81} Even though some conservative Parliament members called for a change in law, a wide range of parties, including the British Medical Association, the Family Planning Association, and the Church of England Children's Society, welcomed the decision.\textsuperscript{82} For Mrs. Gillick, the fight was over; although she had the option to pursue the case further with the European Court of Human Rights, she decided not to take the case further.\textsuperscript{83}

\textsuperscript{76} Id.
\textsuperscript{77} Id. at 845.
\textsuperscript{78} Id. at 845, 859-60.
\textsuperscript{79} Id. at 844.
\textsuperscript{80} Id. at 844-45.
\textsuperscript{81} Timmins, Gillick Loses Fight To Ban Pill For Under 16s, The Times (London), Oct. 18, 1985, at 1, col. 1.
\textsuperscript{82} Id. at 1, col. 2.
\textsuperscript{83} Id. at 32, col. 1. As an interesting sidelight, Mrs. Gillick and her husband were involved in "scuffles" with students at Oxford on the day the decision was announced. Students injured by Mrs. Gillick's stiletto heels attempted to lay charges against her at a local police station, but the students were told to seek their remedy through the civil courts and not the police. Mrs. Gillick denied the fight's existence and labeled the students "socialist workers out for trouble." Also, Mr. Gillick suffered his own injury (missing eyeglasses). His comment: "As far as I am concerned they are parasites." Id.
III. THE UNITED STATES LAW

A. Before the "Squeal Rule" 84

Minors are protected by the United States Constitution and possess constitutional rights, 85 although each state has broad authority to regulate children due to the state's interest in guarding the minor's welfare. 86 The state's authority over minors stems from the common law view that minors lack sufficient capacity to understand the consequences of their actions. 87 Included in these constitutional rights is a "right of personal privacy, or a guarantee of certain areas or zones of privacy... broad enough to encompass a woman's decision [regarding her pregnancy]." 88 A minor's right to privacy was first advanced...
in *Planned Parenthood v. Danforth*\(^8\) to cover the privacy right of a minor to receive an abortion without an absolute parental or state veto. This right to privacy was extended in *Carey v. Population Services*\(^9\) to contraceptive access where an absolute parental or state veto can be limited by a significant state interest.\(^9\) State restrictions limiting a minor's privacy rights are valid only if the restrictions serve "any significant state interest . . . that is not present in the case of an adult."\(^9\) This "significant state interest" test is easier for the state to meet than the "compelling state interest" test used to justify the restriction on adult's privacy rights,\(^9\) since the state has greater power to regulate the conduct of children\(^9\) and because the law regards minors as less capable of making important decisions.\(^9\) However, the state's authority over minors is limited by the minor's and the parents' rights.\(^9\) Therefore, a minor's decision regarding contraceptive

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\(^8\) The right of privacy, whether it be founded in the fourteenth amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the ninth amendment's reservations of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.

*Roe*, 410 U.S. at 153. In *Roe*, the Supreme Court invalidated a Texas statute making the procuring of an abortion a crime (except by medical advice for the purpose of saving the mother's life). The plaintiff was an unmarried and pregnant woman who was unable to get a "legal" abortion because her life was not in danger. *See also*, *Eisenstadt v. Baird*, 405 U.S. 438 (1972). In *Eisenstadt*, a law regulating non-married adults' access and use of contraceptives was found unconstitutional. "If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Id.* at 453 (emphasis in original).


\(^9\) 431 U.S. 678 (1977). Contraceptive distributors challenged the constitutionality of a New York law which prohibited, *inter alia*, the distribution of contraceptives to anyone under sixteen years old. The Court held a state may not impose a blanket prohibition or blanket requirement of parental consent on the distribution of contraceptives to minors. *Id.* at 694-95.

\(^9\) In *Carey*, the Court stated:

[W]hen a State, as here, burdens the exercise of a fundamental right, its attempt to justify that burden as a rational means for the accomplishment of some significant state policy requires more than a bare assertion, based on a conceded complete absence of supporting evidence, that the burden is connected to such a policy.

*Id.* at 696.

\(^9\) *Danforth*, 428 U.S. at 75.

\(^9\) *Carey*, 431 U.S. at 693 n.15.

\(^9\) Prince v. Massachusetts, 321 U.S. 158 (1944). The law may subject minors to more stringent limitations than what is permissible with respect to adults because of the State's interest in assuring the minor's welfare. *Id.* at 168-70. The Supreme Court in *Prince* upheld a state law making it a crime for children to sell merchandise in public cases.

\(^9\) *Carey*, 431 U.S. at 693 n.15.

\(^9\) Wisconsin v. Yoder, 406 U.S. 205, 232 (1972). "Parental discretion has been protected from unwarranted or unreasonable interference from the State." Similarly, in *Pierce v.*
use must be made with consideration of all three interests: the minor's, the state's and the parents'.

Two examples illustrate this test of the state's interests. In Carey, a New York statute prohibiting the distribution or sale of any contraceptive to a minor was challenged by contraceptive manufacturers and distributors. The United States Supreme Court was reluctant to precisely define the state's power to regulate a minor's conduct, but it did uphold the principle articulated in Danforth that state restrictions on a minor's privacy rights are valid only if the limits serve any significant interest of the state. Since the state's interests were not great enough to absolutely veto an abortion for a minor without parental consent, the Court in Carey held that "the constitutionality of a blanket prohibition on the distribution of contraceptives to minors is a fortiori foreclosed." Secondly, in T.H. v. Jones, the Court earlier emphasized that the state's interest must be "substantial" in order to override the minor's constitutional right to privacy. There, a Utah state regulation prohibiting family planning

Society of Sisters, 268 U.S. 510 (1925), members of the Amish Church violated a law compelling school attendance for children through age sixteen. The Supreme Court made an exception to this law for the Amish because there was no compelling state interest that would be adversely affected by the exception; "[I]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Id. at 535. The Supreme Court found that a state's interest in universal education must be balanced with the rights it impinges upon. The Court allowed private religious schools to teach children, as long as the education adequately prepared them for "additional obligations." "[T]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty to recognize and prepare him for additional obligations." Id.

97. An adult's right to contraceptives was firmly established in Griswold v. Connecticut, 381 U.S. 479 (1965). Minor's rights were not discussed.
99. Id.
100. Danforth, 428 U.S. at 75.
102. Danforth, 428 U.S. at 75.
103. Carey, 431 U.S. at 694.
104. 425 F. Supp. 873 (D. Utah 1975). The plaintiff represented a class of "herself and all other minors in the state who receive either AFDC [Aid to Families with Dependent Children] or Medicaid or both and who seek family planning assistance from the [Utah Planned Parenthood Association]." Id. at 876. The challenge here was to a state law requiring parental consent as a condition for a minor's access to family planning services (upon Aid to Families with Dependent Children and Medicaid eligibility requirements). Id. A class-action challenged the legality under federal law of Utah's law requiring parental consent in order for a minor to receive family planning assistance. The plaintiff was fifteen years old and a member of a family receiving AFDC and Medicaid. She refused to get parental consent, so the family planning center could not serve her. Id.
clinics from providing contraceptives to minors without parental consent was overruled because the statute conflicted with federal law by impermissibly adding a consent provision. The state failed to justify this condition by a showing of a substantial interest.\textsuperscript{105} Utah argued that protecting minor females "from the evil effects and unsuspected harm of actions which go against the mores of society"\textsuperscript{106} is a compelling state interest.\textsuperscript{107} Also, Utah argued that the state was very interested in enforcing the parents' rights of family control.\textsuperscript{108} The district court found neither of these arguments compelling, especially in the light of the legislature's failure to enact restrictions which would also curtail the access of contraceptives to minors who can afford private doctors.\textsuperscript{109}

Parents have the "care, custody and nurture of their children as a liberty interest protected by the Fourteenth Amendment."\textsuperscript{110} The parents' primary function is to prepare their child for "obligations the state can neither supply nor hinder."\textsuperscript{111} These obligations include training in moral standards, religious beliefs, and social elements.\textsuperscript{112} Nevertheless, if the state neither requires nor prohibits an activity, the rights of the parents are not deemed affected.\textsuperscript{113} For example, a federal court of appeals in Doe v. Irwin\textsuperscript{114} found that the distribution of

\textsuperscript{105} Jones, 425 F. Supp. at 876, 882.
\textsuperscript{106} Id. at 881.
\textsuperscript{107} Id.; "Every state has a substantial interest in the health and welfare of all of its inhabitants." Doe v. Irwin, 615 F.2d 1162, 1167 (6th Cir. 1980). A state has "an independent interest in the well-being of its youth." Ginsberg v. New York, 390 U.S. 629 (1968).
\textsuperscript{108} Jones, 425 F. Supp. at 881.
\textsuperscript{109} Id. Utah law allows personal physicians to continue dispensing contraceptives even without parental consent. Id. The regulations challenged in this suit apply only to indigent minors seeking family planning service from the Utah Planned Parenthood Association. Id. at 881 n.5. Therefore, this discrepancy undercuts Utah's claim that the regulations embody compelling public interests. Id. at 882. The case was decided on the statutory grounds that since the state law was found to be in conflict with the federal law, the federal law must control because of the Supremacy Clause. Id. at 880.
\textsuperscript{110} Irwin, 615 F.2d at 1167.
\textsuperscript{113} Irwin, 615 F.2d at 1167-68. "The [parents] remain free to exercise their traditional care, custody and control over their unemancipated children."
\textsuperscript{114} Id. at 1162. A class-action was brought by parents of minor children against administrators of a family planning clinic and the county health department because the clinic distributed contraceptive devices and medication without notice to the minor's parents. The parents claimed that their constitutional right to the custody and care of their children was violated by the clinic. The district court concluded that since there was no compelling state interest to exclude the child's parents from the contraceptive decision, the right of parents to participate in their children's sexual activity decisions outweighs the minor's right to make these decisions independently. Doe v. Irwin, 428 F. Supp. 1198 (W.D. Mich. 1977).
contraceptives to minors without parental notice did not interfere with the parents' constitutional rights. There, a class of parents with minor children sued a Michigan family planning clinic because minors were not required to notify their parents when they received contraceptive services. Because Michigan law did not require that children receive contraceptive services or prohibit the parents from being notified of this treatment, the parents were still free to exercise their traditional "care, custody, and nurture" towards their children.

B. The "Squeal Rule" and After

By 1980, the courts in Jones (1975), Carey (1977), and Irwin (1980) had held that states and parents have no absolute veto over a minor's decision to use contraceptives. Additionally, the Irwin court had held that parents' rights were not violated if the parents were not notified when their children received contraceptive services. However, the issue of whether required parental notice violated the minor's rights had not been decided. The Secretary of the United States Department of Health and Human Services (HSS) tried to fill this void in 1982 by the "squeal rule," which mandated parental notice when minors received contraceptive services from federally funded family planning clinics such as Planned Parenthood.

The squeal rule was proposed as an amendment to Title X of the Public Health Service Act to more fully implement the Congressional intent behind the 1981 Amendment to Title X. Congress had passed the Family Planning Services Population and Research Act (Title X) in 1970 to provide federally funded family planning

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lower court found that the parents' rights had been violated. "Parental authority is plenary. It prevails over the claims of the state, other outsiders, and the children themselves. There must be some compelling justification for interference." Id. at 1249. The Court of Appeals found no violation of the parents' rights. Irwin, 615 F.2d at 1169.

115. "In the absence of a constitutional requirement for notice to parents, it is clearly a matter for the state to determine whether such a requirement is necessary or desirable in achieving the purposes for which the [family planning] center was established." Irwin, 615 F.2d at 1169.

116. Id.

117. Id.

118. Jones, 425 F. Supp. at 882; Carey, 431 U.S. at 695; Irwin, 615 F.2d at 1169.

119. Irwin, 615 F.2d at 1169.


122. Pub. L. No. 91-572, 84 Stat. 1504 (1970). Title X authorized grants for population research and voluntary family planning programs, such as Planned Parenthood. The purpose
services in response to the mounting concern in Congress about the number of unwanted pregnancies in the United States, with its attendant social and medical cost increases. Title X was passed to establish a nationwide program with the express purpose of making "comprehensive family planning services readily available to all persons desiring such services." In 1981, Title X was amended to require Title X grantees to encourage family participation in their programs, to the extent practical.

The proposed changes were threefold. First, Title X projects must notify parents or guardians within ten working days following the initial provision of prescription drugs or devices to the unemancipated minor. Verification of notification must be kept on file, in addition to any exceptions granted by the project director in cases where notice to parents would result in physical harm to the minor. Second, projects must comply with any state laws requiring notice or consent for unemancipated minors. Finally, the definition of "low income family" would be changed to consider adolescents on the basis of their family's resources, rather than their own income, for the purpose of charging for services.

The proposed requirements were immediately challenged. Two...
lawsuits\textsuperscript{130} were filed and over 120,000 individuals and organizations commented on the proposed amendment.\textsuperscript{131} The Secretary defended the new regulations by distinguishing the requirements as not "prohibiting access to contraceptive service. Rather, it implements a Federal assistance program, i.e., Title X . . . , by giving specific meaning to the conditions Congress has established for provisions of the assistance."\textsuperscript{132} Additionally, the Secretary countered arguments in favor of no and stricter parental notice requirements.\textsuperscript{133}

But the judiciary disagreed with this interpretation of the 1981 amendment. The courts in both the \textit{Planned Parenthood v. Heckler}\textsuperscript{134} and the \textit{New York v. Heckler}\textsuperscript{135} cases held that the proposed requirements contravened Congressional intent, which merely encouraged

\textsuperscript{130} Planned Parenthood v. Heckler, 712 F.2d 650 (D.C. Cir. 1983); New York v. Heckler, 719 F.2d 1191 (2d Cir. 1983).

\textsuperscript{131} Parental Notification Requirements Applicable to Projects for Family Planning Services, 48 Fed. Reg. 3600 (1983) [hereinafter Notification Requirements].

\textsuperscript{132} \textit{Id.} at 3602. On August 13, 1981, Congress amended Title X to add "[t]o the extent practical, entities which receive grants or contracts under this subsection shall encourage family [sic] participation in projects assisted under this subsection." \textit{Id.} at 3600. Also, the Conference Report on Pub. L. No. 97-35 stressed the importance of family participation in the activities authorized by Title X. \textit{Id.} at 3601.

\textsuperscript{133} For each argument against the amendment, the Secretary justified the new rule.

"A minor's right to privacy is infringed by the amendment."

The minor can decide whether to accept services subject to subsequent parental notification since he/she is advised of the notice requirement prior to services given (and is therefore consenting to notification by accepting the services).

"The amendment is gender, age, and income discriminatory."

The regulation is gender neutral on its face (possibly a male contraceptive pill could make men fall within the scope of this regulation). The Department is only using age as a measure of an emancipated minor's ability to make important decisions. A change in the income requirement merely puts minors on the same footing as all other applicants for services. "Parental notice should be required before contraceptive service is given so that family discussion can take place before contraceptives are given and also possibly dissuade minor[s] from being sexually active."

This would cause undue delays or otherwise restrict access to minors contrary to the statute's policy.

"Parental consent should be required."

Parental consent would lead to an improper balance of service to minors for family planning.

\textit{Id.} at 3601-05.

\textsuperscript{134} 712 F.2d 650 (D.C. Cir. 1983).

\textsuperscript{135} 719 F.2d 1191 (2d Cir. 1983). \textit{Planned Parenthood} was decided prior to \textit{New York} (July, 1983) by the District of Columbia Circuit. The \textit{Planned Parenthood} court issued a permanent injunction against the enforcement of the squeal rule. \textit{Planned Parenthood}, 712 F.2d at 665. The \textit{New York} case was decided in October 1983 by the Second Circuit. \textit{New York}, 719 F.2d at 1197. Judge Friendly's comment (concurrence and dissent) in \textit{New York} points out the doubtful importance of the \textit{New York} decision:

I am at a loss to understand what it is thought we are accomplishing by deciding this appeal or how we may properly do so. [The HSS was] permanently enjoined by \textit{Planned Parenthood v. Heckler} . . . what we are doing is simply rendering an advi-
family participation without requiring parental involvement. The issue, more simply, was of statutory construction.\textsuperscript{136} Although the Secretary was given authority to make rules in accordance with the statute,\textsuperscript{137} regulations promulgated by the Secretary exceed this statutory authority if the proposed rule shows no relation to any recognized concept of the statute.\textsuperscript{138} The \textit{Planned Parenthood} court found that “these regulations not only violate Congress’ specific intent as to the issue of parental notification, but also undermine the fundamental purposes of the Title X program.”\textsuperscript{139} The Secretary, therefore, exceeded statutory authority since the proposed regulations were not related to any “recognized concept” of the statute.\textsuperscript{140}

Sustaining this interpretation of the purpose of Title X, the \textit{Planned Parenthood v. Matheson}\textsuperscript{141} court struck down a state law which imposed a parental notification requirement for minors seeking contraceptives at a family planning clinic.\textsuperscript{142} There, the court granted summary judgment because the state-imposed requirement conflicted with Title X.\textsuperscript{143} Of special note here is the strict standard adhered to which resulted in the grant of summary judgment; Congress must have positively required by enactment that state law be pre-empted and state law must damage clear and substantial federal interests.\textsuperscript{144} Applying this standard, the court first found that providing access to

\textsuperscript{136} \textit{Planned Parenthood}, 712 F.2d at 654; see also \textit{New York}, 719 F.2d at 1196. “No doubt the moral and political wisdom of the Secretary’s actions will remain in dispute for some time to come. The legality of those actions, however, should not.” \textit{Planned Parenthood}, 712 F.2d at 665.

\textsuperscript{137} Public Health Service Act, 42 U.S.C.A. § 300a-4(a) (West 1970).

\textsuperscript{138} \textit{Planned Parenthood}, 712 F.2d at 655; see also \textit{New York}, 719 F.2d at 1196.

\textsuperscript{139} \textit{Planned Parenthood}, 712 F.2d at 656. The Conference Committee report accompanying the 1981 amendment specifically relates to this issue: “The Conferees believe that, while family involvement is not mandated, it is important that families participate . . . [T]he intent of the Conferees [is] that grantees [of Title X funds] will encourage participants . . . to include their families.” H.R. REP. No. 208, 97th Cong., 1st Sess. 799 (1981). The 1981 amendment itself was to “encourage” participation to “the extent practical.” Public Health Service Act, 42 U.S.C.A. § 330(a) (West 1970).

\textsuperscript{140} \textit{Planned Parenthood}, 712 F.2d at 656; \textit{New York}, 719 F.2d at 1196.

\textsuperscript{141} 582 F. Supp. 1001 (D. Utah 1983).

\textsuperscript{142} \textit{Id.} at 1009.

\textsuperscript{143} \textit{Id.} at 1007.

\textsuperscript{144} \textit{Id.} at 1004 (quoting \textit{Hisquierdo v. Hisquierdo}, 439 U.S. 572, 581 (1972)). The court assumed the statute in question was a family law statute (for purposes of the summary judgment motion to make out the strictest case possible) and therefore applied a stricter preemption test. \textit{Id.} at 1004 n.3.
contraceptives to all minors was "critically significant to Congress when it enacted and amended Title X." Secondly, the court noted the statute would do "major damage" to Title X because it would prevent a minor's confidential access to family planning assistance. Therefore, the state law was unenforceable because it conflicted unduly with federal law.

To illustrate this point more fully, years before the proposed squeal rule, Congress' intent in enacting Title X had been similarly interpreted. The court in Doe v. Pickett, in 1979, held that West Virginia's denial of birth control and family planning services to minors without parental consent "clearly thwart[ed Title X's] comprehensive goals." The court read Title X as requiring family planning services to be available to all persons seeking the services. Citing increased incidence of venereal disease, pregnancy and drug abuse (caused in part, the court hypothesized, by rebellion against parental wishes), the court realized that access to counselling, medical advice and other family planning services without parental involvement becomes even more important to achieve the purposes of Title X.

IV. ANALYSIS

United States courts should take a lesson from the House of Lords. By focusing on resolving the individual factors of acquiring contraceptive treatment without parental consent, the House of Lords' discussion broke away from the unresolvable conflict of moral right and wrong. This disassociation was valuable in that it enabled the court to look beyond the morality issue to the effect of the Gillick C ruling by the Court of Appeal in 1984, which made parental consent a prerequisite for a child under sixteen to receive contraceptive advice or treatment: "[T]hey cannot get help under sixteen, so they just go on sleeping with their boyfriends and hope for the

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145. Id. at 1006.
146. Id.
147. Id.
149. This decision was reached two years before the Title X amendment requiring the encouragement of family participation in minors' birth control decisions. Also, Pickett was decided four years before the squeal rule was enjoined against enforcement of the rule.
150. Pickett, 480 F. Supp. at 1221.
151. Id. at 1220.
152. Id. at 1221.
153. See supra note 3.
Although national statistics are not yet available to show what happened after the English Court of Appeal required parental consent in December of 1984, in Camberwell, England, during the first ten months of 1985, there were thirty-three pregnancies (eleven from one school), up from a total of eleven the year before.\textsuperscript{155} In a south-east London clinic, the number of girls under sixteen coming in for advice was halved.\textsuperscript{156}

The House of Lords’ decision does not give doctors unbridled discretion to issue contraceptive treatment and advice. In fact, Lord Fraser clearly warned that a doctor must discharge his professional duties accordingly or be disciplined by his own professional body.\textsuperscript{157} Even further, a doctor who could not justify the treatment of a child under sixteen without parental consent by showing that he satisfied the five conditions could be criminally liable for aiding and abetting the commission of unlawful sexual intercourse.\textsuperscript{158} These restrictions allay some fears that a minor under sixteen could receive contraceptive treatment and advice without any limitations. The five factors which help the doctor in forming his clinical opinion also restrain the doctor from prescribing contraceptives without taking the minor’s best interests into consideration. These factors could be adapted for United States doctors in their determination of whether to prescribe contraceptives to a minor under sixteen. The doctors who do prescribe contraceptives would be subject to close scrutiny by the United States Medical Association or even state-funded committees, if the state wanted to protect its interest of assuring the minor’s welfare, to ensure that the doctors are not breaching their professional responsibility.

Secondly, statistics show that teens are engaging in sexual intercourse, whether or not they are protected by contraceptives. Combining the English and United States statistics, over 140 girls out of every thousand become pregnant, with almost half of these pregnancies ending in abortion.\textsuperscript{159} Commentators in favor of parental consent requirements argue that access to contraceptives increases the statistics of the number of girls under sixteen who are sexually active,\textsuperscript{160} but

\begin{itemize}
\item\textsuperscript{154} Anguish, supra note 5, at 15, col. 2.
\item\textsuperscript{155} Id. at 15, col. 3.
\item\textsuperscript{156} Id.
\item\textsuperscript{157} Gillick, 3 W.L.R. at 845.
\item\textsuperscript{158} Id. at 843-44.
\item\textsuperscript{159} TIMES, supra note 4, at 84.
\item\textsuperscript{160} See Notification Requirements, supra note 131.
\end{itemize}
access to contraceptives can only decrease the number of pregnant girls under sixteen. Studies show that girls in the United States who are sexually active wait almost one year before seeking contraception and only one in three sexually active girls in the United States between the ages of fifteen and nineteen use contraceptives. Of those minors who did in fact use contraceptives, one-fourth get pregnant anyway. Compare this attitude to Holland's teens: "We've been told that no Dutch teenager would consider having sex without birth control . . . [i]t would be like running a red light." And compare Holland's teen pregnancy rate with the United States's rate: fifteen pregnancies per thousand girls in the Netherlands as opposed to ninety-five pregnancies per thousand girls in the United States.

Parents want to protect their children from these dangers, including having sex before the child is physically, emotionally and mentally ready. A parent's right to the "care, custody and nurture of their children as a liberty interest protected by the Fourteenth Amendment" has been recognized by the United States Supreme Court. Parents have an obligation to prepare their child for society by instilling in the child precepts of morality and social conduct. But these rights do not extend to an affirmative obligation on society in general to inform the parents of all their child's actions. The British attitude of "dwindling rights" seems appropriate since the reason for the right initially was to protect the child until the child could look out for herself or himself.

The state's interest in the "health and welfare" of its citizens complements the minor's privacy interest when the goal is the avoidance of unwanted pregnancies. Currently, many states allow minors to consent to specific medical treatments and a few states allow a

161. TIMES, supra note 4, at 82.
162. Id. at 81, 82.
163. Id. at 82 (quoting spokesperson Jane Murray, for the Alan Guttmacher Institution, which is a non-profit research center in New York).
164. Id. at 84.
165. Doe v. Irwin, 615 F.2d 1162, 1167 (6th Cir. 1980).
166. Id.
167. Id. at 1169.
168. Id.
169. See, e.g., CAL. CIV. CODE § 34.10 (West 1982) (minimum age for drug and alcohol treatment consent is twelve years); ILL. REV. STAT. ch. 111, 4504 (1981) (minimum age for consent for treatment for depressant or stimulant drugs is twelve years); CAL. CIV. CODE § 34.5 (West 1982) (prevention and treatment of pregnancy); N.J. STAT. ANN. § 9:17A-1 (West 1976) (pregnancy). The list goes on and on.
minor to consent to receiving contraceptives.\textsuperscript{170} A universal example of state legislation for the good of society is venereal disease laws. To control the spread of venereal disease, all fifty states and the District of Columbia have statutes allowing a minor to consent to the diagnosis and the treatment of venereal disease.\textsuperscript{171} The state also has an interest in protecting their young female citizens from the emotional and physical impact of an unwanted pregnancy, but this interest includes protecting these minors before they have sexual intercourse. However, despite this strong state interest, and corresponding efforts to further such interests, the incidence of intercourse among unmarried teens increased by two-thirds during the 1970's.\textsuperscript{172} Since the state's interest seems to be no bar to sexual intercourse for a significant number of minors, the state must try to shield these sexually active females from unwanted pregnancies.\textsuperscript{173} Choosing between restrictions on availability of contraceptives, resulting in unwanted pregnancies and abortions, or allowing confidential access to contraceptives, the better course is to allow these sexually active teens access to confidential contraceptives.

Finally, as the statistics have indicated, the problem of "babies having babies" is not controlled completely by confidential access to contraceptives. Even when contraceptives are available, many times they are not used or not used properly. Therefore, states should encourage educational programs, such as Planned Parenthood, to ensure the effective use of contraceptives.

Besides the issue of education, an even greater need must be addressed. Both United States and English scholars have concluded

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{170} COLO. REV. STAT. § 13-22-105 (1973) (contraceptive devices, supplies, procedures, and information if minor is in need, pregnant, or referred by physician, clergy, school, agency, or family planning clinic); VA. CODE § 54-325.2(D)(2) (1982) (birth control; V.I. CODE ANN. tit. 19, § 291 (1976) (family planning). This list too could go on. The irony of these statutes is that many states will allow a minor to consent to medical treatment if the minor is pregnant or has been pregnant in the past.
\item\textsuperscript{171} Cohn, Minor's Right to Consent to Medical Care, 31 MED. TRIAL TECH. Q. 286, 292 (1985).
\item\textsuperscript{172} TIMES, supra note 4, at 81. One-fifth of the unmarried teens admitted they were sexually active at fifteen, one-third admitted they were sexually active at sixteen, and 43\% admitted they were sexually active at seventeen. \textit{Id.}
\item\textsuperscript{173} The state protects its interest by promulgating and enforcing statutory rape laws. Considering that many states have these laws, two possible conclusions arise from the increased incidence of teen sex coupled with statutory rape laws: either the laws do not discourage the teens from being sexually active, or the laws only discourage the teens from being sexually active to some extent, so that without the laws, the number of sexually active teens would be much greater.
\end{enumerate}
\end{footnotesize}
that many underprivileged girls have babies just to have someone who will love them.174 In an English study of 120 under-age mothers, most of the girls had very hard lives, such as coping with terrible housing conditions and other difficulties.175 The likelihood of a girl from a depressed area keeping her baby is substantial; "[t]he greater the deprivation, the more the girls want their babies."176 For these underprivileged teens, getting pregnant has little to do with sex, rather it is a means of fulfilling their need for security; "[i]t's like when kids get puppies."177 In sum, contraception alone will not decrease the incidence of teen pregnancies. Education must be considered, as well as wide social changes to reverse the depression and sense of worthlessness of the underprivileged teen.

V. CONCLUSION

Although currently no parental consent is required in order for minors in the United States to receive contraceptive advice and treatment, there are no guarantees that this situation will remain unchanged. In fact, since taking office, President Reagan has attempted several times to restrict the availability of family planning services, including promulgation of the "squeal rule."178 Recently, a federal court of appeal struck down a state-imposed parental consent requirement for the receipt of family planning services after the Planned Parenthood and the New York decisions invalidated such a condition, which the Utah Department of Health tried to justify by the possibility of creating a "referral system" for minors lacking parental consent.179 Furthermore, the United States Supreme Court has not decided whether minors have a right to confidential contraceptives, because the challenges to this right (the "squeal rule" cases) have held only that the "squeal rule" was improper because the HHS Secretary did not have the authority to promulgate the rule.

The English approach, giving minors a right to confidential contraceptives when access is in the minor's best interests, is a strong ruling on which to base our own policy. Not only do we share the same origins of legal and social traditions, we share the same problem

174. TIMES, supra note 4, at 87, 90; see Anguish, supra note 5.
175. Anguish, supra note 5, at 15, col. 3-4.
176. Id., at 15, col. 4.
177. TIMES, supra note 4, at 84 (quoting Pat Berg, director of a Chicago program for homeless youths).
178. Id. at 82.
179. Does v. Utah Dep't of Health, 776 F.2d 253, 255-56 (10th Cir. 1985).
of high pregnancy rates for teens and the depressed economic conditions which aggravate the problems. Let's take a lesson from England.

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