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# “You Can’t Make Me!”: How Expectations of Parental Control over Adolescents Influence the Law

*Judith G. McMullen\**

## I. INTRODUCTION

There is a widespread belief in our society that good parents consistently exercise firm, loving, and successful control over their offspring. This belief system maintains that during a child’s minority, “good” families have parents and children who communicate with each other, parents who consistently recognize and act in their children’s best interests, and children who respond with appropriate behavior and conformity to their parents’ expectations. A corollary of this set of assumptions is that the goodness of a child’s parenting can be measured by the goodness of that child’s behavior: good children have been raised well, and badly behaved children have parents who have not followed the tenets of good parenting. Of course, if parents are responsible for how their offspring turn out, it is logical to hold the parents responsible for any havoc created by their children. This purported cause-effect relationship is ignored rather abruptly beginning at the age of majority (typically age eighteen). Thereafter, the law treats children as adults; they are treated as capable of self-determination (except for consumption of alcohol) and are held legally accountable for their actions.<sup>1</sup>

While it is common knowledge that advice-giving relatives and self-appointed child-rearing experts can be extremely critical of parents whose children behave badly, it is recognized less commonly that some of these same presumptions have crept into judicial opinions and state

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1. In reality, it is not quite so simple. While a few states retain twenty-one as the age of majority, most states use age eighteen as the benchmark. However, children can be held responsible for criminal behavior at much younger ages, sometimes being waived into adult court as early as age ten. See LESLIE J. HARRIS & LEE E. TEITELBAUM, CHILDREN, PARENTS AND THE LAW 399 (2002).

or local ordinances. Efforts to hold parents legally accountable for the illegal or merely undesirable behavior of their offspring are common. For small children who can be controlled physically, this makes sense. Yet, many efforts to hold parents accountable focus on adolescents or pre-teens: children who may be adult-sized and who may well have adult-sized opinions, if not the maturity and judgment to go with them. Much has been written about adolescents and pre-adolescents, and many theorists have concluded that even the most diligent parents cannot fully control the behavior of every child in every circumstance. If this is true, we need to analyze whether parental accountability makes sense as a legal policy.

Of course, the most straightforward justification for holding parents accountable is that they have, or should have, effective control over their children right up until the age of majority. As we will see, however, the vast majority of authors of current parenting literature concede (some more readily than others) that parents do *not* have control over their adolescent and pre-adolescent children.<sup>2</sup> The rare author claiming that parents do have control advocates physical discipline so extreme that it is unlikely to become the norm in this society.<sup>3</sup> Nonetheless, there are at least three other possible justifications for a presumption that parents can control their older children.

First, holding parents accountable for the misbehavior of their older children may be the most economically efficient way to ensure that the children receive as much positive *influence* as possible.<sup>4</sup> Motivating parents to parent more effectively increases the likelihood that constructive action will be taken by those persons in the best position to positively affect their children's attitudes and behavior. As a closer examination of the child-rearing materials will reveal, however, this parental influence can sometimes look like parental control, but it is not the same thing.<sup>5</sup> Hence, justice may require that parental accountability not be absolute where proper assertion of parental influence has occurred, even if the influence has not resulted in the hoped-for behavior on the part of the child.

Second, punishing parents for acts of adolescent rebellion may constitute a kind of retribution against those persons perceived as

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2. See *infra* Part III (examining theories of parental control over children).

3. See *infra* Part III.A (examining the Parental Control approach to parenting).

4. See *infra* Part IV.A (discussing economic efficiency as a justification for parental accountability).

5. See *infra* Part III.A–B (setting out and contrasting the Parental Control and Parental Influence approaches to parenting).

responsible for a generation that is less disciplined and seemingly more out of control than prior generations. Assuming for the sake of argument that today's youngsters are in fact worse behaved than their predecessors, this is only a just result if the parents could have achieved a different result by parenting differently. Looking for the threads of agreement among the child-rearing authorities, we will find gradations of parental guilt that might make the retributive purpose a legitimate one.<sup>6</sup>

Third, punishing the parents of errant children may serve as a deterrent to recalcitrant children, their parents, or *other* parents who might otherwise be too lenient with their own children.<sup>7</sup> As we will see, threats of punishment or actual punishment directed at parents have no demonstrable effect on the behavior of truly resistant children.<sup>8</sup> However, it does appear that at least some parents alter their child-rearing behavior in response to direct threats of punishment.

There is no readily available method of ascertaining whether unrelated parents, who might themselves be too lenient with adolescents, will adjust their behavior in response to seeing *other* parents punished. However, the notion of "deterrence by example" is the most problematic of the deterrence theories. Interestingly, the punished parent need not have had even the possibility of any real control over his own child for this objective to be achieved. It is only necessary that the observing parents *think* that if the offending parent had acted differently, his child would be in control and punishment of the parent would not have occurred. This is the most dangerous of the justifications in the sense that the punished parent is being used to motivate others, but the punishment may not be just in the sense that the parent may have had neither actual control over the child nor the means to obtain it.

This Article will examine how the notion of parental control over children affects some types of legal decisions and will analyze whether the expectation of parental control is a just basis for making law. In discussing parental control, the emphasis will be on control of pre-adolescent and adolescent children; in other words, children within the

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6. See *infra* Part IV.B (discussing retribution as a justification for holding parents accountable).

7. See *infra* Part IV.C (discussing deterrence as a justification for parental accountability).

8. See *infra* notes 171–83 and accompanying text (discussing children who are naturally inflexible and uncontrollable); *infra* Part IV (examining the justifications for and effectiveness of holding parents accountable for the children's misbehavior).

ages of eleven to eighteen.<sup>9</sup> In Part II, two types of situations are scrutinized: cases in which rebellious children refuse to cooperate in visitation arrangements after a parental divorce<sup>10</sup> and cases where children are truants from mandatory school attendance.<sup>11</sup> These situations will show an implicit expectation that parents can and should enforce visitation and school attendance by their children. Part III of the Article will evaluate this expectation of parental control in light of current parenting literature. Part IV will analyze the possible policy justifications for parental accountability in light of the previously discussed parenting literature. Part IV also will use some of the cases from Part II to illustrate the ramifications of some of the policies. Finally, the Article concludes that while current evidence may justify a presumption of parental control over and responsibility for the behavior of older children, that presumption should be rebuttable because current evidence also shows that even diligent parental efforts cannot achieve complete control.

## II. PRESUMPTIONS ABOUT PARENTAL CONTROL IN THE LAW

### A. *The Child Resisting Visitation*

Cases dealing with visitation (or shared custody) after parental divorces (and the statutes that apply to them), present a vivid illustration of the struggle between a model that presumes parental control and a model that presumes child autonomy. State statutes typically require that both parents have reasonable access to their children, barring proof of actual risk of harm to a child from contact with a parent.<sup>12</sup> The terms of the visitation may be agreed to by the parents or imposed by the family court. Both parents are expected to contribute to the financial support of the child, and the “visiting” parent normally will be required to pay monthly child support of a set amount.<sup>13</sup> Compliance with those

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9. Hence, the term “children” as it is used in this Article will frequently refer to older offspring, albeit offspring who have not yet reached the age of majority. Obviously, parents can exercise some degree of control over babies and small children. In the contexts discussed here, for example, a five-year-old could be picked up physically and delivered to a non-custodial parent or to a school. Physical delivery is a different matter with an older, larger child. Hence, the discussion of what other types of control a parent reasonably can be expected to have over older children is warranted.

10. See *infra* Part II.A (discussing cases involving children refusing to comply with visitation orders).

11. See *infra* Part II.B (examining decisions involving truancy).

12. See, e.g., WIS. STAT. ANN. § 767.24(4)(b) (West 2001 & Supp. 2003). See generally LESLIE J. HARRIS & LEE E. TEITELBAUM, FAMILY LAW 807–08 (2d ed. 2000). “Denial of visitation is an extreme remedy rarely approved.” *Id.* at 807.

13. See, e.g., WIS. STAT. ANN. § 767.25.

terms is expected, although sometimes one or both parties will consent to changes. However, what happens if a child fails to appear at an appointed visitation time?

The following are typical facts: A child, most often age twelve to seventeen, begins a pattern of failing to appear for scheduled visitation times. The visiting parent's efforts to contact the child and the custodial parent are either ignored or met with explanations that the child refused to go, the child does not want to see the visiting parent, or even that the child no longer wishes to pursue a relationship with the visiting parent.

The visiting parent responds with understandable disappointment and anger. The custodial parent at first may try to persuade the recalcitrant child and, if that is not successful, may threaten consequences of one sort or another. The reactions of custodial parents may vary from covert encouragement of the rebellion to pleading, persuasion, or threats of punishment to get the child to comply with ordered visitation. If visits still are not forthcoming, some visiting parents resort to the self-help of withholding support payments. This often results in a petition to the court by the custodial parent. Other visiting parents eschew self-help and immediately petition the court for relief, such as a suspension of their payment obligations, due to a denial of visitation rights. Either way, the parents end up back in family court, each likely to blame the other for the interruption in visitation.

The approaches taken by various courts to the above scenario show how beliefs and assumptions about parental control over the behavior of minors influence the law governing parents and children. A survey of relevant cases reveals that many, perhaps most, courts take the position that parents can and should control the behavior of their minor children in visitation situations.<sup>14</sup> The rest of this section takes an in-depth look at representative cases where visitation was interrupted by a child's refusal to cooperate and analyzes the courts' reasonings in those decisions.

Courts that take the position that custodial parents can and should force visitation in effect treat visitation failure as wrongdoing on the part of the custodial parent. This approach presumes that the custodial parent has control over the behavior of the child and that the parent is in some sense responsible for the child's failure to visit. Typical allegations are that the custodial parent poisoned the relationship between the child and the other parent, or that the parent encouraged or allowed, through laxity, the failure to appear for visitation. Courts

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14. See *infra* notes 15–109 and accompanying text (discussing court decisions holding custodial parents responsible for their children's refusal to visit non-custodial parents).

taking this approach tend to impose dire consequences on the parents whose exercise of parental control is found lacking. Erring parents may be held in contempt of court and may be fined or required to serve jail time as a result.

*MacIntosh v. MacIntosh*<sup>15</sup> provides one example of this type of case. In that case, the court awarded custody of the two daughters to the mother, granting the father regular visitation.<sup>16</sup> Eight years later, when both girls were teenagers, the couple began what the lower court characterized as a “tug of war” over the children.<sup>17</sup> The father intended to take both girls to Switzerland during his allotted visitation time in the summer of 2000, but after he purchased the tickets, the girls apparently refused to go.<sup>18</sup> The father got an emergency court order, which required the girls to accompany their father on the trip.<sup>19</sup> However, this ploy angered the girls, who then even more adamantly refused to go.<sup>20</sup> In the end, neither child went, and the father filed a petition for contempt.<sup>21</sup> The lower court found the mother in contempt, imposed a fine, and sentenced her to two years in jail, which would be suspended if she and the children complied with the visitation order.<sup>22</sup>

The mother appealed, asserting inter alia that “she could not force her fifteen- and sixteen-year-old children to participate in visitation.”<sup>23</sup> The court rejected her claim, stating: “[W]e have rejected the notion that a custodial parent may justify inaction simply because a child refuses to cooperate with a visitation order.”<sup>24</sup> The court added that it should not be up to a child to decide whether scheduled visitation takes place.<sup>25</sup> The court also clarified the purpose of the jail sentence:

Although incarceration undoubtedly has a punitive component, [the mother] may avoid incarceration if she ensures that [the father] receives parenting time under the general visitation order. Thus, the effect of imprisonment is to coerce [the mother] into assuring that [the father] and his children maintain continuing contact with each other.

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15. *MacIntosh v. MacIntosh*, 749 N.E.2d 626 (Ind. Ct. App. 2001).

16. *Id.* at 628.

17. *Id.*

18. *Id.*

19. *Id.* at 628–29.

20. *Id.* at 629.

21. *Id.*

22. *Id.*

23. *Id.* at 630.

24. *Id.*

25. *Id.*

The trial court was not precluded from ordering imprisonment as a condition for compliance with its order.<sup>26</sup>

The court's insistence on the mother's responsibility to take action to ensure that the children comply with the visitation order, as well as its view that incarceration would "coerce" the mother into ensuring that the father maintain contact with his teenage daughters, reveals a belief that the mother can control the behavior of her children if she makes an effort. The burden of making sure that the father and the children maintain a relationship with each other seems to be placed solely on the mother. The court dismissed the claim that she could not make the daughters carry out the visitation but offered no concrete advice as to how someone might force an adolescent, who may well be adult-sized and strong-willed, to comply.<sup>27</sup>

Dual policy concerns are evident here. The first is the policy of encouraging continued contact with both parents as a means of advancing the best interests of the child. The second is preserving the integrity of family court orders. A sometimes-articulated concern is that a parent who is hostile to an ex-spouse could conspire with a child or clandestinely influence the child's attitudes and behavior without the child's conscious acquiescence.<sup>28</sup> This could completely abnegate the visiting parent's right to continue to have a relationship with the child.

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26. *Id.* at 631–32.

27. *Id.* at 630.

28. Commonwealth *ex rel.* Lotz v. Lotz, 146 A.2d 362, 364 (Pa. Super. Ct. 1958).

The primary question before us, therefore, is whether the court below was correct in directing the mother to deliver the child to its father for visitation. . . . [W]e feel that the court has such power. If this were not true any child conspiring with the defendant in a custody action could completely nullify the custody order of the court. Hearing judges must take into consideration the feelings of all the parties and weigh carefully the effect of forcing the children and parents to do what may be justly abhorrent to them, but in the end the court's order cannot be voided solely because a child and parent may join in a stubborn refusal to comply.

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Visitation rights of a parent not in custody have long been a matter of concern to the law of this Commonwealth. They must be carefully guarded for when parents are separated and custody is placed in one of the parents, there exists a danger that the parent having custody of the child may use his or her advantageous position to alienate the other parent from the affections of the child. Were we to reverse the order of the court below, we would provide an easy method for any person who has obtained the custody of a child to nullify the visitation rights granted by the court. A court which has awarded custody of a child can require the person to whom such custody has been awarded to exert reasonable authority over such child to require it to obey the lawful orders of a court.

*Id.*; see also *Hoffer v. Hoffer*, 447 A.2d 972, 974 (Pa. Super. Ct. 1982) (affirming a mother's visitation schedule over the custodial father's objection that he was not allotted enough weekend time with his son).



Yet, while courts that subscribe to the view that parents must assert control are quick to insist that custodial parents demand cooperation in visitation, those courts are thin on details as to just how parents can successfully assert their authority.<sup>29</sup> Some judicial opinions do little more than order the custodial parent to get the children to comply.<sup>30</sup> *How* this is to be accomplished is not discussed. Rather, the courts tend to describe what parental action is insufficient, such as where the parent suggests that the child visit or makes ineffective attempts at disciplining the child who fails to visit.<sup>31</sup> I could find no case where a court expressly required a custodial parent to physically force an adolescent to participate in visitation. There seems to be an implication in some of these cases that if the custodial parent really meant business and conveyed that to the child, then the child would comply.<sup>32</sup> Yet it is not at all clear from the facts of these cases whether that would indeed be the outcome.

For example, in *Fernald v. Fernald*,<sup>33</sup> a father appealed from a lower court's denial of visitation rights with his children, aged thirteen, fifteen, and nineteen.<sup>34</sup> The denial apparently was based on a fifteen-minute interview with the children in which they "strongly indicated no wish to visit with their father."<sup>35</sup> The appeals court overturned the denial with respect to the thirteen- and fifteen-year-olds, noting that under Pennsylvania law, a child's wish not to see a parent is not controlling.<sup>36</sup> The court did not extend its ruling to the nineteen-year-old daughter who, the court noted, already was considered an adult for most purposes.<sup>37</sup> The court held that the mother must exercise her authority over the other two children and require them to visit their father despite their reluctance to do so.<sup>38</sup>

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29. See, e.g., *Fernald v. Fernald*, 302 A.2d 470 (Pa. Super. Ct. 1973) (discussed *infra* notes 33–40 and accompanying text).

30. *Id.* at 471.

31. See, e.g., *Ex parte Rosser*, 899 S.W.2d 382 (Tex. Ct. App. 1995) (discussed *infra* notes 54–65 and accompanying text).

32. See *id.*; see also *Rideout v. Rideout*, 40 P.3d 1192 (Wash. Ct. App. 2002) (discussed *infra* notes 41–51), *aff'd*, 77 P.3d 1174, 1175 (Wash. 2003); *Fernald*, 302 A.2d 470 (discussed *infra* notes 33–40 and accompanying text).

33. *Fernald*, 302 A.2d at 470.

34. *Id.* at 470–71.

35. *Id.* at 470.

36. *Id.* at 471.

37. *Id.*

38. *Id.* ("The other two minor children, however, can be required to visit their father, despite their desire not to do so, and the mother can be directed to exercise her parental authority over them so as to require their compliance with the visitation order.")

*How* the mother could enforce compliance is not specified, despite the court's requirement that she do so. However, the clear implication in the case is that she turned the children against their father and that she must undo the damage. This can be inferred from the fact that the court noted that the children's mother believed the father's lifestyle threatened and violated her religious views relating to family life, and that the court pointed out that the mother stressed her allegation that the father had deserted her for another woman.<sup>39</sup> Later in the opinion, the court further revealed its belief that the mother had alienated the children from their father, noting that the mother interfered with his efforts to send birthday cards and make telephone calls.<sup>40</sup>

The court never addressed the possibility that the adolescent children may have formed a negative impression of their father and his role in the divorce on their own and not because of their mother's bitterness. If the children in fact developed a negative opinion of the father independently, the mother may not find it easy or even possible to demand compliance with visitation as the court required.

*Rideout v. Rideout*<sup>41</sup> is another case in which the court found the custodial parent's actions wanting. In that case, the court commissioner found the mother in contempt for failing to deliver her daughter Caroline, then aged twelve or thirteen, for court-ordered visitation with her father.<sup>42</sup> The mother argued that she had not acted based on the bad faith required by the Washington contempt statute "because Caroline had refused to cooperate in the visitation and did not want to spend time with her father."<sup>43</sup>

On appeal, the mother argued that she did not act in bad faith in failing to deliver Caroline for her scheduled visitation:

[The mother] admits that she did not deliver Caroline to [the father] on July 27, 2000, as the court ordered. But she argues that she did not act in bad faith. She contends that she tried to persuade Caroline to visit

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39. *Id.*

40. *Id.*

The record reveals in this case that the father did try to keep in touch with his children via birthday cards and telephone calls but discontinued those efforts when they were thwarted by the mother and rendered unsuccessful by her. The father, despite such reaction on the part of the mother which she imparted to her children, has continued to pay \$20 per week for each of the three children even though the 19-year old daughter is now emancipated.

*Id.*

41. *Rideout v. Rideout*, 40 P.3d 1192 (Wash. Ct. App. 2002), *aff'd*, 77 P.3d 1174 (Wash. 2003).

42. *Id.* at 1193.

43. *Id.*

[the father], but she would not go. She believes that forcing Caroline to visit [the father] was impossible. She states in her brief, "[t]he very concept that a primary parent is responsible to force visitation upon an unwilling teen is a violation of the very laws of nature."<sup>44</sup>

Acknowledging that the question was one of first impression in Washington, the court examined cases from other states before rejecting the mother's appeal.<sup>45</sup> The court held that it could only find that a parent acted in bad faith when his or her child resisted a visitation order if the evidence demonstrated that the parent "contributed to the child's attitude or failed to make reasonable efforts to require the child to comply."<sup>46</sup> The court held that here the mother both contributed to her daughter's reluctance to visit and failed to make reasonable efforts to require her daughter to visit.<sup>47</sup>

The court went on to describe a pattern of incidents in which the mother made excuses for Caroline and was vague about her whereabouts when the father attempted to pick her up.<sup>48</sup> The mother apparently did little more than offer "to allow [the father] to come over and 'drag Caroline out.'"<sup>49</sup> The court found this maternal behavior wanting and emphasized that the mother had an obligation to ensure her daughter complied with the parenting plan.<sup>50</sup> The court added: "Caroline's repeated failures to visit with her father coupled with [the mother's] proffered excuses and her bystander attitude are sufficient to conclude that [the mother] was subtly manipulating the course of events to frustrate [the father's] visitation rights."<sup>51</sup>

As already noted in the above discussion of *Fernald*, there is little recognition in the cases of the possibility that an adolescent child might have legitimate reasons for backing away from a relationship with a visiting parent. In *Lotz v. Lotz*, which affirmed an order compelling a thirteen-year-old girl to visit her father against her strong wishes,<sup>52</sup> only the dissenting opinion defended the possibility that the girl's opposition may have arisen from her own free and justified position.<sup>53</sup> The

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44. *Id.* at 1195.

45. *Id.* at 1195-96.

46. *Id.* at 1196.

47. *Id.*

48. *Id.* at 1196-97.

49. *Id.* at 1196.

50. *Id.* at 1197.

51. *Id.*

52. Commonwealth *ex rel.* Lotz v. Lotz, 146 A.2d 362, 364 (Pa. Super. Ct. 1958).

53. *Id.* at 365 (Wright, J., dissenting).

I cannot go along with the majority in ordering this mother to force her thirteen year old daughter to visit her father. The record discloses that the girl refuses to make the

dilemma faced by courts in these situations is stated clearly by the court in *Ex parte Rosser*:<sup>54</sup>

This dispute, of course, raises serious policy and practical considerations. On the one hand, the policy of this state is to encourage a close and continuing relationship between a child and *each* parent by frequent periods of possession. That policy can be achieved only to the extent the courts have effective means to enforce visitation, such as by contempt. On the other hand, to hold a parent in contempt for his child's unwillingness to comply with visitation would suggest that the parent must either forcibly compel the child to comply, or simply be held accountable for the child's refusal to do so.<sup>55</sup>

*Ex parte Rosser* involved a father who filed a petition for a writ of habeas corpus after he was found in contempt for failure to comply with a visitation order, and the court entered an order for *capias* for his arrest.<sup>56</sup> The court found part of the contempt order (as well as the *capias*, which relied upon that portion of the order) void, but it upheld that portion of the contempt order finding that the father had the ability to comply with the order but nonetheless failed to do so.<sup>57</sup> The father had the burden of proving involuntary inability to comply, and the court outlined what he would have had to show in order to carry that burden:

Within the spectrum of visitation disputes, there may be instances in which: (1) a parent actively discourages or impedes visitation; (2) a parent passively fails to insist that a child comply with visitation; or (3) a parent is legitimately unable to compel a child to comply with visitation. We believe the defense of involuntary ability to comply applies only to the third alternative, and not the first two.<sup>58</sup>

The court's reiteration of the facts of the case show just how hard it can be for a parent to prove legitimate inability to force a child to comply.<sup>59</sup> The daughter, who was seventeen at the time of the hearing, had a strained relationship with her mother and flatly refused to go on

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visits voluntarily because the father has inflicted serious physical injuries upon her, and she fears and dislikes him. While I fully agree that it is against public policy to destroy or limit the relationship of parent and child, and that a parent should not be denied the right of visitation, the instant order does not provide for visitation of the child by the father. On the contrary, it requires the mother to compel visitation of the father by the child.

*Id.*

54. *Ex parte Rosser*, 899 S.W.2d 382 (Tex. Ct. App. 1995).

55. *Id.* at 385 n.7 (citations omitted).

56. *Id.* at 384.

57. *Id.* at 386–87.

58. *Id.* at 386.

59. *Id.* at 383–84.

summer visitation with her.<sup>60</sup> Testifying as to her refusal, the daughter stated:

I think that even if you force me to, you know, to physically drag me, I just don't believe my dad would do that. I just—I mean, he couldn't do it. He can't drag me to do anything. He made it very clear that there would be consequences if I didn't go and I think that shows how persistent I am and not just someone who will [be forced] to visit my mother and to have a relationship with my mother. . . .

He told me I had to go. He said that he would drag me into the car and I said that I would [go] run away to a friend's if he forced me to [go] visit her.<sup>61</sup>

In terms of efforts to encourage his daughter's compliance with the visitation order, the father reportedly talked with her, encouraged her to visit, grounded her, and took her car away for a week because she refused.<sup>62</sup> He told her that he might be held in contempt if she refused to go. The daughter apologized but told him that she still refused to go.<sup>63</sup> Nonetheless, the lower court found that the father had the ability to comply with the visitation order but failed to do so.<sup>64</sup>

Once again, neither the lower court nor the appellate court spelled out just what further action would be required of the father. Although the appellate court conceded that it saw no evidence that the father sought to impede or discourage visitation, the court upheld the lower court's conclusion, deferring to the trial court's judgment on the credibility of the witnesses.<sup>65</sup>

Why did the trial court find the claim of impossibility unbelievable? The simple explanation may be that witness demeanor, tone of voice, or facial expression led the court to conclude that the explanations were not truthful. However, the trial court also may have subscribed to the view that the custodial parent can and should control the behavior of a minor child. If that is the premise, then failure to comply will be

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60. *Id.*

61. *Id.* at 384.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* at 385–86. The court stated:

[The father's] and Julie's testimony were to the effect that he tried to persuade her to visit her mother, but because she refused, he was unable to do so.

However, [the father] and Julie were interested witnesses, and their testimony could not be readily contradicted if untrue. Thus, the trial court was not bound by this testimony if it disbelieved it, and we may not substitute our judgment for that of the trial court on that determination.

*Id.* at 386.

viewed as evidence of faulty parenting, but the court would not generally construe it as evidence that the parent could not force compliance by the child.

In a case with similar facts, *Hancock v. Hancock*,<sup>66</sup> the appellate court overturned a portion of a contempt order based on a finding that the mother willfully violated the terms of a consent judgment by failing to require her son Andrew to visit his father.<sup>67</sup> In that case, Andrew apparently loved his father and wanted contact with him but did not wish to spend time with his father's second wife and her children.<sup>68</sup>

The appeals court was sympathetic to the mother's claim that the child's failure to appear for visitation was *not* the result of any resistance to visitation or willfulness on the mother's part.<sup>69</sup> The court noted that the mother had done everything, except use physical force or threats of punishment, to make the child visit his father, including getting the child ready to go, encouraging him to go, and telling him he had to go.<sup>70</sup> The court found that mere failure by the mother to use physical force on the boy, absent any evidence that she encouraged his resistance to visitation, did not amount to contempt.<sup>71</sup>

Despite overturning the visitation-based portion of the contempt order, the appellate court did not let this mother completely off the hook.<sup>72</sup> The court described the father's frustration as "understandable" and held that where a custodial parent has taken no action to force a

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66. *Hancock v. Hancock*, 471 S.E.2d 415 (N.C. Ct. App. 1996).

67. *Id.* at 422.

68. *Id.* at 419. The court also noted:

The child also testified on cross-examination that he did not visit with his father because he "didn't feel comfortable" with defendant's wife or at defendant's house, that defendant's wife had called him "a spoiled brat," and that the beds at defendant's house were "uncomfortable." Plaintiff's daughter testified she had never heard her mother discourage the child from visiting his father and had instead always encouraged him to go. She said her brother refused to go because he "hated it down there" at his father's home and because the child "hated" defendant's wife's son. Defendant testified he thought plaintiff should "at least make" the child go for his visitation in the same way she made the child attend school.

*Id.*

69. *Id.* at 419–20.

70. *Id.*

71. *Id.*

While perhaps the plaintiff could have used some method to physically force the child to visit his father, even if she improperly did not force the visitation, her actions do not rise to a willful contempt of the consent judgment. . . . We find no evidence that plaintiff willfully refused to allow the child to visit with the defendant.

*Id.*

72. *Id.* at 420.

child to visit, the non-custodial parent should ask the court to modify the visitation order to compel visitation.<sup>73</sup>

This confusing advice is difficult to apply. Is the court suggesting that parents should be ordered to physically force a child to visit? This would seem to be consistent with some of the cases above, such as *Fernald* and *Rosser*, in which the custodial parents were held in contempt despite the fact that they evidently had done everything *but* physically force the child to visit.<sup>74</sup> The father's testimony in *Hancock*, that the mother "should 'at least make' the child go for his visitation in the same way she made the child attend school,"<sup>75</sup> gives some insight into the expectation of parental authority present here. The statement implies a presumption that the child's attendance at school is the result of an appropriate and successful assertion of parental authority. So too, the reasoning goes, the mother should compel attendance at visitation. Yet, this line of reasoning does not admit the possibility that the child might actually want to attend school, or at least is not unwilling to do so.

Moreover, it is difficult to find any cases on appeal that discuss the remedy of an order compelling visitation. In *Mintz v. Mintz*, which was cited by the court in *Hancock*, the court reversed an order that provided for the incarceration of the custodial parent, the mother, if the father orally reported to the sheriff that the mother had failed to comply with the visitation order.<sup>76</sup> The reversal was due to the appellate court's conclusion that the order violated the mother's due process rights.<sup>77</sup> The court's discussion of the order to compel visitation appeared in this larger context:

Although improperly attempted in the present case, a trial judge has the power to make an order forcing a child to visit the non-custodial parent, but only when the circumstances are so compelling and only after he has done the following: afforded to the parties a hearing in

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73. *Id.* (citing *Mintz v. Mintz*, 307 S.E.2d 391, 394 (N.C. Ct. App. 1983)). The court stated: Defendant's frustration over not being able to have visitation with his child is certainly understandable. Where, as here, the custodial parent does not prevent visitation but takes no action to force visitation when the child refuses to go, the proper method is for the non-custodial parent to ask the court to modify the order to compel visitation. "[A] trial judge has the power to make an order forcing a child to visit the non-custodial parent."

*Id.*

74. See generally *supra* notes 33–40 and accompanying text (discussing the *Fernald* decision); *supra* notes 54–65 and accompanying text (discussing *Rosser*).

75. See *supra* note 68 (quoting *Hancock v. Hancock*, 471 S.E.2d 415, 419 (N.C. Ct. App. 1996)).

76. *Mintz v. Mintz*, 307 S.E.2d 391, 393–94 (N.C. Ct. App. 1983).

77. *Id.* at 394.

accordance with due process; created a proper court order based on findings of fact and conclusions of law determined by the judge to justify and support the order; and made findings that include at a minimum that the drastic action of incarceration of a parent is reasonably necessary for the promotion and protection of the best interest and welfare of the child.<sup>78</sup>

It seems from this and other language in the case that a court's appropriate response to a failure to comply with an order forcing a child to visit would be to hold the custodial parent in contempt and possibly incarcerate her. Since this is the usual penalty for violation of visitation orders,<sup>79</sup> the dispute here appears to be mostly about process and procedure rather than about family law principles.

Oddly enough, *In re Custody of Stancil*,<sup>80</sup> which the *Mintz* court cites as general support for its conclusion, does not involve a childish refusal to visit, or even a dispute between parents; it involved an award of custody to a child's grandmother after the death of his father, the custodial parent.<sup>81</sup> The appellate court upheld the custody order against the mother's appeal but found that the lower court erred in entering a visitation order that gave the grandmother complete discretion as to whether, when, and how the mother could visit the child.<sup>82</sup> The relevance of this case to a situation where a child balks at visitation is somewhat obscure. However, there is much discussion in *Stancil* of the importance of a non-custodial parent's right to visit, and the folly of allowing visitation by the non-custodial parent to be subject to the invitation, consent, or convenience of the custodial parent.<sup>83</sup> Since the custodial parent often bears the blame for a child's refusal to visit, the court may have been persuaded to use its power to force the custodial parent here to facilitate visitation.

Ironically, while courts like those cited above suggest that physical force may be necessary to assure compliance with a visitation order, many courts will not allow the less violent method of withholding child support as a method to encourage compliance. Often these issues arise in the context of a petition to release a non-custodial parent from the

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78. *Id.* (citing *In re Custody of Stancil*, 179 S.E.2d 844 (N.C. Ct. App. 1971)).

79. *See, e.g.*, HARRY D. KRAUSE, FAMILY LAW IN A NUTSHELL 320 (3d ed. 1995). Contempt is the usual penalty for violation of visitation orders, although courts occasionally turn over custody to the other parent. *Id.*

80. *In re Custody of Stancil*, 179 S.E.2d 844 (N.C. Ct. App. 1971).

81. *Id.* at 845-46.

82. *Id.* at 849-50. The unusual decision to award custody to someone other than a living parent was based on the fact that the mother had a history of mental illness, and had had only supervised visitation with the child prior to the father's death. *Id.* at 846-47.

83. *Id.* at 848.



obligation of paying child support.<sup>84</sup> A typical fact scenario involves an adolescent child who has consistently failed to appear for court-ordered visitation, a custodial parent who is not forcing an appearance, and a fed-up payor parent who believes he should no longer have to support a child who wants nothing more to do with him.

As a preliminary matter, it is interesting to consider the support-withholding behavior of the payor. Withholding support could be intended to control the behavior of the custodial parent, and to get her to force the child to visit. After all, any financial burden resulting from non-payment of support is likely to be borne by the custodial parent, who will have to come up with another means of providing what the child needs. Or, the non-payment may be intended to punish the child, who at some point will have to manage with fewer resources once the support payments cease. If the motivation is the latter one, it implicitly presumes (at least unconsciously) that the child has some control over the visitation behavior, or over the perceived choice to "side with" the custodial parent. Whatever the intent of the payor, courts generally are reluctant to suspend child support payment obligations because of public policy concerns: the welfare of the child and the potential burden to society if a child's parents do not financially support her.

A case in point is *Macaluso v. Macaluso*.<sup>85</sup> There, in a dispute over payment of child support and enforcement of the father's visitation rights, the trial court entered a stipulated judgment, which contained a provision that made future child support payments contingent upon the daughter's compliance with the father's visitation rights.<sup>86</sup> The daughter was sixteen at the time. The agreement stood for eight days before the mother filed an action for contempt and past due child support.<sup>87</sup> The mother alleged that the father and his new wife treated the daughter badly and made it "impossible for her to complete the specified period of visitation."<sup>88</sup> The mother "further alleged that [the father] was using this as a pretext for wrongfully refusing to pay child support, and accordingly, she requested that past due child support be made executory."<sup>89</sup>

Following a hearing in which it was determined that the daughter had not complied with the visitation requirements of the stipulated

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84. See *infra* notes 85–109 and accompanying text (discussing cases concerning the release of non-custodial parents from paying child support).

85. *Macaluso v. Macaluso*, 509 So. 2d 201 (La. Ct. App. 1987).

86. *Id.* at 202.

87. *Id.*

88. *Id.*

89. *Id.*

judgment, the mother's request was denied.<sup>90</sup> She appealed, and the court held that the section of the judgment that made child support contingent on compliance with the visitation term was "an absolute nullity."<sup>91</sup> The court found that this sort of provision was void as against the public policy of ensuring that all children receive the support they need for maintenance and upbringing.<sup>92</sup> The court held that "[a] parent's duty of support arises entirely independent of any issue of visitation privileges, merely by virtue of the child's paternity."<sup>93</sup> The court added that such a provision had practical limitations and also could be voided because it was not in the daughter's best interest.<sup>94</sup>

It is unclear whether the father in *Macaluso* was attempting to motivate (or punish) the mother or the child through his nonpayment. The court does not address who is responsible for the failure of visitation but only establishes the principle that support and visitation are separate legal issues.

In a 1985 Wyoming case, *Broyles v. Broyles*, the Wyoming Supreme Court reversed portions of a trial court order that released a father from further child support obligations on the ground that the daughter, who was a senior in high school, refused to visit with him.<sup>95</sup> Citing authority from many jurisdictions, the court held:

[T]he denial of visitation rights by either the custodial parent or the child does not constitute a change in circumstances justifying the reduction or termination of the noncustodial parent's support obligation. A child's need for support and a parent's ability to pay are not related to questions concerning visitation. The welfare of the child is a primary concern, and the duty of a noncustodial parent to support his or her child cannot depend on that parent's opportunity to exercise visitation rights.<sup>96</sup>

In a concurring opinion, Justice Cardine expressed his concern that the majority opinion held that so long as the daughter remained unemancipated, the father's child support obligation continued without regard to any other consideration.<sup>97</sup> In Justice Cardine's view, the better rule would be to require a non-custodial parent to continue child

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90. *Id.*

91. *Id.* at 203.

92. *Id.* at 202.

93. *Id.* at 203.

94. *Id.*

95. *Broyles v. Broyles*, 711 P.2d 1119, 1128–29 (Wyo. 1985).

96. *Id.* at 1128. Note that the court's choice of words, "the denial of visitation rights by either" (emphasis added), stresses that the court is not opining on who is responsible for the visitation breakdown.

97. *Id.* at 1129 (Cardine, J., concurring).

support unless "the custodial parent is capable of providing support for the unemancipated minor child, and . . . the custodial parent is at fault or at least substantially involved in the unemancipated minor's refusal to afford visitation rights to the non-custodial parent."<sup>98</sup>

Other cases are in accord. For example, in *Carroll v. Carroll*,<sup>99</sup> the appeals court reversed a lower court judgment suspending a father's child support obligation because his sixteen-year-old son refused to visit. The court noted that while the situation was almost impossible from the trial court's perspective, it would reverse the portion of the judgment that suspended the support obligation, holding that a child's refusal to visit would not cancel a non-custodial parent's obligation of child support.<sup>100</sup>

Both the concurrence in *Broyles* and the opinion in *Carroll* imply that those courts believed that the custodial parent may be responsible for visitation failure at least some of the time. In such cases, courts view reducing the child support payments of the non-custodial parent as a possibly fair penalty for the custodial parent's wrongful actions. However, these courts *are unwilling to presume* that the custodial parent is at fault, at least in the context of child support obligations. It is unclear from the opinions whether this represents a rejection of the expectation of parental control or a particular solicitude for the burdens of society if child support payments are not made.

Another judicial approach is to treat children as individuals acting out of their own free will. This approach does not make the custodial parent accountable for the child's behavior. Courts taking this approach may impose consequences on the children themselves or may emphasize persuasion only and not impose overt consequences on anybody.<sup>101</sup>

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98. *Id.* at 1130 (Cardine, J., concurring).

99. *Carroll v. Carroll*, 593 So. 2d 1131, 1132 (Fla. Dist. Ct. App. 1992).

100. *Id.* The court further stated, "[W]e are unwilling to say that conduct by a child, not shown to be orchestrated by one of the parents, should relieve a parent of his or her duty to support the child. This seems to punish only the other parent's ability to pay for that child's needs." *Id.* at 1133.

101. A variation of the free will approach is taken by some courts that will discontinue a support obligation where it is shown that a child is emancipated. The doctrine of constructive emancipation recognizes the free will of employed children who are financially independent from their parents; however, actions other than paid employment can result in a court treating a child as emancipated for child support purposes. *See, e.g.*, *Cohen v. Schnepf*, 454 N.Y.S.2d 785, 786-87 (N.Y. Sup. Ct. 1982) (releasing a father from support of an eighteen-year-old son who changed his name to that of his stepfather and denying payment of the son's college expenses). *See generally* Judith G. McMullen, *Father (or Mother) Knows Best: An Argument Against Including Post-majority Educational Expenses in Court-ordered Child Support*, 34 IND. L. REV. 343, 347-

I could find few cases in this category, but one of the rare examples of this approach is set out in the concurring opinion in *Broyles* discussed above.<sup>102</sup> In this case, the concurring justice provided a sympathetic analysis of the daughter's refusal to visit, stating:

The rights of the parent and the child must coexist. If the child, of his own volition, determines not to visit the noncustodial parent, it seems that the child may have a right to those feelings. Neither the child nor the custodial parent should be punished for that choice. As the Michigan Court of Appeals said in *Henshaw v. Henshaw* . . . :

Affection is bestowed, not bought. Family relations cannot be regulated by the clock. Obviously, any coerced companionship the defendant might compel by a cutoff of child support would be utterly devoid of the sentiments of filial love and respect whose encouragement furnished the only admissible ground for visitation in the first place.<sup>103</sup>

The concurring justice went on to note that the seventeen-year-old daughter in question clearly was solely responsible for her own refusal to visit.<sup>104</sup> The girl testified that she was afraid of her father because he had abused her mother, and that she did not want to visit her father because he failed to spend time with her while her parents were married and the parties were living together.<sup>105</sup>

In the *Henshaw* case cited by the court above, the court held that "support payments may not be used as a weapon to force a child's visitation."<sup>106</sup> The court was uncommonly sympathetic to a thirteen-year-old girl who refused to visit her father because, as she testified, they had no interests in common, and her father sometimes embarrassed or criticized her.<sup>107</sup> The court stated:

It is clear to us that it is the defendant-father who must convince his daughter that she should visit him. We cannot prescribe how that should be accomplished because each case of this kind presents a new situation. The child's likes and dislikes, her activities, her age and friends are all variables which weigh heavily in matters of this type.<sup>108</sup>

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49 (2001) (stating that college expenses typically are not required as child support absent special circumstances).

102. See *supra* text accompanying notes 97–98. *Broyles* reversed portions of a trial court order that had released a father from child support obligations because his teenage daughter refused to visit him. *Broyles*, 711 P.2d at 1128–29.

103. *Broyles*, 711 P.2d at 1130 (Cardine, J., concurring).

104. *Id.* (Cardine, J., concurring).

105. *Id.* (Cardine, J., concurring).

106. *Henshaw v. Henshaw*, 268 N.W.2d 289, 291 (Mich. Ct. App. 1978).

107. *Id.* at 290–91.

108. *Id.* at 290.

The court noted that while parents commonly experience estrangement from their children as their children approach adolescence, especially in homes broken by divorce, the fact that the daughter here unfortunately wanted to distance herself “hardly justifies calling on the retributive power of the state.”<sup>109</sup>

### B. *The Truant Child*

Truancy provides another example of a situation where a child’s failure to follow an established rule (mandatory school attendance) can be perceived either as a failure of appropriate parental control or as a free act of rebellion by the child. While society sometimes has treated truancy lightly in the past,<sup>110</sup> the past decade has seen a movement toward cracking down on truancy, which increasingly is viewed as a harbinger of more serious criminal misbehavior in the future.<sup>111</sup> This crackdown often takes the form of punishing parents whose children are truant.

Punishment of parents for a child’s truancy from school is based on the premise that it is a parental responsibility to assure that children attend school and that conscientious parents will consistently do so. According to one district educator in Fort Worth, Texas, “It’s a parent’s responsibility, just like feeding and clothing them. The way I look at it, not sending a child to school is another form of neglect.”<sup>112</sup> A domestic relations and juvenile court judge in Franklin County, Ohio agreed: “There is no greater benefit you can give your child than an education.

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109. *Id.* at 291.

110. *See, e.g.,* FERRIS BUELLER’S DAY OFF (Paramount Pictures 1986). At one point, Matthew Broderick’s character Ferris asks: “How can I possibly be expected to handle school on a day like this?” James Alan Fox & Jack Levin, Opinion, *Playing Hooky*, CHI. SUN-TIMES, Jan. 2, 2000, at 45A (quoting Ferris in *Ferris Bueller’s Day Off* and arguing that “[h]olding parents legally responsible for their children’s chronic absenteeism sounds better than it is”), available at 2000 WL 6662612.

111. *See* Janet E. Jackson, Letter to the Editor, *Truancy Is the First Step Down a Long, Dark Road*, COLUMBUS DISPATCH, Mar. 30, 2001, at 14A (“High-school dropouts . . . are 2 1/2 times more likely to be on welfare than high-school graduates.”), available at 2001 WL 17867322; Joe Williams, *Educators Say They Can’t Control Many of Students’ Obstacles, ‘Suitcase Full of Problems’ Complicates District’s Effort to Cut Truancy*, MILWAUKEE J. & SENTINEL, Mar. 1, 1998, at 10 (“Educators and police also agree that there is a relationship between truancy and crime. Just about all of the juveniles charged with serious and violent crimes tend to have truancy problems in their backgrounds, said Sue Jaskulski, who handles truancy cases in the Milwaukee County district attorney’s office.”), available at 1998 WL 6303802.

112. Nancy Calaway, *Judging Truancy; New Fort Worth Court Aims To Curb Absences with Zero-tolerance Message*, DALLAS MORNING NEWS, Feb. 5, 2001, at 15A, available at LEXIS, News Library, Major Newspapers File.

If parents, by their inaction, fail to send their child to school, that to me, is criminal."<sup>113</sup>

Parental responsibility for truancy may be premised on parental inaction, as shown by the preceding comments. However, some believe that parents are more actively responsible for their children's failure to attend school, enabling truancy by providing written excuses or having older children baby-sit younger siblings during school hours.<sup>114</sup> Some parents, dropouts themselves, apparently do not have the inclination to require school attendance of their own children. "Some of these kids are children of children who were pregnant at [fifteen]. They don't think there's anything wrong with [truancy] because they stopped going [to school] in the eighth grade, according to one school attendance clerk."<sup>115</sup>

The price of this parental responsibility can be high. Laws and ordinances passed by states, counties, school districts, and municipalities impose combinations of fines, prison sentences, and community service on parents and sometimes on their errant children as well. A January 2000 editorial in the *Chicago Sun-Times* catalogued some examples:

In February, when their children failed to show up for class, six mothers from Downstate Springfield were threatened with 30 days in jail. Last May, a grand jury in Brewton, Ala., indicted the 10 parents of truant teenagers on charges punishable by three months behind bars. And the parents of 67 out-of-school children in Detroit face prospects of being incarcerated for up to 90 days.<sup>116</sup>

Further, some states link welfare payments to school attendance, withholding the payments from the students or their parents if the students are truant.<sup>117</sup> Other communities impose hefty fines of up to

113. Editorial, *Juvenile Truancy Parents Should Be Responsible, Too*, COLUMBUS DISPATCH, Aug. 16, 1999, at 6A (quoting Judge Yvette McGee Brown of Franklin County, Ohio, Domestic Relations and Juvenile Courts), available at 1999 WL 22716837.

114. Peter Finn, *Pilot Program Would Target School Truancy*, WASH. POST, Mar. 27, 1997, at V01 (quoting James Dedes, director of probation services, Fairfax County, Virginia), available at 1997 WL 10009404.

115. Calaway, *supra* note 112.

116. Fox & Levin, *supra* note 110.

117. See, e.g., Jonathan Rabinovitz, *Rowland Seeks To Cut Welfare for Parents of Truant Children*, N.Y. TIMES, Feb. 15, 1996, at B1, available at LEXIS, News Library, New York Times File. Rabinovitz reported that a study done by the Institute for Research in Poverty found that, as of 1996,

34 states have received Federal permission to link welfare benefits to school performance. These programs vary widely: while Connecticut intends to focus on the parents of truant children, others are aimed at teen-aged parents or dropouts. At least

\$1000 or more on the parents.<sup>118</sup> Another favored penalty is the imposition of community service obligations on parents.<sup>119</sup> Additionally, parents may face threats of multiple penalties.

There is a paucity of reported cases in which parents appeal these penalties, possibly because of the comparatively low cost of the fines relative to the cost of litigation, or possibly because the penalties are threatened more often than they are imposed.<sup>120</sup> They may actually have the desired deterrent effect. But are they good public policy?

There is the very reasonable question of whether, in fact, parents can completely control the behavior of children, particularly teenagers. Judge Yvette McGee Brown, a county juvenile court judge in Ohio, said, "I don't expect a 120-pound woman to be able to get her 6-foot-2 son off to school if her son doesn't want to go."<sup>121</sup> She suggested "that in such cases, the weight of the law is brought to bear against the teenager."<sup>122</sup> Not everyone agrees that it is fair to penalize the parents, rather than the teenagers, in the first place.<sup>123</sup>

one program gives welfare recipients a bonus if they attend school and get good grades.

*Id.*

118. See, e.g., Charles Stanley, *Parental Liability Code Gets Tougher*, CHI. TRIB., Aug. 28, 1996, at 3 (Metro Southwest ed.) (describing the 1996 decision of Richton Park, Illinois to boost the range of possible truancy fines against the parents to \$50 to \$750), available at 1996 WL 2703103. See also James Bradshaw & Kevin Kidder, *Governor To Sign Truancy Measure Pressure on Parents*, COLUMBUS DISPATCH, June 2, 2000, at 1A, available at 2000 WL 21727491, which describes Ohio's SMART (Student Mediation and Assistance to Reduce Truancy) program and notes that "in extreme cases [SMART] can fine parents of truants up to \$1,000 or sentence them to up to a year in jail under the first-degree misdemeanor of 'contributing to the nonsupport of a minor.'" This approach has not been confined to the United States. In 1998 *The Independent of London* reported that a British couple had been fined £1000 for failing to ensure that their truant fifteen-year-old son attended school. *Record Fines After Truancy*, THE INDEPENDENT (LONDON), May 28, 1998, available at LEXIS, News File, Major Newspapers File.

119. See, e.g., Stanley, *supra* note 118. Richton Park, Illinois requires up to 160 hours of community service from parents of truants. *Id.*

120. See, e.g., *infra* text accompanying note 124 (noting a police chief's experience that the threat of a penalty appeared to be an effective deterrent).

121. Bradshaw & Kidder, *supra* note 118.

122. *Id.*

123. Fox & Levin, *supra* note 110.

Holding parents legally responsible for their children's chronic absenteeism sounds better than it is. First, such laws send the wrong message to wayward youngsters who are all too eager to escape the blame for their misconduct. By aiming the legal sanctions at Mom and Dad, we teach children that they need not feel personally responsible for their truancy—that only their parents need to change, not them. Even worse, parental responsibility laws may backfire by persuading more parents to distance themselves from their difficult youngsters rather than face the possibility—if they fail—of being fined or spending time behind bars. Why take the risk yourself

Proponents of punitive measures against parents argue in response that the threat of sanctions provides a valuable incentive to parents and wayward children alike. One suburban police chief told newspaper reporters that while the police had not cited many parents, "it's effective as a threat. When they receive a notice, parents tend to get angry. They tell their kids: 'You're going to get us in trouble. Straighten up your act.'"<sup>124</sup> A Columbus, Ohio middle school student told the same reporters, "I sure wouldn't skip—you care about your parents."<sup>125</sup> Other kids were not so sure. One nineteen-year-old high school graduate stated, "Those kids are going to do anything, whether there's a law or not."<sup>126</sup>

Just like the issue of recalcitrant children resisting court-ordered visitation, the issue of child truancy raises the question of whether every parent can control every child. Part III will examine books on parenting pre-adolescent and adolescent children and also will address the question of whether parents really have complete control over their offspring.

### III. EVALUATING THE EXPECTATION OF PARENTAL CONTROL

Our culture, like our legal system, revolves around a model in which children remain children, for most purposes, until they are eighteen years of age. This is also the case in many cultures much different from our own.<sup>127</sup> *Why* it is so is the subject of much scholarly debate. Some anthropologists suggest that human beings have a long childhood, compared to other species, because their larger brains require a longer period of learning.<sup>128</sup> Other researchers suggest that childhood is protracted because humans have a comparatively longer lifespan.<sup>129</sup> Therefore, slow growth and postponement of reproduction make sense

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when you can let the state take over if you're having problems with your child? This may mean less diligent parenting, not more.

*Id.*

124. Bradshaw & Kidder, *supra* note 118.

125. *Id.*

126. *Id.*

127. Natalie Angier, *Why Childhood Lasts, and Lasts and Lasts*, N.Y. TIMES, July 2, 2002, at D1 (citing studies on the island of Mer, near Australia, where children could not compete with adult women in the work of collecting shellfish, even though the children were proficient at fishing), available at LEXIS, News Library, New York Time File.

128. *Id.* (citing the work of Dr. Hillford S. Kaplan of the University of New Mexico, who argues that "human styles of hunting and gathering are often quite complex compared with the foraging strategies of other creatures, and thus require long periods of learning, practice, and apprenticeship").

129. *Id.*



“because the more one invests in physical development early on, the higher one’s reproductive success and quality of offspring in adulthood.”<sup>130</sup> Another advantage of a protracted childhood may be that children are perceived as less threatening by adult protectors, who are in their prime.<sup>131</sup>

Whatever the physical or sociological motivations for protecting smaller children, however, the reasons become less clear as children advance through adolescence. Adolescents may well have reached adult size and strength, they are likely capable of bearing and begetting children, and they may have adult cognitive capacity, if not adult levels of education and experience. Thus, it might not make sense to presume that parents are capable of controlling adolescent children.

Experience and readily accessible parenting literature do not necessarily justify popular or judicial presumptions that parents can and should control the behavior of their adolescent and pre-adolescent children. Look in the parenting section of any local library or bookstore and you will find literally hundreds of books about the relationship between parents and their children.<sup>132</sup> This section will discuss information in several of these books, representing a range of theories on parents and adolescents. My informal survey of these books reveals that the authors are in agreement about some points, but after that, they can be divided into groups according to how much control they believe parents of adolescents have over their children. The authors also differ somewhat about whether full-scale adolescent rebellion is a normal part of the maturation process.

As a starting point, the sources agree that adolescence is known to be a period in which children work on the psychological task of achieving independence from their parents.<sup>133</sup> A second point of agreement is that

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130. *Id.*

131. *Id.*

132. This Part discusses information in several of these books, representing a range of theories on parents and adolescents. The books discussed were selected not quite at random; those selected have authors who have some documented experience in research or in hands-on work with adolescents and their parents, and most have credible academic credentials as well. For the most part, I will not address tomes by persons whose only claim to fame is that they are disgruntled about the behavior of the modern teenager. For example, see FRED G. GOSMAN, *SPOILED ROTTEN* (1992), where the book jacket states, “The author, neither a psychiatrist nor a cultural theorist, is a plainspoken Midwestern father.”

133. ELIZABETH BERGER, *RAISING CHILDREN WITH CHARACTER* 175 (1999)

[I]t is the essence of adolescence to need to embrace some risks. This is necessary for the adolescent to take the biggest risk of all: to take his life in his own hands, no longer protected by the parent, and begin to make his way in the world. This leads every

some children are temperamentally difficult and therefore much more difficult to parent. According to one source, a child can be classified on a spectrum ranging from “basically easy but with some difficult features” all the way to “impossible, a ‘mother-killer,’” depending on how many difficult temperamental traits that child has.<sup>134</sup>

Yet, there is no absolute agreement among the experts about whether parents can control the behavior of their adolescent children. Examining these resources reveals that they divide into three main categories. The Parental Control approach emphasizes parental authority, backed up with physical force if necessary.<sup>135</sup> The Parental Influence approach maintains that while a parent can influence his or her child's behavior, only the child truly controls it.<sup>136</sup> The Societal/Peer Influence group focuses on the diminishment of parental influence resulting from social messages (on television, in movies, etc.) and peer group pressures and argues that parents have virtually no control over what their pre-adolescent and adolescent children do.<sup>137</sup> We will examine each of these approaches in turn; however, it should be noted at the outset that it is far easier to find theorists in the Parental Influence camp. Proponents of Parental Control and Societal/Peer Influence are much rarer.

#### A. *The Parental Control Approach*

I could find no expert who claims that parents can and should control every aspect of their children's behavior all of the time. However, in *Parent in Control*, author Gregory Bodenhamer approaches that view.<sup>138</sup> He argues that all children, no matter how temperamentally

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ordinary adolescent to do things from time to time that his particular parents would not choose to do because he is leading his own life and not theirs.

*Id.*

134. STANLEY TURECKI & LESLIE TONNER, *THE DIFFICULT CHILD* 15 (1985). Turecki and Tonner evaluate the difficulty of a child's temperament by assessing nine temperamental traits: activity level, distractibility, negative persistence, adaptability, approach/withdrawal, intensity, regularity, sensory threshold, and mood. *Id.* at 14. Another author who deals with difficult children emphasizes that these difficult temperamental traits continue through adolescence, but notes that they are viewed with less tolerance after infancy. See ROSS W. GREENE, *THE EXPLOSIVE CHILD* 27 (2d ed. 2001).

135. See *infra* Part III.A (examining the Parental Control theory of parenting).

136. See *infra* Part III.B (examining the Parental Influence approach to parenting). Recently, I was discussing the topic of this Article with some colleagues. All are parents, with children ranging in age from four to twenty. All, even the parent of the four-year-old, were incredulous that any parent could be so delusional as to believe he or she was actually *controlling* a child. As will become clear, child-raising authors are somewhat more nuanced in their conclusions about this issue.

137. See *infra* Part III.C (exploring the Societal/Peer Influence approach to parenting).

138. See generally GREGORY BODENHAMER, *PARENT IN CONTROL* (1995).

difficult, can be forced to follow rules at home and school.<sup>139</sup> Bodenhamer writes, “Children’s behavioral templates can be structured with good character traits, good habits, and positive attitudes by using the three elements within the ethological milieu that structure children’s behavior: *rule-based discipline, supervision, and emotional attachment.*”<sup>140</sup> Although Bodenhamer clearly presents these principles as applicable to all children and adolescents, as a former probation officer and current consultant and trainer for schools, parents, and agencies, he focuses on children who are temperamentally difficult and behaviorally out of control.<sup>141</sup> These are not mildly sassy teenagers; Bodenhamer’s subjects are failing or truant from school, verbally or physically aggressive at home, and sometimes even engaging in drinking, drugs, running away, and petty crime. Nonetheless, Bodenhamer insists that their parents can control their behavior.<sup>142</sup> Bodenhamer’s book presents a detailed plan and many examples of how this parental control should be established and maintained.

According to Bodenhamer, the first element of the program is discipline, which “consists of three elements: clearly defined and stated rules; follow-through and monitoring to make the rules mandatory; and consistency.”<sup>143</sup> Follow-through involves adult monitoring that ranges from minimum supervision to following the child and even physically forcing or directing his actions. Examples of physical force would include holding a child’s hand and forcing her to write part of a homework assignment or physically removing a sleeping teenager from bed when it is time to get up for school.<sup>144</sup>

The second element of Bodenhamer’s program is supervision, and he takes a decidedly hands-on approach there too. Bodenhamer defines “supervision” as “consistently knowing and approving of what your children are doing, where they are, and, most important, who [sic] they are with.”<sup>145</sup> Of course, most parents would opt for the honor system here, but Bodenhamer is addressing parents whose children have already lied to and manipulated them.<sup>146</sup>

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139. *Id.* at 37.

140. *Id.*

141. *Id.* at 42.

142. *Id.* at 14–15.

143. *Id.* at 38.

144. *Id.* at 38–39.

145. *Id.* at 40.

146. *Id.* at 42. If a parent cannot trust a child, Bodenhamer suggests not letting the child out of the house without the parent or a responsible adult. *Id.* If the child sneaks out when not properly monitored, he suggests the parent employ security methods such as locking windows and doors and installing an inexpensive alarm system. *Id.*

The third element is emotional attachment. Bodenhamer believes that unless parents can bond with their children, the children will withdraw or misbehave.<sup>147</sup> He recommends positive shared activities and verbal and physical expressions of affection.<sup>148</sup>

Other advice in the book indicates that Bodenhamer maintains that any parent who is truly determined and willing to do what it takes can bring a child under control.<sup>149</sup> Even physical violence against a parent is seen as controllable:

If you are a parent with no other resource or assistance, and you have a violent teenager—one who smacks you around, slugs you, kicks you, throws you against the wall or down on the floor—it is imperative that you learn to defend yourself. Enroll in a self-defense class or, better yet, take private lessons from a self-defense instructor in pins, holds, and restraints. You don't need a black belt in one of the martial arts to protect yourself. And you clearly don't want to learn to maim or disable your violent child. Instead, you need to be trained by a qualified self-defense instructor to do the basic pins, holds, and restraints that police officers, psychiatric hospital staff, and juvenile hall counselors use to protect themselves and the violent children with whom they have to work. With consistent practice you can learn how to put violent children on the floor and keep them there until they have calmed down and are willing to go to a time-out to finish the calming process . . . .<sup>150</sup>

Even with his can-do approach, Bodenhamer concedes that, at least with violent children, some parents may be forced to resort to wilderness programs (if they can afford them) or juvenile court.<sup>151</sup>

Dr. James Dobson, a well-known psychologist and founder of Focus on the Family,<sup>152</sup> has slightly more moderate views, which place him in the Parental Control camp with respect to younger children and in the Parental Influence camp with respect to adolescents. Dobson maintains that parents must be loving but firm with their children and should *never* let a young child get away with deliberate defiance of the parents' authority.<sup>153</sup> Dobson believes that allowing a young child to speak

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147. *Id.* at 44.

148. *Id.*

149. *Id.* at 13–15.

150. *Id.* at 74.

151. *Id.* However, according to Bodenhamer, reliance on the juvenile court system is no panacea as it may limit parental authority. *Id.*

152. Focus on the Family is a Christian-based organization that runs a website and publishes literature dealing with family issues from the Christian perspective.

153. See generally JAMES DOBSON, *THE STRONG-WILLED CHILD* (1978).

disrespectfully to, or refuse to obey, an adult is a mammoth mistake.<sup>154</sup> Dobson writes:

This kind of behavior, if unchecked, will continue to deteriorate day by day, producing a more profound disrespect with each encounter. If you don't discourage it, you can expect some wild experiences during the adolescent years to come. Thus, the behavior for which punishment is most necessary is that involving a direct assault on the leadership and personhood of the parent (or teacher), especially when the child obviously knows he shouldn't be acting that way.<sup>155</sup>

With children from the ages of about eighteen months though ten or twelve years of age, Dobson is a firm believer in corporal punishment.<sup>156</sup> For minor incidents where a child resists the parent, Dobson recommends pinching the trapezius muscle to produce a sharp pain, which, he claims, usually motivates immediate compliance with the parent's command.<sup>157</sup> In other situations, Dobson advocates spanking in the buttocks area,<sup>158</sup> either with a bare hand, or with an object such as a belt or paddle.<sup>159</sup> Yet, Dobson also says that "[c]orporal punishment should be a rather infrequent occurrence"<sup>160</sup> and should be supplemented by time-outs, denial of privileges, and reward/withholding programs.<sup>161</sup>

154. *Id.* at 68–69

155. *Id.*

156. JAMES DOBSON, *NEW DARE TO DISCIPLINE* 65 (2d ed. 1992).

157. *Id.* at 38. Dobson suggests:

When a parent's calm request for obedience is ignored by a child, Mom or Dad should have some means of making their youngster *want* to cooperate. For those who can think of no such device, I will suggest one: it is [a] muscle lying snugly against the base of the neck. Anatomy books list it as the trapezius muscle, and when firmly squeezed, it sends little messengers to the brain saying, "This hurts: avoid recurrence at all costs." The pain is only temporary; it can cause no damage. But it is an amazingly effective and practical recourse for parents when their youngster ignores a direct command to move.

*Id.*

158. *Id.* at 63. It should be noted that Dobson does not advocate this method of punishment for parents who have a history of child abuse, or anyone else who is in danger of losing control.

*Id.* However, according to Dobson:

Many children desperately need this resolution to their disobedience. In those situations when the child fully understands what he is being asked to do or not to do but refuses to yield to adult leadership, an appropriate spanking is the shortest and most effective route to an attitude adjustment. When he lowers his head, clenches his fists, and makes it clear he is going for broke, justice must speak swiftly and eloquently.

*Id.* at 60–61.

159. *Id.* at 64.

160. *Id.* at 62.

161. *Id.* at 62, 105–17. Dobson calls this the "Law of Reinforcement." *Id.* at 105.

Both Bodenhamer and Dobson insist that parents can elicit complete compliance from children, but the clear implication of their approaches is that this can be done only, at least with some children, by the use of corporal punishment and sometimes significant physical force.

### B. *The Parental Influence Approach*

In the case of adolescents, however, Dobson falls into the Parental Influence group, which maintains that by adolescence, if not sooner, physical control becomes a virtual impossibility, and the normal psychological development of some independence from the parents means that parents can at best steer their children in the direction of desired behavior. The best a parent can hope for is that positive values that have been instilled in the child from his early years are internalized and will provide the basis for action in adolescence. For example, Dobson believes that teenagers should never be spanked, both because spanking is ineffective at that age and because it insults teenagers' emerging sense of adulthood.<sup>162</sup>

Similarly, Dobson does not advocate use of the trapezius muscle technique on adolescents: "I do not recommend that mothers weighing less than ninety pounds try to squeeze the shoulder muscles of their big teen-agers. There are definite risks involved in that procedure. The general rule to follow is, 'If you can't reach it, don't squeeze it.'"<sup>163</sup>

Instead, like the other Parental Influence proponents, Dobson relies upon values internalized earlier in childhood and on incentive systems to regulate the behavior of teenagers.<sup>164</sup> He provides an example:

To illustrate, a child should be *required* to keep his room relatively neat when he is young. Then somewhere during the midteens, his own self-discipline should take over and provide the motivation to

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162. *Id.* at 72. Dobson believes that:

Teens desperately want to be thought of as adults, and they deeply resent being treated like children. Spanking is the ultimate insult at that age, and they are justified in hating it. Besides, it doesn't work. Discipline for adolescents and teens should involve lost privileges, financial deprivation, and related forms of non-physical retribution.

*Id.*

163. DOBSON, *supra* note 153, at 107.

164. *Id.* at 66.

My concept is that parents should introduce their child to discipline and self-control by the use of external influences when he is young. By being required to behave responsibly, he gains valuable experience in controlling his *own* impulses and resources. Then as he grows into the teen years, the transfer of responsibility is made year by year from the shoulders of the parent directly to the child. He is no longer forced to do what he has learned during earlier years.

*Id.*

continue the task. If it does not, the parent should close his door and let him live in a dump, if necessary.<sup>165</sup>

As the "closing the door and letting him live in a dump" option illustrates, Dobson maintains that physical and psychological changes make it impossible to control a teenager completely.<sup>166</sup> While he admits that incentives can be useful with teenagers, Dobson emphasizes that rapid physical growth and hormonal changes make teenagers sluggish, even lazy, much of the time.<sup>167</sup>

The main difference between Dobson and other proponents of the Parental Influence approach is that other writers do not place emphasis on controlling even young children as does Dobson. For example, in her book *Raising Children with Character*, Elizabeth Berger describes a pattern of successful parenting whereby parents teach values by parental example; by controlling situations for small children; and by providing loving guidance and reinforcement as the child internalizes positive social values, such as honesty, hard work, discipline, and empathy for others.<sup>168</sup> The parent's goal is to help the child deal with reality rather than to obey the parent as an end in itself.<sup>169</sup> According to Berger, this will not prevent teenagers from sometimes acting in ways that their parents do not approve of, but it may minimize some of the conflicts and difficulties so often experienced in adolescence. Berger maintains that parents who have tried to control, rather than guide, their young children are in for a rude shock when those children become teenagers and can no longer be controlled.<sup>170</sup>

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165. *Id.*

166. DOBSON, *supra* note 156, at 98.

167. *Id.* According to Dobson:

The principles of reinforcement are particularly useful with teenagers, because such rewards appeal to youngsters during this typically self-centered time of life. However, laziness is an unavoidable fact of life with many adolescents. Their lack of industriousness and general apathy has a physiological origin. Their energy during early adolescence is being redirected into rapid growth. Also, glandular changes require a physical readjustment. For several years they may want to sleep until noon and drag themselves around until it comes time to do something that suits their fancy. If any system will succeed in charging their sluggish batteries, it will probably involve an incentive of some variety.

*Id.*

168. *See generally* BERGER, *supra* note 133.

169. *Id.* at 51-60.

170. *Id.* at 176.

Many parents, especially those who have approached their children by trying to manage and control them, are bewildered by the needs of the adolescent, who is now too big to control. This parent has trouble distinguishing between the distress he feels at his teenager's ability to act on his own decisions and the distress he may feel at his teenager making what seem to him to be bad decisions.

Yet another author provides a perspective that focuses on the most difficult children. In *The Explosive Child*, Ross W. Greene argues that while many children respond to traditional parental discipline, some children are naturally inflexible, easily frustrated, and generally uncontrollable.<sup>171</sup> Greene, who is director of Cognitive-Behavioral Psychology at the Clinical and Research Program in Pediatric Psychopharmacology at Massachusetts General Hospital, has worked with many such children, whom he refers to as inflexible-explosive children.<sup>172</sup> For some unknown reason, which may include brain chemistry, these children do not learn basic skills in coping with frustration or new experiences.<sup>173</sup> Early in the book, Greene describes the behavior of an eleven-year-old girl named Jennifer who becomes physically and verbally aggressive at the least provocation.<sup>174</sup> In one incident, Jennifer explodes and pushes her mother, knocks down a chair, and screams because her mother is about to feed her younger brother some frozen waffles Jennifer had been planning to eat the next day.<sup>175</sup> Greene observes that the parents of such children quickly learn that time-honored disciplinary techniques (like reasoning, rewards, time-outs, or punishments) that work for other children are not effective with children like Jennifer.<sup>176</sup>

Greene's book offers insights and suggestions that might help parents of explosive children help their children learn frustration-coping skills. But Greene clearly does not think that these parents can "control" their children. In fact, he believes that conventional parenting advice leads to

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The wise parent who has *controlled the situation* for his small child has been able to maintain a warm intimacy with the youngster; he has avoided, whenever possible, the need to control the child directly and thus minimized conflicts and power struggles within their relationship. The nature of the authority between the parent and child has been predominately one of imparting wisdom and guidance, rather than constricting the child's activity. The child admires the parent and is inspired to model himself after the parent's leadership.

This approach pays off in adolescence, when of course the parent can no longer control the situation. The adolescent no longer inhabits special environments created by the parent; for the most part he inhabits and participates in the ordinary outside world, with all of its problems and dangers. The parent, however, by virtue of his good rapport with the adolescent, maintains a considerable influence over him. But this is not control, because the adolescent has the power to make his own choices, based on his inner resources.

*Id.*

171. GREENE, *supra* note 134, at xi.

172. *Id.* at 5, 335-36.

173. *Id.* at 9-55.

174. *Id.* at 1-5.

175. *Id.* at 1-2.

176. *Id.* at 4.



a great deal of guilt and self-blame on the part of parents of explosive children, who conclude that the reason they *can't* control their children is that they are doing something wrong.<sup>177</sup> Believing that the child's bad behavior is due to poor parental teaching, they embark on a program of unlearning, followed by supposedly better teaching.<sup>178</sup>

Often, this re-teaching and unlearning process includes (1) providing the child with lots of positive attention to reduce the desirability of negative attention; (2) teaching parents to issue fewer and clearer commands; (3) teaching the child that compliance is expected and enforced on all parental commands and that he must comply quickly because his parents are only going to issue a command once or twice; (4) delivering consequences—rewards, such as allowance money and special privileges, and punishments, such as time-outs and the loss of privileges—contingent upon the child's successful or unsuccessful fulfillment of specific target behaviors (such as complying with adults' commands, doing homework, getting ready for school); and (5) teaching the child that his parents won't back down in the face of tantrums. This approach isn't magic; it merely formalizes practices that have always been important cornerstones of effective parenting: being clear about how a child should and should not behave, consistently insisting on appropriate behavior, and motivating the child to perform such behavior.<sup>179</sup>

Greene acknowledges that “[s]ome parents and their children benefit enormously from such formality,”<sup>180</sup> and others may benefit to some extent.<sup>181</sup> Some of the parents and children who *do not* benefit from such programs may miss out on benefits because the “parents fail to implement such procedures correctly or consistently.”<sup>182</sup> However, the program might fail to work for another reason:

Children who are developmentally compromised in the skills of flexibility and frustration tolerance may lack the capacity to (a) manage the emotions associated with frustration well enough to think clearly in the midst of frustration or (b) shift immediately and consistently from their agenda to their parents' agenda, even when faced with very meaningful consequences. And none of us can consistently exhibit behaviors of which we are incapable, no matter how enticing the reward or how aversive the punishment.<sup>183</sup>

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177. *Id.* at 87.

178. *Id.*

179. *Id.* at 87–88.

180. *Id.* at 88.

181. *Id.*

182. *Id.* at 89.

183. *Id.*

Hence, writers in the Parental Influence camp acknowledge the importance of parental discipline and shaping of children's values. However, they place greater emphasis on factors that tend to dilute parental efforts, such as the child's free will, the child's developmental imperative to move towards independence during adolescence, and, in some cases, difficult personalities, which may or may not have a physical component, such as a difference in brain chemistry. The Parental Influence authors agree that these other factors make it impossible for parents to actually control a child's behavior.

### C. *The Societal/Peer Influence Approach*

In her controversial book *The Nurture Assumption*, author Judith Rich Harris argues a more extreme position.<sup>184</sup> She claims that far from having control over their adolescents, parents don't even have much influence over them.<sup>185</sup> Harris uses the term "nurture assumption" to refer to "the assumption that what influences children's development, apart from their genes, is the way their parents bring them up,"<sup>186</sup> and she spends her book debunking the assumption.<sup>187</sup>

Harris maintains that young children and teenagers alike are motivated largely by peer influence, and that a combination of inborn personality and peer influence determines most of their behavior.<sup>188</sup> Harris does not totally discount adult influences; what Harris calls the "parents' peer group" indirectly does pass on cultural norms to young people,<sup>189</sup> and parents have control over who their child's peers will be by virtue of the parent's power to choose or change neighborhoods or schools.<sup>190</sup> However, Harris is critical of the accepted theory that children learn most attitudes and behaviors at home.<sup>191</sup> She states that our culture cherishes the belief that parents either can mold their children into happy, successful adults or ruin their lives.<sup>192</sup> According to Harris, society blames parents for their children's misdeeds,

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184. JUDITH RICH HARRIS, *THE NURTURE ASSUMPTION 2* (1998).

185. *See id. passim.*

186. *Id.* at 2.

187. *See id. passim.*

188. *Id.* at 285-88.

189. *Id.* at 205-17.

190. *Id.* at 335-38.

191. *Id.* at 12-13.

192. *Id.* at 327 ("[Culture] has, as one of its cherished myths, the belief that parents have the power to turn their children into happy and successful adults or to mess up their lives very badly. The belief that if anything goes wrong, it must be the parents' fault.").

exonerating children only by shifting blame for their actions to their parents.<sup>193</sup>

Harris' conclusions are based on an extensive critique of behavioral and developmental research. She points to many studies of socialization and behavioral genetics and concludes that there is no hard evidence for the nurture assumption.<sup>194</sup> She cites the following conclusion from two noted researchers, Eleanor Maccoby and John Martin, who published a 1983 review of the socialization research up to that time:

These findings imply strongly that there is very little impact of the physical environment that parents provide for children and very little impact of parental characteristics that must be essentially the same for all children in a family: for example, education, or the quality of the relationship between the spouses. Indeed, the implications are either that parental behaviors have no effect, or that the only effective aspects of parenting must vary greatly from one child to the other within the same family.<sup>195</sup>

Harris says that, rather than picking the first alternative (which she prefers), researchers adopted the second view and began focusing on the differences in the way the same parents treat different children.<sup>196</sup> Harris concedes that this approach has some appeal because, after all, parents do treat individual children differently.<sup>197</sup> Yet, this approach makes it difficult to pin down the cause and effect of parental actions.<sup>198</sup>

193. *Id.*

It is a harmless myth of our culture that children are born innocent and good, blank slates for their parents to write upon. The other side of the myth—that if children do not turn out as we hoped it must be their parents' fault—is not so harmless. We exonerate the child only by putting the burden of blame on the parents.

*Id.*

194. *Id.* at 1–13.

195. *Id.* at 38 (quoting ELEANOR MACCOBY & JOHN MARTIN, REVIEW OF SOCIALIZATION RESEARCH 82 (1983)).

196. *Id.* at 39–40.

197. *Id.* at 40.

198. *Id.*

But immediately we run into problems, because that path leads directly to an endless loop of causes and effects. How do we know Mom didn't love you best because you were better to begin with? Are you smart because you were labeled "the brain" or were you labeled "the brain" because you were smart? If parents treat each of their children differently, are they *responding* to the differences among their children or are they *causing* them?

In order to get out of this loop, we need to show that parents are not simply reacting to characteristics their children already had—characteristics they were born with. We need to find a reason why a parent might behave differently toward two children that cannot be attributed to genetic differences between them. Then—and this is the tricky part—we need evidence that these differences in parental treatment *actually have effects on the children*. We need evidence of parent-to-child effects,

Harris claims that the research simply doesn't support the theory that parents determine how their kids turn out.<sup>199</sup> She examines birth order studies as examples of work that could have proven a connection between parental behavior and child characteristics, but did not.<sup>200</sup> Harris claims that while birth order appears to impact how parents treat their children,<sup>201</sup> it does not necessarily affect how the children turn out.<sup>202</sup>

Harris examines some of the academic research and concludes that there really is no evidence for a birth order effect, despite some unsupported pop psychology pronouncements.<sup>203</sup> She examines research on parenting styles and concludes that it yields similarly conflicting and inconclusive results.<sup>204</sup> Finally, she looks at environmental influences outside of the family, most notably peer group influences, and concludes that these have huge and lasting effects on how children behave and how they ultimately turn out.<sup>205</sup> Parental lifestyle, personality, and parenting style have, in Harris' view, been vastly overrated.

Harris' book takes an extreme position, and other child-raising gurus have not joined her. Yet, even moderate theorists agree with parts of her theory. For example, in his book *Bringing Up Boys*, Dr. James Dobson points out the limits of parental influence in response to a question from a discouraged father who tried to parent well, but now has a sixteen-year-old son who "is dour, disrespectful, and defiant" in addition to being "in serious trouble with the law."<sup>206</sup> Dobson writes:

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because if all we've got are child-to-parent effects we haven't shown that parents have any influence whatever on how their children turn out.

*Id.*

199. *Id.* at 52.

200. *Id.* at 40–45.

201. *Id.* at 41.

The firstborn and secondborn have equal chances in the lottery in which genes are handed out, but once they are born they find themselves in very different microenvironments. They have different experiences in the home, and these experiences can be predicted with some accuracy on the basis of which one was born first. The firstborn has the parents' full attention for at least a year and then suddenly is "dethroned" and has to compete with a rival; the secondborn has competition right from the start. The firstborn is reared by nervous, inexperienced parents; the secondborn by parents who know (or think they know) what they're doing. Parents give firstborns more responsibility, more blame, and less independence.

*Id.*

202. *Id.* at 40–45.

203. *Id.*

204. *Id.* at 45–49.

205. *Id.* at 54–77, 146–82, 218–63.

206. JAMES DOBSON, *BRINGING UP BOYS* 224 (2001).

Before you take the blame for everything that has happened, I urge you to stop and think about what has occurred. All of us who work with kids have observed that a teen's rebellious behavior sometimes results not from parental mistakes or failures but from bad choices made on his own initiative. Your child may be one of these teens.

Two things are clear from this understanding. First, parents have been quick to take the credit or blame for the way their children turn out. Moms and dads who are raising bright young superstars are inclined to stick out their chests and say, "Look at what we accomplished." Those with irresponsible kids wonder, "Where did we go wrong?" It is very possible that neither assessment is accurate. Even though parents are enormously influential in the lives of their children, they are only one component from which children are assembled.<sup>207</sup>

Similarly, writers like Ross Greene, who focus on temperamentally difficult children, would agree that there are limits to parental influence on a child's functioning and personality.<sup>208</sup> Otherwise, the notion of "explosive children" would not make sense.

#### *D. Views on Adolescent Rebellion*

The extent to which the normal adolescent movement toward independence includes "acting out" behaviors such as drinking, truancy, running away, avoiding parents, or other disobedience is a matter of some dispute among experts. Elizabeth Berger, the child and adolescent psychiatrist quoted above, maintains that appropriate adolescent independence does not include outright rebellion, which she says "is a sign that something has deflected [the teenager's] energies away from his natural interest in mastering the world and taking his rightful place in it as a mature individual."<sup>209</sup>

Other writers see rebellious acts as within the range of normal adolescent behavior, either because of peer influence or because of an intrinsically more oppositional character. For example, in *The Nurture Assumption*, Judith Rich Harris argues that too much credit and blame has been leveled at parents, when in fact an adolescent's behavior is most likely the result of his own personality and peer group influence.<sup>210</sup>

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207. *Id.* Dobson goes on to state that in addition to influences from nutrition, genetic heritage, biochemistry, and parental influence, "God has created us as unique individuals, capable of independent and rational thought that is not attributable to any source." *Id.*

208. See *supra* text accompanying notes 177-83 (exploring Greene's views on the ability of parents to control and influence their children).

209. BERGER, *supra* note 133, at 175.

210. HARRIS, *supra* note 184, at 285-88.

In *The Explosive Child*, Ross Greene discusses how his program for helping younger explosive children develop coping skills must be adapted to an individual teenager's situation, because alienated teenagers have a tendency to affiliate with similarly alienated teenagers, making them harder to reach.<sup>211</sup> While Greene clearly does not view self-destructive and risky behavior as inevitable, he seems to see it as increasingly likely for a child whose coping skills are not great and who affiliates with similarly situated adolescents.<sup>212</sup>

Part of Greene's program involves doing battle with the child only in very important circumstances, such as those in which one's physical safety is at risk.<sup>213</sup> Parents also must be sure that a rule is actually enforceable before they try to impose it.<sup>214</sup> Therefore, Greene says that parents of unruly teenagers should not consider drug use and sexual promiscuity as non-negotiable because, while they involve physical safety, they are not rules that a parent realistically can enforce.<sup>215</sup> "In other words," Greene summarizes, "I have more faith that rebuilding your relationship with your teenager will reduce self-destructive behavior and keep your child from being arrested than *pretending you can enforce the unenforceable*."<sup>216</sup> Greene believes that parents can work with their children to help those children develop the kind of internal controls and emotional skills that will help them deal with situations constructively and make fewer self-destructive choices. Parental control over specific behaviors, however, is impossible when the teenager is outside a parent's purview, and may be impossible even when a teenager is in the parent's presence.

James Garbarino and Clare Bedard, two researchers known for their work with delinquent teenagers, claim that secretive and rebellious behavior is common not only among troubled teens but among high-achieving ones.<sup>217</sup> According to Garbarino and Bedard,

When asked: "Did your parents know about everything you did when you were a teenager that was dangerous or dishonest?" most of us would answer "no." And we can assume that today's teenagers are not telling their parents everything either. The question, though, is "What aren't they telling their parents?" To test this out, we gave a questionnaire to first-year undergraduate students at Cornell

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211. GREENE, *supra* note 134, at 258.

212. *Id.*

213. *Id.* at 133–36.

214. *Id.* at 134

215. *Id.* at 258–59.

216. *Id.* at 259 (emphasis added).

217. JAMES GARBARINO & CLAIRE BEDARD, PARENTS UNDER SIEGE 97–120 (2001).

University, an Ivy League college where our surveyed students predominantly come from two-parent families of means. The results indicate, not surprisingly, that many of the students had some secret life of which their parents were, almost by definition, unaware. What did surprise us, however, is the seriousness of some of the events these students kept from their parents throughout their teens and until then, even though the vast majority of these students were living in families with intact marriages, where both parents were present and involved in their children's lives. The point being that, even in families where conditions were good for maintaining a healthy level of supervision of teens, teens still managed to keep dramatic events in their lives from ever reaching their parents' consciousness.<sup>218</sup>

Garbarino and Bedard go on to describe the behaviors that these high-achieving adolescents had managed to conceal, and they were indeed serious.<sup>219</sup> The teenagers reported incidents of hard drug use, stealing, arrests, visiting adults-only websites, suicidal thoughts and suicide attempts, heavy drinking, vandalizing property, being raped, engaging in voluntary sex, having abusive boyfriends, being mugged, and driving under the influence.<sup>220</sup> The authors examine research on why parents are not always aware of what their children are doing and conclude that if a child really doesn't want to communicate "the parents' efforts cannot be effective."<sup>221</sup> Of course, the clear implication is that if a parent cannot get full information without the adolescent's cooperation, then the parent cannot control the child's actions without her cooperation either.

Despite variation in perspectives and details, the fairly representative authors referred to above seem to agree on several points. First, conscientious parents can have influence on how children develop coping and other social skills. Second, at least children of certain "easier" temperaments will respond to parental discipline of traditional sorts. This gives the illusion that parents are controlling the children, but, in fact, none of the authors claims that. What seems to happen is that the consequences parents can impose on their children will influence those of a certain character type to make parentally approved choices. Children of other character types may not respond to the parental directives at all. Finally, "control" of specific behavior is not possible since teenagers have free will and the autonomy to use it. Peer influence, opportunities for risky activities, and the urge to be

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218. *Id.* at 101–02.

219. *Id.* at 102–05.

220. *Id.*

221. *Id.* at 107.

independent will all influence a teenager's behavior, maybe as much or more than parenting techniques.

#### IV. SHOULD COURTS HOLD PARENTS ACCOUNTABLE?

In light of the above findings, it is appropriate to question whether it is good policy for the law to hold parents accountable for the behavior of their adolescent and pre-adolescent children. There are several possible policy justifications for such accountability. The most obvious is the goal of forcing the parents to "make" their children behave in a certain way, such as visiting a non-custodial parent<sup>222</sup> or attending school.<sup>223</sup> In light of the above materials, this does not seem like a valid justification because uniform behavior control of that type is probably impossible.<sup>224</sup>

However, there are at least three other possible justifications. First, holding parents accountable may be the most economically efficient way to get a significant percentage of kids to behave a certain way.<sup>225</sup> Second, punishing parents for their children's misdeeds may be a form of retribution by a society angry about adolescents perceived as out of control.<sup>226</sup> Third, punishing the parents of erring children may have a deterrent effect on parents who might lean toward letting up too much on their own children.<sup>227</sup>

##### A. *Economic Efficiency*

Holding parents accountable may reflect a belief that parents are in a unique position to offer incentives to their own children at the lowest cost to the rest of society.<sup>228</sup> This is analogous to what Guido Calabresi called "the cheapest . . . cost avoider" in torts.<sup>229</sup> The cheapest cost avoider is the person who could, at the least expense, prevent something

222. See *supra* Part II.A (discussing court approaches to enforcing parental visitation rights when a child refuses to visit).

223. See *supra* Part II.B (reviewing approaches to truancy issues).

224. See *supra* Part III (discussing the feasibility of parental control over the behavior of children).

225. See *infra* Part IV.A (analyzing economic efficiency as a reason for holding parents accountable).

226. See *infra* Part IV.B (exploring retribution as a justification for holding parents accountable).

227. See *infra* Part IV.C (discussing the use of parental accountability to deter the use of flawed parenting practices and visitation order violations).

228. See generally GUIDO CALABRESI, *THE COSTS OF ACCIDENTS* (1970) (setting forth a law and economics theory to reduce accident costs).

229. See *id.* at 135 n.1.



bad from happening.<sup>230</sup> In the context of a parent-child relationship, a parent typically has ready access to a child and some control over living arrangements and finances. Leaving aside extreme cases where teenage children run away or achieve total economic independence through legal or illegal employment, most parents can exercise quite a bit of influence by controlling money and car privileges. This sort of influence is less costly than the sorts of influence that other authorities can exercise, such as expulsion or suspension from school or arrests for violations of various ordinances applicable to juveniles. Violation of such ordinances might require formal or informal hearings, legal representation, lost workdays for parents, or other time-consuming and expensive procedures. The argument for parental accountability essentially is that accountability will motivate the parents, who can act most quickly and cost effectively, to assert their influence over their offspring.<sup>231</sup>

Related to this argument is the theory that since many parents of children can influence their children's behavior with traditional parenting techniques, society should impose accountability to make *all* parents attempt to do so. As a result, parents will influence many children to comply with the desired behavior. Even if incentives such as loss of allowance or car keys will not work for every recalcitrant child, they will work for many, and the more parents who are motivated to crack down, the more children will become acquiescent. Despite the variety of parenting philosophies discussed above, this approach has some support in all of the authorities cited.

For example, the strict control approach of Gregory Bodenhamer is based on the presumption that any sufficiently motivated parent can control all but the most outrageously out-of-line and violent adolescents.<sup>232</sup> It stands to reason that Bodenhamer would acknowledge the potential benefits of motivating parents with the threat of punishment.

James Dobson is less optimistic about absolute control of adolescents, but he clearly believes that parents who consistently use good disciplinary techniques are the most likely to have appropriately

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230. *Id.* at 135–40.

231. See, for example, the visitation cases in Part II.A, where the judicial expectation is that the threat of incarceration of the custodial parent for contempt would result in the prompt production of the child for visitation. See also *supra* notes 124–26 and accompanying text, where proponents of parental accountability for truancy argue that the threats motivate parents to ensure that their children will attend school.

232. See BODENHAMER, *supra* note 138, at 74.

behaved children of all ages.<sup>233</sup> Thus, the notion of motivating parents to act properly is not inconsistent with his theories. On the other hand, his general resistance to any state encroachment on areas he deems properly within the purview of the family<sup>234</sup> may actually make him less sympathetic to this approach than any other author discussed, except for Judith Rich Harris.<sup>235</sup>

A parent who has followed the approach exemplified by Elizabeth Berger and has built a strong rapport with an adolescent likely will have a great deal of success influencing that child's behavior with traditional techniques.<sup>236</sup> Moreover, since the rapport presupposes an affection for and identification with the parent, the child most likely would be motivated to save the parent from fines, imprisonment for contempt, and other bad outcomes.<sup>237</sup>

The approach represented by *The Explosive Child* offers more qualified support for the notion of providing an incentive for parents.<sup>238</sup> The parents of explosive children may not be able to induce their children to behave in a certain way, but Ross Greene is quick to point out that the majority of children are not chronically inflexible and will respond to traditional acts of good parenting.<sup>239</sup> So, if the cheapest, most efficient solution for the greatest number is the goal, Greene might have some sympathy for this approach, at least as a first attempt at results.

The approach exemplified by Judith Rich Harris's theory that most children are more responsive to peers than to parents is least compatible with the notion of punishing parents to motivate better parenting.<sup>240</sup> However, even Harris admits that some children are much more

233. DOBSON, *supra* note 156, at 217.

234. *See, e.g., id.* (advocating that parents, rather than schools, should ideally teach children about sex). "There is a growing trend for all aspects of education to be taken from the hands of parents (or the role is deliberately forfeited by them). This is a mistake." *Id.*

235. *See generally supra* notes 184–205 and accompanying text (discussing Harris' views). Since Harris contends that parental influence has only minimal impact on adolescent behavior, punishing parents as a way of motivating their influence does not make sense under her theory.

236. *See supra* notes 168–70 and accompanying text (discussing the benefits of guiding a child's behavior rather than attempting to control it).

237. *See supra* notes 168–70 and accompanying text (explaining that the guidance approach to shaping a child's behavior can be successful in instilling positive social values in a child).

238. *See supra* notes 171–83 and accompanying text (explaining that while some children respond to traditional parental discipline, others generally are uncontrollable).

239. *See GREENE, supra* note 134, at 96–98.

240. *See supra* notes 184–205 and accompanying text (discussing Harris' argument that children are more responsive to peers than to parents).

acquiescent than others.<sup>241</sup> If we presume that there is a significant percentage of reasonably compliant children, parent accountability may still be a reasonably efficient approach. Harris' theory also admits the possibility that cultural norms influence children.<sup>242</sup> If we presume that these norms could include visiting with both parents after they divorce and attending school, then enforcing these norms in the law might make sense as well.

What about the children who do not respond? According to Greene, at least some of those who do not respond will fail to do so because their parents were not consistent enough or diligent enough to get good results.<sup>243</sup> It might make sense to hold them accountable too, to make them more diligent. However, there may be a fairness issue in holding parents accountable when a good faith diligent application of accepted parenting techniques has failed because the adolescent was chronically inflexible by nature or unduly influenced by peers. If a parent is making every effort to exact the adolescent's compliance with the law to no avail, it seems unjust to hold the parent accountable anyway. However, if we assume that the parent could have prevented the adolescent rebellion with earlier, more appropriate action, accountability still might be justified.

### B. Retribution

The second possibility is that punishing a parent for a child's misdeeds has a retributive effect that is perceived as just. The theory is that while the parent may not be able to force or prevent a specific behavior *today*, if the parent had engaged in the appropriate parenting techniques when the child was younger and more malleable, the teenager might have turned out differently. So the parent is being punished for past mistakes. Berger, Dobson, and to a lesser extent Greene provide some support for this approach. Berger believes that if parents adequately control the situation and build rapport with children beginning when they are very small, adolescent rebellion and self-destructive acts will be minimized.<sup>244</sup> Similarly, Dobson maintains that it is important for parents to assume positive leadership over children when children are small because it is very difficult to undo parenting

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241. See HARRIS, *supra* note 184, at 318. "The adolescents who can be monitored are the ones who are willing to be monitored, and they are the ones who need it least." *Id.*

242. See *id.* at 183-217, 356-59.

243. See GREENE, *supra* note 134, at 88-89.

244. See *supra* notes 168-70 and accompanying text (discussing Berger's argument that parents should attempt to guide a child's behavior rather than control it).

mistakes once adolescence begins.<sup>245</sup> Greene advocates working with inflexible, explosive children early on, so that they can develop the frustration tolerance they will need to weather adolescence.<sup>246</sup> He does not believe that adolescence is too late but does suggest that meaningful change will be much more difficult to accomplish during that rocky developmental period.<sup>247</sup> Even Harris, with her emphasis on corrosive peer and societal influences, admits that parents can move children from one peer group to a more positive one by switching the child's school or residence.<sup>248</sup>

Extrapolating from these theories, one could conclude that if earlier action that is more appropriate to the individual child in question might have averted the current undesirable behavior, then many would believe that punishing the hapless parents for what turned out to be an ineffective parenting choice is justified. Yet Judith Rich Harris argues that this is an unfair attack on parents who, through no fault of their own, gave birth to more difficult, less responsive offspring.<sup>249</sup>

A related issue is whether it is fairer to focus on parental actions or parental results. Most legal issues of parental accountability focus on actions and whether they were appropriate. Did a parent provide reasonable amounts of food and shelter? Was discipline excessive?<sup>250</sup>

245. See DOBSON, *supra* note 156, at 75–76.

246. See GREENE, *supra* note 134, at 258–59.

247. *Id.*

248. See *supra* notes 188–90 and accompanying text (discussing how parents have control over their child's peers).

249. HARRIS, *supra* note 184, at 317–18. Harris writes,

I see it in the news all the time; it always makes me angry. The Smith kid gets into trouble and the judge threatens to throw his parents in jail. The Jones kid burglarizes a house and his parents are fined for their failure to “exercise reasonable control” over his activities. The Williams kid gets pregnant and her parents are criticized for not keeping track of where she was and what she was doing. One set of parents, when they found it impossible to keep their teenage daughter out of trouble, chained her to the radiator. They were arrested for child abuse.

Blaming the parents is easy if you've never been in their shoes. Sometimes chaining the kid to the radiator is the only thing they haven't tried. The parents of reasonably well-behaved teenagers don't realize how crucially their ability to monitor their kid's activities depends upon the willing cooperation of the kid. An unwilling teenager cannot be monitored; my husband and I found that out. Kids can always outwit you if they really want to. If you try to enforce your rules by grounding them, they don't come home at all. If you stop giving them an allowance they mooch off their friends or steal. The adolescents who can be monitored are the ones who are willing to be monitored, and they are the ones who need it least. Parents have remarkably little power to maintain control over the adolescents who need it most.

*Id.*

250. See, e.g., WIS. STAT. ANN. § 48.02 (West 2003) (defining child abuse); *id.* § 48.13 (defining the grounds for jurisdiction over a child in need of protection or services).

Courts usually judge these parental actions or failures relative to what other similarly situated parents reasonably would do under the circumstances.<sup>251</sup>

It seems fair to judge a parent's actions by comparing them to those of other reasonable parents. If a reasonable parent would try conventional parenting schemes, such as rewards and punishments (like denial of privileges), then it may be unfair to penalize a parent who follows the same course, even if the hoped for results are not achieved. Nonetheless, it may be reasonable to hold parents accountable if they either do not act, or if they give up after their first attempts at discipline prove unsuccessful. Perhaps the standard should be reasonable parental perseverance rather than complete success.

However, determining that it is not fair to punish parents when their good faith attempts at child discipline are unsuccessful leaves open the question of what the law could do instead to punish the wrongful actions of the pre-adolescent or adolescent. The usual alternative is to punish the offending child directly. It must be understood, however, that many punishments directed at offending children end up punishing the parents as well. Any significant fine imposed on a child likely will be paid by the parent, who may then try to get the child to pay back the debt. Expelling a child from school leaves the parent with the difficult problem of what to do with the child, and it may force the parent to seek expensive options such as private school, boarding school, or tutoring. Where the lives of minors and their parents necessarily are intertwined, it is difficult to isolate punishing one from punishing the other.

### C. Deterrence

The third possibility is that courts are holding accountable the parents of erring children to deter them from their current unsuccessful parenting practices, to deter their children from resisting visitation or school attendance, or to deter other parents from failing to raise their children appropriately.

The first possible justification for using threats of parental punishment as a deterrent, namely the theory that the threat of punishment will deter some bad parenting practices, has some

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251. For example, if a child's diet is deficient, this may not constitute neglect if the parents are poor and are providing the best diet they can afford. See *id.* § 48.13(10m) (allowing that a child may be subject to court jurisdiction if the parent has failed to provide "for reasons other than poverty . . . necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child" (emphasis added)). However, if the parents have a good income and still fail to feed their children adequately, the parents may be judged neglectful. See *id.*

credibility. It is impossible to know how many parents have successfully cracked down on their children to avoid being fined or held in contempt of court. Yet, there is anecdotal evidence that deterrence works with at least some parents. For example, the suburban police chief cited in Part II.B attributed the lack of actual parental citations for child truancy to the deterrent effect of the threat of penalties.<sup>252</sup> In some of the custody cases discussed above, it is clear that the custodial parent altered his behavior (although not always successfully) in hopes of avoiding punishment.<sup>253</sup> For example, the father in *Ex parte Rosser* grounded his daughter and took away her car privileges in an attempt to get her to comply with the terms of the visitation order.<sup>254</sup> Although the father in *Ex parte Rosser* was unsuccessful, there is no telling how many other similarly situated parents have made successful efforts at disciplining their children into compliance.

Whether using threats to punish parents will result in good parenting that therefore leads to improved child behavior depends in part on whether the children's misbehavior is indeed attributable to their parents' action or lack thereof. All of the child-rearing authors discussed in this Article recognize situations where adolescents have gone astray despite their parents' best efforts. The legal system must question whether it is fair to punish parents to deter bad parenting where parents have endeavored to use good parenting practices, but where their attempts have not yielded the hoped-for adolescent compliance. Deterrence is, in theory, aimed at changing behavior; once the behavior has changed, there is no clear moral justification for punishment.

The second possible justification for using parental punishment as a deterrent, that adolescents will alter their behavior to avoid adverse consequences to their parents, has less credibility. While deterring adolescents by threatening to punish their parents is no doubt successful with some children, this approach obviously has been unsuccessful with the truly resistant offspring whose parents end up in court facing fines or incarceration.<sup>255</sup> If the deterrent method had been successful, these situations simply would not have gone so far. Deterring teenagers' behavior by creating consequences for third parties (their parents) seems

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252. See *supra* text accompanying note 124 (quoting a suburban police chief's views on the effectiveness of citation threats).

253. See *supra* Part II.A (discussing cases where children resisted attending court-ordered visitation, which resulted in the custodial parent being sued).

254. See *supra* notes 54–65 and accompanying text (discussing the court's holding in *Ex parte Rosser*).

255. See *supra* Part II.A–B (discussing cases where custodial parents faced incarceration because their children refused to submit to visitation or were habitually truant).

suspect. For one thing, teenagers are notorious for their feelings of invulnerability (the “it won’t happen to me” attitude). For another thing, teenagers are, on average, more self-centered than mature adults and may not consider effects on their parents to be a sufficient deterrent.<sup>256</sup>

In addition, if theorists like Greene are right, the most troublesome youngsters simply may not have the ability to alter certain behavior in response to a threatened consequence.<sup>257</sup> In such cases, consequences threatened against a parent have no effect on the teenager, and even if the consequences affect the parents’ behavior, the desired outcome will only be achieved if the parent can readily pick an effective alternative approach to disciplining the child. While the idea that some children will be deterred may seem to be a valid justification for punishing parents, it is difficult to justify punishing all parents, including those whose children are, by nature, unresponsive to this approach.

The third possible justification for using parental punishment as a deterrent is to ensure that other parents of potentially problem adolescents will straighten out their own parenting practices to avoid suffering punishment in the event that their own children step out of line. The reasoning goes like this: if an overly lax parent sees that Mrs. X was fined for her child’s misbehavior, Mrs. X may be inclined to crack down to avoid similar consequences from her own child’s misbehavior.

It is possible that parents, concerned about the punishments imposed on others for lax parenting, might alter their behavior to avoid a similar fate. Ironically, the other parents may be motivated to crack down on their own kids even if the punished parents legitimately tried to control their offspring but were unsuccessful because of factors beyond the parents’ control. For an observing parent to become motivated to parent more strictly, he or she need only *believe* that the punished parents could have controlled their children by acting differently whether or not that was in fact the case. Punishing people to motivate others, however, presents fairness issues that are not resolved easily, particularly where the punished persons did not have real control over the outcome of the situations. Moreover, there is no guarantee that the stricter parenting practices that may be induced in the observing parents will be any more successful than those of their fined or imprisoned cohorts.

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256. See DOBSON, *supra* note 156, at 98 (describing the teenage years as a “typically self-centered time of life”).

257. See *supra* notes 171–83 and accompanying text (discussing Greene’s theory that some children are uncontrollable).

#### D. Considering the Visitation Cases

Applying these principles to the custody cases analyzed in Part II.A demonstrates some of the implications. For example, consider the case of *Rideout v. Rideout*, in which the court found a mother in contempt for failing to deliver her thirteen-year-old daughter Caroline for court-ordered visitation with her father.<sup>258</sup> The mother claimed that she tried to persuade the reluctant Caroline to visit her father but believed that it would be impossible to force her.<sup>259</sup> The record showed no concrete effort on the mother's part to get Caroline to comply, other than the alleged efforts to persuade her.<sup>260</sup> The record also showed that the mother had made excuses for Caroline and had covered for her when she refused to visit her father.<sup>261</sup> The appeals court rejected the mother's claims of innocence and concluded that she had contributed to the child's reluctance and failed to make reasonable efforts to ensure compliance with the visitation order.<sup>262</sup>

The fact that the mother apparently had failed even to attempt to use conventional methods of parental persuasion may have been the factor that led the court to be so unsympathetic to her claims of impossibility. Had the mother attempted to ground the girl, to withhold allowance or privileges, or to offer rewards for compliance, her position might have been stronger. On the one hand, the daughter may have been in the rather large percentage of youngsters who respond to these tactics most of the time, according to the child-rearing books discussed in Part III. On the other hand, if the daughter did not respond and the mother could show that she had been forceful and consistent in applying these parenting techniques, the court may have found that the mother had made reasonable efforts to comply.

The court may have acted to induce the mother to behave differently with respect to paternal visitation. However, there was an unmistakable punitive element in this case as well. In the court's view, the mother did not act properly and she must pay the price.<sup>263</sup> Of course, the mother also was punished because the court concluded that she had

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258. *Rideout v. Rideout*, 40 P.3d 1192, 1193 (Wash. Ct. App. 2002), *aff'd*, 77 P.3d 1174 (Wash. 2003). See generally *supra* notes 41–51 and accompanying text (discussing *Rideout*).

259. *Rideout*, 40 P.3d at 1195.

260. See *id.* at 1196 (stating that “the record supports a finding that [the mother] both contributed to Caroline’s recalcitrance and failed to make reasonable efforts to require her to visit [her father]”).

261. *Id.*

262. *Id.*

263. *Id.* at 1195–97.



contributed to the child's recalcitrance.<sup>264</sup> This is a troubling element in all of the contested-visitation cases. Trial courts are certainly in a unique position to observe nuances that might indicate that the custodial parent is trying to turn the child against the other parent.<sup>265</sup> Unfortunately, however, there are few divorces without any rancor or bitterness, and if judges believe that parents should control their children, there is always the possibility that those judges will conclude that parental maliciousness exists behind every recalcitrant child. Given what we know about adolescent behavior, attitudes, and rebellion, this presumes a level of power that few parents actually have.<sup>266</sup>

Finally, a desire for deterrence probably motivated the court as well. Of course, there is the obvious objective of preventing the mother from acquiescing to the daughter's refusal to visit her father for the duration of the girl's minority. There is also the hope that other parents who may be tempted to get back at their ex-spouses by interfering with child visitation will be deterred from doing so after seeing what happens to parents like Caroline's mother. Despite the fact that divorced parents do not, as a group, study appellate family law cases, there is word-of-mouth information, plus the occasional human interest story in the local newspaper, which will suffice to get the word out.

Consider another case discussed above, *Ex parte Rosser*, which involved a seventeen-year-old daughter who flatly refused to go to court-ordered visitation with her mother.<sup>267</sup> Unlike the *Rideout* case, in which the mother did little, if anything, to ensure compliance, this case involved a father who had encouraged and pleaded with the daughter on the one hand and had grounded her and taken away car privileges for her noncompliance on the other hand.<sup>268</sup> The daughter even testified that she would run away to a friend's house if her father tried to drag her into the car for visits.<sup>269</sup> Still, the appellate court upheld the lower court's conclusion that the father possessed the ability to comply with the visitation order.<sup>270</sup>

Again, we can see that the court was motivated by the three objectives we have identified: incentive to parent more effectively,

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264. *Id.* at 1196.

265. Courts can, of course, observe things such as body language and voice inflection, which cannot be detected from the record.

266. *See supra* Part III (discussing whether parents really have control over their children).

267. *Ex parte Rosser*, 899 S.W.2d 382, 384 (Tex. Ct. App. 1995). *See generally supra* notes 54–65 and accompanying text (discussing *Ex parte Rosser*).

268. *Ex parte Rosser*, 899 S.W.2d at 384.

269. *Id.*

270. *Id.* at 386.

retribution, and deterrence.<sup>271</sup> Despite the absence of any evidence on the record of encouragement or collusion by the father of the daughter's noncompliance, the trial court did not accept the father's claim that he was unable to make the daughter visit. Thus, by holding the father responsible, the court endeavored to induce the father to take some unspecified but effective action to make the daughter comply. The accountability is supposed to spur the father on to a mode of more effective parenting, whatever that might be. We also see retribution because the father clearly is being punished for the fact that his daughter is not complying with the visitation order. Finally, there is an implicit message of deterrence to others: "Beware ye parents whose children refuse to visit non-custodial parents. We will assume the parents are complicit, even if we cannot figure out how. So don't even think about letting your child get away with this!"

The outcome in *Ex parte Rosser* is not supportable under most of the child-rearing theories we have discussed. It is clearly contrary to the "parents have little influence over adolescents" view espoused by Judith Rich Harris.<sup>272</sup> Similarly, the outcome is not supported by any of the Parental Influence theorists.<sup>273</sup> For example, Greene's work does not support the outcome.<sup>274</sup> The daughter's testimony that her father could not drag her to do anything and that she would run away to a friend's house if he tried might be construed as evidence that she was less responsive to traditional parenting methods, even if she did not exhibit the volatility of some of Greene's explosive children. The fact that the daughter refused to go, even when faced with the prospect of her father being jailed for contempt,<sup>275</sup> provides further support for the theory that she is more resistant to parental persuasion than many kids her age. According to Greene's approach, punishing the father is unlikely to produce the desired results.

Even Berger's approach in *Raising Children with Character* does not support punishing the father in these circumstances.<sup>276</sup> On the one hand, one could argue that if the father had established a stronger, healthier relationship with his daughter when she was younger, she would have been more likely to comply with her father's requests (and the visitation order). However, that ignores the positive relationship *the*

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271. See *supra* Part IV.A–C (discussing the three objectives of court action: economic efficiency, retribution, and deterrence).

272. See *supra* notes 184–205 and accompanying text (discussing Harris' view).

273. See *supra* Part III.B (discussing the Parental Influence approach).

274. See *supra* notes 171–83 and accompanying text (discussing Greene's work).

275. *Ex parte Rosser*, 899 S.W.2d at 384.

276. See *supra* notes 168–70 and accompanying text (discussing Berger's work).

*mother* should have developed with the daughter at the same time. Placing the entire onus on the father ignores the role that the non-custodial mother also plays in this turn of events. If parental relationships are the key to a relatively smooth transition to adulthood, surely each parent should bear the consequences of his own relationship with the child in the absence of actual interference by the other parent. There was admittedly no such evidence here.

Possible justification for the court's approach in *Ex parte Rosser* could be found in the parental control theory of Gregory Bodenhamer.<sup>277</sup> Since Bodenhamer advocates physical control of adolescents, including such techniques as holding a teen's hand and forcing her to write homework, it is logical to assume that he would advocate physically dragging a reluctant teen to visitation with a non-custodial parent. However, cases specifically mandating this level of parental physical force toward a child refusing to visit are notably absent. *Why* they are absent is not clear. It may be that on some level, conscious or not, judges share the more moderate view of writers such as James Dobson that with teens, physical punishment is developmentally inappropriate and does not work anyway.<sup>278</sup>

#### E. Truant Children

It is also reasonable to ask whether punishing parents when their children are habitually truant from school constitutes good public policy according to the principles discussed above.<sup>279</sup> Consider a hypothetical case. Sixteen-year-old Lance Lax has missed half of the scheduled school days this semester. If we fine or jail his mother Mrs. Lax, will we have motivated the person in the best position to change Lance's behavior? Will we justifiably have punished bad parenting or provided a deterrent to Mrs. Lax, other parents of truants, or Lance himself? It is impossible to say without more information about Mrs. Lax's parenting and Lance's personality.

On the one hand, Mrs. Lax might be the picture of upright parenting. She may drag Lance out of bed each morning and threaten, bribe, or cajole him into the car. She may drop him off at the front door of the school on time each day. If he walks through the school and sneaks out the back door, she may punish him when the school notifies her of his absence. Lance may or may not respond to these techniques. If he has a difficult personality, or if he has fallen in with a bad crowd and has

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277. See *supra* notes 138–51 and accompanying text (discussing Bodenhamer's work).

278. See *supra* notes 162–67 and accompanying text (discussing Dobson's work).

279. See *supra* Part IV.A–C (discussing objectives of court action).

cronies to encourage his truancy, his mother's efforts to ensure his compliance with attendance rules may come to naught. If he does not comply, there is little more she could do except accompany him to school or hire someone else to do so. Either option might present an insurmountable economic burden, such as loss of work days (and ultimately her job) or the prohibitive cost of hiring someone else to accompany him to school.

If we presume the levels of parental diligence set out in the foregoing example, it seems that only Bodenhamer (the most extreme of the Parental Control theorists) would claim that Mrs. Lax can and should do more. Since Bodenhamer advocates parental supervision amounting to lockdown in cases of total noncompliance by an adolescent,<sup>280</sup> it appears that he would favor penalizing Mrs. Lax unless she accompanies Lance to school, locks him in his room at night, and otherwise assures that he is where he should be, doing what he should be doing, at all times. Authors such as Berger, Dobson, and even Greene might entertain the idea of consequences for Mrs. Lax on the retributive theory: if she had provided more structure and discipline earlier in Lance's life, perhaps she would have a better behaved son today. However, since her current disciplinary techniques are well within the expected range of parental responses to a misbehaving child, it is more likely that the Parental Influence crowd would conclude that Lance is an especially difficult teen and that punishing Mrs. Lax would be unlikely to result in either her parenting more effectively or a socially fair outcome. Peer Influence theorists such as Harris would likely view Lance Lax as an example of how even the most diligently parented teens can engage in appalling behavior.<sup>281</sup>

On the other hand, Mrs. Lax may be complicit in Lance's behavior. She may communicate to him that she does not see school as valuable. She may even encourage him to stay home, care for younger siblings, or complete tasks for the family. She simply may not make the effort to get him up and out the door in the morning. When the school calls with absence reports, she may lie for Lance or ignore the reports and impose no consequences on Lance.

In this second scenario, there is a lot more Mrs. Lax could do to facilitate Lance's school attendance. It is clear that whether or not she has actual control over her son's behavior, she is not even exercising the legitimate *influence* that all of the child-rearing theorists agree a parent can and should exercise. Mrs. Lax is clearly the person in the best

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280. See *supra* notes 138–51 and accompanying text (discussing Bodenhamer's approach).

281. See *supra* Part III.B (discussing the Peer Influence approach).

position to influence Lance, and the fear of a hefty fine may be just the incentive she needs. If she does receive a fine, other parents who are headed down the same path may reevaluate their actions, assuming their own homes are not so chaotic as to make that kind of reasoned action unlikely.

Thus, in this case, punishing Mrs. Lax may indeed motivate more effective parenting on her part, justly penalizing her for failing to fulfill her parental obligations and deterring other unmotivated parents from falling into the same trap. The key from a policy perspective will be determining whether Mrs. Lax falls into the category of diligent but unsuccessful parents or into the category of negligent parents.

#### *F. What Courts Should Do*

As the above analysis shows, punishing parents for certain types of misbehavior by their children may be reasonably good policy in some cases, but it may cause grave injustice in other cases. I propose that courts resolve this dilemma by making implicit assumptions of parental control over minors into a rebuttable presumption that parents are in control. Parents could rebut the presumption with evidence that they consistently have engaged in reasonable parenting behavior, such as communicating with their children and using rewards and punishments to induce conforming behavior. The presumption would be reinforced by actual evidence that the parent had colluded in the child's misbehavior, but collusion could not be inferred merely from the child's noncompliance.

In the case of children who resist visitation with a non-custodial parent, this approach would enable courts to advance the legitimate objective of assuring that the child experience continuing contact with both parents, if the parents are fit, because it would place the primary responsibility for encouraging the visits on the parent who is most likely to have at least some control over the child. It would not facilitate parental game playing or turning children against the other parent because evidence of those blatant activities would be punishable readily. However, it would acknowledge that not all parents, no matter how good or conscientious they are, can control all children all the time. Where a child has an opportunity to see a non-custodial parent, and the custodial parent has used encouragement and discipline to ensure the visit takes place, it may not be within the realistic power of the custodial parent to force a resistant child to actually visit. Acknowledging this puts part of the responsibility to develop a relationship the child will want to continue on the non-custodial parent.

Obviously, it makes sense to use a higher standard for parental discipline with children from birth to age ten because parents have more actual control over younger children. From ages ten to eighteen, it would make sense to refer warring parents and children to mediation, in the absence of actual evidence of parental interference or total inaction. This would force both the child and the parents to work out some sort of compromise, which is what will be necessary for a meaningful relationship anyway.

Courts could apply a similar rebuttable presumption in truancy cases as well. A parent could rebut a presumption that he or she is responsible for a child's failure to attend school with evidence that the parent had taken actual, reasonable steps to avert the truancy. Examples would include getting the child up in the morning, arranging for reliable transportation, and imposing disciplinary consequences for school absences. Evidence that the parent had colluded in the truancy by, for example, making excuses for the child or using the child's services (such as babysitting) during the truancy, would reinforce the presumption and make the parent vulnerable to a fine or other consequence.

Use of an explicitly stated presumption, along with recognized types of rebuttal or reinforcement evidence, would go a long way toward ensuring justice in these cases. It would eliminate prejudices and unstated theories about what "good" parents would do from subtly influencing the outcome. Finally, it would force courts to articulate what erring parents should have done to comply with the law. Presumably that would offer a deterrence value (for the parents in question and for other parents in their position) greater than vague pronouncements that a parent has acted improperly.

## V. CONCLUSION

This Article has attempted to demonstrate that, while expectations that parents will control the behavior of their adolescents may subtly influence the law, there is little actual evidence that parents can do anything other than influence (instead of control) their children. Rather than automatically holding parents accountable when their offspring stray, this Article suggests that the law use a rebuttable presumption that parents are in control. The ability to rebut the presumption with evidence of good, consistent (even if ineffective) parenting techniques would be more just for parents who, through no fault of their own, cannot force their children to be law-abiding. The author hopes that this approach would enable parents of recalcitrant children to focus their

energies on dealing with those children, rather than focusing their energies on legal defenses.