The Constitutionality of Parental Consent Requirements in Minor Marriages

This article discusses the constitutionality of parental consent requirements in minor marriages. The article argues that minors and adults have a correlative fundamental right to marry and that the parental consent requirement imposes an impermissible burden on the minors' right to marry. Additionally, the article suggests an alternative system for conferring consent to minor marriages that meets the constitutional questions raised with regard to the present parental consent system.

I. Parental Consent Requirements for Minor Marriages.

Generally, state law imposes certain restrictions on marriages for minors. In California, section 4101 of the Civil Code imposes a two-tier system which minors must comply with in order to marry.[1] Individuals who have not met the minimum age require-

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[1] Minors must obtain the consent of both a parent guardian, and the court to consummate marriage while adults are free to enter into marital relationships without approval from any third person. Cal. Civ. Code §.4101 (West Cum. Supp. 1979), states:

> (a) Any unmarried male of the age of 18 years or upwards, and any unmarried female of the age of 18 years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.
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> (b) Any unmarried male or female under the age of 18 years is capable of consenting to and consummating marriage if each of the following documents is filed with the clerk issuing the mariage license as provided in section 4201:
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> (1) The consent in writing of the parents of each person who is underage, or of one guardian of each such person.
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> (2) After such showing as the superior court may require, an order of such court granting permission to such underage person to marry.
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> (c) As a part of the order under subdivision (b), the court shall require the parties to such prospective marriage of a person under the age of 18 years to participate in premarital counseling concern-

ment[2] must obtain both the written consent of at least one of their parents or guardians and an order of the superior court granting them permission to marry.[3] California's laws in this area are typical of those used by other states.[4]

A marriage contracted without strict compliance with the requirements of section 4101 of the Civil Code[5] is voidable and may be adjudged a nullity.[6] The California courts have held that marriage contracted between minors and adults are not void *ab initio*[7] but voidable only, irrespective of parental consent or other requirements of the statutes.[8] In this way, the law discourages un-

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ing social, economic and personal responsibilities incident to marriage if it deems such counseling necessary. Such parties shall not be required, without their consent, to confer with counselors provided by religious organizations of any denomination. In determining whether to order the parties to participate in such premarital counseling, the court shall consider among other factors, the ability of the parties to pay for such counseling.

[2] *Id.* § 4101(a).

[3] *Id.* § 4101(b). The statute states that as a part of the order granting permission to marry, the court shall require that the underage parties participate in premarital counseling if the court deems such counseling necessary. *Id.* at § 4101(c). Such counseling covers various topics, including social, economic and personal responsibilities pertaining to marriage. The courts generally ask all minors applying for a marriage license to obtain such counseling. However, before making an order requiring such counseling, the courts consider the financial status of the applicants as well as the availability of such counseling services. The courts may also require verification of other information such as age, health, pregnancy and employment. 5 GODDARD, CALIFORNIA FAMILY LAW PRACTICE, Marriage, App. 2 (2 ed. 1972).

[4] 22 THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF STATES 1978-1979 at 270 (1978). The age at which marriage can be contracted without parental consent is 18 in all states except Mississippi, Nebraska and Wyoming. In those states, the minimum age requirement for consenting to marriage are 21, 19, and 19 respectively.

[5] CAL. CIV. CODE § 4101 (West Cum. Supp. 1979), *set forth in* note 1 *supra*.

[6] CAL. CIV. CODE § 4425(a) (West Cum. Supp. 1979). This section provides:

> A marriage is voidable and may be adjudged a nullity if any of the following conditions existed at the time of marriage:
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> (a) The party who commences the proceeding or on whose behalf the proceedings is commenced was without the capability of consenting thereto as provided in Section 4101, unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband and wife.

[7] *Ab initio* is a latin phrase meaning "from the first act." BLACK'S LAW DICTIONARY 8 (rev. 4th ed. 1968).

[8] CAL. CIV. CODE § 4425(a) (West Cum. Supp. 1979), *set forth in* note 6 *supra*. Notable is the fact that the proceedings for judgment of nullity must be commenced by the party who is the minor in the questioned marriage or be com-

derage marriages without abandoning the common law presumption that all marriages between physically mature parties are valid.[9]

Since court consent to minor marriages is presumed to be conferred in the best interests of the parties in every case, the necessity of parental consent to further the best interests of the child is questionable. The utility of parental consent is especially doubtful in view of the fact that parents may withhold consent for any reason unrelated to the best interests of their children or for no reason at all. Parents may thus prevent a potentially successful union or permit an ill-fated one.[10] Section 4101 of the Civil Code has no guidelines by which parents can more likely render consent decisions in the best interests of their minor children. To avoid duplication when the best interests of the minors are foremost in the minds of both their parents and the court and to avoid bad results from parental consent granted or denied without such interest in mind, the authority for conferring consent should be vested exclusively in the impartial courts.

The remainder of this article will discuss parental consent requirements for marriages of minors. It will use the California statute as a model and suggest the elimination of California's two-tiered consent system. The article initially focuses upon the constitutionality of the parental consent requirement in light of the trend in other areas to afford minors more control over their personal affairs. The second part of the discussion deals with a proposed alternative to the current statutory framework that will solve some of the problems identified in the previous section.

II. Analyzing the Fundamental Right to Marry.

Much of the speculation on whether the right to marry is fundamental[11] has been laid to rest by *Zablocki v. Redhail.*[12] Justice

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menced on his or her behalf. After consummating marriage, parents have no independent right to initiate nullity proceedings. *See* Greene v. Williams, 9 Cal. App. 3d 559, 88 Cal. Rptr. 261 (2d Dist. 1970).

[9] At common law, an irrebuttable presumption of readiness to marry was made at fourteen for males and twelve for females, the estimated ages of puberty. Swindlehurst, *Some Phases of the Law of Marriage,* 30 Harv. L. Rev. 124 (1916).

[10] *See* discussion of In re Guardianship of Ambrose, 170 Cal. 160, 144 P. 43 (1915) in note 84 *infra.*

[11] Fundamental rights are those rights which the Court recognizes as having a value so essential to individual liberty in our society that they justify the Court's reviewing governmental actions limiting such rights with strict scrutiny. J. Nowak, R. Rotunda, & J. Young, Handbook on Constitutional Law 416-19

Marshall, writing for the majority in *Zablocki,* found that cases before and after *Loving v. Virginia*[13] confirm that the right to marry is of fundamental importance for all individuals.[14] In drawing its conclusion as to the fundamental character of the right to marry,[15] the court noted such cases as *Maynard v. Hill,*[16] which found marriage to be the most important relation in life,[17] *Meyer v. Nebraska*[18] which recognized that the right "to marry, establish a home and bring upon children" is a central part of the liberty protected by the due process clause,[19] and *Skinner v. Oklahoma,*[20] which described marriage as fundamental to the very existence

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(1978) [hereinafter cited as NOWAK, ROTUNDA & YOUNG]. The list of rights which the Court has found to be fundamental falls into 6 categories: the freedom of association, Bates v. City of Little Rock, 361 U.S. 516, 522-23 (1960); the right to vote and to participate in the electoral process, Harper v. Bd. of Elections, 383 U.S. 663 (1966); the right of interstate travel, Shapiro v. Thompson, 394 U.S. 618 (1969); the right of fairness in the criminal process, *e.g.,* Douglas v. California, 372 U.S. 353 (1963) (right to counsel on first appeal); the right to fairness in procedure concerning individual claims against governmental deprivations of life, liberty, or property, see NOWAK, ROTUNDA, & YOUNG, *supra* at 478-98; the right to privacy, Carey v. Population Services International, 431 U.S. 678 (1977), Skinner v. Oklahoma, 316 U.S. 535 (1942). *See also* Barrett, *Judicial Supervision of Legislative Classifications—A More Modest Role for Equal Protection?,* 1976 B.Y.U. L. REV. 89, 120 n. 146 [hereinafter cited as Barrett].

[12] 434 U.S. 374 (1978). In *Zablocki,* the Court struck down a Wisconsin statute which prevented persons who were obligated to support children not in their custody from marrying without a court order. The Court held that the statute violated the equal protection clause of the fourteenth amendment to the United States Constitution. For a detailed discussion of the facts from which the case arose *see* Note, *Zablocki v. Redhail: Due Process or Equal Protection?,* 12 U.C. DAVIS L. REV. 165 (1978).

[13] 388 U.S. 1 (1967). In *Loving,* an interracial couple who had been convicted of violating Virginia's antimiscegenation laws challenged the statutory scheme on both equal protection and due process grounds. The opinion could have rested solely on the ground that the statutes discriminated on the basis of race in violation of the Equal Protection Clause. *Id.* at 11-12. However, the Court went on to hold that the laws arbitrarily deprived the couple of a fundamental liberty protected by the Due Process Clause, the freedom to marry. *Id.* at 12.

[14] "Although *Loving* arose in the context of racial discrimination, prior and subsequent decisions of this Court confirm that the right to marry is of fundamental importance for all individuals." Zablocki v. Redhail, 434 U.S. 374, 384 (1978).

[15] Zablocki v. Redhail, 434 U.S. 374, 384 (1978).

[16] 125 U.S. 190 (1888).

[17] *Id.* at 211.

[18] 262 U.S. 390 (1923).

[19] *Id.* at 399.

[20] 316 U.S. 535 (1942).

and survival of the race.[21] Other cases, such as *Griswold v. Connecticut*,[22] *Loving v. Virginia*,[23] and *Carey v. Population Services International*,[24] were cited as having categorized the decision to marry among those personal rights protected by the right of privacy.[25] The Court noted that it would make little sense to recognize a right of privacy with respect to other matters of family life such as contraception and child rearing,[26] yet not with respect to the decision to enter the relationship that is the foundation of the family in our society.[27] The Court concluded that if the right to procreate, which it previously recognized,[28] has any meaning, it must imply some right to enter the only relationship in which states allow legal sexual relations.[29]

Since neither *Zablocki* nor its predecessors arose in the context

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[21] *Id.* at 541.

[22] 381 U.S. 479, 486 (1965) (Court struck down a law which prohibited the use of contraceptives by married persons).

[23] 388 U.S. 1, 11-12 (1967) (Stewart, J. concurring), *see* note 13 *supra*.

[24] 431 U.S. 678, 684-85 (1977) (Court invalidated a law which allowed only pharmacists to sell non-medical contraceptive devices to persons over 16 years of age and prohibited the sale of such items to those under 16).

[25] Zablocki v. Redhail, 434 U.S. 374, 384-85 (1978).

[26] Skinner v. Oklahoma, 316 U.S. 535, 541-42 (procreation), Eisenstadt v. Baird, 405 U.S. 438, 453-54 (1972) (contraception), Prince v. Massachusetts, 321 U.S. 158 (1944) (family relationships), Meyer v. Nebraska, 262 U.S. 390, 399 (1923) and Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925) (child rearing and education). *See* Carey v. Population Servs. Int'l., 431 U.S. 678, 684-85 (1977).

[27] It is not surprising that the decision to marry has been placed on the same level of importance as decisions relating to procreation, childbirth, child rearing and family relationships. As the facts of this case illustrate, it would make little sense to recognize a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society.

Zablocki v. Redhail, 434 U.S. 374, 386 (1978).

[28] Skinner v. Oklahoma, 316 U.S. 535 (1942). On the basis of the equal protection clause, the Court held unconstitutional a statute which authorized the sterilization of persons previously convicted and sentenced to imprisonment two or more times of crimes amounting to felonies of moral turpitude in the state. The Court noted that the statute dealt with "one of the basic civil rights of man . . . Marriage and procreation [were] fundamental to the very existence and survival of the race." *Id.* at 541.

[29] "Surely a decision to marry and raise children in a traditional family setting must receive equivalent protection. And, if [the] right to procreate means anything at all, it must imply some right to enter the only relationship in which the State . . . allows sexual relations legally to take place." Zablocki v. Redhail, 434 U.S. 374, 386 (1978).

of a state regulating minor marriages, the question remains as to whether the fundamental right to marry extends to minors. As neither the Constitution nor the Bill of Rights distinguishes between minors and adults in according individual rights,[30] the fundamental right to marry seemingly exists for minors. The question of minority, then, does not arise when determining whether a fundamental right exists,[31] but rather when the reasonableness of a particular regulation is analyzed. The Court will thus consider the state's interest in the minor in determining the applicable level of scrutiny and whether the regulation reasonably furthers the legitimate state interest.

There are some contrary indications in the case law, however, that the court will use a lower level of scrutiny in comparing a minor's right to an adult's.[32] The rationale for using this lower level of scrutiny is the state's greater interest in the child's development and welfare.[33] Logically, however, the weight of the

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[30] *See* Planned Parenthood v. Danforth, 428 U.S. 52 (1976), where the court held that states may not impose blanket provisions requiring the consent of a parent or person *in loco parentis* as a condition for abortion of an unmarried minor during the first 12 weeks of pregnancy. "Constitutional rights do not mature and come into being only when one attains the state defined age of majority. Minors as well as adults, are protected by the Constitution and possess Constitutional rights." *Id.* at 74. *See also In re* Gault, 387 U.S. 1, 13 (1967).

[31] *See* Carey v. Population Serv. Int'l., 431 U.S. 678, 691-99 (1977). In this case, minors were found to have the same right to access to contraceptives as adults. The minors were considered to have the same privacy right as adults. Thus, the examination of the statute by the Court was based solely on the reasonableness of the regulation in relation to significant state interests including the state's interest in the minor. *See* note 33 *infra*.

[32] In both Carey v. Population Serv. Int'l., 431 U.S. 678, 692-93 (1977) and Planned Parenthood v. Danforth, 428 U.S. 52, 72-74 (1976), the Court seemed to indicate that a lower level of scrutiny would be applied when examining restrictions on minors' fundamental rights, since it has been held in a variety of contexts that "the power of the state to control the conduct of children reaches beyond the scope of authority over adults." Carey, 428 U.S. at 692 (*quoting* Prince v. Massachusetts, 321 U.S. 158, 170 (1944)). In *Danforth,* 428 U.S. at 75, the Court indicated that minors' right to abortion was not equal to the same right in adults, but was limited to mature minors capable of understanding the procedure and making intelligent assessments of their circumstances.

[33] In re Roger S., 19 Cal. 3d 921, 141 Cal. Rptr. 298, 569 P.2d 1286. Petition for writ of *habeas corpus* brought by a minor seeking release from Napa State Hospital to which he was admitted on an application by his mother, denied by the state Supreme Court without prejudice. The court in discussing the extent of minors' personal liberty rights, stated:

> The liberty interest of a minor is qualitatively different than that of an adult, being subject both to reasonable regulations by the state

state's interest in the minor should not affect the level of scrutiny applied to a fundamental right, but should be entered into the calculus which analyzes the state's other interests in the legislation.[34]

The level of scrutiny the Court uses in analyzing the state's interest, however, makes a significant difference. If the state interest in minors lowers the level of scrutiny, the state may only have to show a rational relationship between the regulation and the state interest,[35] whereas a higher level would require the state to show a compelling or overriding interest.[36] In contrast, if the state interest in minors is considered together with other legitimate state interests, the minor's right is accorded the same level of protection as an adult's, but the greater state interest is appropriately recognized. Since the Court finds that the state interest in minors is compelling,[37] a more lenient standard of reasonable-

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> to an extent not permissible with adults (*citations*), and to an even greater extent to the control of the minor's parents unless 'it appears that the parental decision will jeopardize the health or safety of the child or have a potential for significant local burdens.' (*Citation*) Minors . . . therefore, are not 'similarly situated' with adults for purposes of equal protection analysis.

Id. at 934, 141 Cal. Rptr. at 306, 569 P.2d at 1294. *See also* F.C.C. v. Pacifica Foundation, ___ U.S. ___, 98 S. Ct. 3026, *rehearing denied* 99 S. Ct. 227 (1978), where the Court held that the government's interest in the "well being of its youth" and in supporting parents' claims to "authority in their household" justified the regulation of the otherwise protected expression. *Id.* at 639-40.

[34] Actually, there is an infringement upon certain adult's rights also. The imposition of parental control on a minor may prevent their intended adult spouse from entering into the marital relationship. While this is a less direct burden than that placed on the adult in Zablocki v. Redhail, 434 U.S. 374 (1978), it is nonetheless, a burden. Furthermore, if the plaintiff in *Zablocki* has been a minor, or if those in Loving v. Virginia, 388 U.S. 1 (1967) had been minors, presumably, the Court would have reached the same result. Thus, as argued, the question of minority enters logically when weighing the state interest.

[35] Dandridge v. Williams, 397 U.S. 471 (1970). In this case, the Court reviewed a statute which set a formula for the provision of aid to families with dependent children that in effect did not give any benefits to children born to families over a certain size. Since the Court had never recognized a fundamental right in government subsistence benefits, the Court upheld the law under a rational relationship test, finding an arguable basis for relating the classification to the state interest in economy and the provision of certain families. *See also* NOWAK, ROTUNDA & YOUNG, *supra* note 11, at 524.

[36] "When statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." Zablocki v. Redhail, 434 U.S. 374, 388 (1978).

[37] *See* text accompanying note 33 *supra*. *See also* Wilkensen & White,

ness is applied when examining state-imposed restrictions on minors. In examing the reasonablenss of California's minor marriage statute, for example, the Court should group the state's interest in minors together with the state's interest in domestic relations,[38] the parental right of control,[39] and the minor's right of privacy.[40] Moreover, the same level of scrutiny which *Zablocki* and relevant cases indicate for adults should be applied to the minor's right.

In *Zablocki v. Redhail,*[41] the Justices had little difficulty in striking a law which restricted the ability of economically poor persons to marry.[42] Yet the Justices had considerable difficulty in deciding why the law violated the equal protection clause. Although *Zablocki* reaffirms the right to marry as a fundamental right,[43] Justice Marshall's opinion leaves some doubt as to what

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Constitutional Protection for Personal Lifestyles, 62 CORNELL L. REV. 563, 569-70 (1977).

[38] Domestic relations is recognized as "an area that has long been regarded as a virtually exclusive province of the States." Sosna v. Iowa, 419 U.S. 393, 404 (1975).

[39] *See* Wisconsin v. Yoder, 406 U.S. 205 (1972) (right to control religious upbringing and education of minors), Pierce v. Society of Sisters, 268 U.S. 510 (1925) (right to direct upbringing and education of children), and Meyer v. Nebraska, 262 U.S. 390 (1923) (right to bring up children).

[40] The right of privacy in connection with decisions affecting procreation, Planned Parenthood v. Danforth, 428 U.S. 52 (1976), and contraception, Carey v. Population Servs. Int'l. 431 U.S. 678 (1977) extends to minors as well as adults. As stated in Zablocki v. Redhail, 434 U.S. 374 (1978), it would not be proper to recognize a right of privacy in these areas of family life and not with respect to the marital relationship that is the foundation of the family in our society. *Id.* at 386. Thus, the right to make a personal decision as to marriage should also extend to minors as well as adults.

[41] 434 U.S. 374 (1978).

[42] The Wisconsin statutes, WIS. STAT. §§ 245.10(1), (4), (5) (1973), in question prohibited any Wisconsin resident from marrying without court permission if that person had minor issue who were not in his custody and whom he was required to support according to a court order or judgment. A state court could grant such persons permission to marry only if they submitted proof of compliance with the support obligation and demonstrated that the children covered by the court order were not likely to become "public charges." *Id.* at 375.

[43] The majority opinion reaffirms marriage as a fundamental right although the language used to maintain the fundamental right against government intrusion is weaker than that of previous majority opinions. *See* text accompanying notes 11-29 *supra. See also* Shapiro v. Thompson, 394 U.S. 618, 634 (1969) (compelling state interest test for right to travel), Harper v. Virginia Bd. of Elections, 383 U.S. 663, 666 (1966) (right to vote subject to strict scrutiny), Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) (right to procreate subject to strict scrutiny). Justice Marshall stated that all regulations of incidents of mar-

level of scrutiny the courts should apply to legislation which burdens that fundamental right. The level of scrutiny which the court applies determines the extent to which the state's purported interests must correspond to the legislation. Thus, if *Zablocki* is read to require "strict scrutiny," the legislation must be closely tailored to meet a compelling state interest.[44] On the

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riage need not be subjected to "rigorous scrutiny." However, he did not specify the types of regulations that need to or need not to be tested by "rigorous scrutiny." Zablocki v. Redhail, 434 U.S. 374, 386 (1978).

[44] There is some confusion as to what approach the court is taking in evaluating restrictions on fundamental rights. Professor Edward L. Barrett, Jr. makes a distinction between cases where the state has discriminated against a fundamental right and those where it has burdened a fundamental right. Barrett, *supra* note 11, at 108-111. Where legislation discriminates against constitutionally protected interests, the Court applies a high level of scrutiny and requires a compelling state interest served by a closely tailored statute. *Id.* at 109-110. One commentator concludes that the language of Zablocki v. Redhail, 434 U.S. 374, 386 (1978) seems to indicate that this is the approach used in that case. Note, *Zablocki v. Redhail: Due Process or Equal Protection?*, 12 U.C. DAVIS L. REV. 165 (1978). On the other hand, where the legislation burdens the fundamental interest the Court usually applies a weighing process, or a determination of whether the state interest asserted is sufficiently important to justify the burden imposed on the protected interest. Legislation surviving this kind of scrutiny must be reasonably related to the substantial state interest. Barrett, *supra* note 11, at 110. In a recent discussion with Professor Barrett, he observed that Zablocki v. Redhail may be read as applying such an approach. This approach seems applicable to the issue of this article, since the parental consent requirement burdens the children's right to marry as opposed to discriminating against it.

Perhaps the lack of clarity as to what level of scrutiny the Court is applying in *Zablocki* stems from Justice Marshall's implementation of his "spectrum of standards" view of equal protection. This view appears to run as follows: (1) The nature of the relationship required between the classification and the state objective should vary between the extremes of the presumed rational relation test and the strict scrutiny test depending on (a) the invidiousness of the statutory classification and (b) the importance of the individual interest burdened by the classification. (2) The required substantiality of the state interest should also vary between the extremes of any legitimate interest and a compelling interest depending on the same variables as to the classifying factor or individual interest burdened. San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (Marshall, J., dissenting) (1973). *See also* BARRETT, CONSTITIONAL LAW CASES AND MATERIALS 1012-13 (5th ed. 1977). Since the burden imposed by the parental consent requirement is on a minor's fundamental right to marry, the relationship required between the requirement and the state objective should be subject to a high level of scrutiny. The substantiality of the state interest should likewise be sufficient to justify the burden imposed by requiring parental consent to minor marriages.

Since Justice Marshall never commits the Court to strictest scrutiny in examining the Wisconsin marriage statute but rather restricts the Court to "rigorous

other hand, if *Zablocki* had granted the state legislation a traditional presumption of validity or considered the right to marry a fundamental right to which a lower level of scrutiny is applied,[45] the statute would only have to bear a "rational relation" to the state's legitimate objective.[46]

Read objectively, *Zablocki* establishes neither strict scrutiny nor low level scrutiny.[47] While one commentator[48] and Justice Rehnquist interpret the majority opinion as establishing the highest level of scrutiny,[49] the opinion itself states that it does not

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scrutiny," Justice Marshall seems to be applying a level of scrutiny on the upper end of his spectrum. *See* note 43 *supra.* Thus, because Zablocki v. Redhail, 434 U.S. 374, seems to use a level of scrutiny somewhat below strictest scrutiny, the issues raised in this article will be treated in a similar manner.

[45] In Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974), the Court indicated that it may not be ready to apply the strict scrutiny analysis of Shapiro v. Thompson, 394 U.S. 618 (1969) to every durational residency requirement. Where the requirement relates to activities which are not directly related to the exercise of other rights or the individual's ability to function in a meaningful manner as a new resident of the state, these laws may be upheld on a test which comes close to the rational basis standard. *See also* Mathews v. Lucas, 427 U.S. 495 (1976) where the Court held that illegitimacy was not a suspect class, and even though the statute infringed upon a right to presumption of dependency entitling children to Social Security benefits, strictest scrutiny would not apply.

[46] In the area of economics and social welfare, a classification is valid if it bears a rational relationship to an end of government which is not prohibited by the Constitution. Dandridge v. Williams, 397 U.S. 471, 485 (1970), *see* note 35 *supra. See also* Zablocki v. Redhail, 434 U.S. 374, 407 (Rehnquist, J., dissenting) (1978).

[47] Strict judicial scrutiny used to analyze state regulation infringing upon the fundamental right to marry normally results in the regulation's invalidation. Barrett, *supra* note 11, at 110. If such a level of scrutiny were applied in *Zablocki,* every marriage regulation would be deemed invalid regardless of public health, safety and welfare objectives. In view of the state's recognized interest in domestic relations, Sosna v. Iowa, 419 U.S. 393, 404 (1975), *see* note 38 *supra,* invalidation of every state limitation on marriage cannot be the result intended by by the Court. On the other hand, the rational relation test propounded in Dandridge v. Williams, 397 U.S. 471, 485 (1970), *see* note 35 *supra,* under which any regulation not offending the Constitution would be upheld, is also not applicable in *Zablocki.* Surely, the state's right to regulate marriage is limited by the individual's fundamental right to consummate it. *See* note 44 *supra.*

[48] Note, *Zablocki v. Redhail: Due Process or Equal Protection?,* 12 U.C.D. L. REV. 165 (1978).

[49] "I substantially agree with my Brother Powell's reasons for rejecting the Court's conclusion that marriage is the sort of 'fundamental right' which must invariably trigger the scrictest judicial scrutiny." Zablocki v. Redhail, 434 U.S. 374, 407 (Rehnquist, J., dissenting) (1978).

mean to suggest such a test.[50] Rather, the Court recognizes that reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may be legitimately imposed.[51] Thus, it may be concluded that the Court examines the regulations affecting the right to marry with a "middle level of scrutiny" under the equal protection clause.[52] Moreover a middle level of scrutiny is applicable to regulations of minor marriages.[53]

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[50] "By reaffirming the fundamental character of the right to marry, we do not mean to suggest that every state regulation which relates in any way to the incidents or prerequisites for marriage must be subjected to rigorous scrutiny." Zablocki v. Redhail, 434 U.S. 374, 386 (1978).

[51] *Id.*

[52] The concurring opinions of Justice Powell and Justice Stevens further suggest that the middle level of analysis, *see* note 45 *supra,* is the proper one for examining marriage regulations. Both Justices seem to advocate, however, an even lesser standard of scrutiny than the one suggested by Justice Marshall. Justice Powell concedes that the right of marital and familial privacy places some substantive limits on the regulatory power of government. Zablocki v. Redhail, 434 U.S. 374, 397 (Powell, J., concurring) (1978). Acknowledging that the marriage relation has traditionally been subject to state regulation, however, he finds that such restriction on the right to marry does not trigger the most exacting scrutiny. *Id.* It should be noted that Justice Powell finds that Justice Marshall, in his majority opinion, examined the Wisconsin statute under the strict scrutiny or compelling interest test. *Id.* at 396. Yet, Justice Marshall never reaches such a high degree of scrutiny. This is evident from the word choice used to describe the test the majority opinion was imposing. The Court made a "critical examination" of the statute rather than applying a "compelling state interest" test. *Id.* at 383. The Court spoke only of "rigorous scrutiny," *Id.*, at 386, rather than strict scrutiny, and "important state interests," *Id.* at 388, rather than compelling state interests. *See* note 44 *supra.* Without reference to the majority opinion, Justice Stevens states the individual's interest in making the marriage decision independently is sufficiently important to merit special constitutional protection but is not an interest which is constitutionally immune from evenhanded regulation. *Id.* at 404 (Stevens, J., concurring).

[53] Arguably, a restrictive marriage statute should be analyzed under substantive due process. Substantive due process analysis is applicable if state legislation burdens a constitutionally protected interest. If the state interest is not substantial enough to justify the burden imposed by the legislation, it will be deemed invalid. If the state interest is sufficiently important, the Court will examine the legislation to determine the reasonableness of the relation between the state interest and the burden. *See* Barrett, *supra* note 11, at 110. Justice Stewart's concurring opinion in Zablocki v. Redhail, 434 U.S. 374, 391-396 (Stewart, J., concurring) (1978), suggests such an analysis. He found that the Wisconsin statute abridged the freedom to marry, which was included in the sphere of liberty protected by the due process clause of the fourteenth amendment. *Id.* at 392. When state interests supporting the abridgement cannot overcome the substantive protections of the Constitution the statute is deemed

Under *Zablocki*, the state must closely tailor its statute to achieve its goals.[54] If the state fails in either aspect, it unconstitutionally burdens the protected fundamental right. Consequently, the next section examines the nature of the individual minor's right to marry without parental consent, the nature of the state interests and the degree to which California's statute achieves its ends.

III. Determining the Constitutionality of the Parental Consent Requirement.

Once it is determined that the individual has a fundamental interest at stake, the initial question in an analysis under the equal protection clause is whether the state legislation discriminates against or burdens that right.[55] If it does, then the regulation is impermissible, unless it is justified by an important state interest to which the regulation is closely tailored.[56]

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unconstitutional under substantive due process analysis. *Id.* at 395. As the state interest in the welfare of its minor residents cannot overcome minors' right to marry, the parental consent requirement would not pass constitutional muster under substantive due process analysis.

Section 4101 of the Civil Code (West Cum. Supp. 1979), might also receive procedural due process analysis. Procedural due process requires that the government not restrict a specific individual's freedom to exercise a fundamental constitutional right without a process to determine the basis for the restriction. Nowak, Rotunda & Young, *supra* note 11, at 485. Although procedural due process protection normally applies to those activities having specific constitutional recognition, the Court has made it clear that freedom of personal choice in matters of marriage and family life is one of the implied liberties so protected. Cleveland Bd. of Education v. La Fleur, 414 U.S. 632, 639 (1974), Roe v. Wade, 410 U.S. 113, 152-53 (1973), Loving v. Virginia, 388 U.S. 1, 12 (1967), Griswold v. Connecticut, 381 U.S. 479, 485-86 (1965), Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925), Meyer v. Nebraska, 262 U.S. 390, 399-400 (1923). Since denial of parental consent precludes minors from marrying without procedural due process protections, the parental consent requirement would also be unconstitutional under this analysis.

Whether the California statute is analyzed under a due process or equal protection analysis may be inconsequential in light of the fact that the parental consent requirement imposes an absolute bar on minors' right to marry. An absolute bar to a fundamental right constitutes an adequate infringement or burden for analysis under either theory. Since the *Zablocki* case has propounded analysis of marital regulations under the equal protection clause, however, a similar approach will be taken by this article to examine section 4101 of the Civil Code (West Cum. Supp. 1979).

[54] Zablocki v. Redhail, 434 U.S. 374, 388 (1978). *See* note 36 *supra*.

[55] *Id.*

[56] *See* text accompanying notes 32-36, 44-46 *supra*.

Section 4101 of the Civil Code[57] is typical of the statutes regulating the marriages of minors in providing that underage persons may only be issued a marriage license with the written consent of their parent or guardian.[58] Under the present California law, parents can arbitrarily deny their children's right to marry by refusing to give written consent.[59] Moreover, the restrictive marriage statutes do not provide minors with any means of reviewing or questioning the decision of parents.[60] Furthermore, minors are legally disabled from questioning such decisions in court except as represented by their parents or guardians whose very decision they are questioning.[61] Thus, even if parental consent is denied irrationally, minors' right to marry is denied absolutely without the due process protections to which they are entitled.[62] Such an arbitrary denial constitutes a substantial burden on the minor's right to marry. Moreover, as the burden is only directed at minors, the legislation discriminates against their constitutional right to marry.

Given that the minor has a fundamental right to marry, and that California's parental consent requirement burdens the minor's right, the ultimate question is whether the minor's right survives the middle level of scrutiny test enunciated in *Zablocki*.[63]

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[57] CAL. CIV. CODE § 4101 (West Cum. Supp. 1979), *set forth in* note 1 *supra*.

[58] CAL. CIV. CODE § 4101(b)(1) (West Cum. Supp. 1979), *set forth in* note 1 *supra*. *See* H. CLARK, HANDBOOK ON DOMESTIC RELATIONS 77-79 (1968) [hereinafter cited as CLARK].

[59] CAL. CIV. CODE § 4101 (West Cum. Supp. 1979), set forth in note 1 *supra*, contains no guidelines by which parents' decisions to grant or deny consent may be adjudged arbitrary or sound. They, therefore, have an implicit right to use the state created right for selfish or irrational purposes. *See* note 84 *infra*.

[60] The only way to challenge such decisions is by the minor succeeding in consummating marriage irrespective of parental consent and then having an action brought to annul the marriage. *See* note 6 *supra*. Even then, however, the action must be brought by the parents on behalf of the minor. *See* note 8 *supra*.

[61] CAL. CIV. CODE § 42 (West 1954). This section provides:

> A minor may enforce his rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian must conduct the same.

[62] *See* In re Gault, 387 U.S. 1 (1967) (minors accorded rights to the safeguards of due process in criminal contexts) and Goss v. Lopez, 419 U.S. 565 (1975) (disciplinary actions against minors which resulted in their suspension from school must conform with the minimum requirements of procedural due process).

[63] "When statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those inter-

The parental consent issue essentially involves three constitutionally recognized interests: the minor's, the states's and the minor's parents'. Since the parental consent requirement effectively constitutes state protection of the parental interest,[64] discussion of that interest is subsumed under an analysis of the state's interest at stake. This section first analyzes the interests of the minor and then focuses on the interests of the state.

A. Nature of the Individual Minor's Right.

The minor's interest regulated by the statute is the individual interest in making certain fundamental decisions. During the past two terms, the Supreme Court has indicated a child has rights to make autonomous decisions which may limit or overcome state and parental intervention. In *Planned Parenthood of Missouri v. Danforth*[65] and *Bellotti v. Baird,*[66] the Court declared a minor had the right to decide to have an abortion free from parental interference.[67] In *Carey v. Population Services International,*[68] the Court indicated that states can neither prohibit a child from procuring contraceptives, nor inform the parents of the child's decision to procure such items.[69] In these two situations, the minor's right to privacy was found to outweigh whatever interest parents and the state might have in prescribing an alternate course of conduct.[70]

Zablocki has placed the decision to marry on the same level of importance as decisions relating to procreation, childbirth and other matters of family life.[71] Thus, state and parental intervention should be similarly curtailed when minors assert their right to make independent decisions to marry. Under California's cur-

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ests." Zablocki v. Redhail, 434 U.S. 374, 388 (1978). "Reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may be legitimately imposed." *Id.* at 386.

[64] Garvey, *Child, Parent, State and the Due Process Clause: An Essay on the Supreme Court's Recent Work*, 51 So. CAL. L. REV. 769, 786 (1968) [hereinafter cited as Garvey].

[65] 428 U.S. 52 (1976).

[66] 428 U.S. 132 (1976).

[67] Planned Parenthood v. Danforth, 428 U.S. 52, 72-75 (1976); Bellotti v. Baird, 428 U.S. 132, 151 (1976).

[68] 431 U.S. 678 (1977).

[69] For an opposing viewpoint on the matter *see id.* at 713-716 (Stevens, J., concurring in part and concurring in judgment).

[70] *Id.* at 692-699. Interests in morality and physical and mental health of the minors were overcome.

[71] Zablocki v. Redhail, 434 U.S. 374, 386 (1978). *See* note 27 *supra.*

rent statutory scheme, the prerogative of parents to arbitrarily deny permission to marry substantially infringes upon the minor's assertion of such right. Thus, the parental right to interfere with the child's decision should be weighed heavily in the critical examination of California's restrictive marriage statutes.[72]

B. Nature of the State Interest.

1. Protecting the State's Interest.

The individual minor's right to marry is not absolute.[73] Some degree of state regulation is required to further the important interests of the state in ensuring that a minor will enter into a successful marriage with the ability to assume all the incidents of a marital relationship. Moreover, in certain areas, the Court has recognized that states have a greater interest in regulating the activities of a minor than of an adult.[74] In situations where legislation has involved line-drawing such as exists in the parental consent to marriage situation,[75] the Court has allowed the state to make reasonable decisions with a rational basis.[76] Nearly all minor marriage statutes, however, infringe upon the rights of those who, at least physically, are sufficiently mature to enter

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[72] CAL. CIV. CODE § 4101 (West Cum. Supp. 1979), *set forth in* note 1 *supra.*

[73] All marriages are subject to certain restrictions related to public health and welfare of future offspring. However, minors are subject to even greater limitations in asserting their right to marry. Carey v. Population Serv. Int'l., 431 U.S. 678 (1977) and Planned Parenthood v. Danforth, 428 U.S. 52 (1976) conclude minors' rights are entitled to somewhat less stringent protections than the corresponding rights of adults. The Court in *Danforth,* stated that it, "long has recognized that the state has somewhat broader authority to regulate the activities of children than of adults." *Id.* at 374; *accord,* Carey v. Population Serv. Int'l, 431 U.S. 678, 693 (1977).

[74] Thus, the state may prohibit the dissemination of obscene materials to a minor which it could not prohibit to an adult. Ginsberg v. New York, 290 U.S. 629 (1968), F.C.C. v. Pacifica Foundation, 98 S. Ct. 3026, *rehearing denied* 99 S. Ct. 227 (1978).

[75] This article does not suggest the complete abrogation of line-drawing with respect to minor marriages. However, the age limit of 18 does not bear a reasonable relationship to the purported state interests. A more rational age limitation is drawn somewhere near the age of puberty, when children develop the need to enter the marital relationship and the physical capacity to realize its incidents. *See* text accompanying notes 133-134 *infra.*

[76] In Craig v. Boren, 429 U.S. 190 (1976), the Court acknowledged the interest of states in prohibiting minors from imbibing intoxicating beverages. The Court recognized the state's right to draw reasonable lines to promote the interest. *Id.* at 197.

into the marital relationship.[77] Thus, while the state has recognized interest in its minor citizens and a right to impose regulations to further those interests such regulation must be reasonably related to and and closely tailored to those interests to justify its interference with the minor's right to marry.[78]

Presumably, the purpose of the parental consent requirement is to protect the welfare of its resident minors,[79] by preventing the marriage of immature minors and by promoting greater marital stability.[80] Parental consent is one way of preventing hasty or ill-advised marriages. Statistics show, however, that this method of furthering the state interest in increasing the stability of marriages is not even reasonably related to such interest.[81] The parental consent requirement is also improperly tailored in that it is both grossly underinclusive and overinclusive with respect to the

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[77] Generally, the age at which minors can enter into marital contracts without the imposition of parental consent requirements is 18. *See* note 2 *supra.* This should be compared to the age at which puberty sets in, usually at age 10-14. P. MUSSEN, J. CONGER & J. KOGAN, CHILD DEVELOPMENT AND PERSONALITY 610-12 (3d ed. 1969). Moreover, at common law, minors above the age of 7 could marry without consent. Turner, *Marriage of Minors,* 8 W. AUSTRALIA L. REV. 319, 330-333 (1968).

[78] *See* text accompanying notes 29-40 *supra.*

[79] Planned Parenthood v. Danforth, 428 U.S. 52, 72-73 (1976); *see also* Turner v. Turner, 167 Cal. App. 2d 636, 334 P.2d 1011 (2d Dist. 1959). In this latter case, the father of a minor sought to have the written consent to the marriage of his minor son canceled on the ground of fraud and to have the marriage annulled. Discussing the role of the court in interfering with the marriage matter, the court stated, "[T]he State in its position of *parens patriae* is of course charged with a continuing interest in the welfare of children within its borders and our state has surrounded the matter of their custody and care, including their adoption, with many protective statutory laws." *Id.* at 641, 334 P.2d at 1014.

[80] CLARK, *supra* note 58, at 78-79.

[81] The rate of divorces in minors under the age of 20 is the second highest among all age groups, the rate being highest in the 20-24 age group. 1970 WHITE HOUSE CONFERENCE ON CHILDREN, PROFILES OF CHILDREN 142 (1970). This reflects the fact that parental consent has little effect on the success of minor marriages. According to CLARK, *supra* note 58, at 77, the typical minor marriage statute requires parental consent before marriage may be legally entered into by minors. Thus, an assumption can logically be made that marriages involving minor parties are entered into with the consent of the minor parties' parents. If parental consent is an effective means of preventing improvident marriages, then the number of minor marriages ending in divorce should be low or at least not substantially greater than the divorce rate in all other age groups, except the 20-24 age group. The high divorce rate in the latter age group probably results for the same reasons divorce rates are high in lower age group. Little relation can therefore be drawn between the imposition of the parental consent requirement and the state interest in lasting and stable marriages.

purposes of the statute. Parental consent permits some immature minors to marry and prevents other competent minors[82] from marrying. The statute's fatal flaw is that it grants parents the unrestrained and unguided power to confer or deny consent.[83] No assurance that parents will make decisions based on the important state interests exists.[84] A denial of consent coupled with the

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[82] Competent minors are those minors who possess the ability to assume the rights and obligations attached to the marital status.

[83] *See* text accompanying note *supra.*

[84] As evidenced by the case law, parents often make decisions without considering the welfare of the child. In re Green, 448 Pa. 338, 292 A.2d 387 (1972). The director of a State hospital for crippled children filed a petition which sought a judicial declaration that Ricky Green was a neglected child since his mother refused to consent to desirable orthopedic surgery because of her religious belief that the Bible proscribed blood transfusions necessary for the surgery. The court ruled that the state did not have an interest sufficient to outweigh parents' religious beliefs when their child's life is not immediately imperiled by his physical condition. However, when adults refuse to consent to blood transfusions necessary to save the life of their children, the court acknowledged the conclusion of other jurisdictions that the state can order such transfusions over the parents' religious objection. The court further stated that in any event, the wishes of an intelligent child of sufficient maturity should be considered in determining whether the blood transfusion should be administered. State of Oregon v. McMaster, 486 P.2d 567 (1971). This was a proceeding to terminate parental rights in a four-year-old child under an Oregon statute providing for such termination if parents are found to be unfit by reason of conduct or condition seriously detrimental to the child. The Oregon Supreme Court upheld the statute concluding that when parents' conduct, "substantially departing from the norm," is seriously detrimental to their child, parental right can be terminated. Wisconsin v. Yoder, 406 U.S. 205 (1972). The Court struct down a statute requiring Amish children to attend public school against their parents' wishes on the ground that the statute violated the parents' right to raise their children in their own manner and their right to free exercise of religion. However, in dicta, the Court stated, "To be sure, the power of the parent, even when linked to a free exercise claim, may be subject to limitation under *Prince* if it appears that parental decisions will jeopardize the health and safety of the children, or have a potential for significant social burdens." *Id.* at 233-234. Although these cases do not deal with parental consent in minor marriage cases, they do focus on the issues presented in this article. *See also* In re Guardianship of Ambrose, 170 Cal. 160, 149 P. 43 (1915). In this case, a superior court sought to get around the impropriety of the parental consent requirement by making an order appointing a guardian of the minor while the minor's parents were still alive. The order was clearly made to overcome the minor's parents' opposition to her marriage. Once the guardian was appointed the parents no longer had the power to deny consent to the marriage. The appointed guardian, given the power to consent, gave his consent to the minor's marriage and the minor subsequently consummated the marriage. All the circumstances disclosed at trial indicated that it was in the best interests of the minor for the third party to be appointed her guardian for the purpose of consenting to her marriage. Therefore, the state

absence of any provision giving minors standing to review such denial violates minors' right to due process under the law.[85] Thus, the restriction imposed by the consent requirement on minors' right to marry is impermissible if rationalized as promoting marital stability.

The state has a further interest in ensuring that a minor has the ability to assume the rights and obligations attached to marriage.[86] Again, however, the means selected by the state for achieving this interest unnecessarily impinges on the right to marry.[87] Once more, a minor has no assurance that the decision of parents to deny or grant consent will be made pursuant to the state interest in encouraging marriages between competent individuals. Without any right to examine the integrity of such decisions, the minor's right to due process is repeatedly violated.[88]

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interest in stable marital relationships is furthered only when parents choose not to exercise their consent privilege in a selfish or irrational manner.

[85] *See* text accompanying note 62 *supra*.

[86] CLARK, *supra* note 58, at 78. This interest is not wholly separable from the interest in promoting stable marriages. The second interest relates more to the obligations of the married couple to third persons such as the children of the young marriage, than to the obligations of the married partners to each other.

[87] It should be noted that in California, the test for mental competence to marry is very low. In fact, under CAL. CIV. CODE § 4101 (West Cum. Supp. 1979), the definition of capacity to marry does not include any element of mental ability to assume the duties and responsibilities which marriage creates. The requirement of mental competency is only inferred from CAL. CIV. CODE § 4425(c) (West Cum. Supp. 1979) which provides a marriage may be adjudged a nullity if "either party was of unsound mind, unless such party after coming into reason freely cohabited with the other as husband and wife." Judicial decision has determined that the level of competency required for marriage is minimal on the theory that a person may be mentally ill but still able to comprehend the nature and consequences of marriage. *See* Briggs v. Briggs, 160 Cal. App. 2d 312, 325 P.2d 219 (2d Dist. 1958). Thus, while adults possessing minimal capacity to understand the nature of a marital contract may freely enter into such contracts, minors possessing equivalent or greater capacity to understand the consequences of such contract can be precluded from marrying by the parental consent prerequisite. Since parental consent may be conferred or denied without relation to mental competency to enter marriage, the state interest in minors' competency to marry is not served by the parental consent requirement. It, therefore, constitutes an unreasonable and unnecessary infringement on the right to marry.

[88] Greene v. Williams, 9 Cal. App. 3d 559, 88 Cal. Rptr. 261 (2d Dist. 1970), Turner v. Turner, 167 Cal. App. 2d 636, 334 P.2d 1011 (2d Dist. 1959), Vaughn v. Vaughn, 62 Cal. App. 2d 260, 144 P.2d 658 (2d Dist. 1944). All three of these cases involved parents' challenges to their minor children's marriages. In each case, the minor had no opportunity to represent his or her own interests independently.

Since the parental consent requirement is not drawn narrowly enough to effectuate the state interest in ensuring that competent minors are making the decision to marry, the requirement cannot be sustained on this basis.

The state also has an undeniable interest in family unity[89] and postponing family division until minors are sufficiently mature to sever familial ties. Yet the parental consent requirement does not have a reasonable relation to that state interest. When children agree with parents, parental consent will not serve to enhance existing family ties. If parent and child are in close communication, mutual decision-making will follow irrespective of the consent requirement.[90] Forcing family unity by denying consent does not promote family harmony. When parent and child are in disagreement as to the decision to marry, requiring parental consent will not alleviate the division of the family brought by the fundamentally different opinions as to the propriety of marriage.

Another problem is posed by the fact that consent of only one parent is required to procure marriage licenses.[91] When one parent decides to give consent to a prospective marriage and the other vehemently disagrees with the decision, family discord will probably result. If the dissenting parent resorts to judicial channels, a legal action between family members results. This is surely the type of outcome the state seeks to avoid.

Although the state's interests in promoting long-lasting and stable marriages, in ensuring that a minor has the ability to assume the responsibilities attached to marital status, and in enh-

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[89] The Court has recognized a "private realm of family life which the state cannot enter." Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977), Loving v. Virginia, 388 U.S. 1, 12 (1967), Griswold v. Connecticut, 381 U.S. 479, 486 (1965), Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

[90] If there is no parental-consent requirement many minors will submit to the abortion procedure without ever informing their parents. An assumption that the parental reaction will be hostile, disparaging, or violent no doubt persuades many children simply to bypass parental counsel which would in fact be loving, supportive, and indeed, for some indispensable. it is unrealistic to assume that every parent-child relationship is either (a) so perfect that communication and accord will take place routinely or (b) so imperfect that the absence of communication reflects the child's correct prediction that the parent will exercise his or her veto arbitrarily to further a selfish interest rather than the child's interest.

Planned Parenthood v. Danforth, 428 U.S. 52, 103-04 (Stevens, J., concurring in part and dissenting in part) (1976).

[91] CAL. CIV. CODE. § 4101(b)(1) (West Cum. Supp. 1979), *set forth in* note 1 *supra*.

ancing the family unit are legitimate interests that may be served by appropriate legislation, the parental consent requirement does not further them in a reasonable or closely tailored manner.[92] Parents may make decisions without regard to these state interests. If parents are acting to protect the state's interest, by not providing for any means for review of parental action by minors subject to it, minors are denied their due process rights. The violation of their due process right is unjustified and unnecessary in light of the availability of less restrictive means of promulgating the state interest which would be subject to review.[93] The next inquiry, then, is whether such less restrictive alternative of regulating minor marriages violates parents' fundamental rights.

2 Protecting Parents' Fundamental Rights.

The question concerning the permissibility of state control over minors within its borders involves the issue of whether parents' fundamental right to have primary control over their children[94] limits that control. One group of cases,[95] however, indicates that children themselves have rights which limit both state and parental intervention in their affairs. In the event that minors are not able to decide whether to exercise their rights, some state inter-

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[92] There are other state interests involved in underage marriages such as the interest in solemnization of such mariages, Vaughn v. Vaughn, 62 Cal. App. 2d 260, 266, 144 P.2d 658, 662 (2d Dist. 1944), and the interest in protecting the unborn child of the minors by giving him or her a name, CLARK, *supra* note 58, at 80. However, the enhancement of these interests by parental consent are easily discounted when considering less restrictive means of furthering them. As the interest in solemnization is achieved by the ceremony and licensing requirements of CAL. CIV. CODE §§ 4200-4215 (West 1970), further solemnization by parental consent seems unnecessary especially when considering its infringement on the minor's right to marry. Parental consent to marriage by a pregnant minor also does not protect the unborn child by giving him or her a name. It is probably better to give the child a name through the process of adoption rather than through marriage between minors unprepared to provide the child with the care of mature and responsible parents. *See* note 84 *supra*.

[93] *See* text accompanying notes 135-145 *infra*.

[94] Wisconsin v. Yoder, 406 U.S. 205 (1972) (struck down state statute requiring Amish children to attend public high schools); Pierce v. Society of Sisters, 268 U.S. 510 (1925) (overturned a law prohibiting attendance of private schools); Meyer v. Nebraska, 262 U.S. 390 (1923) (overturned state law prohibiting teaching of German in elementary school).

[95] Planned Parenthood v. Danforth, 428 U.S. 52 (1976) and Bellotti v. Baird, 428 U.S. 132 (1976) (state cannot condition a minor's right to abortion on parental consent), and Carey v. Population Servs. Int'l, 431 U.S. 678 (1977) (state may neither prohibit children from procuring contraceptives, nor leave the decision to parents).

vention may be justified. Such intervention is characterized as upholding the child's best interests against an arbitrary or selfish assertion of otherwise protected parental prerogatives. Two claims the state must contend with in the regulation of underage marriages collide: the child's right to autonomous development and the parents' right to raise and control their children.

Early decisions dealing with state interference in family matters only concerned parental rights. In *Meyer v. Nebraska*[96] and *Pierce v. Society of Sisters,*[97] the Court held that state attempts to direct the growth of children through compulsory educational systems must yield to parental rights protected by the due process clause. *Meyer* overturned a state law prohibiting the teaching of any subject in any language other than English in elementary school. Although the issue was whether the statute unreasonably infringed upon the liberties guaranteed to the teacher by the fourteenth amendment, the conclusion that it did was influenced by the Court's recognition of parental rights to bring up children.[98] *Pierce* was more explicit regarding parents' rights. The Court held unconstitutional an Oregon statute requiring students to attend public rather than private schools because the parents enjoyed a due process right to bring up children as they saw fit, free from unreasonable state interference.[99]

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[96] 262 U.S. 390 (1923).

[97] 268 U.S. 510 (1925).

[98] While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right . . . to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men . . . [Meyer's] right thus to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the [fourteenth] Amendment.

Meyer v. Nebraska, 262 U.S. 390, 399-400 (1923).

[99] Under the doctrine of Meyer v. Nebraska, 262 U.S. 390 (1923), we think it entirely plan that the Act of 1922 unreasonable interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control . . . The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the

Cases outside the due process sphere have also protected the rights of parents. In *Wisconsin v. Yoder,*[100] the Court struck down Wisconsin's compulsory school attendance laws compelling Amish children to attend secondary school against the religious wishes of their parents. It justified its exacting scrutiny of the state's asserted interest in compulsory education by acknowledging the first amendment claims to free exercise of religion of the parents rather than of the children.[101]

These three cases seem to delineate a "private realm of family life which the state cannot enter."[102] Without regard to the minor's dissatisfaction with parental choice, the Court concluded that the state could not interfere with parental rights associated with first amendment protections.[103] When children assert rights independent of their parents, however, the Court has indicated that parental rights must yield to children's rights.[104] When children's rights are asserted along with parental rights, the Court has indicated that the children's rights are deserving of at least attention equivalent to that given adults' rights.[105]

Since the Court has given preference to minors' fundamental right to privacy in abortion and contraception over parents' right to control their children, such preference should be extended to minors' fundamental right to privacy in marriage. In *Planned Parenthood of Missouri v. Danforth,*[106] the Court stated that the state could not interfere with the decision of the minor and her

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high duty to recognize and prepare him for additional obligations. Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925).

[100] 406 U.S. 205 (1972).

[101] *Id.* at 230-31.

[102] Moore v. City of East Cleveland, 431 U.S. 494, 499 (Powell, J.) (joined by Brennan, Marshall, and Blackmun, JJ.) (1977); Pierce v. Massachusetts, 321 U.S. 158, 166 (1944).

[103] In Wisconsin v. Yoder, 406 U.S. 205 (1972), Pierce v. Society of Sisters, 268 U.S. 510 (1925), and Meyer v. Nebraska, 262 U.S. 390 (1923), the compulsory education imposed interfered with the right of access to ideas protected by the free speech clause and the free exercise of religion clause. *See* Griswold v. Connecticut, 381 U.S. 479, 482 (1965) (characterizing *Meyer* and *Pierce* as first amendment cases).

[104] Planned Parenthood v. Danforth, 428 U.S. 52 (1976), Bellotti v. Baird, 428 U.S. 132 (1976) (minors' right to abortion); Carey v. Population Servs. Int'l, 431 U.S. 678 (1977) (minors' right to contraception).

[105] Smith v. Organization of Foster Families for Equality and Reform (OFFER), 431 U.S. 816, 839 (1977) (Parents and children have an equivalent right to familial privacy, reflected by the fact of the parties having separate counsel to assert their right to family life).

[106] 428 U.S. 52 (1976).

doctor to terminate her pregnancy. The state's defense of a statute requiring an unmarried minor to obtain parental consent before an abortion was performed[107] emphasized the Court's prior decisions holding that a state may at times subject a minor to more stringent limitations than adults.[108] The state claimed that counsel of an adult who has responsibility or concern for children was required to declaim the state's duty to protect the welfare of minors. Parental discretion in that regard was itself an interest constitutionally protected against state interference.[109]

Justice Blackmun's majority opinion rejected the state's claims and held that the state could not interfere with the right of privacy in competent minors physically mature enough to become pregnant unless there was a showing of some significant state interest not present in the case of an adult.[110] The Court considered the interest in safeguarding the family unit and in preserving parental authority.[111] The Court concluded that the consent requirement was not likely to advance either interest where the minor and the nonconsenting parent are so fundamentally in conflict, and the very existence of the pregnancy has already fractured the family structure.[112]

The two state interests in family unity and preserving parental authority may be similarly discounted in regard to minor marriages. It is difficult to conclude that providing a parent with absolute power to overrule a decision made between minors or a minor and adult to marry will serve to strengthen the family unit. Concluding that such veto power in abortion decisions serves to strengthen the family unit is just as questionable. Nor is it likely that the parents' veto power will enhance parental authority or control.[113]

The same day *Danforth* was decided, the Court addressed the issue of who may make decisions for immature children once

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[107] *Id.* at 84, 85 (statute is reproduced as Appendix to the Opinion of the Court).

[108] *Id.* at 72. Examples of such limitations include compulsory education, Wisconsin v. Yoder, 406 U.S. 205 (1972), Pierce v. Society of Sisters, 268 U.S. 510 (1925), Meyer v. Nebraska, 262 U.S. 390 (1923); statutes relating to child labor, Prince v. Massachusetts, 321 U.S. 158 (1944); and the regulation of the sale of cigarettes, alcohol and obscene literature, Planned Parenthood v. Danforth, 428 U.S. 52, 72-73 (1976).

[109] Planned Parenthood v. Danforth 428 U.S. 52, 72-73 (1976).

[110] *Id.* at 75.

[111] *Id.*

[112] *Id.*

[113] *See* text accompanying notes 89-90 *supra.*

parental veto has been eliminated. In *Bellotti v. Baird,*[114] the Court examined the constitutionality of a Massachusetts statute forbidding abortion to minors without parental consent even where consent was withheld irrationally.[115] The Court abstained from deciding the constitutionality of the statute, finding the construction of it by the state Attorney General different from a statute creating a parental veto power.[116] The statute was construed as preferring parental consultation and consent. However, where there was a showing that the abortion would be in the minor's best interests,[117] a mature minor capable of giving informed consent was able to obtain a court order permitting the abortion without parental consultation without undue burden. As in *Bellotti,* when parents refuse consent because of their irrational opposition to marriage, the decision should be removed to the courts.[118]

The conclusion which emerges from *Danforth* and *Bellotti* then, is that the right of privacy protects the individual's interest in autonomous decision-making and embraces the the individual's interest in having decisions made in his or her own best interests. The best interests of the child, when child and parents disagree are to be determined by a court according to its own standards.[119] The term, however, usually refers to the goals of

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[114] 428 U.S. 132 (1976).

[115] *Id.* at 146 (*construing* Mass. Acts and Resolves 1974, c. 706 § 1)

[116] *Id.* at 147-48. As in Planned Parenthood v. Danforth, 428 U.S. 52 (1976), if such veto power were exercised, the minor had the burden of proving the abortion was necessary to preserve the life of the mother, *see* note 107 *supra,* thus requiring a choice between the privacy rights of the minor and the state created right of the parents. *See* NOWAK, ROTUNDA & YOUNG, *supra* note 11, at 634.

[117] Bellotti v. Baird, 428 U.S. 132, 145 (1976).

[118] The purpose behind the parental consent requirement in minor marriages is to ensure that the best interests of the minors will be preserved and protected. Greene v. Williams, 9 Cal. App. 3d 559, 563, 88 Cal. Rptr. 261, 264 (1970) (*construing* CAL. CIV. CODE § 4425(a) (West Cum. Supp. 1979). Since consent can be denied for reasons unrelated to this purpose, the protection of minors' best interests should revert back to the state through the courts.

[119] With respect to the [Missouri] law's requirement of parental consent . . . I think it clear that its primary constitutional deficiency lies in its imposition of an absolute limitation on the minor's right to obtain an abortion. The Court's opinion today in Bellotti v. Baird, *post* at 132, 147-148, suggests that a materially different constitutional issue would be presented under a provision requiring parental consent or consultation in most cases but providing for prompt (i) judicial resolution of any disagreement between the parent and the minor, or (ii) judicial determination that the minor is

health, happiness and prosperity for minors entering a marriage.[120]

In *Carey v. Population Services International,*[121] the Court held that minors had a fundamental right of access to contraceptives because it affected the individual's decision whether to bear or beget a child.[122] The Court rejected the state's assertion that avoiding the sale of contraceptives by young people was a sufficiently compelling interest justifying the burden imposed by the law.[123] Although Justice Brennan's opinion spoke of a mere rationality standard in demanding evidence that limiting access to contraceptive would in fact substantially discourage sexual behavior,[124] the Court actually utilized a closer scrutiny test. The Court read the Constitution as giving minors a special measure of protection against certain kinds of adverse and enduring consequences,[125] though the Court's decision on minors' behalf in some cases lead to equally harmful consequences of another sort.[126]

> mature enough to give an informed consent without parental concurrence or that abortion in any event is in the minor's best interest. Such provision would not impose parental approval as an absolute condition upon the minor's right but would assure in most instances consultation between the parent and the child.

Planned Parenthood v. Danforth, 428 U.S. 52, 90-91 (1976) (Stewart, Powell, JJ., concurring). [footnotes omitted]

[120] The problem with "best interests" determinations is that two rational adults making an identical decision on the minor's behalf might base their choice on different value systems and reach incongruent results. For example, the outcome of either an abortion decision or a contraception decision may vary according to the ranking the decision-maker gives to emotional health, preservation of nascent life, maximization of possibilities for future lifestyles, maintenance of an accustomed standard and style of living, or preservation of physical health. *See* Garvey, *supra* note 64, at 799-800.

[121] 431 U.S. 678 (1977).

[122] *Id.* at 685, 691-96. Justice Brennan's plurality opinion announced that "the right to privacy in connection with decisions affecting procreation extends to minors as well as adults." *Id.* at 696 n.22.

[123] *Id.* at 682. Section 6811(8) of the New York Education law made it a crime for any person to sell or distribute any contraceptive of any kind to a minor under the age of 16, and for anyone other than a licensed pharmacist to distribute contraceptives to peresons over 16. N.Y. Educ. Law § 6811 (a) (McKinney 1972).

[124] *Id.* at 691-99.

[125] *Id.* at 696 n.21.

[126] If a child becomes pregnant she must make a decision whether to carry the pregnancy to term or abort it. If the child decides to terminate a pregnancy, that fetus will be lost forever. The child can never conceive a being identical to the one aborted. If the child instead, decides to bear the baby, she will be burdened with supporting the child until the child's emancipation, CAL. CIV. CODE §§ 60-

Carey indicates that the state is prohibited from entrusting decision on some matters to parents because parental decision may harm the child, even though in some cases, parental advice would be helpful, and its absence harmful given the maturity of the child.[127]

The argument that the child's right to make autonomous decisions in marriage overrides the parents' right to control their children may be supportable. The case law regarding the issue, however, has created total ambiguity in the area of parental control. Perhaps the real issue in minor marriages is the constitutionality of state support for parental choices or the wisdom of state assistance in the child's choice. The Court has generally deferred to parental decisions to further the child's best interests.[128] However, in the areas of abortion and contraception, the Court has removed parents' decision-making power and accorded competent minors the right to make independent decisions in such areas. How far the Court will go in giving children the right to make autonomous decisions in other areas of private life is undeterminable.

Zablocki equated the decision to marry with other decisions concerning family matters such as procreation and contraception.[129] The Court suggested that it may extend individual autonomy to minors from abortion and contraception to marriage.[130] Yet, contraception and abortion may be distinguished from marriage in that decisions affecting procreation have physical and emotional manifestations. In contrast, marriage results in only a changed emotional state and legal status. The two situations are further different in that the law cannot prevent intercourse, whereas it can prevent the formation of marriage. While a pregnancy must be recognized whether or not the intercourse was

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68 (West Cum. Supp. 1979), face the prospect of adoption, or bring the child into life to suffer the myriad social, if not economic, disabilities that the status of illegitimacy brings. A minor deciding to bear the child will also be faced with the tribulations of pregnancy for nine months.

[127] It is interesting to note that Carey v. Population Servs. Int'l, 431 U.S. 678 (1977), implies that the state could not delegate the decision to get contraceptives to parents any more than it could forbid access altogether. Justice Brennan stated that "less than total restrictions on access to contraceptives that significantly burden the right to decide whether to bear children must also pass constitutional scrutiny." *Id.* at 697. Thus, the burden of parental consent on minor marriages should be constitutionally scrutinized although its ultimate imposition is merely to delay the consummation of a decision to marry.

[128] *See* text accompanying notes 119-120 *supra.*

[129] Zablocki v. Redhail, 434 U.S. 374, 381-86 (1978). *See* note 27 *supra.*

[130] *See* text accompanying notes 65-72 *supra.*

legal,[131] a marriage not legally contracted will not be recognized and will therefore not exist before the law. Perhaps the Court will conclude that the infringement on minors' right to make independent decisions significantly affecting their lives is a common denominator sufficient to extend the minors' liberty in procreation to marriage.[132]

The real question in minor marriage cases may be whether the arbitrary line-drawing at eighteen is justified. Presumably, age limitations on certain kinds of activity[133] acceptably regulate minors and protect the public from their improvidences. The problem with the age restriction in minor marriages is that it is drawn without relation to either the state's objective in promoting long-lasting and stable marriages, the minor's ability to enter such a relationship, or the interest in family unity. Perhaps the line should be drawn somewhere near the age of puberty. Before puberty parents would be accorded absolute control over minors in their custody.[134] From puberty to statutory majority, the minor should be afforded full constitutional protection of his or her right to marry. After puberty, the child will develop the need and desire to enter into such a marital relationship. The state should interfere with that right only to the extent of furthering its interest in ensuring that only able minors ready to assume the responsibilities of marriage consummate marriage.

III. Proposed Deletion of the Parental Consent Requirement.

In order to protect the minor's right to marry without undue interference with parents' right to control and custody of their

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[131] The untoward effects of pregnancy must be dealt with to avoid physical harm to either the minor or the viable fetus.

[132] Moore v. City of East Cleveland, 431 U.S. 494 (1977), further supports the proposition that parents' rights and children's rights should at least be equalized. In that case, a statute was stricken as an unconstitutional restriction on the people's right to family life. Thus, parents and children were accorded an equivalent right to family life. *See also* Garvey, *supra* note 64, at 812-15.

[133] For example driving, drinking and voting.

[134] Below puberty neither the state nor minors could assert a legitimate interest in denigrating parental right to control. Since children would, at that stage of development, be incapable of realizing the rights and obligations of marriage, specifically child bearing, the state would have no interest in ensuring minors have the ability to cope with nonexistent consequences of marriage. The question then arises as to whether the state would be justified in distinguishing between males and females on the basis of the factual difference in age on which puberty is reached. P. Mussen, J. Conger & J. Kagan, Child Development and Personality 608, 612 (3d ed. 1969).

minor children, this article proposes a less restrictive alternative to the present system. The alternative places reasonable limitations on parents' right to control minor marriages, yet accords minors their constitutional right to marry. This proposal meets the *Zablocki* requirements of reasonableness and narrow tailoring[135] and still gives parents a reasonable amount of input into the marriage process. It also eliminates the duplication of the present law. Under this proposed system, a young couple wishing to marry will first submit an application for a license to a premarital counseling center. The counseling center would be associated with existing Family Law sections of the county superior courts. There, the counseling center will evaluate the couples as to the timeliness of the marriage,[136] reality factors,[137] emotional maturity, the couple's attitude towards the parents' attitudes, and personal interaction.[138] The premarital counselors will then submit a recommendation and report to the superior court, which will hold a hearing on the matter.

This system of evaluating the minors' circumstances is a reasonable improvement over the present system. It will eliminate arbitrary age limits and, instead, evaluate each minor as an individual. This will allow the court to recognize that minors mature at different times. The factors listed above are items a court should reasonably consider when deciding to permit the minor parties to marry. The system improves upon today's strict age and consent requirements. The proposed system guarantees that permission to marry will be given in the child's best interests in every case by eliminating the age and consent requirement of section 4101 of the Civil Code[139] and emphasizing the objective evaluation aspect of it.

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[135] *See* text accompanying notes 54-55 *supra*.

[136] Timeliness of marriage are determined by factors contributing to the decision to marry, the mutuality of the decision and the similarity of motivating factors.

[137] Living arrangements, finances, employment, interferences.

[138] This would be an improvement over the present system. As written, CAL. CIV. CODE § 4101 (West Cum. Supp. 1979) discriminates against underage couples not able to afford counseling services. Although a couple may benefit from such services, they are precluded from that benefit because of their lack of wealth. The statute can even preclude the couple from contracting a marriage if the court deems premarital counseling as necessary to the marriage. Since the couple is unable to pay for such services, the court could not enter a consent order. The couple would, thus, not be able to consummate a nonvoidable marriage in California. The proposed system enables every couple to obtain counseling services at no cost, if necessary.

[139] CAL. CIV. CODE § 4101 (West Cum. Supp. 1979), *set forth in* note 1 *supra*.

Prior to the hearing, the agency will inform the couple of its recommendation. The minors will then be able to testify on their own behalf at the hearing. The agency will also notify the minors' parents of the hearing, allowing them to contribute their opinions as to the providence of the marriage at the hearing. Parents will, therefore, receive due process in the proposed proceeding that could deprive them of the custody of their minor children through marriage.[140]

In granting or denying the minors permission to wed, the court will consider the recommendation and report of the premarital counseling agency, along with other evidence presented at the hearing. If the court chooses not to follow the recommendation of the counseling agency, the judge will have to file a written justification for the decision. Should the court find the minor "fit" to make a marriage decision, consent should be mandatory. "Fitness" would be a finding of fact decided by reviewing the recommendation and questioning the affected parties. A court could not refuse consent solely because of age. This further decreases the probability of arbitrary state interference with a capable minor's right to marry. The judge will also have the authority to condition the permission to marry on the couple's attending various premarital and/or marital counseling sessions. This is already provided for in the existing statutes.[141]

This proposed system merely alters what the existing statutory structure currently allows. Premarital counseling is already legislatively provided for.[142] The law now requires the court to make an offer either granting or denying permission in every marriage involving an underage person.[143] Under this system, no license will be issued to a minor couple whose marriage is not sanctioned by the superior court. Judicial consent to enter a marital contract followed by consummation of the marriage will elevate the status

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[140] In Armstrong v. Manzo, 380 U.S. 545 (1965), the court held that the termination of a father's parental rights by adoption proceedings without according him notice of hearing violated due process. *See also* Stanley v. Illinois, 405 U.S. 645 (1972) (due process rights of fathers of illegitimate children). In minor marriage cases, the potential emancipation being likened to the deprivation of parental right in adoption or custody proceedings, Stanley v. Illinois, 405 U.S. at 651, would not take place. Parents will be given notices of the hearing and will be allowed to participate in the proceedings.

[141] CAL. CIV. CODE § 4101(c) (West Cum. Supp. 1979), *set forth in* note 1 *supra.*

[142] *Id.*

[143] CAL. CIV. CODE § 4101(b)(2) (West Cum. Supp. 1979), *set forth in* note 1 *supra.*

of that contract, thereby making the marriage unvoidable.[144] The proposed system of handling underage marriages will merely increase the use of existing social support services for marital relationships. It will also emphasize the participation of the judiciary in granting permission to underage persons to marry. It will decrease litigation in other areas by eliminating the cause of action for annulling a marriage on account of the minority of one or both members of the married couple.[145]

The deletion of the parental consent requirement will enable young persons to better evaluate their circumstances as an objective problem-solving approach is substituted for parental consent. There should not suddenly be an increase in the number of teenage marriages with a corresponding increase in the number of dissolutions, obviating the failures of youth marriages. Parents will not lose their children to imprudent marriages. The courts will consider any legitimate objection the parent might have to the marriage. Instead, the deletion will assure the young couple of a complete evaluation of the propriety of going through with the desired marriage before consent to it is withheld or given. The minors will then have a better chance of entering into a successful marriage.

IV. CONCLUSION.

As shown, the present system of requiring parental consent to validate a minor's marriage will not survive constitutional scrutiny. The state interests served by the parental consent requirement are not substantially furthered by it. That parental consent is theoretically conferred in the best interests of the child is an assumption that cannot be made in every case.[146] Parents have often used the consent requirement as a tool to maintain the custody of their children, to keep undesired suitors from their children, or to force an ill-fated marriage for their own ends, irrespective of the welfare of the children. Marriages consummated with defective consent are clearly contrary to the state's interest in their permanence. The problem of parental interference may be stated as follows: Parents have fixed images of their children which are generally inconsistent with a child's self-image

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[144] *See* note 92 *supra.*

[145] The cause of action for voiding a marriage provided for in CAL. CIV. CODE § 4425(a) (West Cum. Supp. 1979), *set forth in* note 6 *supra,* would be eliminated since capacity to marry would no longer be determined by purely arbitrary factors such as age.

[146] *See* text accompanying note 84 *supra.*

as a married adult. On the one hand, parents have a fundamental right to rear their children in their own manner. Yet, as this article demonstrates, this right of parental authority should yield to the right of competent minors to marry. If children have shown requisite maturity to enter a marriage to a non-partisan court, parental consent should not stand as a potential bar to the child's fundamental right.

The rights of each party are difficult to reconcile when with correlative right, one party shuns emancipation and the other actively seeks it. However, through the proposed plan of handling teenage marriages, the right of the minor can prevail without unreasonable infringement on the parental right to custody and control of their children. A new system of consent based on judicial rather than parental evaluation of the competency of minors to enter marital contracts should prove to be more objective than the present system. It should also result in a higher percentage of successful youth marriages. Thus, the possibility of invalid marriages due to defective consent is reduced and, perhaps, the permanence of these unions would become the rule rather than the exception.

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