"THROWNAWAY" CHILDREN AND THROWAWAY PARENTHOOD

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You live here because we let you. You're a minor in our custody and the only rights that you have in this home are ones we choose to give you.

--Terms of 1992 "Toughlove" contract teenagers must sign in order to continue living in their parents' home [FN1]

It may only be a slight extravagance to say that the abandonment of children by their parents constitutes an advance of civilization. That certainly appears to have been the view of proper Romans, who considered their routine "exposing" of newborn children a humane alternative to the infanticide of Carthage and other "barbaric" societies. [FN2] Thus Euripides' chorus might regard Medea's murder of her children as a "deed of horror," [FN3] but classical depictions of child abandonment typically occurred in mythology and comedy. *1716 With no adverse judgment implied against the abandoning parents. [FN4]

As John Boswell has shown, the early and medieval Church officially censured, but in practice tolerated, widespread abandonment and sale of children because the alternatives for poor parents were starvation or filicide. [FN5] Centuries later, Thomas Hobbes would still contend that natural law gives parents the "power . . . to save, or destroy" their children. [FN6] Yet he seems to portray as more benign the power a mother holds either to "nourish, or expose" her infant; for "if she expose it, and another find and nourish it, the Dominion is to him that nourisheth it," all toward the "end" of "preservation of life." [FN7] Rousseau again saw the "preservation" of children as a "natural" duty of parents, but in his philosophy he viewed the parent-child bond as entirely conditional. [FN8] In his own life he abandoned five of the children he fathered. [FN9]

Yet the desertion or exile of children is not a practice which our own century has pretended to condone. The laws of many states, typically dating to about 1900, make it a crime for parents to "abandon" [FN10] or fail to provide "necessary" support for their children, [FN11] and, prodded by Congress, all states provide at a minimum that parental rights can be forfeited by abandonment *1717 or significant neglect of a child. [FN12] Our era has recognized as a "cardinal" principle of constitutional law that the "custody, care and nurture of the child reside first in the parents," [FN13] which is not simply a "right of control" but also a "natural duty." [FN14] In our earnest efforts to protect parental rights against state interference we have seemed to rely, along with Blackstone, on "Providence . . . implanting in the breast of every parent that natural . . . or insuperable degree of affection, which not even the deformity of person or mind, not even the wickedness, ingratitude, and rebellion of children can totally suppress or extinguish." [FN15]

In a fallen world, though, "natural" duties do not necessarily correspond to natural behavior. Not just in ancient Rome or ancien regime France, but now, in the 1990s, many parents are abandoning and expelling their children. [FN16] The most important empirical study ever conducted on the subject is the National Incidence Study:
Missing, Abducted, Runaway and Thrownaway Children in America ("NISMART"), which Congress mandated to help resolve questions over the number of "missing" children. [FN17] Based on a carefully conducted national telephone survey of 34,822 households, NISMART found that about 127,000 children under age eighteen became "thrownaways" [FN18] during 1988 through abandonment or exile by their parents. [FN19] Of those children, some 59,000 were considered by the authors to be "policy focal": after expulsion from their home, they had no "familiar and secure place to stay while away." [FN20] What providers of runaway shelter services and *1718 others have long asserted was proved true: an extraordinary number of children in this country are abandoned or forced onto the street each year by the decision of their parents. [FN21]

This article contends that the problem of "thrownaways" represents more than simply a subset of the larger calamity of child abuse and neglect. Instead, the exile of adolescents by their parents represents a distinct--and fundamental--challenge to our notions, and our practices, of family justice. Careful assessment of the results of NISMART alongside other recent demographic data suggests that the abandonment or exile of a child is an event shockingly common in the United States. Moreover, it is an event that should be treated with far greater seriousness than most previous scholarship has acknowledged--especially that supporting widespread adoption of adolescent "emancipation" procedures. [FN22] Not only does exile [FN23] of a child from *1719 the parents' home create grave risks of major harm to the child, it undermines one of the key premises (and, arguably, promises) of the liberal state--that parents will care for their young. Perhaps taken off guard by this failure of social reality to comply with its basic assumptions, the liberal state has shown itself remarkably clumsy and half-hearted in its response to the plight of these kids. It is in the best interest of children, families, and the state that "throwaway" events be both discouraged in advance and addressed after the fact by careful legal reforms which give long-overdue recognition to the informal community resources which adolescents at risk depend on most.

I. NismarT's "Thrownaways"--Sketch for a Portrait

NISMART makes it possible for the first time to speak in something approaching "exact numbers" with respect to exiled children, and to identify some of their own and their families' distinctive characteristics. For a number of reasons, though, the incidence of parental abandonment NISMART reflects must be regarded as a mere fraction of what really occurs--the profile it draws of the throwaway population is radically incomplete.

At the outset, it seems possible only to express admiration and gratitude for the care and the strength of NISMART's approach. [FN24] The specificity of its definition of "throwaway" is impressive--including only those children under age eighteen who were (1) "told to leave" home, (2) abandoned or deserted, (3) refused reentry to the home after running away, or (4) unsought by their parents after running away. [FN25] Its methods for identifying such children *1720 were both more comprehensive and more imaginative than those of previous national incidence studies concerning runaway behavior [FN26] that have supported estimates of the "homeless youth" population. The study used not only a very large sample of households, but a structured, sensitive, and varied format for its telephone interviews. In addition, social service professionals in a nationally representative sample of twenty-nine counties identified an estimated 14,500 children found to have been "abandoned" by their parents and so taken into state custody. Finally, a sample of "returned runaways" were questioned to determine how much of the behavior that parents described as "running away" was actually the result of parental expulsion from the home. [FN27]

The distinction between "runaways"--whom NISMART found to number 446,700 in 1988--and "thrownaways" is open to controversy. The distinction separates into groups children whom service providers and clinicians have in the past found it sensible, even necessary, to consider as one. Nothing in NISMART substantially contradicts the received wisdom that both runaway children and "pushed-out" children are often victims of rejection and abuse at the hands of their parents, and that their needs once out of the house are similar. As the authors themselves freely admit, [FN28] the estimate of the number of thrownaways must for many purposes be considered in close conjunction with the study's estimate of "runaways": excluding overlapping cases, the groups together numbered 513,400 in 1988. [FN29] While it may only have limited value in designing services for kids on the street, distinguishing some as thrownaways based on a rejecting act admitted to by the *1721 parents is an important aspect of understanding the family dynamics that put children at risk. [FN30]

In addition to these methodological and definitional strengths, NISMART made significant substantive

contributions to our understanding of who thrownaways are and what kinds of backgrounds produced them. The vast majority, it turns out, are aged sixteen or seventeen [FN31] and come from families with a structure other than that of two biological or two adoptive parents. [FN32] (See Figure 1.) Some of the most interesting findings are negative: thrownaways do not differ significantly from the general youth population with respect to gender, race, geographic region, or household income, [FN33] except that children abandoned to the foster care system did tend to come from poorer households (less than $15,000 in annual income). [FN34] "Thrownaways" are demographically identical to "runaways" except as to age: the latter group contains no children as young as the 14,500 "abandoned" children, mostly under age ten, included among throwaways, and contains a few more youth in their early teens. [FN35]

Figure 1

Thrownaways and Family Structure

This sort of demographic profile, of course, can only be the beginning of efforts to describe this complex population, but it is of no small importance nonetheless. It tends to negate one easy explanation for the underlying acts of parental rejection: that the children themselves, through misbehavior, are to blame for being "thrown away." If these children are impossible for their parents to handle, why do they not more closely resemble the population of juveniles arrested for acts of delinquency? [FN36] Further, why does the "thrownaway" *1722 population--children who have been rejected by their parents--so closely mirror, and so substantially overlap, the population of "runaways"--kids who are actively rejecting their parents? [FN37] Indeed, recent research strongly suggests that, even when closely studied, thrownaways differ from runaways only in coming from more "punitive," "detached," and "conflicting" homes. [FN38] Furthermore, throwaways show no greater antisocial tendencies than runaways. [FN39]

Even what the authors of NISMART concede to be a "drawback" of their methodology--the likelihood that parents responding to the telephone survey might misrepresent the abandonment/push-out behaviors that identified throwaways, because such behaviors would reflect negatively on their parenting [FN40]--is in a sense one of the study's real strengths. This strong tendency toward underreporting means that the estimates for thrownaway children, as opposed to the study's estimates for "otherwise missing" children, *1723 must almost certainly be taken to be irreducible minimums. [FN41] Indeed, based on interviews with "returned runaways," the authors found that if children, rather than parents, had been interviewed, the incidence of throwaways would have been at least forty percent higher. [FN42] Thus, unlike previous attempts to quantify runaway and homeless children that were open to attack on grounds of exaggeration, NISMART has given those interested in reaching out to this population a firm basis for beginning to determine the least that needs to be done.

For several clearcut reasons, however, NISMART's tendency toward underreporting of throwaways is almost certainly greater even than that caused merely by its reliance on parental reports. The most important of these factors are definitional. First, parents were questioned only regarding events of the previous twelve months. Thus, children abandoned or expelled more than a year earlier and still out of the home would not be counted. [FN43] Since twenty-six percent of identified throwaways were found to be gone from home for long periods, [FN44] this could result in substantial undercounting. [FN45] Second, children expelled from the home were not counted as throwaways if their parents had provided "adequate substitute care." [FN46] But from whose perspective was the care "adequate"? Parents, not the children they pushed out, were interviewed, and the tendency to justify their behavior may well have led a significant number to paint an inaccurate picture of the alternatives offered to children who would otherwise be considered throwaways. Further, it is not clear at all whether children pushed out of the home toward what their parents viewed as "adequate substitute care" in fact made use of the alternative. [FN47]

*1724 The most serious weakness in the NISMART estimates of throwaways is its exclusion of nearly all children in the foster care system [FN48]--of whom in 1991 there were some 429,000 nationally at any one time. [FN49] A very high proportion, perhaps even a majority, of those children are in foster care as the result of "voluntary" placements by parents. [FN50] Thus, one recent study of black children in foster care found that for
seventeen percent of them the "primary reason" for placement was "voluntary" action, and for another eight percent it was "abandonment." [FN51] In addition, "abandonment" was a "primary contributing factor" for placing twenty-one percent of all children in foster care in the five major cities studied, while "voluntary placement" was a primary contributing factor for twenty-two percent. [FN52] It has long been accepted wisdom that the difference between "voluntary" and coercive foster care placement by parents is sometimes "illusory." [FN53] From the discarded child's standpoint, nonetheless, "neglect," "abandonment," or "voluntary placement" by the parent ends in the same place—a system that typically provides "care," but little or no stable parenting. [FN54]

Ultimately, then, from one-quarter to one-half of children in the foster care system—perhaps as many as 200,000—arguably qualify as thrownaways based on their parents' rejection of responsibility for their care, far more than the 14,500 that NISMART revealed. Discarded children in foster care are different from other thrownaways in several key respects: the discarded children are far younger, far more likely to be members of a racial minority, and *1725 far more likely to come from impoverished backgrounds. [FN55] Like their older counterparts outside the system, though, they come overwhelmingly from fractured families. [FN56]

When adjusted for parental under-reporting and expanded to include discarded children in foster care, the incidence of parental "throwing away" behavior could easily increase to encompass 350,000 children a year. Yet even this figure may seem conservative when considered against a larger social fact—as of the 1990 Census, 5.7 million children, or nine percent of all children in the United States, were living in households headed by neither of their parents. [FN57] (See Figure 2.) Dubbed the "new orphans" despite the fact that one or both of their parents are usually still living, [FN58] most of these children reside in households headed by relatives, the rest with friends or in institutions. [FN59] While parents (usually single parents) were also living in many of these households, that was not true for more than two million children in 1991. [FN60] Indeed, according to one recent study, almost two percent of children in this country never live with either biological parent. [FN61] Parental abdication is thus a social reality that extends far beyond the limited definitional bounds of the NISMART study.

Figure 2

The New Orphans

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

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Worse yet, there is every reason to believe that the flight from parental responsibility is as much a trend as it is a fact. Thus, the number of children living in non-parent-headed households increased by 400,000 from 1980 to 1990 even as the population of that age group slightly decreased. [FN62] Children in out-of-home foster placement increased sixty-four percent between 1982 and 1991. [FN63] NISMART, as the first large-scale survey to focus specifically on *1726 thrownaway children, could not measure whether the number of children so defined has increased from past times. [FN64] However, its finding of a strong association between membership in a non-intact family and being abandoned or pushed out by a parent is highly suggestive on this score. During the past two decades, the population of children living with a single parent has risen by almost eight million while the number of those living with two parents has declined by twelve million. [FN65] A very high proportion of children in single-*1727 parent families have already been abandoned by one of their parents. [FN66] Is it so startling that a great many of them face expulsion and rejection by the other parent? From a short-term perspective, after the beginning of the recession in 1991, homeless shelter providers have reported an enormous increase in the use of their facilities by young teenagers. [FN67]

In view of this increase, it is surprising that NISMART has not yet been analyzed, let alone embraced, by scholars and advocates concerned with homeless youth populations. [FN68] The study's emphasis on sheer numbers may help explain this lack of interest, for some scholars may regard its data as merely cumulative, or even unhelpful. NISMART's incidence estimates for abducted, runaway, thrownaway, and "otherwise missing" children do not provide highly detailed information about the children or the families involved, and the study only takes on significant meaning for scholars when considered in the context of the literature on runaways and homeless youth. Advocates, by contrast, may be most annoyed precisely by the numerical thrust of the NISMART estimates, especially because those estimates are lower than some of the widely circulated previous claims made by advocates.
pressing for government attention to runaway and homeless youth. [FN69]

But whatever one ultimately thinks of NISMART, or, indeed, whatever one's conclusions are about the exact quantity of abandoned and exiled children in this country, the existence of this large population is now beyond all reasonable debate. Yet, if recognition of this fact does automatically furnish any imperatives, it surely justifies further inquiry in at least two directions—whether the problem of "thrownaways" is one that ought to engage the attention of government, and, if so, what kinds of action on their behalf would be most productive.

*1728 II. Why Thrownaways Matter

Thrownaways have by definition been rejected by their parents, who presumably know them best. Why then should anyone else care? Parental abandonment is, as noted at the start, hardly a new phenomenon, and it is difficult to detect any sense of urgency about the problem either inside government or outside of it. Congress, for all its fervor to protect other categories of "missing" children, [FN70] has yet to react legislatively to the findings regarding thrownaways. State anti-child-abandonment laws are close to a dead letter, [FN71] and state legislatures have shown little inclination during the past decade to assume added responsibilities for yet another disadvantaged group. [FN72] Indeed, enthusiasm appears to be running in the opposite direction. Two more states in the 1990s joined twenty-one others which had already adopted some form of an "emancipation" statute. [FN73] This legislation, in sharp *1729 contrast with the common law tradition of judicial emancipation, [FN74] has made it relatively easy in practice for adolescents to sever their ties with parents, and, less obviously, for parents to escape their obligations to troublesome teenagers. [FN75] Why then would legislators chosen by adults fear the consequences of ignoring non-voters who have been rejected by the voters closest to them? And since thrownaways, as counted by NISMART, represent only about two of every 1000 children under age eighteen in the United States, why, a hard-pressed committee chairman might ask, are existing social service systems incapable of serving their needs?

Nor should we expect academic opinion immediately to embrace a view of thrownaways as particularly endangered victims. Rather, champions of the cause of children's "liberation" [FN76] might see these teenagers as well out of *1730 their parental bondage. An even broader segment of the academic community would argue that sixteen-and seventeen-year-olds generally have the capacity to make important decisions, and if necessary, to live independently. [FN77] From this perspective, adolescence is, in Joseph Kett's words, an "invention" of our own century, one which has masked the historic competence of teenagers to lead their own lives. [FN78]

For several reasons, however, we should put aside the temptation to minimize the importance of the "thrownaway" experience for both the adolescents who experience it and for the society in which it occurs. First, and most crucially, there is the question of the consequences--the tragic reality of life on the street for a very substantial number of thrownaways and runaways. Second, by reflecting on the capacity of this segment of the adolescent population to function as independent adults we may arrive at a more realistic assessment of adolescent "competence" in general, and of "emancipation" legislation in particular. Finally, the presence of these children on our streets may cause us to question our assumptions about the competence of many parents to handle the challenge of rearing a teenager in difficult times.

A. Consequences of Exile

Although NISMART's thrownaway estimates may represent a small window on a larger and increasing problem of parental abdication, these kids deserve to be viewed on their own. For theirs is an experience quite unlike that of children for whom substitute care-- even care we know to be unsatisfactory--is provided. Children in foster care or residing with relatives or friends have some structure to rely on, and contend with, but teenagers who find themselves exiled (including many who are "runaways" fleeing intolerable abuse at home) must identify immediately how they will survive the next days and nights. The vortex of informal social structures, government safety nets, and illegal networks into which they are drawn, sometimes to be saved and sometimes to be lost, must be at least briefly sketched if the worst of the risks they face are to be rationally addressed.
Almost nine out of ten thrownaway children in NISMART's sample initially found shelter with a friend or relative, and six of ten were back in the home within two weeks of leaving. [FN79] (See Figure 3.)

Only ten percent traveled more than fifty miles from home, and most parents knew where their pushed-out teenager had gone. [FN80] Further, only a small minority of the parents of these youths admitted that their child suffered any physical or sexual abuse, or indeed any harm at all, while away. [FN81] All of this, which is similar to the experience of "runaways" in NISMART and other previous surveys, [FN82] cautions against extreme alarm over an adolescent's irregular absence from home. The fact that the overwhelming majority of these children know people willing to take them in is a happy indication that informal, resilient community resources are taking up some of the slack for families in trouble.

B. Adolescent Capacity and Premature "Emancipation"

When the despair and danger of the lives of thrownaways is fully understood, it becomes possible to judge the question of their "capacity" for "emancipation" in a clearer light. Surely it is not enough to argue, as Carol Sanger and Eleanor Willemsen did regarding the emancipated minors they recently studied, that their ability to make good decisions about living on their own is demonstrated by older psychological studies of middle-class youths living with their parents. [FN95] Recent research has strongly undermined a rosy view of adolescent competence in general: in the words of Jeffrey Arnett, "adolescence bears a heightened potential for recklessness compared to other developmental periods in every culture and in every time." [FN96] Recognition of that potential led one distinguished group of child psychiatrists to recommend recently that the age of emancipation for signing binding contracts should not be eighteen, but twenty-one. [FN97] At best we must recognize "the limited state of our knowledge about adolescents' competence in making decisions about 'risky behaviors.'" [FN98]

What has become clearer in recent years is the crucial contribution of context to capacity. Thus, historians studying the changing notions of "adolescence" over the past centuries have consistently noted that "competence" for adult status is strongly tied to current expectations of what qualities and capabilities are necessary to function productively and independently in a given social economy. [FN99] Indeed, two psychiatrists, Melvin Lewis and
Fred Volkmar, have gone so far as to say that "when tremendous changes occur in society over the course of history, astonishing changes emerge in the complex adaptive psychologic mechanism of the individual adolescent." [FN100]

Given that over the last two centuries teenagers have ceased to be sent from the home into "fostering out" or apprenticeship situations and instead faced "prolonged dependence" on the "isolated family," [FN101] is it so surprising that their psychological dependence on parental support has dramatically increased *1735 as well? An intriguing recent study led by Thomas Achenbach and Catherine Howell found that in just the thirteen tumultuous years between 1976 and 1989, the "competence scores" of American children significantly declined, while most measures of their "problems" significantly increased; this was demonstrated in part by especially dramatic increases in the percentage of children either receiving mental health services or "scoring in the clinical range" on the Child Behavior Checklist. [FN102]

Whether adolescent competence is affected by historical change or not, recent research indicates that competence now relates strongly to parental involvement and support. Children from families in which parents are neglectful consistently score lower on measures of competence, misbehavior, and psychological distress than children from any other kind of family. [FN103] Conversely, parental influence and pressure can severely compromise the decision-making ability even of older adolescents. [FN104] Finally, in Richard Jesser's phrase, the "ultimate importance of the social environment cannot be gainsaid" as a predictor of adolescent risk-taking behavior, with "poverty, racial/ethnic marginality, and limited life-chances" as principle compromisers of competence. [FN105]

Each of these corrosive factors is powerfully present in the lives of thrownaway kids. By definition, they have been neglected or rejected by their parents, no doubt in part because many of them have been spectacularly reckless and difficult children at home. As Sanger and Willemsen showed in their superb study of "emancipated" minors, parents frequently apply "subliminal" pressure on children to leave the house for promised independence, [FN106] thus accounting, perhaps, for some of the overlap between "thrownaway" and "runaway" episodes. [FN107] Finally, the "limited life chances" of kids forced from home prior to age eighteen could hardly be clearer, whether we judge those chances from the standpoint of their typically dysfunctional *1736 home environment or that which they encounter upon leaving it. [FN108]

Whatever we might think about general rules of adolescent "competence," thrownaways present us with a paradigmatic group whom we would expect to find not possessed of adult capacity. [FN109] It should hardly surprise us that service providers to homeless adolescents do not typically view thrownaways as capable of a productive, healthy life without the kinds of strong support structures that "independent living" programs provide. [FN110] Emancipation legislation, premised as it is on the belief that adolescents can survive on their own, works against creation of those structures, and, worse, can create procedural hurdles that block homeless children's access to services previously available. [FN111] Why then sully so noble and resonant a term as "emancipation" by associating it with the exile, exploitation, and squalor that constitute the world of homeless kids? [FN112]

C. Parental "Capacity"

If the experience of thousands of exiled teenagers calls into question some of our convenient assumptions about their ability to survive on their own, the fact of their exile should also lead us to rethink deeply held assumptions about parents' abilities and responsibilities to raise adolescents. That over 100,000 parents every year at least temporarily abdicate those responsibilities may well cause us to suspect that, for many people, the job is simply too tough and the payoff too small. [FN113]

That suspicion is particularly salient in view of NISMART's data on the composition of families from which thrownaways come--with only nineteen percent being exiled from two-parent homes [FN114]-- and on the nature of the incidents leading to the exile. Almost sixty percent of "thrownaway" events *1737 were preceded by an argument, and twenty-seven percent involved violence. [FN115] It is easy to imagine, and sympathize with, the desperation of a single parent trying to cope with a verbally or physically abusive child--even though we might suggest that the parent must share some degree of responsibility for the youth's wildness. Indeed, recent research on delinquency has shown that the relationship between "family attachment" and delinquent behavior is not simply linear, with poor attachment increasing the likelihood of delinquency, but rather cyclical, with poor attachment
leading to delinquency, which thereupon weakens attachment. [FN116] As proponents of "Tough Love" would put it, the "rotten behavior" of teenagers leads their families to be "filled with anger, fear, frustration, hurt, and especially helplessness." [FN117] This helplessness may be compounded, as Martha Minow has suggested, by what may at least appear to be conflicting obligations to other children in the household. [FN118] That such feelings could lead a parent to show her child the door should hardly shock us, especially since the gradual erosion of the "status offense" jurisdiction and authority of juvenile courts [FN119] has left many parents to feel, in the words of a juvenile court judge, "particularly helpless," with "no place to turn." [FN120]

This "Tough Love" image of parents under siege unfortunately tells only part of the story of "throwaway" parenthood. Study after study of children in runaway and homeless youth shelters indicates that a very high proportion of these children were seriously abused--physically or sexually or both--prior to leaving home. [FN121] In one in-depth, independent study of children at New York City runaway and homeless shelters, one-half reported physical *1738 abuse severe enough to leave welts or bruises or to require hospitalization; those so abused had run away from home more frequently than other children in the shelter. [FN122] A similar study in a Seattle program found that thirty-nine percent of "street youth" had suffered physical abuse and twenty-six percent had suffered sexual abuse before leaving home. [FN123] For many exiled children, then, is it really best that they return home almost at once?

Even when outright abuse does not exist in the homes from which these children have been expelled, their families are frequently near breakdown in many other respects. Perhaps most significantly, the households of many, possibly most, homeless adolescents contain a family member with an alcohol problem or other substance abuse problem. [FN124] In one study, more than one-third of those in runaway and homeless youth shelters sampled were found to have had a father in jail at some time; fifty-seven percent of those surveyed had parents who were "alcoholics, substance abusers, convicted criminals, or some combination of these." [FN125] About half of those who turn up in shelters as homeless adolescents were at some previous time placed in the foster care system. [FN126] In the face of this evidence of parental pathology, we may be entitled to take with a grain of salt the allegations of the parents of throwaways that it was their child's behavior that provoked his or her expulsion from the home, and we may also understand better why the populations of "throwaway" and "runaway" adolescents ultimately appear so similar in family background. [FN127]

Even more importantly, the extreme incapacity of many parents of throwaway children should alert us to the danger that parenthood is becoming an ever more difficult and, for all too many parents, overwhelming task. Substantiated reports of child neglect now number over 900,000 per year, and neglect appears to be increasing at a rate far greater than any other type of child maltreatment. [FN128] On a more general level, the study by Achenbach and Howell found that between 1976 and 1989 there was a significant increase in parents' reports that their child "feels unloved," is "stubborn," or "demands attention." [FN129] Adolescents in particular spend only 4.8 percent of their time *1739 with parents. [FN130] and that may be due in part to the simple fact that there is effectively a "parent shortage"--between 1970 and 1993 the percentage of children living with only their mother more than doubled, from eleven to twenty-three percent. [FN131] Even the presence of two parents does not guarantee that there will be much discretionary time for adolescents--indeed, seventy-five percent of married women whose youngest child is aged fourteen to seventeen now participate in the labor force, as compared to only fifty-three percent in 1975. [FN132]

It is easy to understand why mothers have felt less able to forsake work for stay-at-home parenting. From 1973 to 1991, three of every five families with children experienced a substantial decline in real cash income. [FN133] This economic hardship may in itself have made being a parent to an adolescent all the more difficult, and not just because teenagers typically demand money from their parents and are frustrated by a refusal. That frustration can, of course, in some cases propel a teenager directly to the street; thus runaway incidents appear to be nearly twice as common in families where the chief wage earner is unemployed. [FN134] Less obviously, as one recent study showed, family money problems frequently lead to marital discord and "irritable parenting," which in turn make parent-child hostility and adolescent aggression significantly more likely. [FN135] Whatever the cause, parents are currently reporting (with the concurrence of teachers) more aggressive and delinquent behavior by their children than in the mid-1970s, as well as increased use of mental health services. [FN136] Without attributing blame to those struggling to keep their households solvent, it is possible to wonder whether the very capacity *1740 of parents to handle difficult teenagers has not suffered a corresponding decline. [FN137]
III. Disposable Parenthood and the Liberal State

If adolescents cannot take care of themselves on the street, and their parents are unwilling or unable to provide them a haven, must, or should, the government intervene? As a preliminary matter, it seems that the Federal Constitution requires nothing, even if it permits much, in terms of government action on behalf of homeless children. Dandridge v. Williams [*138] and Jefferson v. Hackney [*139] seem to have effectively closed off any chance that a general right to public assistance would be recognized by the United States Supreme Court, while Lindsey v. Normet [*140] explicitly rejected the claim that "the need for decent shelter" is a "fundamental interest" requiring special constitutional vigilance. [*141] That this harsh rule might not apply to children seemed briefly possible when, in Schall v. Martin, [*142] the Court declared, by way of upholding "preventive detention" for possible delinquents, that "[c]hildren, by definition, are . . . assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as parens patriae." [*143] But all such hope vanished with DeShaney v. Winnebago County Department of Social Services, [*144] where the Court specifically found that abused or neglected children have "no affirmative [constitutional] right to governmental aid, even where such aid may be necessary to secure life." [*145] Abused children, and of course throwaways, are thus free under the Constitution to fall into a gaping legal chasm between parent and state. [*146] That *1741 they do in fact face this risk presents fundamental challenges both to the theory and the practice of our law.

A. Throwaways and "Rights"

Surely many will say that, as a matter of theory, providing for homeless adolescents is something that their parents, or failing that the state, ought to do, whether the Constitution demands it or not. For some of us who are caught up in teleological beliefs [*147] that mandate sacrifice on behalf of the poor, especially poor children, the circumstances of homeless adolescents may in themselves clinch an argument for a parental duty to provide for their care, and perhaps even larger social action on their behalf. [*148] Yet even if we were unpersuaded that the problems of throwaways deserve attention on *1742 grounds of humanity, we would still have to confront the question of whether they have special claims against their parents and against society generally founded in simple justice—at least, as justice is conceived by the liberal state.

I will confine my analysis of the question of the throwaways' "right to receive care" within the confines of several key features of the particularly influential contractarian liberalism of John Rawls, [*149] who argues for the priority of a carefully defined vision of "justice" over any full conception of "the good." [*150] That argument is of crucial importance in the context of parent-child abandonment because it rejects arguments grounded in "utility" which first define "the good" and calculate what social and political structure will maximize "goodness" [*151]—arguments that are especially problematic because of the grave difficulties of balancing parental burdens against adolescent needs. [*152] Thus, it is not a liberalism that is grounded in any notion of making "sacrifices" for others, or on any assumption of widespread "sympathy and benevolence." [*153] We therefore cannot assume, in Rawls' moral universe, that simply because throwaways suffer, others must act to prevent or relieve that suffering—even if society as a whole would be better off for such action. [*154] Instead, we must look for a contractarian foothold for asserting that children have a right not to be exiled by parents or forgotten by society.

The first and most obvious such foothold may well appear to be Rawls' acknowledgment of "a lexically prior principle" to what he has labeled his "first principle covering basic rights and liberties"—that is, a requirement "that citizen's basic needs be met, at least insofar as their being met is necessary for citizens to understand and to be able fruitfully to exercise those rights and liberties." [*155] Surely throwaway kids—denied, as we have seen, some of the basic requirements of a stable life [*156]—can invoke this most fundamental of all rights?

Unfortunately, such a conclusion may not follow at all, at least with respect to the exiled adolescents with whom we are here most concerned. [*157] To begin with, the debate discussed above regarding the capacity of teenagers to be "emancipated" illustrates that we would likely fall short of a consensus that these adolescents do not already understand what is "necessary" for them to exercise "fruitfully" the rights and liberties guaranteed by the liberal state. [*158] Moreover, it is not even clear whether what some of us would consider the worst features of a street...
kid's life—most notably, survival sex—would be counted as unacceptable by all rational members of the liberal polity. [FN159] Because Rawls refuses to spell out the full scope of this "prior principle," it is not at all clear how he would resolve such disputes. [FN160]

Even if we cannot clearly derive parental (or community) duties to thrownaways on the basis of this "prior principle" of "basic needs," what of the much more fully elaborated "principle of fairness," the principle by which individuals, through their actions or their promises, acquire obligations not *1744 only to the world, [FN161] but to specific other people? [FN162] Something akin to this principle seems to have motivated Kant to locate the source of parental responsibility in the "act of procreation"—the act by which "we have brought a person into the world without his consent and on our own initiative, for which deed the parents incur an obligation to make the child content with his condition so far as they can." [FN163] In the more specific modern context of child support after divorce, Mary Ann Glendon sees a "notion," accepted by "most people," that the fact of "having children impresses a lien upon all of the parents' income and property to the extent necessary to provide for the children's decent subsistence at least until those children reach the age of majority." [FN164]

Yet this notion, appealing as it may be, does not seem to have the same meaning as Rawlsian "fairness," nor does the "act" of procreation in itself appear to satisfy the conditions for implying a Rawlsian "obligation" on parents. [FN165] Such "obligations" arise only out of "voluntary" acts, with voluntariness to be judged with all the strictness of modern contract principles. [FN166] Sleepiness, delusions, coercion or deceit—all too often key contributors to procreation—are defenses to being held bound. [FN167] Moreover, obligations are "normally" owed only to "those who are cooperating together," because "fairness" is premised on the view that "[w]e are not to gain from the cooperative labors of others without doing our fair share." [FN168] For this reason, *1745 marriage qualifies as an act implying obligations, [FN169] while procreation, which does not in the least involve a "mutually advantageous cooperative venture according to rules," [FN170] does not. [FN171] Elizabeth Scott has recently argued that a "duty to rescue" children arises under the liberal "harm principle" laid down by John Stuart Mill and the "voluntarily undertaken obligation" of parenthood. [FN172] However, even she admits that liberal, contractarian theory cannot easily support the imposition of parental duties on "a rape victim or a man or woman who was fraudulently assured that he or she was engaging in protected sex." [FN173] What, then, of cases of statutory rape (or, more generally, teenage parenting), negligent misrepresentation, or diminished capacity? Indeed, what difference does it make to the child's need for parenting that there has been a failure of good-faith bargaining between her parents? And even if the harm principle adequately supports a construction of parental duty, does a parent's "fair share" include the heroic task of facing down an intractable, perhaps even violent, teenager? [FN174]

That simple liberal "fairness" does not resolve the existence or extent of parental responsibility for children becomes all the more evident when we reach, finally, the full description of Rawls' "original position," laying at the heart of his theory. For here we find a crucial "motivational assumption" which Rawls acknowledges to be integral to imagining the actions of the parties to the original position. [FN175] Those parties must be thought of as "heads of families, and therefore as having a desire to further the welfare of their nearest *1746 descendants." [FN176] With this rare assumption about human desire—another is his assumption of a provisional lack of envy [FN177]—he avoids having to posit "obligations and duties . . . to descendants". [FN178] Such duties, he urges, should be "derived" from "other conditions" inherent in justice as fairness. [FN179]

But how can this assumption survive our vision of the thousands of children whose parents have demonstrated no desire to further their welfare, who in fact find themselves either abused at home or utterly exiled from their home at an age that puts them at an extreme social and economic disadvantage? [FN180] Is it enough to say that the "original position" is "purely hypothetical," [FN181] a mere "device of representation," [FN182] and that any "empiricist objection" to its conditions misconceives its function? [FN183] Perhaps we should be content imagining that parties to the original position would be impelled by their good will toward their descendants to establish protections for all children against the consequences of parental abuse or rejection. [FN184]

*1747 Yet doubt and distrust may linger. How can a sense of duty to one's child (much less to the child of another) be derived as a duty, or at least a certain event, from a structure which had to assume its existence in the first place? [FN185] Will that care, even if it can be derived, be subject to Rawls' absolute priority of "liberty"—that is, the principle that "liberty can be restricted only for the sake of liberty"? [FN186] And how can a parent's assumption of the parental duties, which may seem clear enough when holding an infant, be irrevocable once that needy, helpless
creature turns into an independent, surly adolescent? [FN177] Surely we may wonder how a liberalism that has for
two decades agonized over questions of liberty from parents can have any interest in, or capacity for, giving shape to
the moral obligations of parents to *1748 children. [FN188] Rawls himself questions whether the family should be
abolished while remaining silent on what social provisions for children could conceivably take its place. [FN189] As James Fishkin recently put it, "[l]iberal theory has seemed almost to assume that atomic individuals spring from
nowhere into adulthood only to return, eventually, to the void." [FN190] At the very least one might suspect that
liberal theory--as distinguished from liberal sentiment--has inadequately defined a place in its polity for those
thrownaway children who have neither a parent to represent them nor the capacity to assume responsibility for
themselves.

B. Homeless Youth and the Failure of Law

Fortunately, for most thrownaways in our liberal society, exile from home does not mean falling into an abyss: the
vast majority find a place to go, mostly to other family or friends. [FN191] They suffer serious risks compared with
teenagers living in stable homes, but to imply that our society has been indifferent to their plight would be grossly
unfair. Moreover, despite the apparent absence, after DeShaney, of any constitutional mandate that the government
address their plight, [FN192] various components of the modern welfare state--including affirmative programs
targeted directly toward runaway and homeless youth, a foster care system open to "abandoned" children, and public
assistance programs for poor parents--appear directly applicable to the plight of thrownaways. Unfortunately,
careful scrutiny of these options indicates that the special problems created by thrownaways for the theory of the
liberal state also carry over to its practice. Government programs that apparently target "homeless" kids are in fact
strongly oriented toward resolving the short-term crises of runaway children whose parents or guardians want them
back. The foster care system is generally closed to adolescent throwaways, while public assistance structures
create subtle incentives for pushing children out of the house. Finally, the law tends at once to turn a *1749 blind
eye to the willful exile of children by their parents while at the same time discouraging the provision of informal
family and community shelter and services to these children.

1. Runaway and Homeless Youth Programs

The Federal Runaway and Homeless Youth Act ("the Act"), [FN193] which funds a national network of short-term
shelters for adolescents and a toll-free "runaway hotline," is the preeminent governmental effort on behalf of
adolescents who run or are pushed out of the house. Enacted in 1974 to benefit only runaways, its scope from 1980
was enlarged to encompass homeless youth as well. [FN194] Yet the Act is of extremely limited value to these
youth, with less than five percent of them spending any time in a state or federally funded runaway and homeless
youth shelter. [FN195] (See Figure 4.) Limited funding is part of the problem: Congress currently has allocated
$12.9 million annually to fund the Act's entire transitional living program for homeless youth aged sixteen to
twenty-one. [FN196] More money, over $40 million, goes to emergency shelters for runaways, [FN197] but federal
regulations prohibit stays of more than fifteen days in such shelters. [FN198] On the state level, fewer than ten
states make any kind of specific statutory provision for runaway and homeless youth services, [FN199] and the
federal Act contains no incentive for states to pass regulatory legislation or to appropriate funds. [FN200]

Figure 4

Where Thrownaways Stay While Away

Additionally, few of the programs operated under the aegis of the Act include the kinds of transitional living
services, along with intensive mental *1750 health and substance abuse services, that long-term throwaways need.
[FN201] Anne Moses anticipated all of this in 1978 when she noted that, for all the strengths of the recently passed
Runaway Youth Act, the law "has frozen a particular type of response into a legitimated, federally funded network,
leaving little room for flexibility." [FN202] Flexibility in the system was crucial to meeting the longer-term, more
intensive needs of throwaways, but, hemmed in by restrictive federal requirements, the runaway shelter network
has remained committed to models designed for quick reunion of children with parents. [FN203] This may explain
why, according to a recent study, on any given *1751 night only fifty-five percent of available beds in youth shelters
are occupied, and why over half of the street youth have never spent a night in such a shelter. [FN204]

2. Foster Care

Even worse, however, the establishment of this special network may be partially responsible for the fact that
teenage throwaways and runaways have virtually no access to the traditional foster care system, [FN205] where
long-range shelter and significantly more extensive services are available. Indeed, almost half of the children in
runaway shelters are placed there by the very child protective agencies who run the foster care system--thus sparing
the system the cost of their presence and incidentally making it harder for youths on the street to find an available
shelter bed. [FN206] As Douglas Besharov recently noted, "most child protective agencies do not consider it
abandonment when parents expel older children from the home or refuse to allow them to return because of serious
misbehavior." [FN207] While Besharov himself condones this attitude, [FN208] we might ask how seriously we
should take allegations of a child's misconduct when we know how abusive, both of self and of their children, the
parents of many, if not most, long-term throwaways have been. [FN209] Isn't accepting at face value a story of
adolescent acting-out too easy a way for an overburdened child protective system to avoid taking on additional,
unwanted responsibility?

In New York, the Legal Action Center for the Homeless recently filed a pathbreaking lawsuit, Rosado v. Cuomo,
[FN210] seeking to force the state to admit destitute and homeless teenagers to emergency foster care. [FN211] The
*1752 State's response was that the foster care system has no responsibility for the immediate needs of such youth
because of the existence of runaway shelters. [FN212] While still unresolved, Rosado illustrates the procedural
barricades in the foster care system for throwaways: they will not be placed until an investigation finds that they
were "neglected," but such investigations may take weeks to complete. [FN213] For youths who are clinically
depressed, destitute, and often caught up in drugs and prostitution, even a few days is simply too long to wait.

3. Indirect Weakening of Parent-Child Bonds

Affirmative governmental action on behalf of throwaways, then, is pathetically weak. In some obvious and some
subtle ways, however, state and federal laws may actually facilitate the parental abandonment and exile of children.
Some we have already encountered; most notably, the only penalty imposed by the bulk of states on parents who
"push out" a teenager is loss of custody. [FN214] And of course emancipation statutes give parents the ability to
maneuver, or even force, older teenagers out of the house. [FN215]

In addition, federal and state public assistance policies may have their own subtle impact on maintaining the
population of "new orphans." While on the whole throwaways do not come disproportionately from impoverished
families, long-term runaways and street youth probably do. [FN216]

*1753 Teenagers put poor families in an economic squeeze: it costs nearly twice as much, according to Department
of Agriculture studies, to provide a teenager with food, clothing, and transportation as it does a small child, [FN217]
yet public assistance grants remain the same regardless of a dependent child's age. [FN218] In the real world of the
1980s, moreover, welfare payment levels declined dramatically against inflation-- thus children born in the late
1970s and early 1980s have become extremely expensive for poor and single parents. [FN219] The failure of public
assistance laws--and arguably of tax laws as well [FN220]--to take account of the additional costs of rearing
teenagers may provide some of the underlying tension that explodes into the arguments over "house rules" and
"friends" which parents typically describe as having preceded a throwaway episode. [FN221] Typically, though,
homeless teenagers seeking public assistance are turned away on the grounds that their parents should be supporting
them. [FN222]

*1754 4. Informal Community Assistance
By far the greatest resources of thrownaway and runaway children are nearby friends and relatives.  Yet this is one kind of assistance that the law of most states actively discourages.  The parental right of custody, under both the common law and state statutes, implies tort or even criminal liability for anyone who, in the words of an Idaho statute, "knowingly or intentionally provides housing to a runaway child."  Appellate courts in Michigan and Illinois have both held that this parental right does not preclude runaway shelters from providing help to children, but this sort of protection does not apply to other good samaritans.  Fortunately, to date these prohibitions against simple charity have been enforced with no more apparent rigor than have the legal obligations of parents who pushed their children out of the house.

Still, our rigid conception of parental custody as absolute against the whole world, even during early and mid-adolescence and even against extended family and long-time adult friends, remains a highly dubious corner of the law in relation to child development theory, and quite likely a damaging one in practice.  For even if custodial interference laws and doctrines are not formally enforced against those giving help to thrownaways and runaways, they act as strong disincentives to the provision of anything other than brief sanctuary to such youths by friends and relatives.  Most crucially, teenagers not living with their parents are frequently barred, absent a formal transfer of guardianship to their adult hosts, from attending public schools.  Nor, of course, are they able to satisfy employers' demands for parental permission or waiver slips required either by company policy or state law.  Under such circumstances what adult, kin or nonkin, would want to "interfere" with parental custody of a thrownaway teenager except perhaps for a few days?

Barbara Bennett Woodhouse has recently mapped the growing fault lines in our law between the "private child" of parental sovereignty and the "public child" subject to state guidance and assistance, and urged that we reject that easy dichotomy in favor of a view that "children own themselves."  Yet because parents reject them, the state is willfully blind to them, and they themselves lack the full capacity for full self-"ownership" in a complex modern society, thrownaways fit none of these molds.  Their circumstances call on us to recognize--as the Supreme Court did at least glancingly in Yoder v. Wisconsin--the existence of the community child.  Just as adolescents (and their parents) trust friends and extended family without depending on state licensing and regulation, so should we.

C. Recommendations

To the extent it exists, the American welfare state is a distinctly mixed affair for pushed-out and destitute kids.  Services specifically targeted in their direction are grossly inadequate, while other social structures for the poor are closed to them.  Any legal rights they possess are of little account in their fragile, despondent existence, while the legal rights possessed by their parents diminish their chances to receive meaningful help from others.  Much of this could be alleviated through a few incremental changes in the law and in funding priorities: (1) expanding transitional living services for thrownaways; (2) providing them ready access to the foster care system; (3) discouraging parental abdication through the enforcement of civil and criminal penalties for abandonment and nonsupport; and (4) providing financial relief to families with adolescents at home.

An even more obvious response in the years ahead will be for states to assume full and explicit responsibility for these children through runaway and homeless youth laws which, like that of New York, authorize emergency and transitional programs, provide for prompt notification of parents as to their children's whereabouts, integrate runaway programs with other components of the juvenile justice and foster care system, and provide strict confidentiality protections for the children served.  Unlike current laws, however, such statutes should permit programs to shelter children for unlimited periods absent parental objection, and should authorize greater flexibility in the maximum size of such programs, particularly in large urban areas where many youth are routinely turned away for lack of beds.

As specific government efforts suggest themselves, though, so too do their costs and their inherent dangers.  Adequate government intervention on behalf of hundreds of thousands of exiled children would require the diversion of fiscal resources far more substantial than the political climate in the United States seems likely to soon support.  More importantly, we have already seen in this century how government involvement with children...
rejected by their parents--under the guise of "status offenses"--can produce a system wholly devoid of the compassionate care those children need most. [FN243] Government action on behalf of abandoned children continues to present the subtle dangers described by Professor Boswell as the "paradox of the foundling hospital" in the early modern world--the creation of institutions "neatly organized, modern, civic, discreet, and deadly." [FN244]

Informal community resources, then, could again be as valuable to throwaways as they were in the pre-modern world [FN245]--if the law will get out of the way. Criminal and civil restrictions on the provision of shelter to throwaway and runaway children by relatives and family friends should be severely limited in scope to those circumstances in which the caregiver is actively attempting to subvert the parent-child relationship. [FN246] In the more usual situation, where a teenager is simply fleeing abuse or wholesale parental rejection, such informal care should be actively encouraged. [FN247]

Supporting access to informal community resources also has the potential to greatly relieve the stresses of overburdened parents. In what they called the "Family Matters Project," Moncrieff Cochran and Charles Henderson demonstrated that a program centered on home visits and group activities could strengthen the "social networks" of mothers, and thereby improve *1759 markedly the quality of their parenting and the performance of their children. [FN248] The broadening of social support (from friends, neighbors, and relatives) for a parent--especially a single parent--substantially relieves stress within the family unit and improves the quality of its caregiving. [FN249] As Cochran has concluded, "[r]ather than inventing new programs from whole cloth, so to speak, one might instead concentrate on reinforcing the naturally occurring social systems used by families and communities to build on strengths and channel social behavior." [FN250] Indeed, one recent study to investigate the effects on health of "caring and connectedness" in the lives of over 36,000 adolescents found that higher measures of such connectedness were significantly associated with lower rates of a wide variety of health-threatening conditions and behaviors. [FN251]

IV. The Throwaway Family

In 1643 John Milton made his plea for legal, readily available divorce in memorable terms:

Yet now a civil, an indifferent . . . Law of marriage, must be for't upon us to fulfill, not onely without charity, but against her. No place in Heav'n or Earth, except Hell, where charity may not enter: yet marriage the Ordinance of our solace and contentment, the remedy of our loneliness will not now admit of charity or mercy to come in and mediate or pacify the fierceness of this gentle Ordinance, the unremedied loneliness of this remedy. [FN252] Thus did Reformation strivings for companionate marriage based on "charity" turn a crucial corner toward the almost completely conditional family arrangements of our own time. [FN253] Ties without contentment became ties without force.

When children who have been cast out, abandoned, or "divorced" emerge briefly into view, they create anxiety in a society clinging to this *1760 premise. [FN254] We are ready to express concern, perhaps even to expand social services, but we are not ready to reconsider whether some family ties should be ties that bind. Even though we acknowledge that children are innocent victims of broken promises and are unable on their own to repair the havoc in their lives wrought by adults, we grope for any response to them other than the simplest one: promises and commitments should be made to children, and then they should be kept. It is easy, of course, to fall back on the platitude that child abandonment is as old as society--but we know well that some generations of our ancestors were remarkably successful in reducing abandonment and moderating its evil effects in economic and social circumstances far unhappier than our own. [FN255]

Nor is this an area where Right or Left has shown greater moral courage. [FN256] In tenaciously asserting the supreme value and the beneficence of the traditional intact family, the growing communitarian movement, along with the "Tough Love" movement, often appears to ignore the ugly potential of that isolated unit for petty tyranny and abuse, its limited capacity in hard times to provide economic security to children, and even in the best of times its inability to provide a fully stimulating environment for adolescents. [FN257] Liberals and libertarians, by contrast, often have seemed so concerned with *1761 protecting every possible relationship option for adults that they have been blind to the devastation such choices can cause in the lives of the young [FN258]--sometimes so
willfully blind that children are effectively redefined as adults. As moderns desperately afraid of recognizing unconditional obligations backed by nothing more compelling than Blackstone's and Locke's invocation of "Providence," society runs from the hard fact that parenthood is the one human task for which we can provide no earthly rationale.

Thrownaway children have little to hope for in their families and even less on the street--even if that street has a drop-in or crisis center on the corner. When their parents push them out, they mostly go where any sane adolescent goes on a bad day, to the house of a relative or a friend. Could it be that they seek there what their nuclear families have refused them and what no government program can offer, the sense that here they belong? And is it really a surprise that our supposedly atomized society of unrelated individuals and hermetically sealed families turns out to have the possibility of community after all--that virtually all of the thrownaways are taken in, at least for a time, by these friends?

Children need unconditional ties, yet the traditional family is not always able to provide them; moreover, many children are part of nontraditional families in which bonds are almost by definition conditional. The experience of street youth, and of children dumped into foster care, demands that we seek new ways to provide them real, not happy-face, belonging. Might that search not begin with non-governmental communities of blood, faith, culture, or even friendship? And might it not end with the recognition that charity must sometimes be unconditional and irrevocable if it is to be charity at all?

[FNa]. Associate Professor, Quinnipiac College School of Law. I am grateful to Stephen Gilles, Alexander Meiklejohn, Lauren Sage, and W. John Thomas for comments on earlier drafts of this Article, and to Joseph Bavaro for research assistance. I am particularly grateful to Covenant House, where I worked from 1980 to 1990, for permitting me access to its extensive collection on homeless youth--and for continuing, along with so many other valiant runaway and homeless youth programs, to meet the emergency needs of kids on the street.

[FN1]. Ellen Rosen & Allison Stam, Desperate Parents Join Support Group, Rochester Times Union, Aug. 31, 1992 (available on LEXIS/NEXIS, News library, ACRNWS file). For a full description of the Toughlove movement, which helps parents organize "support groups" to control "outrageous" youth behavior, see Phyllis York et al., Toughlove (1982). Part of the Toughlove approach is to force "acting-out" youth to leave their parents' house "after other alternatives are attempted." Id. at 21-22. Although Toughlove proponents acknowledge that some "parents . . . don't want their children" and that some youths "come from mean homes [and] ... out of desperation choose desperate lives," Phyllis York et al., Toughlove Solutions 61 (1984), they appear to view most runaways as "run-tos" who "are running to partying and to where they can get the least hassle." See id. at 62 (asserting that many youths leave good homes in search of "excitement and fun"). The literature of the movement contains only the most glancing recognition of the existence of "thrownaway" adolescents who face serious abuse or outright rejection by their parents, and no prescription addressing the needs of those youths.


[FN3]. Medea, in 7 Famous Greek Plays 287, 333 (E.P. Coleridge trans., Whitney Oates & Eugene O'Neill Jr. eds., 1950). Aeschylus has Agamemnon cry out in tears that it is "ill to smite my child, my household's love and pride." Agamemnon, supra, at 48, 56. But the King kills his daughter nonetheless, to pacify Artemis and "speed the ships upon their way"--toward the conquest of Troy and, not incidentally, the slaughter of Trojan children. Id. For a full account of the King's dilemma, see Martha Nussbaum, The Fragility of Goodness 32-38 (1986) (noting that "[t]he sacrifice of Iphigenia is regarded by the Chorus as necessary; but they also blame Agamemnon").

[FN4]. Boswell, supra note 2, at 75-80, 89-90. As Boswell points out, the "founding of the Roman state was, according to the most widely dispersed of Roman myths [Livy's account of Romulus and Remus], the happy result of the abandonment of children." Id. at 76.

[FN5]. Id. at 164-74; David Herlihy, Medieval Households 26-27 (1985).

[FN7]. Id.

[FN8]. Rosseau noted:
The most ancient of all societies, and the only one that is natural, is the family: and even so the children remain attached to the father only so long as they need him for their preservation. As soon as this need ceases, the natural bond is dissolved.... If they remain united, they continue so no longer naturally, but voluntarily; and the family itself is then maintained only by convention. Jean Jacques Rousseau, The Social Contract, in The Social Contract and Discourses 3, 4 (G.D.H. Cole trans., 1950).

[FN9]. Boswell, supra note 2, at 424 n.91.


[FN16]. Even more tragically, many continue to engage in virtual or actual filicide. According to a recent study, almost 2,000 infants and young children die from abuse or neglect by parents or caretakers each year, and death rates from homicide of children under age four have hit a 40-year high. U.S. Advisory Bd. on Child Abuse & Neglect, U.S. Dep't of Health & Human Servs., A Nation's Shame: Fatal Child Abuse and Neglect in the United States 8-9 (1995).


[FN18]. NISMOAT's authors adopted the term "throwaways" to describe children whom previous authors had typically labelled "throwaways" or "pushouts" in order to emphasize that their status is not the result of their actions
or personal qualities but a result of "what has been done to the child." Id. at 135.

[FN20]. Id. at 136-37, 142. It should be noted that the leaders of the Toughlove movement deny any interest in expelling youths from their homes without an offer of "temporary housing" with other Toughlove parents or "appropriate social service agencies." York et al., Toughlove, supra note 1, at 21-22. Yet they admit that after such expulsion youths "[o]ften ... 'take to the streets,'" id. at 22, and as will become clearer later, the existence of "appropriate" social services in any community is hardly a given. See infra notes 191-236 and accompanying text for a more detailed discussion of the lack of social services available to runaway youths.

[FN21]. The most influential early assessment of the problem estimated that there are "almost 242,000 homeless youngsters" annually. Homeless Youth: The Saga of "Pushouts" and "Throwaways" in America: Report of the Subcomm. on the Constitution of the Sen. Comm. on the Judiciary, 96th Cong., 2d Sess. 27 (Comm. Print 1980). For more recent evaluations of the scope of the problem, see Paul G. Shane, Changing Patterns among Homeless and Runaway Youth, 59 Am. J. Orthopsychiatry 208, 210-11 (1989) (estimating that every year there are between 750,000 and two million runaways and 500,000 homeless youth); Marjorie J. Robertson, Homeless Youth: An Overview of Recent Literature (1989) (paper presented at the Conference on Homeless Children and Youth: Coping with a National Tragedy) (discussing numbers of homeless youth and some problems faced by homeless youth including drug abuse, physical and mental health disorders, and lack of suitable shelters or job training). For a general discussion of the problem in Canada, see Kathleen Kufeldt et al., Providing Shelter for Street Youth: Are We Reaching Those in Need, 16 Child Abuse & Neglect 187, 190-97 (1992) (analyzing data collected from shelter for runaway and homeless youths, including data on reasons for leaving home, age of leaving, last grade of school completed, and alternatives to living on street).

[FN22]. For enthusiastic endorsements of statutory emancipation procedures, see Dana Castle, Early Emancipation Statutes: Should They Protect Parents as Well as Children, 20 Fam. L. Q. 343, 367-71 (1986) (supporting expansion of emancipation statutes by recognizing right of parents, as well as children, to seek emancipation instead of forcing parents to commence juvenile court proceedings); Comment, The Uncertain Status of the Emancipated Minor: Why We Need a Uniform Statutory Emancipation of Minors Act, 15 U.S.F. L. Rev. 473, 486-91 (1981) (suggesting changes to emancipation statutes, such as lowering minimum age to 14, holding proceedings in family court, and requiring children merely to notify parents before emancipation petition is filed); Note, Juvenile Law-Emancipation: New Legislation for Oregon's Children, 57 Or. L. Rev. 573, 580-82 (1978) (arguing that recently enacted Oregon emancipation statute does not go far enough in granting minors same rights awarded to adults). For more qualified support of emancipation statutes, see Carol Sanger & Eleanor Willemsen, Minor Changes: Emancipating Children in Modern Times, 25 U. Mich. J.L. Ref. 239, 348 (1992) (examining emancipation petitions filed over two-year period, focusing on California emancipation statute and common reasons children filed emancipation petitions).

[FN23]. "Exile" in the sense used here includes "runaway" behavior that is essentially a rational, perhaps necessary response to intolerable abuse in the home, see infra notes 121-27 and accompanying text (discussing reports from New York and Seattle which show that up to 50% of children in runaway and homeless youth shelters have suffered abuse and many of their families were near collapse due to alcohol problems or criminal convictions), and to "emancipation" events that, while formally occurring at the instance of the minor, are substantially the product of parental coercion. See Sanger & Willemsen, supra note 22, at 281-83 (citing excerpts from interviews with children filing emancipation petitions and analyzing role of parent in child's decision); see also infra notes 128-37 and accompanying text (discussing problems of child neglect and lack of genuine parental influence in lives of many thrownaway children caused in part by pressures of earning sufficient income to raise family).

[FN24]. The study's methodology is described generally, NISMART, supra note 17, at 13-40, and more specifically for the "thrownaway" estimates, id. at 138-41. The authors further elaborate and defend their methods in Gerald Hotaling et al., How Many Runaways?: Evidence from a National Household Survey (unpublished monograph 1993). A recently conducted, independent review of NISMART for the Department of Justice found that its "studies were well-planned and well-conducted," but the reviewers did recommend some refinement in definitions and methodology for a projected "NISMART II." James J. Collins et al., Planning the Second National Incidence

[FN25]. In Planning NISMART II, the reviewers appear to urge that future estimates of runaways and thrownaways be limited to children who come to shelters for assistance or for whom "adequate care is lacking." Planning NISMART II, supra note 24, at 13-14. While such a limitation might have advantages of economy in focusing specifically on government's role in helping this population, it would dramatically limit NISMART's usefulness in gauging what is actually happening to children in families at risk. Moreover, because of severe inadequacies in the current system of shelters for this population, it is highly questionable whether such a narrowing of these definitions would be even methodologically defensible. See infra notes 193-204 and accompanying text (discussing limited state and federal funding for youth shelters and policies limiting stays to 15 days).


[FN27]. With respect to their investigation of "runaway" behavior, the authors also conducted interviews with children in sample households whose parents had not reported a "runaway" episode. The results of those interviews suggested that parents had failed to report about 11 percent of such episodes. Hotaling et al., supra note 24, at 14-15. It is not clear, however, whether such children were questioned regarding thrownaway incidents; if so, the results might be particularly useful for comparison with parental reports. See infra notes 40-47 and accompanying text (noting methodology of NISMART included interviews of parents, not children, and concluding that such methodology likely resulted in underreporting of runaway and thrownaway incidents).

[FN28]. NISMART, supra note 17, at 141-44.

[FN29]. Id. at 143.

[FN30]. See Gerald R. Adams et al., Homeless Adolescents: A Descriptive Study of Similarities and Differences between Runaways and Throwaways, 20 Adolescence 715, 718-22 (1985) (sociological study focusing on different reasons runaways and throwaways gave for leaving home, including peer relations, student-teacher relations, and problems with parents, including sexual abuse, beatings, and other punishments); Sally J. Hier et al., Social Adjustment and Symptomatology in Two Types of Homeless Adolescents: Runaways and Throwaways, 25 Adolescence 761, 762 (1990) (analyzing sociological differences between runaways and throwaways, looking at factors such as social isolation, depression, antisocial tendencies, and aggression).

[FN31]. NISMART, supra note 17, at 145 (noting that 16-and 17-year-olds represent 84% of all throwaways, but only 16% of children under age 18). This finding is consistent with that of at least one other study showing that youths aged 16 and 17 were three to six times more likely than younger children to be living apart from their parents. R. Jean Haurin, Childhood Residence Patterns: Evidence from the National Longitudinal Survey of Work Experience of Youth tab. 7c (1991) (report prepared for Bureau of Labor Statistics, U.S. Department of Labor).

[FN32]. NISMART, supra note 17, at 146 (finding that only 19% of throwaways come from two-parent families, compared to 67% of all children under age 18, a difference found to be statistically significant).

[FN33]. NISMART, supra note 17, at 147-50.

[FN34]. Id. at 151.

[FN35]. Compare id. at 107 (providing demographic information on ages of runaway children) with id. at 145, 149
(providing similar information for thrownaways and abandoned children).

[FN36]. Children involved in violent crime are overwhelmingly male (90%), and disproportionately black. Paul A. Strasburg, Recent National Trends in Serious Juvenile Crime, in Violent Juvenile Offender: An Anthology 8 (Robert A. Mathias et al. eds., 1984). However, the "thrownaway" population is neither. NISMART, supra note 17, at 145, 147. Indeed, a majority of "thrownaways" are female, which makes quite a stark contrast with the population of youths known to create serious social disruption by other measures. See id. at 145 (estimating that 53% of thrownaways were female, although majority not statistically significant).

[FN37]. Compare NISMART, supra note 17, at 107-09 (providing demographics on age, gender, and other characteristics of runaways) with id. at 145-47 (providing similar demographics for thrownaways).

[FN38]. Adams, supra note 30, at 722.

[FN39]. Hier, supra note 30, at 768.

[FN40]. NISMART, supra note 17, at 140.

[FN41]. For the next NISMART, it should be noted that reviewers have urged that a greater variety of data sources be used, with particular attention to "methods that interview the children themselves." Planning NISMART II, supra note 24, at 14-18.

[FN42]. NISMART, supra note 17, at 144. An even higher rate of parental underreporting with respect to "runaway" behavior was found in another study. See Tim Brennan et al., Behavioral Research and Evaluation Corp., The Incidence and Nature of Runaway Behavior: Final Report for the Dep't of Health, Educ. and Welfare 107-09 (1975) (showing that when both parents and children, as opposed to parents only, were questioned regarding runaway behavior, percentage increased by as much as fifty percent).

[FN43]. NISMART, supra note 17, at 17-18.

[FN44]. Six percent of "thrownaways" who returned home were reported by parents to have been away for more than four weeks; 20 percent had "not yet returned" home. Id. at 158. The authors did not recognize the possibility that parents who have a tendency to underreport "thrownaway" episodes might also have a tendency to minimize the time their children spent in exile.

[FN45]. The authors acknowledge that this limitation may have led them to "slightly undercount" the "thrownaway" population. Id. at 158 n.31.

[FN46]. Id. at 137.

[FN47]. The authors do point out, however, that the number of households admitting having taken in a "thrownaway" roughly matched the number admitting having pushed a child out of the house. Id. at 143. Taking in such a child, of course, would reflect quite positively on a person responding to a survey, so this measure quite likely was vulnerable to overreporting, making the match somewhat less impressive. In addition, children seeking shelter at the home of a friend or relative may have a strong incentive to place the blame for their absence from home on their parents. Thus, many children identified as "thrownaways" taken in by others may more properly be classified as "runaways."

[FN48]. NISMART counted children in state placement as "thrownaways" only if their case had been officially identified as one of "neglect" based on "abandonment," resulting in an estimate of 14,500 children. Id. at 140, 141 tbl. TA-1. Because of the high likelihood of mislabeling such children, the authors conceded this figure was "probably underestimated." Id. at 143-44, 144 tbl. TA-3. They did not clearly recognize that voluntary placement by parents can constitute the "throwing away" of the child just as much as formal "neglect."


[FN51]. Nat'l Black Child Dev. Inst., Inc., Who Will Care When Parents Can't?: A Study of Black Children in Foster Care 34 tbl. 2 (1989) [hereinafter Who Will Care? ].

[FN52]. Id. at tbl. 3.


[FN55]. See NISMART, supra note 17, at 149 tbl. TA-8, 151 tbl. TA-10 (indicating that over 50% of abandoned children are 4 years of age or under; white children represent only 50% of abandoned children while representing 81% of children in general population; and few abandoned children come from higher-income households); Merkel & Sobel, supra note 49 (showing decrease in median age of children and increase in number of African-American and Latino children entering out-of-home care).

[FN56]. See NISMART, supra note 17, at 150 tbl. TA-9 (showing that children living with both parents were underrepresented); Who Will Care?, supra note 51, at 28-30 tbls. 1-2 (noting that 46% of children in study came from single-parent households and 62% came from female-headed households).


[FN61]. Haurin, supra note 31, at 15 tbl. 7b. See also R. Jean Haurin, Patterns of Childhood Residence and the Relationship to Young Adult Outcomes, 54 J. Marriage & Fam. 846, 850 (1992) ("Less than 2% [of children] did not live with at least one parent through the age of 12.").


[FN63]. Merkel & Sobel, supra note 49. A longer-term perspective complicates the picture somewhat: in 1977, an estimated 502,000 children were in foster care, compared with 276,000 in the mid-eighties and 429,000 in 1991. See id. (discussing increased number of children in foster care since 1982); General Accounting Office, Foster Care: Incomplete Implementation of the Reforms and Unknown Effectiveness 4 (1989) (noting that decreases seemed to have occurred within first few years after reforms were implemented and that numbers have subsequently leveled off or even increased slightly). Yet the median length of stay in foster care decreased from 2.4 years in 1977 to 1.4 years in 1989. Merkel & Sobel, supra note 49. Simple arithmetic indicates that the system has recently been taking in more children but keeping them for a substantially shorter period of time.
seeking reimbursement for services provided. See, e.g., a parent was prosecuted for forcing an adolescent to leave home prior to the age of majority, nor any civil action for emancipation process for minors). Other state statutes permitting "emancipation" before the age of majority are:

- Al. Code s 26-13-1 (1992) (permitting minors over 18 to be relieved of "disabilities of nonage" prior to age of majority of 19 in certain cases);
- Alaska Stat. s 09.55.590 (1994) (discussing removal of disabilities of minor);
- Ark. Code Ann. s 9-26-104 (Michie 1993) (granting judges power to authorize minors over 16 to transact business with same legal rights and obligations as adults);
- Cal. Fam. Code s 7000-7143 (West 1994) (governing emancipation of

Of 9.9 million women heading one-parent households with children in 1989, only 3.7 million ever received any child support payment from the absent fathers. Statistical Abstract, supra note 65, at 372.


NISMA RT is not even mentioned in the several significant articles and monographs on "runaway" and "homeless" youth populations which have appeared since its publication. See, e.g., Sheila Pires & Judith Tolmach Silber, On Their Own: Runaway and Homeless Youth and the Programs that Serve Them 37 (1991) (citing only estimates from previous studies of runaways); Deborah J. Sherman, The Neglected Health Care Needs of Street Youth, 107 Pub. Health Rep. 433 (1992) (study on homeless youth which never mentions NISMA RT).

Typical previous estimates of the "runaway and homeless youth" population ranged from 730,000 to 1.3 million. Pires & Silber, supra note 68, at 37. The authors of NISMA RT have acknowledged the problems for advocates apparently created by their work. Hotaling et al., supra note 24.


State v. Winters, 346 So. 2d 991, 994 (Fla. 1977) (holding unconstitutionally vague that part of criminal nonsupport statute mandating provision of "necessary food, clothing, shelter, or medical treatment" by parent); Robert Horowitz & Howard Davidson, Legal Rights of Children s 7.04 (1984) (discussing decline of child neglect laws). In my own research, I have encountered not a single reported case during the past twenty years where a parent was prosecuted for forcing an adolescent to leave home prior to the age of majority, nor any civil action for nonsupport of an adolescent brought by anyone other than a parent of the teenager or by a governmental entity seeking reimbursement for services provided. See, e.g., Drago v. Drago, 526 N.Y.S.2d 518, 519 (N.Y. App. Div. 1988) (action against parents to reimburse state-funded runaway program); Berks County Children and Youth Servs. v. Rowan, 631 A.2d 615, 617 (Pa. Super. Ct. 1993) (action by county against parents seeking support for minor child in care of agency), appeal granted, 644 A.2d 737 (1994).

Thus, only a handful of states currently have legislation aimed at facilitating, let alone funding, services for runaway and homeless youth. See infra notes 191-236 and accompanying text for a fuller discussion of how state and federal laws have failed to respond to the needs of runaway and thrownaway children.


[FN74]. See, e.g., Alice C. v. Bernard G.C., 602 N.Y.S.2d 623, 625 (N.Y. App. Div. 1993) (no emancipation found despite son's having left father's home after argument and having received $41,000 personal injury settlement); Rovin, 631 A.2d at 618-19 (no emancipation found despite child's marriage). For an overview of the common law doctrine of emancipation, which was previously used largely to allow older adolescents to recover damages from their parents' insurers and is currently invoked mainly to avoid continued child support payments, see Sanford N. Katz et al., Emancipating Our Children-- Coming of Legal Age in America, 7 Fam. L.Q. 211, 214-31 (1973).


[FN76]. For very broad and well developed child "liberation" arguments, see generally Howard Cohen, Equal Rights for Children (1980) (premising book on broad child "liberation" argument that children should have same rights as adults); The Rights of Children (Bob Franklin ed., 1986) (containing broad child "liberation" arguments by various authors); Laurence D. Houlgate, The Child and State: A Normative Theory of Juvenile Rights (1980) (presenting normative theory of juvenile rights to advocate "equalitarian justice"). For an overview of the children's rights movement, along with a strong response to its basic arguments, see generally Laura M. Purdy, In Their Best Interest? The Case Against Equal Rights for Children (1992).

[FN77]. Most relevantly, that is the view of Sanger & Willemsen, supra note 22, at 327-44 (arguing that youths under age 18 have capacity to make emancipation decision, and against abolition of emancipation statutes). For an excellent overview of the literature on children's capacity, see Katherine Hunt Federle, On the Road Reconceiving Rights for Children: A Postfeminist Analysis of the Capacity Principle, 42 DePaul L. Rev. 983, 1011-21 (1992).

[FN78]. Joseph F. Kett, Rites of Passage: Adolescence in America 1790 to the Present 243 (1977). Kett himself, however, was at pains to show that "semidependence" (rather than independence) was the lot of youths under age 21 from the earliest days of the republic. See id. at 29-30 (providing historic examples of the "jarring mixture of complete freedom and total subordination").

[FN79]. See NISMART, supra note 17, at 158 tbl. TA-18 (providing information on length of time throwaways are away from home).
[FN80]. See NISMART, supra note 17, at 160 tbl. TA-20 (charting caretakers' knowledge of thrownaways whereabouts).

[FN81]. See id. at 161 tbl. TA-22 (listing information about types of harms suffered by thrownaways while away from home). This, of course, is an area where parents who forced their child out of the house are most likely to adjust (or refuse to face) the truth in a telephone interview—harm to their child from having been pushed out of the house could in fact constitute reportable/actionable neglect.

[FN82]. See id. at 113-17 tbls. RA-8 to RA-12 (providing similar information on runaways). See also 1976 Runaway Survey, supra note 26, at 62; Brennan, supra note 42, at 144-53 (compiling data on runaways).

[FN83]. NISMART, supra note 17, at 115, 158. In addition, Collins found that thrownaways are significantly (by a factor of three) more likely than runaways to have no secure place to stay at some time during their absence from home. Collins, Enforcement Policies, supra note 24, at B-4 tbl. B.1. Lack of a secure place to stay, in turn, was associated with heightened exposure to serious danger and sexual exploitation. Id. at 68 tbl. 4.10.


[FN85]. Schram, supra note 84, at 15, 19.


[FN88]. See Schram, supra note 84, at 28-29 tbls. 17-18 (51 percent of clients served in program for homeless youth "were currently or previously involved in prostitution activities"); Gary L. Yates et al., A Risk Profile Comparison of Homeless Youth Involved in Prostitution and Homeless Youth Not Involved, 12 J. Adolescent Health 545, 546 (1991) (25 percent of homeless youth treated in Los Angeles clinic were "involved in prostitution at the time of visit").


[FN91]. Shaffer & Caton, supra note 86, at 59. See also Yates et al., supra note 84, at 821 (discussing mental health problems and other difficulties faced by homeless youth). It is not clear, though, what proportion of these youths were already suffering under psychiatric disabilities at the time they left their homes.

[FN92]. Peter Mundy et al., The Prevalence of Psychotic Symptoms in Homeless Adolescents, 29 J. Am. Acad. Child & Adolescent Psychiatry 724, 729 (1990). The study could not, however, clinically determine whether in fact these youths were suffering from psychotic disorders. Id.

[FN93]. See generally Robert Deisher et al., Birth Outcomes of Prostituting Adolescents, 12 J. Adolescent Health
528 (1991) (explaining "multifactorial" risks of pregnancy to adolescents engaged in prostitution); Julia Pennbridge et al., Risk Profile of Homeless Pregnant Adolescents and Youth, 12 J. Adolescent Health 534 (1991) (discussing additional risks faced by pregnant street youth).


[FN95]. Sanger & Willemsen, supra note 22, at 332 & n.379. Sanger and Willemsen relied on, inter alia, Lois A. Weithorn & Susan B. Campbell, The Competency of Children and Adolescents To Make Informed Treatment Decisions, 53 Child Dev. 1589, 1591 (1982) (study involving children recruited through letters to parents of children attending fourth through ninth grades and "characterized by middle class membership") and Catherine C. Lewis, How Adolescents Approach Decisions: Changes over Grades Seven to Twelve and Policy Implications, 52 Child Dev. 538, 539 (1981) (study involving children recruited from middle and upper-middle-class suburban areas). The Weithorn and Campbell study found significant differences between 14-year-olds and 18-to 21-year-olds in certain measures of competency, and qualified its findings by noting that the "subjects were 'normal' white healthy individuals of high intelligence and middle-class background," facing only "hypothetical" situations "not influenced by current physical illness or psychological disorder or by factors such as weakness, confusion, depression, or anxiety." Weithorn & Campbell, supra, at 1596. Lewis noted that early and middle adolescents show, among other things, "relative deficiencies in certain aspects of decision approach including imagining risks and future consequences." Lewis, supra, at 543.


[FN99]. See Kett, supra note 78, at 3-7 (finding that demographic changes over past 200 years have shaped both social experience of and society's perceptions for young people); John Modell & Madeline Goodman, Historical Perspectives, in At the Threshold: The Developing Adolescent 93 (Shirley Feldman & Glen Elliott eds., 1990) (noting that "the dominant political economy of an era helps define adolescence, both descriptively and prescriptively").


[FN103]. Susie D. Lamborn et al., Patterns of Competence and Adjustment Among Adolescents from Authoritative, Authoritarian, Indulgent, and Neglectful Families, 62 Child Dev. 1049, 1063 (1991) (also citing other studies finding same result).


[FN106]. Sanger & Willemsen, supra note 22, at 330.

[FN107]. See supra notes 28-67 and accompanying text for a discussion of the distinction between "thrownaway" and "runaway" episodes.

[FN108]. See supra notes 79-94 and accompanying text for a discussion of the consequences of exile.

[FN109]. Another such group—one which, of course, may significantly overlap thrownaways—is adolescents suffering with a serious emotional disturbance, for whom recent research has found "a consistent pattern of poor outcomes ... in high school and in the early years of adulthood" when compared with other adolescents. Mary M. Wagner, Outcomes for Youths with Serious Emotional Disturbance in Secondary School and Early Adulthood, 5 Future of Children 90, 97-103 (1995).


[FN111]. See Karen Norlander et al., The In-Between Years: 1985 Supplement 36-39 (finding that formal emancipation procedures "might limit [the] eligibility [of poor youths] for the support they might need to survive [and] would be counterproductive").

[FN112]. See Bruce C. Hafen, Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their "Rights," 1976 B.Y.U. L. Rev. 605, 651-56 (arguing that children have a basic "right ... not to be abandoned to [their] 'rights'").

[FN113]. NISMART, supra note 17, at 141. See Figure 1, supra.

[FN114]. Id. at 146.

[FN115]. Id. at 156.


[FN117]. York et al., Toughlove, supra note 1, at 10-12. "Toughlove" proponents, of course, reject the idea that parents should accept any "blame" for the behavior of their children. Id. at 76-77.

[FN118]. See Martha Minow, All in the Family and in All Families: Membership, Loving, and Owing, 95 W. Va. L. Rev. 275, 305-06 (1992-93) (citing as examples of conflicting obligations instances where one sibling is asked to donate bone marrow or kidney for another sibling).

[FN119]. For an overview of the considerable diminution in juvenile court authority over "status offenders" (that is, minors charged with having committed actions--e.g., truancy, incorrigibility--that would not be criminal if committed by adults) by the "deinstitutionalization" movement, see Robert Sweet, Deinstitutionalization of Status Offenders: In Perspective, 18 Pepp. L. Rev. 389, 404-11 (1991). See also Lois A. Weithorn, Mental Hospitalization of Troublesome Youth: An Analysis of Skyrocketing Admission Rates, 40 Stan. L. Rev. 773, 803-04 (1988) (describing "dramatic" declines in reach of status offense jurisdiction).


[FN121]. See, e.g., Deisher & Rogers, supra note 90, at 500 ("nearly all" youth at program had "histories of significant abuse and neglect"); Kennedy, supra note 94, at 578 ("physical and sexual abuse reported by 53% and 30%, respectively" of runaways and throwaways in shelter); Lucy Olson et al., Runaway Children Twelve Years Later, 1 J. Fam. Issues 165, 177 (1980) (runaways in study had all suffered violent punishments by parent while nearly all nonrunaway siblings had not); Robertson, supra note 21, at 10 (literature indicates rates between 20% and 50% of homeless youth having experienced abuse at home).

[FN122]. Shaffer & Caton, supra note 86, at 55-56.

[FN123]. Schram, supra note 84, at 16.

[FN124]. Robertson, supra note 21, at 11; Shaffer & Caton, supra note 86, at 42.

[FN125]. Shaffer & Caton, supra note 86, at 42.

[FN126]. Id.; Kennedy, supra note 94, at 578; Robertson, supra note 21, at 11-12.

[FN127]. See supra notes 31-39, 48-67, and accompanying text for a discussion of the similarities in family background between "thrownaways" and "runaways."

[FN128]. U.S. Dep't of Commerce, Statistical Abstract of the United States 1994 212 tbl. 336 (1995) (showing increase from 358,846 in 1990 to 474,945 in 1992) [hereinafter Statistical Abstract ]. It should be noted that this figure does not include much neglect of adolescents, because their expulsion from home is typically not considered a reportable event. See supra notes 24-69 and accompanying text for a discussion of the NISMART study and the appropriate number of unreported teenage runaways which should be included in government statistics.

[FN129]. Achenbach & Howell, supra note 102, at 1149.


[FN131]. Statistical Abstract, supra note 128, at 66 tbl. 80. Between 1970 and 1993 the number of one-parent households with children grew 25 percent, while the number of households headed by a married couple actually fell one percent. Id. at 65 (summarizing calculations derived from data contained in table 77).

[FN132]. Id. at 402 tbl. 627. Indeed, over 70% of all women (married or single) who have children aged 6 to 17 participated in the labor force in 1993--as compared with only a 39% rate for married women in 1960. Id. at 402 tbl. 626.

[FN133]. House Comm. on Ways and Means, Overview of Entitlement Programs, 1993 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Comm. on Ways and Means, 103d Cong., 1st Sess. 1419 tbl. 60 (Comm. Print 1993) (income adjusted for inflation). For the lowest quintile of families with children

the decline in income was 26.7% between 1973 and 1989, and another 12.8% between 1989 and 1991. Id.


[FN135]. Martie L. Skinner et al., Linking Economic Hardship to Adolescent Aggression, 21 J. Youth & Adolescence 259, 268 (1992). For further discussion of this issue, see infra notes 200-08 and accompanying text.

[FN136]. Achenbach & Howell, supra note 102, at 1150-51.

[FN137]. See Weithorn, supra note 119, at 807 ("Changes in the American family structure have significantly hampered the ability of families to cope internally with the adjustment problems of their children and adolescents.").


[FN139]. 406 U.S. 535, 548-49 (1972) (holding that state's system for allocating fixed pool of welfare money did not violate Fourteenth Amendment).


[FN141]. Id. at 73-74. With respect to state constitutional law, most jurisdictions have rejected constitutional claims based on a "right to shelter," but not all have. Compare Hilton v. City of New Haven, 661 A.2d 973, 984 (Conn. 1995) (rejecting such a right) with Tucker v. Toia, 371 N.E.2d 449, 451-52 (N.Y. 1977) (finding general state obligation to provide for needy).


[FN145]. Id. at 196. DeShaney may be properly viewed as supporting Barbara Bennett Woodhouse's claim that the Supreme Court's jurisprudence of family autonomy has within it a strong "property component" with respect to parental control over children, rooted in "a Spencerian conviction that men should be able to deploy their properties as they wish." Barbara B. Woodhouse, "Who Owns the Child?": Meyer and Pierce and the Child as Property, 33 Wm. & Mary L. Rev. 995, 1112-13 (1992).

[FN146]. In Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816, 844-46 (1977), the majority indicated in dicta that "a deeply loving and interdependent relationship between a foster parent and a child in his or her care may exist even in the absence of a blood relationship," and that there might be constitutional protections available for such formal or informal arrangements. Id. Yet the Court also hinted that such protections could be limited to relationships begun when the child was an "infant" and "has never known his natural parents," id. at 861, a class that would exclude virtually all the informal custodial arrangements to which throwaways typically resort.

[FN147]. Mine happen to be Roman Catholic, a tradition which, like Judaism, has from its earliest days opposed abandonment of children and infanticide on wholly religious and natural law grounds. See Herlihy, supra note 5, at 26-27 (concluding that parents accepted responsibility for protection and socialization of children since medieval times); Pope Leo XIII, Rerum Novum: On the Condition of Workers, in Justice in the Marketplace: Collected Statements of the Vatican and the United States Catholic Bishops on Economic Policy 13, 17 (1985) ("It is a most sacred law of nature that the father of a family see that his offspring are provided with the necessities of life ..."). Reinhold Niebuhr, in a modern formulation of the Christian view, sees parental responsibility for children resting in the "dialectical relation of the individual to the community" and the fact that "self-giving is bound to contribute

ultimately to self-realization." Reinhold Niebuhr, Man's Nature and His Communities 106-07 (1965). Parental affection and responsibility means that "the gift of security given by parents to children is transmuted naturally into the ability of even those parents, who are otherwise self-seeking, to be 'self-giving' in their relations to their family." Id. at 107. The historical importance of these traditions to a liberal view of society is most evident, perhaps, from the fact that John Locke explicitly, and almost exclusively, relied on Christian teleology in his refutation of Sir Robert Filmer's arguments for absolute parental power over children, and in explicating highly egalitarian views on the respective roles of mothers and fathers. John Locke, Two Treatises of Civil Government 36-51 (Part I, ss 52-72), 141-54 (Part II, ss 52-76) (1924) (1690). In addition, Professor Hafen has argued that traditional "status" concepts of marriage and parenting remain fundamental to our liberal democracy. Bruce C. Hafen, The Constitutional Status of Marriage, Kinship, and Sexual Privacy--Balancing the Individual and Social Interests, 81 Mich. L. Rev. 463, 479-84 (1983).

[FN148]. Although not a feminist in my own premises, it is impossible to approach the question of children's relationships "trumping justice" without reference to the work of feminists, particularly Martha Minow's seminal articles, Rights for the Next Generation: A Feminist Approach to Children's Rights, 9 Harv. Women's L.J. 1 (1986), and Interpreting Rights: An Essay for Robert Cover, 96 Yale L.J. 1860 (1987). In addition, the work of Barbara Bennett Woodhouse must be considered crucial. See generally Barbara B. Woodhouse, Hatching the Egg: A Child-Centered Perspective on Parents' Rights, 14 Cardozo L. Rev. 1747 (1993) (using examples from popular culture to demonstrate some failings of the family in modern society). There is, of course, no clear consensus that a true "feminist" perspective on children exists: for a recent critique of Minow's thought in this area by a feminist, see Federle, supra note 77, at 1018-20.

[FN149]. This brief excursion into Rawls' framework of "justice" is intended only to suggest problems and questions that I hope to treat at greater length later. For more general, sustained critiques of contractarian approaches to questions of parental duty, see generally Katherine T. Bartlett, Re-Expressing Parenthood, 98 Yale L.J. 293, 297-306 (1988); Bruce C. Hafen, The Family as an Entity, 22 U.C. Davis L. Rev. 865, 897-905 (1989); Minow, supra note 118, at 305-25. In response, Elizabeth Scott recently mounted a careful defense of fundamentally liberal, contractarian views of the family, while recognizing the force of some "communitarian" criticisms of specific liberal reforms in family law. Elizabeth S. Scott, Rehabilitating Liberalism in Modern Divorce Law, 1994 Utah L. Rev. 687. Whether "liberal" or not, previous scholarship has tended to ignore or skate quickly over the special problems posed by difficult adolescents for any theory of parental duty. This Article seeks at least to open a discussion of these problems. For a fascinating consideration of the poverty of "rights" analysis, and the difficulty of formulating clear grounds for parental duty, in the context of severely retarded or physically damaged newborns, see Carl E. Schneider, Rights Discourse and Neonatal Euthanasia, 76 Cal. L. Rev. 151, 157-66 (1988). For one of the earliest and most sustained attacks on the full sweep of Rawls' conception of "justice," see generally Michael Sandel, Liberalism and the Limits of Justice (1982).

[FN150]. John Rawls, Political Liberalism 173-211 (1993); John Rawls, A Theory of Justice 395-99 (1971). Moreover, I will not attempt to argue here whether those aspects of Rawls's thought on which I rely are central to his liberalism, or could be modified or dispensed with by him or other liberals on further reflection. Cf. Rawls, Political Liberalism, supra, at 26-29 (disavowing any reading of his previous work that would presuppose metaphysical, as opposed to political, conception of the person).


[FN152]. Thus the fullest recent attempt to define children's rights through a utilitarian calculus makes no effort to derive parental duties to children from such calculus, and even shies away from defining absolute governmental duties to children in need. Houlgate, supra note 76, at 129-37.

[FN153]. Rawls, A Theory of Justice, supra note 150, at 178-81. Requiring some to sacrifice for the good of others, Rawls argues, means that to some degree they are being treated as "means" rather than as "ends." Id. at 182- 83.

[FN154]. To be sure, Rawls would happily permit benevolence, or "supererogatory actions," of which he says: "These are acts of benevolence and mercy, of heroism and self-sacrifice. It is good to do these actions but it is not one's duty or obligation." Id. at 117. For a related view, see Rawls, Political Liberalism, supra note 150, at 217
(noting that "civility" is only "moral" duty, not legal one).


[FN156]. See supra notes 79-94 and accompanying text (describing conditions facing thrownaways during their exile from home).

[FN157]. Infants abandoned by parents would clearly seem to require the assumption of social and governmental responsibility under this "basic needs" principle. See Immanuel Kant, The Metaphysics of Morals 136-37 (Mary Gregor trans., 1991) (arguing that state can charge people with duty of not "knowingly letting [children] die," even those which constitute unwelcome burden on state).

[FN158]. For a thoughtful justification of parental duties on Rawlsian principles that is premised on the "natural deficiencies, cognitive and emotional" of children, see Jeffrey Blustein, Parents and Children: The Ethics of the Family 115-16 (1982). Blustein further notes that where such deficiencies are less apparent, as in adolescence, the basis for implying such duties would seem logically to weaken. Id.


[FN160]. Rawls, Political Liberalism, supra note 150, at 7. In a footnote, Rawls does explain that meeting "basic needs" does not imply support for socialism, id. at 7-8 n.7, which might indicate that we should err on the side of a narrow reading of this "prior principle."

[FN161]. Rawls, A Theory of Justice, supra note 150, at 114-16. Duties owed to all people are the "natural duties." Id. at 114. Thus, because of their general character, natural duties as defined by Rawls could not compass the bond between a specific parent and child. Id. at 114-16.

[FN162]. Id. at 108-14, 342-50. Further, these obligations may be far more extensive and onerous than those entailed in the "natural duties." Id. at 113.

[FN163]. Kant, supra note 157, at 99. It appears possible, however, that Kant would limit this obligation only to cases of procreation "within" the "community" of marriage. Id. at 98. Cf. Planned Parenthood v. Casey, 505 U.S. 833, 870 (1992) (plurality opinion) (noting that "[i]n some broad sense it may be said that a woman who fails to [abort] before viability has consented to the State's intervention on behalf of the developing child"). The intervention anticipated by Casey will clearly impose at least some responsibility on the mother.

[FN164]. Mary Ann Glendon, Family Law Reform in the 1980's, 44 La. L. Rev. 1553, 1559 (1984). See also Scott, supra note 149, at 732-34 (arguing that liberalism would not support any reduction in any parental duties and obligations following divorce); Woodhouse, supra note 148, at 1819 (arguing that "[a]dults are charged with obligation for the children they have created, the consequences, intended or not, of sexual activity").

[FN165]. See Bruce Ackerman, Social Justice in the Liberal State 128-29 (1980) (denying that mere fact of procreation requires anything of parents, and resting arguments against infanticide only on claims of other adults desiring adoption and on principles against "wanton cruelty" to "mute creation").

[FN166]. See Rawls, A Theory of Justice, supra note 150, at 345 (noting that "in order to make a binding promise [one type of "obligation"], one must be fully conscious, in a rational frame of mind, and know the meaning of operative words" while speaking them "freely or voluntarily"); Blustein, supra note 158, at 146-47 (explaining that people are only responsible for foreseeable consequences of voluntary acts).

[FN167]. Cf. Blustein, supra note 158, at 146-47 (noting that people are only accountable for voluntary actions and that sleepiness, delusions, coercion, and deceit cause one to act involuntarily).

[FN169]. Id.

[FN170]. Id. at 112. See also id. at 291 ("We can do something for posterity but it can do nothing for us.").

[FN171]. See Minow, supra note 118, at 321-25 (arguing that since families "often involve more than one generation and more than two people, the notion of reciprocation that so often defines the scope of duties seems out of place"). For an excellent analysis of the special problem of fairness to biological fathers, who may have only the "act of procreation" as a basis for paternal responsibilities, see Deborah L. Forman, Unwed Fathers and Adoption: A Theoretical Analysis in Context, 72 Tex. L. Rev. 967, 988-1000 (1994).

[FN172]. Scott, supra note 149, at 731-32.

[FN173]. Id. at 732.

[FN174]. The problem of "parent abuse" by their teenagers is a major foundation of Toughlove arguments in favor of the right to exile troubled kids. See York et al., Toughlove Solutions, supra note 1, at 111-25 (arguing that parent abuse is result of violent teenage behavior which is often best addressed by Toughlove solutions, including police involvement and removing children from homes when necessary). Liberal principles of "fairness" cannot easily resolve the question of the extent of a parent's obligation, or its duration in light of changed circumstances. Cf. Scott, supra note 149, at 723 (admitting that attempt to import contractarian concepts such as breach and damages into dissolution-of-marriage "leads to a thicket"). In the absence of an agreement of a parent with her potential child prior to procreation, how do we determine whether she must provide physical care for the child, financial support over and above minimum subsistence, or remain involved with the child at all in the face of disobedience or unruliness? And at what point does the welfare of other children in the household take precedence? See Minow, supra note 118, at 305-06 (describing conflict which arises when parent is compelled to put interests of one child above another).

[FN175]. Rawls, A Theory of Justice, supra note 150, at 128.

[FN176]. Id. (emphasis added). For a critical assessment of the function of "motivational assumptions" in Rawls' theory, see Sandel, supra note 149, at 45-46.

[FN177]. Rawls, A Theory of Justice, supra note 150, at 143, 530-34.

[FN178]. Id. at 128. Such obligations would, Rawls explains, be "one way of handling questions of justice between generations." Id. Whether his "motivational assumption" adequately handles such questions, or whether indeed such questions can ever be satisfactorily addressed within the rubric of the "original position," is a question beyond the scope of this article. See generally Justice Between Age Groups and Generations (Peter Laslett ed., 1992) (noting that over long periods of time, principles of justice, equality, and utility begin to produce strange results as total population sizes begin to vary).


[FN180]. At the very least, we may be dismayed by Rawls' use of the word "therefore" in his statement of the motivational assumption, which seems to assert that the parties to the original position will act for the benefit of descendants because they are "heads of families." See supra note 176 and accompanying text (quoting Rawls' language regarding motivational assumption).


[FN183]. Sandel, supra note 149, at 41-42. Sandel is one of the earliest and most effective critics of the tendency of contractarian liberalism to subordinate or ignore claims of community and family. Id. at 28-35, 168-74.

[FN184]. However, that answer raises its own further questions that cannot be explored in depth here. First, given Rawls' assumption of "mutual disinterest" among parties to the original position, Rawls, A Theory of Justice, supra note 150, at 127-30, why would a party care about descendants of any other party? Since each one is dealing only with others who have "good will" toward descendants, why would anyone feel impelled to reach any agreement about the nature of parent-child ties, when that issue could simply be resolved within each family? Would we posit, for example, a meeting of major league baseball owners as a metaphorical means of deriving principles of fairness in owner-player relations? Finally, what precisely does the "good will" of the parties toward descendants mean, given the severe differences in viewpoints regarding proper upbringing and capacity of children? Rawls himself only describes "good will" in terms of economic "savings." Id. at 285-93.

[FN185]. Ignoring this "motivational assumption," Blustein reads Rawls to suggest that the parties to the original position, not knowing whether they will be children or adults after the veil of ignorance is lifted, would agree to a "principle of paternalism" by which parents would be bound to protect and care for their young. See Blustein, supra note 158, at 123-25. Yet the passage in Rawls to which Blustein refers is clearly set in the context of defining what limitations on liberty would be accepted because of "weakness and infirmities," and refers to duties only in the vaguest sense. Rawls, A Theory of Justice, supra note 150, at 249-50. Blustein's extrapolation of Rawls is unpersuasive for several reasons. First, and most obviously, if the possibility of finding oneself to be a child would cause the parties to impose parental duties of care, what about the possibility of being a fetus, the one stage of life where care by the biological parent is absolutely essential to survival? Rawls clearly supports abortion rights, Rawls, Political Liberalism, supra note 150, at 243-44 n.32, so it is unlikely he would accept this mechanical an approach to implying parental duties. Second, how would the parties balance the risk of unmet needs for children against what Blustein admits are the "nonreciprocal obligations, immense self-discipline, and personal sacrifice" attendant on parental duties? Blustein, supra note 158, at 101. Indeed, because the very existence of a child depends on a parent's decision to procreate, and this decision must be within the parent's absolute discretion, how would parties to the original position balance the possibility of, say, child neglect against the possibility of nonexistence? See Gregory Kavka, The Paradox of Future Individuals, 11 Phil. & Pub. Aff. 93, 103 (1982) (noting that "individualistic principles of obligation ... cannot be relied on to yield correct results when applied to cases involving the creation of persons"). Ultimately, the "motivational assumption" of caring for descendants may be the means by which Rawls attempts to avoid these difficulties.

[FN186]. Rawls, A Theory of Justice, supra note 150, at 244. Rawls recognizes that this priority may give way under circumstances of incapacity or great deprivation, id. at 542, but the parents of a thrownaway are likely to assert, along with advocates of emancipation, that their teenager is old enough to exercise her liberty and that the dangers awaiting her outside are small in comparison with the benefits of getting her out of the house. Cf. Blustein, supra note 158, at 160 (suggesting that childrearing responsibilities might be disclaimed if "psychologically destructive to parents").

[FN187]. Blustein argues that parents have the right to the "cooperation of their children in the tasks of childrearing" as well as "honor from their children," and premises parental duties on children's needs. Blustein, supra note 158, at 113. Adolescents clearly have fewer needs than small children on which to rest their claims to continuing parental care, and at the same time they are far more likely to be in clear, deliberate violation of parental rights to obedience and honor. Id. Moreover, Blustein argues that determining the nature of parental duties does not answer the question of who must undertake them. Id. at 139-40. He asserts that if the basis of parental duties is need, then the persons who can best meet those needs, who may in fact be outside the nuclear family, should be responsible. Id. at 159-60.

[FN188]. Laura Purdy, opposing on liberal (though not Rawlsian) premises the "child liberation" movement, effectively shows why parents should have power over their children, but sidesteps the question of why they should ever bother to exercise it. See Purdy, supra note 76, at 121-23 (maintaining that adults should apply pressure on children to "bend children in the right direction" but failing to explain how this should be accomplished). For a recent overview of arguments, arising in the context of alimony and child support after divorce, in favor of

abandoning a contractarian perspective for one resting on notions (which would appear, from a Rawlsian perspective, to be "teleological"), of "community" and "role morality," see generally June Carbone, Income Sharing: Redefining the Family in Terms of Community, 31 Hous. L. Rev. 359 (1994); Milton Regan, The Boundaries of Care: Constructing Community after Divorce, 31 Hous. L. Rev. 425 (1994).


[FN191]. See infra note 195 and accompanying text for additional information on where runaways and throwaways go upon leaving home.

[FN192]. See DeShaney v. Winnebago County Dep't of Social Servs., 489 U.S. 189, 194-203 (1989) (holding that state's failure to protect child from series of severe beatings by father did not constitute violation of Due Process Clause of Fourteenth Amendment).


[FN194]. See 42 U.S.C. s 5714-1(b)(1)(A-C) (Act permitted assistance for any homeless youth, broadly defined as "any individual ... not less than 16 years of age and not more than 21 years of age; for whom it is not possible to live in a safe environment with a relative; and who has no other safe alternative living arrangement").

[FN195]. NISMART, supra note 17, at 157; Hotaling et al., supra note 24, at 20.


[FN197]. Id.

[FN198]. 45 C.F.R. s 1351.1(o). This restrictive regulation has no textual basis in the Act, and is arguably in direct conflict with its finding that "juveniles who have become homeless or who leave and remain away from home without parental permission ... may live on the street for extended periods thereby endangering themselves." 42 U.S.C.A. s 5701(1) (West 1995).


[FN201]. U.S. Gen'l Accounting Office, Homeless and Runaway Youth Receiving Services at Federally Funded Shelters 33-34 (1989). A recent study found that only 32 percent of responding runaway shelters provide any "transitional living services" for homeless youths, and only eight percent of "youths ready for independent living" enter an independent or transitional living program. Deborah Bass, Helping Vulnerable Youths: Runaway and Homeless Adolescents in the United States xvii-xviii (1992).

Another reason so few kids on the street find their way to existing services may well be "[t]he limited or nonexistent capacity of the police to refer juveniles or children in need of social or mental health services to appropriate resources." Collins et al., Enforcement Policies, supra note 24, at 111. Better coordination among appropriate agencies and the police would arguably alleviate this problem. See id. (suggesting discussion between agencies as method of better serving needs of runaway and homeless youth population). Ultimately, though, from the point of view of police, runaway/throwaway reports "do not involve serious law violations or risk of harm and thus do not warrant the heavy commitment of police resources." Id. at 8.

Pires & Silber, supra note 68, at 96.

See Nat'l Network of Runaway and Youth Services, To Whom Do They Belong?: A Profile of America's Runaway and Homeless Youth and the Programs That Help Them 11 (1985).


See id. ("Such 'locking out' may not be the wisest response to the problems of adolescents and it can have disastrous consequences, ... [b]ut it is not child abuse.").

See supra notes 113-37 and accompanying text for a fuller discussion of the poor and hopeless home environments which compel many of these homeless youth to leave their homes.


Id. at 6-7.

See id. at 4 (arguing that no cause of action exists since the requested action is not required as the immediate care and shelter of homeless youth are provided for by the Runaway and Homeless Youth Act).

See Tex. Admin. Code tit. 40, s 700.505 (1986) (requiring that child neglect investigations, where there is no "immediate threat of death or serious harm" to child, be initiated within 10 days of report); Colo. Code Regs. ss 7.402.4, 7.402.7 (1986) (mandating that investigations of "moderate" risk referrals begin within 72 hours after receipt of report and conclude within 30 days).

See supra notes 10-11 and accompanying text for a discussion of statutes that make it a criminal offense for parents to abandon or to fail to provide support for their children. With respect to infants and small children, in fact, parents frequently relegate them "voluntarily" to the foster care system--an arrangement which often becomes permanent, even though it scrupulously preserves the ability of the parent to block an adoption. See Shelley Smith, Child Welfare in the States: Fifty State Report 19-22 (1986) (discussing current trends in foster care system and how children's rights are often ignored or treated as secondary in system); see also supra notes 50-54 and accompanying text (discussing large number of children in foster care due to "voluntary placement" or "abandonment"). Some states have statutes explicitly authorizing voluntary placement in foster care without requiring surrender for adoption. See, e.g., N.Y. Soc. Serv. Law s 384-a (McKinney 1992) (stating that transfer shall not affect rights or obligations of parents or guardians).

See supra notes 73-75 and accompanying text for a discussion of the emancipation statutes; see also Sanger & Willemsen, supra note 22, at 277-83.

See Greene et al., supra note 204, at E-7 (noting that 40 percent of street youth studied came from families on public assistance). In part, the poor economic circumstances of the families of long-term throwaways may be a reflection of extremely high levels of substance abuse and alcoholism in those families. See supra note 87 and
accompanying text for a discussion of the effects of drugs on thrownaways.


[FN218]. One study pointed out that the establishment of a separate public assistance household for a teenager can substantially increase the overall welfare grant received by the family; the authors concluded that the "assistance standards ... constitute a powerful economic incentive for a young person to leave the public assistance family unit." Joseph Fashing et al., The "In-Between Years": A Study of Laws Affecting the Delivery of Services to Sixteen to Twenty-One Year Olds 48-49 (1982).

[FN219]. For youths aged 15 to 19, one team of researchers using data from the Survey of Income and Program Participation has found that living in a one-parent household is a significant determinant of the youth's departure from the household for independent living. Roger Avery et al., Feathered Nest/Gilded Cage: Parental Income and Leaving Home in the Transition to Adulthood, 29 Demography 375, 383 (1992). Further, the data suggested that "parental income decreases nest leaving significantly in the early stages of the nest leaving process [ages 15-19]." though primarily through discouraging early marriage. Id. at 384.

[FN220]. Parents of teenagers do not receive larger dependents' deductions despite their higher costs. For marginally middle class families, especially in periods of recession, this would exacerbate the economic squeeze of having a teenager in the house.

[FN221]. See NISMART, supra note 17, at 156 (stating that most runaway situations were preceded by argument of some sort). That "house rules" (mentioned by 49% of "thrownaway" parents), "friends" (36%), and "staying out late" (27%) could dwarf arguments over drugs (13%), sex (8%), and alcohol (6%) in provoking the exile of a child seems likely to indicate that these seemingly less important issues are euphemisms for other ongoing conflict. Money, and the insatiable teenage thirst for free and frequent doses of it, may well be a major factor in that conflict for many families. See generally Rand Conger et al., A Family Process Model of Economic Hardship and Adjustment of Early Adolescent Boys, 63 Child Dev. 526, 539 (1992) (suggesting important influence that hardship conditions may have on family and illustrating significance of emotional distress as mediator that links family's economic condition to disruptions in family interaction); Joan I. Vondra, Socioeconomic Stress and Family Functioning, in Troubled Youth, Troubled Families 191, 227-30 (James Garbarino et al. eds., 1986) (concluding that examining parents' reactions to economic conditions of home may be more important than broader socioeconomic indicators).

[FN222]. Fashing et al., supra note 218, at 40-58; Norlander et al., supra note 111, at 14. In New York, at least, such refusals of assistance are erroneous if a youth has been pushed out of the house. Fashing et al., supra note 218, at 49-50.

[FN223]. See supra notes 79-80 and accompanying text and Figure 4, supra, for information on where runaways and thrownaways stay while away from the family home.

[FN224]. See Restatement (Second) of Torts s 700 (1977) (stating that person who abducts or otherwise compels or induces child to leave parents without parental consent may be subject to liability); Murphy v. I.S.K. Con. of New England, Inc., 571 N.E.2d 340, 351-52 (Mass. 1991) (following Restatement and recognizing tort of intentional interference with parent-child relationship against religious organization harboring child without parental consent); Silcott v. Oglesby, 721 S.W.2d 290, 292 (Tex. 1986) (recognizing same tort against grandparent).

[FN225]. Most commonly, those harboring a child who turned out to be a runaway could be charged with contributing to the delinquency (or frequently "dependency") of a child. See, e.g., Cal. Penal Code s 272 (West 1988 & Supp. 1995) (causing, encouraging, or contributing to delinquency of minor constitutes misdemeanor); Mich. Comp. Laws Ann. s 750.145 (West 1991) (providing that person who encourages, contributes towards, or causes minor to become neglected or delinquent is guilty of misdemeanor). Other states have prohibitions against custodial interference broad enough to cover informal assistance to runaways. See Ga. Code Ann. s 16-5-45

(Michie 1992) (providing that person is guilty of interference with custody when he knowingly, without privilege to do so, entices, takes or harbors child from parent); Ohio Rev. Code Ann. s 2919.23 (Anderson 1993) (establishing misdemeanor offense of interfering with custody of child when person knowingly takes or entices child away from individual with lawful custody); id. s 2307.50 (1993) (creating civil remedy for violation of s 2919.23). Still others have specific prohibitions against harboring runaway children. See Colo. Rev. Stat. s 18-6-601 (1986 & Supp. 1995) (establishing that person commits crime of aiding or harboring runaway child if one knowingly aids child in running away from home by concealing child's whereabouts without informing parents).

[FN226]. Idaho Code s 18-1510 (Supp. 1995). A child forced out of the house by a parent would not technically fall under the language of these statutes, but for one considering whether to take in a needy youth it would be impossible to determine with certainty whether the parent had consented to the child's departure. Fortunately, many states have included affirmative defenses in their custodial interference statutes for actions taken to protect a child from harm or abuse. See, e.g., Idaho Code s 18-1510 (Supp. 1995) (offering affirmative defense if person provides housing to child after noticing reasonable evidence of abuse); Minn. Stat. Ann. s 609.26(2) (West 1987) (providing for no violation if action was taken to protect child from physical or sexual assault); 18 Pa. Cons. Stat. Ann. s 2904(b) (1983 & Supp. 1995) (offering affirmative defense if action taken was necessary to protect child from danger).


[FN228]. In many states, one who provides room and board to an unrelated minor must be licensed as a "foster parent" or face (usually very light) penalties. See, e.g., Md. Code Ann., Fam. Law ss 5-508 to 5-509, 5-521 (1991) (requiring license to run child care home or institution and imposing fine if found guilty of misdemeanor of operating without license). Some states exempt "friends," at least temporarily, from such requirements. See, e.g., Iowa Code Ann. s 237.14(1)(a) (West 1994) (excluding care furnished by individual who receives child of personal friend from statutory definition of foster care).


[FN230]. See Woodhouse, supra note 145, at 1113-14 (arguing that "patriarchal notions of ownership do not lend themselves to a child-centered theory of custody or parenthood"). Recognition of the crucial importance of social networks for adolescents—or (to use Uri Bronfenbrenner's influential term) the "ecology" of adolescence—has been a major feature of child development research in the last two decades, with James Garbarino taking an early and leading role. See James Garbarino et al., The Social Maps of Children Approaching Adolescence: Studying the Ecology of Youth Development, 7 J. Youth & Adolescence 417, 426 (1978) (concluding that data reveals that children in different ecological settings and at different stages of development report different social maps); Joan I. Vondra & James Garbarino, Social Influences on Adolescent Behavior Problems, in Social Networks of Children, Adolescents, and College Students 195, 201 (Suzanne Salzinger et al. eds., 1988) (examining individual differences in adolescent social functioning in relation to hypothesized parental and familial influences). For a recent overview of this literature, with application to the special problems facing adolescents after divorce, see Kandi Stinson, Adolescents, Family, and Friends 2-24 (1991). In one recent study of 16-year-old boys in Norway, a larger number of non-kin adults in the adolescents' social networks was found to be related to better educational and social performance, which the authors found to "underscore the value of taking a broad ecological approach to understanding the development and behavior of adolescents." Moncrieff Cochran & Inge Bo, The Social Networks, Family Involvement, and Pro-and Antisocial Behavior of Adolescent Males in Norway, 18 J. Youth & Adolescence 377, 395 (1989).

To its credit, the "Toughlove" movement recognizes the crucial importance of community support to effective family functioning, and establishes support networks for parents in conflict with their children. York et al., Toughlove, supra note 1, at 99-107. Unfortunately these networks appear to be composed only of "Toughlove" parents, id., and so are not part of a natural social network for the teenagers themselves.

[FN231]. See Fashing et al., supra note 218, at 59-60, 68-71 (discussing restrictions upon attending school after
leaving home); Norlander et al., supra note 111, at 17-19 (discussing effects of state laws on runaway's ability to attend public school). But see Horton v. Marshall Public Sch., 769 F.2d 1323, 1334 (8th Cir. 1985) (holding unconstitutional requirement that child not living with parents must have appointed legal guardian to satisfy residency requirements for school enrollment); Byrd v. Livingston Indep. Sch. Dist., 674 F. Supp. 225, 229 (E.D. Tex. 1987) (same).

[FN232]. See Fashing et al., supra note 218, at 32-39 (describing troubles runaways encounter when seeking to obtain employment).

[FN233]. For an illuminating discussion of the problems confronting even grandparents attempting to perform practical parental functions regarding their grandchildren--problems that may leave them only with "untenable choices"--see Karen Czapanskiy, Grandparents, Parents, and Grandchildren: Actualizing Interdependency in Law, 26 Conn. L. Rev. 1315, 1316-19 (1994).

[FN234]. Woodhouse, supra note 145, at 1117-22 (arguing that state and parents are morally obligated to care for children but that children must own themselves for children's rights to be fully protected).

[FN235]. 406 U.S. 205, 225 (1972) (holding that Amish children cannot be compelled by state to attend public schools until age 16, reasoning that "the Amish alternative to formal secondary school education has enabled them to function effectively in their day-to-day life").

[FN236]. Or, as Professor Glendon has put it, in the course of a discussion to which I am greatly indebted, "[w]hat is needed . . . is a shift from family policy to family ecology." Mary Ann Glendon, Rights Talk: The Impoverishment of Political Discourse 130 (1991).

[FN237]. For a description of a well-developed transitional living program for homeless youth (Transition House) that begins with two "learning levels" in a group home setting, then moves to carefully supervised apartments on the program site, and culminates in strong after-care services to youths who have graduated to their own apartments, see Bass, supra note 201, at 36-37.

[FN238]. In addition, new penalties could be added for child abandonment. To hit the mid-and upper-income parents, such disincentives could include the loss of personal exemptions in computing income taxes for taxpayers who had forced a child out of the house prior to the age of majority without making adequate provision for his or her care. Lower-income parents could suffer loss of Earned Income Tax Credit benefits, as well as reduced public assistance eligibility.

[FN239]. Such relief could take the form of increased public assistance benefits for low-income parents with adolescent children, along with higher dependents' deductions for mid-and upper-income parents with teenagers at home. See supra notes 133-37, 216-22 and accompanying text for a discussion of the relationship between financial stress and thrownaways.

[FN240]. N.Y. Exec. Law ss 532 to 532-e (McKinney 1982 & Supp. 1995). The New York statute authorizes the state Department of Youth to oversee and approve both "runaway programs" and "transitional living programs", and indeed, the department has issued detailed regulations for both kinds of programs. N.Y. Comp. Codes R. & Regs. tit. 9, ss 182.1-182.15 (1983). "Transitional living programs" are authorized to serve youths aged 16 to 21 for up to 12 months, and to provide a comprehensive range of services. N.Y. Exec. Law ss 532-a, 532-d (McKinney Supp. 1995). Further, state financial assistance to such programs is authorized, but to encourage effective local involvement such aid is limited to those counties which have developed individual county plans for services to runaway and homeless youth. N.Y. Comp. Codes R. & Regs. tit. 9, ss 182.14, 182.15 (1983). Much of the basic structure of the New York law was imitated in subsequent statutes adopted by Alaska and Louisiana. Alaska Stat. ss 47-10.300 to 47-10.390 (1990); La. Rev. Stat. Ann. ss 1351-1356 (West Supp. 1995). One other state to have adopted detailed state regulations for runaway shelters is Florida, but its scheme makes no provision for the longer term shelter and support most needed by thrownaways. See Fla. Admin. Code Ann. s 10M-9.066 (1983) (providing for 35-day maximum stay in shelter for runaway youths and providing little detail on available aftercare options).
[FN241]. The New York statute puts an absolute 60-day cap on provision of services by runaway shelters, whether or not the parent explicitly consents. N.Y. Exec. Law s 532-b(2) (McKinney Supp. 1995). Because properly drawn runaway and homeless youth statutes include a requirement that parents be notified of the child's whereabouts, see id. s 532-c, and because discharge of a youth to the street can be so dangerous, the failure of parents to consent or object to a child's presence in a program should not bar continued services.

[FN242]. See Gary Yates et al., The Los Angeles System of Care for Runaway/Homeless Youth, 12 J. Adolescent Health 555, 559 (1991) (noting dramatic drop in youths turned away after significant increase in available beds, but still leaving 1,829 youth turned away in following year); Greene et al., supra note 204, at E-8 (noting over 10% of youths had been turned away from shelter in past).


[FN244]. Boswell, supra note 2, at 426.

[FN245]. See id. at 403-22 (discussing how informal community organizations in pre-modern world provided valuable benefits for runaway youths). For a discussion of the need for public policy to recognize more fully the importance of informal community resources to adolescents, see Nightengale & Wolverton, supra note 130, at 23-27.

[FN246]. This is arguably a fair reading of the language of s 700 of the Restatement (Second) of Torts: "One who with knowledge that the parent does not consent, abducts or otherwise compels or induces or minor child to leave a parent legally entitled to its custody or not to return to the parent after it has left him, is subject to liability to the parent." Yet that language, unlike that of some state custodial-interference statutes, fails to recognize the crucial need for an exception for cases where the adult providing shelter reasonably believes that the child would face abuse upon return, or who notifies the appropriate authorities of the child's whereabouts. See, e.g., Idaho Code s 18-4506(2) (Supp. 1994) (protecting child from "imminent harm" constitutes affirmative defense); Colo. Rev. Stat. s 18-6-601(1) (1986) (precluding harboring liability if whereabouts of child reported within 24 hours to parent, legal guardian or law enforcement agency). See also Fla. Stat. Ann. s 409.175(e) (West 1993) (exempting from foster-care licensing requirement "person who cares for a child of a friend for a period not to exceed 90 days").

[FN247]. As a start, the federal Runaway and Homeless Youth Act authorizes support for "programs that place runaway youth and homeless youth in host family homes." 42 U.S.C.A. s 5714-23(b)(5) (West 1995). It is not clear why those homes could not include those of responsible relatives and family friends.


[FN249]. Id. at 255-59.


[FN251]. M.D. Resnick et al., The Impact of Caring and Connectedness on Adolescent Health and Well-Being, 29 J. Paediatric Child Health Suppl. 1, S3 (1993). Perhaps more surprisingly, considering of measures of "connectedness" eliminated the significance of socio-economic status as a factor in explaining those conditions and behaviors. Id. at S6.

[FN253]. For an overview of the movement away from concepts of status to the notion of contingency in American law governing parent-child relationships and custody rights during the nineteenth and early twentieth centuries, see Michael Grossberg, Governing the Hearth: Law and the Family in Nineteenth Century America 234-85 (1985); Hafen, supra note 149, at 871-89.


[FN255]. See Herlihy, supra note 5, at 26-27 (1985) (Christianity "powerfully influenced" gradual movement during middle ages away from "accepted practice" of child abandonment in ancient society, so that it "was always regarded as a sin"); Suzanne Dixon, The Roman Family 122 (1992) (same).

[FN256]. For an illuminating discussion of the bankruptcy of both sides in the "war over the family," see Glendon, supra note 230, at 121-30.

[FN257]. "Toughlove" advocates speak of past parental abuse and neglect as a problem of "theory" unrelated to resolving parent-child conflicts, for which parents must tenaciously refuse to accept "blame." York et al., Toughlove, supra note 1, at 61-77. See also Hafen, supra note 112, at 617, 657 (arguing that children should be kept "within the walls of the family tradition," which will not tolerate claims to child from state or "other outsiders" absent abandonment, abuse, or neglect threatening "serious harm" to child, but not acknowledging economic or developmental limitations of many families); Platform, The Responsive Communitarian Platform: Rights and Responsibilities, 2 Responsive Community 4-18 (Winter 1991-92) (urging that moral education "requires close bonding of the kind that is typically formed only with parents," and that family bonds should be strengthened, without acknowledgment of potential for intra-familial abuse or adolescents' need for community broader than just nuclear family). For an apparently communitarian position that openly wrestles with the problem of child abuse and neglect and integrates it into a thoughtful argument for greater reliance on "familistic assumptions," see Hafen, supra note 149, at 883-87, 900-15. As Hafen points out, much strident pro-family rhetoric may be in response to the too-ready intervention of the state into the family during the past several decades, and "unless we to some degree assume that risk [of unfair or inadequate parenting], constant legal intervention (or the threat of it) will destroy the continuity that is critically necessary for meaningful, ongoing relationships and developmental nurturing." Id. at 912. That parental decisions regarding children ("family privacy") should be left as often as possible undisturbed is also, of course, fundamental to the policies urged by Joseph Goldstein, Anna Freud, and Albert Solnit. See Joseph Goldstein et al., Before the Best Interests of the Child 6-14 (1979) (urging limited intervention in family matters). Goldstein and his colleagues propose standards that would appear to permit intervention on behalf of an abandoned child only upon the "death or disappearance of both parents ... coupled with their failure to make provisions for the child's custody and care." Id. at 59. Yet their discussion does not explicitly consider the problem of adolescent throwaways, and because they clearly mean to focus "on the actual plight of the individual child" and to protect abandoned children, id. at 60, it seems unlikely that they would exclude such throwaways from state intervention and services on "family privacy" grounds.

[FN258]. For an excellent overview of the rise of private ordering in family law and its relationship to ideological trends favoring individual privacy, gender equality, application of economic principles to the personal sphere, and the disassociation of law and morality--along with the disadvantages of private ordering for children--see Jana Singer, The Privatization of Family Law, 1992 Wis. L. Rev. 1443, 1508-31, 1550-56 (1992). Professor Woodhouse's argument for a "generist" approach to parent-child relationships, based on "earned" parental authority, may be seen as an effort to find a kind of quasi-contractual grounding for children's "rights" that is wholly rooted in their needs, and that would allow for a wide range of non-traditional family arrangements. See Woodhouse, supra note 148, at 1814-27 (setting forth argument for "generist perspective in which children's needs justify and circumscribe adult power"). Woodhouse does not appear yet to have developed, however, a clear basis (apart from the traditional Kantian obligation-flowing-from-sexual-act ground) for determining parental responsibility. See
supra notes 163 and accompanying text for further discussion on Kant's view of parental obligations as arising out of procreation.

[FN259]. See Cohen, supra note 76, at 42-48 (arguing that if children were given full liberty, they would desire to use only that liberty they are capable of exercising wisely); see also supra notes 94-109 and accompanying text (discussing push for early emancipation laws).

[FN260]. See supra notes 147-90 and accompanying text discussing the theory of the liberal state. Blustein rejects Locke's "theological grounding" of parental duties, in part because "how can we justify a claim to know what God commands?" Blustein, supra note 158, at 111-12. Yet he later admits that "a moral theory of parenthood presupposes some conception of the good life for mature human beings." Id. at 120. And how likewise could we "justify" a claim to know what that "good life" is, in a world where conceptions of the "good" are so at odds? Sandel, supra note 149, at 165-68.

[FN261]. As Joseph Goldstein and his colleagues have put it, the adolescent needs to establish "his own independent adult identity. But for a successful outcome it is important that the breaks and disruptions of attachment should come exclusively from his side and not be imposed on him by any form of abandonment or rejection on the psychological parents' part." Goldstein et al., supra note 257, at 34.

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