ARTICLE

MATURITY

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ABSTRACT

Across numerous areas of the law—including family law, criminal law, labor law, health law, and other fields—when children are involved, maturity determinations are pivotal to outcomes. Upon reaching maturity, however defined, an individual has access to a range of rights not previously available and is expected to fulfill certain duties. Despite the central importance of maturity, the law's approach to it has been to consider the concept of maturity in a piecemeal and issue-specific fashion. The result is a legal construct of maturity that is anything but consistent or coherent. For example, every state has a minimum age below which a child is considered not mature enough to consent to sex. However, if money is involved, more than forty states deem that child mature enough to have consented to sex for money and be charged with the crime of prostitution (even if the money is paid to a pimp and the child never sees it). This Article seeks to undertake a holistic assessment of the law's approach to maturity.

Markers of maturity in the law frequently occur at different points in time. An examination of key indicators of maturity

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under the law reveals that the law is inconsistent, not only across issues but also within the same issues. Children are deemed mature enough to participate in the polity (e.g., vote) at a different age from when they are deemed mature enough to exercise independent economic power (e.g., work or contract), control their own bodies (e.g., engage in consensual sex), or assume adult social responsibilities (e.g., drink alcohol in public places).

In short, the law provides little clear guidance on how maturity should be understood and treated. Recent research on brain development and the work of cognitive psychologists provide some answers. To date, however, a significant consideration has been largely overlooked—cultural conceptions of maturity. Thus, this Article seeks to bring cultural perspectives on maturity into the dialogue. Ultimately, this Article aims to bring some clarity to the issue of maturity and examine whether cultural practices can inform the legal, policy, and moral questions in the law's approach to maturity.

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I. INTRODUCTION

Globally more than two billion people, representing approximately one-third of the world's population, including one-quarter of the U.S. population, are restricted or otherwise barred from voting in elections, entering freely into contracts or employment arrangements, or exercising control over fundamental choices regarding their own bodies.[1] These denials would offend the sensibilities of almost anyone if the population in question were adults, but because they are children, little objection is voiced. Children today are denied rights that adults consider fundamental and also are relieved of certain common duties of citizenry because they are deemed not to have reached "maturity."[2]

Maturity is a foundational concept in all law related to children.[3] How a society delineates maturity has far-reaching implications in the life of every child. As Annette Appell explains, "In the United States, the category of childhood constructs children as dependents in social, political, legal, and economic matters . . . ."[4] When childhood ends, therefore, is of critical importance. Across numerous areas of the law—including family law,[5] criminal law,[6]

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1. *See* UNICEF, THE STATE OF THE WORLD'S CHILDREN 2011, at 91, 111 (2011), *available at* http://www.unicef.org/sowc2011/pdfs/SOWC-2011-Main-Report_EN_02092011.pdf (reporting that globally the number of individuals under eighteen years of age exceeds more than 2.2 billion and that, in the United States, there are more than 77 million children under eighteen).

2. Children are treated differently for a variety of reasons, including the belief that children do not have the capacity to make mature decisions. *See, e.g.*, Tamar Schapiro, *Childhood and Personhood*, 45 ARIZ. L. REV. 575, 578 (2003) (stating that philosophy's explanation for differential treatment of children is that "children, unlike adults, are as yet lacking in reason and are therefore unfit to govern themselves until they reach the age of reason").

3. Maturity is a process that occurs over time, *see infra* notes 17 and 260, however, in this Article, when discussing the law's approach to "maturity" I mean the point at which a child is deemed an adult under the law.

4. Annette Ruth Appell, *The Pre-Political Child of Child-Centered Jurisprudence*, 46 HOUS. L. REV. 703, 708 (2009).

5. In family law, maturity is relevant to the weight given to a child's views in custody hearings. *See, e.g.*, *Ex parte* Devine, 398 So. 2d 686, 696–97 (Ala. 1981) (establishing that best interests determinations in custody cases shall consider a number of factors, including "the preference of each child, if the child is of sufficient age and maturity"); *In re* Marriage of Winter, 223 N.W.2d 165, 166 (Iowa 1974) (holding in custody cases that the "characteristics of each child, including age, maturity, mental and physical health" shall be considered in determining placement of the child).

6. In criminal law, whether a child is tried as a juvenile or an adult is based, at least in part, on societal determinations regarding maturity. *See* State v. Georgius, No. 34807, 2010 WL 2850756 (W. Va. May 12, 2010) (including maturity as one of sixteen factors a court should consider in deciding whether a defendant should be given "youthful offender treatment," as opposed to being sentenced as an adult).

labor law,[7] health law,[8] and other areas[9]—when children are involved, maturity determinations are pivotal to outcomes. Despite the central importance of maturity, the law's approach to it has been to consider the concept of maturity in a piecemeal and issue-specific fashion. The result is a legal construct of maturity that is anything but consistent or coherent. For example, children are deemed mature enough to participate in the polity at a different age from when they are deemed mature enough to exert economic independence, control their own bodies, or assume adult social responsibilities.[10] Inconsistencies persist even within the same issue. Every state has a minimum age below which a child is considered not mature enough to consent to sex.[11] However, if money is involved, in more than forty states that child is deemed mature enough to have consented to sex for money and be charged with the crime of prostitution (even if the money is paid to a pimp, and the child never sees it).[12]

This patchwork of inconsistent laws related to maturity is partly a result of the fact that policymakers frequently adopt

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7. In labor law, minimum age laws seek to protect children not yet mature enough to participate in the workforce. *See infra* Part II.B.2 (providing a historical discussion of age-related employment laws in the United States).

8. In health law, medical decision-making assesses a child's maturity in determining whether to follow the child's treatment preferences. *See, e.g.*, Alicia Ouellette, *Shaping Parental Authority over Children's Bodies*, 85 IND. L.J. 955, 987 (2010) ("As children mature, they are increasingly able to participate in medical decision making . . . ."); Lawrence Schlam & Joseph P. Wood, *Informed Consent to the Medical Treatment of Minors: Law and Practice*, 10 HEALTH MATRIX 141, 157–61 (2000) (discussing the law's use of the "mature minor" doctrine, which enables children who demonstrate requisite maturity to make medical decisions without parental consent).

9. Maturity is relevant to a host of other areas of the law and other issues, including civil rights (e.g., voting), other areas of health law (e.g., family planning), other areas of family law (e.g., marriage), etc.

10. *See infra* Part II; *see also* Larry Cunningham, *A Question of Capacity: Towards a Comprehensive and Consistent Vision of Children and Their Status Under Law*, 10 U.C. DAVIS J. JUV. L. & POL'Y 275, 277 (2006) (discussing inconsistencies in the ages of maturity across a range of rights and issues).

11. *See* Kate Sutherland, *From Jailbird to Jailbait: Age of Consent Laws and the Construction of Teenage Sexualities*, 9 WM. & MARY J. WOMEN & L. 313, 314–19 (2003) (reviewing state age-of-consent laws).

12. Safe harbor laws, which aim to ensure prostituted children are treated as victims rather than criminals, exist in Connecticut, Illinois, New York, Vermont, and Washington. Texas has followed suit via judicial decision. *See* Kimberly Kotrla & Beth Ann Wommack, *Sex Trafficking of Minors in the U.S.: Implications for Policy, Prevention and Research*, 2 J. APPLIED RES. ON CHILD. 1, 10 (2011), http://digitalcommons.library.tmc.edu/cgi/viewcontent.cgi?article=1012&context=childrenatrisk (discussing safe harbor laws in Connecticut, Illinois, New York, and Washington); VT. STAT. ANN. tit. 13, § 2652 (Supp. 2011); *In re* B.W., 313 S.W.3d 818, 821–22 (Tex. 2010). Minnesota adopted a safe harbor law in 2011, although some of its key provisions do not enter into force until August 1, 2014. 2011 Minn. Laws 707 (amending its definition of a "delinquent child" to exempt sexually exploited youth under sixteen years old).

legislation affecting children with little or no regard to what it says about, or how it affects, our understanding of maturity. In other instances, policymakers might include maturity as one of the factors considered when contemplating legislative changes, but even then they typically consider maturity only as it relates to the narrow issue at hand (e.g., a particular thirteen-year-old commits a heinous crime so the law is changed to enable thirteen year olds to be tried as adults, with little or no thought given to other aspects of maturity). In those cases, the result is that policymakers are quick to deem young individuals mature for certain acts (e.g., criminal responsibility), even while assuming those same individuals are too immature to engage in other acts (e.g., voting).[13] Such an approach can be confusing and discouraging for children.[14] Equally important, it fails our society by not fostering children's development so that they have a developed capacity to make good decisions and contribute to society once they reach adulthood (and perhaps even earlier).[15]

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13. See *infra* notes 127–32 and accompanying text, discussing the recent trend toward imposing criminal liability on youth at an increasingly younger age.

14. In the United States, the current prevailing legal framework creates a "discouraging one-way ratchet":

> No matter how well a child behaves, how mature and thoughtful his or her decision-making, [the law does] not allow them to vote, enter into contracts, serve on juries, drink alcohol, drive a car below a certain age or do any number of other things adults can do. . . .
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> Yet when children make bad decisions and commit bad acts, [increasingly our laws] insist they were mature enough that they should suffer adult consequences.

Jonathan Todres, Op.-Ed., *Is There No Redemption for Children?*, ATLANTA J.-CONST., Nov. 6, 2009, at A23; *see also* Emily Buss, *The Parental Rights of Minors*, 48 BUFF. L. REV. 785, 794–96 (2000) (noting that children's rights are curtailed more by law than adults' parallel rights across a range of issues, including speech, religion, procreative rights, medical care, and procedural rights in criminal cases); Ann Tobey, Thomas Grisso & Robert Schwartz, *Youths' Trial Participation as Seen by Youths and Their Attorneys: An Exploration of Competence-Based Issues*, *in* YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 225, 230–31 (Thomas Grisso & Robert G. Schwartz eds., 2000) (reporting on interviews with youths who struggled to understand proceedings against them).

15. For further support, see GERISON LANSDOWN, UNICEF, INNOCENTI RESEARCH CTR., PROMOTING CHILDREN'S PARTICIPATION IN DEMOCRATIC DECISION-MAKING 6 (2001). Lansdown writes:

> Children need opportunities to learn what their rights and duties are, how their freedom is limited by the rights and freedoms of others and how their actions can affect the rights of others. They need opportunities to participate in democratic decision-making processes within school and within local communities, and learn to abide by subsequent decisions. Only by experiencing respect for their own views and discovering the importance of their respect for the views of others, will they acquire the capacity and willingness to listen to others and so begin to understand the processes and value of democracy.

Id.; *see also* David Dominguez, *Community Lawyering in the Juvenile Cellblock: Creative Uses of Legal Problem Solving to Reconcile Competing Narratives on Prosecutorial Abuse,*

This Article seeks to examine more closely how maturity is constructed under law and explore whether the current approach to maturity provides the best framework for children and for society. As the above examples indicate, when they are examined with a view to understanding law's conception of maturity, it becomes clear that the law provides little clear guidance on how maturity should be understood and treated and thus what younger members of society should be permitted or expected to do. Recent research on brain development and the work of cognitive psychologists offer important guidance regarding children's capacities at various stages of their development.[16] To date, however, a significant consideration has been largely overlooked—cultural conceptions of maturity. Thus, this Article seeks to bring this missing piece, cultural perspectives on maturity, into the dialogue. Ultimately, through a holistic approach to the issue, this Article aims to bring some clarity to the concept of maturity as expressed in law and examine whether

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Juvenile Criminality, and Public Safety, 2007 J. DISP. RESOL. 387, 391 ("[W]e now know that detention, all other things controlled for, is a stronger predictor of future delinquency and criminality, more powerful than gang affiliation, weapons possession, or family dysfunction. Detention also exacerbates the numerous and disproportionate disadvantages these youth bring with them, whether those are untreated health and mental health problems, poor educational attachment, or immersion in a delinquent culture." (citation omitted) (internal quotation marks omitted)); Maxine Eichner, *Who Should Control Children's Education?: Parents, Children, and the State*, 75 U. CIN. L. REV. 1339, 1370–71 (2007) (suggesting that the success and survival of a liberal democratic government require that children be taught civic virtues).

16. *See, e.g.*, Sara B. Johnson, Robert W. Blum & Jay N. Giedd, *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESCENT HEALTH 216, 216–20 (2009) (reviewing the historical and current use of brain research in child health policy development); *see also, e.g.*, BARBARA BENNETT WOODHOUSE, HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN'S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE 17 (2008) ("While childhood may be a cultural construct that differs from place to place, the study of child development exposes commonalities between children from every culture and historical period."); Daniel Romer, *Adolescent Risk Taking, Impulsivity, and Brain Development: Implications for Prevention*, 52 DEVELOPMENTAL PSYCHOBIOLOGY 263, 270–71 (2010) (arguing that adolescent impulsivity results more from a lack of experience than a developmental deficit in the brain). *But see* A. Bame Nsamenang, *Adolescence in Sub-Saharan Africa: An Image Constructed from Africa's Triple Inheritance*, *in* THE WORLD'S YOUTH: ADOLESCENCE IN EIGHT REGIONS OF THE GLOBE 61, 61 (B. Bradford Brown, Reed W. Larson & T.S. Saraswathi eds., 2002) (arguing that "[a]dolescent psychology is a Eurocentric enterprise" and that "the field would have been different had adolescence been 'discovered' within the cultural conditions and life circumstances different than those of Europe and North America, say, in Africa"); Emily Buss, *What the Law Should (and Should Not) Learn from Child Development Research*, 38 HOFSTRA L. REV. 13, 14–15, 48–49 (2009) (expressing concern for potential misuses and misunderstandings of child development research and calling for a more measured approach to its use by courts). For a discussion of the historical construct of childhood, see generally PHILIPPE ARIÈS, CENTURIES OF CHILDHOOD: A SOCIAL HISTORY OF FAMILY LIFE (Robert Baldick trans., Alfred A. Knopf 1962) (1960).

cultural practices can inform the legal, policy, and moral questions about the law's approach to maturity.

This Article aims to contribute to the existing scholarship on children and the law in three respects. First, this Article seeks to shift the discourse on children's maturity from a piecemeal approach to a more cohesive treatment of this fundamental issue.[17] A more cohesive approach to maturity issues can lead to more coherent policies on children. To be clear, a more cohesive approach does not necessarily mean identical age standards across all issues.[18] Rather, it means both ensuring that maturity is considered in the development of law and policy affecting children, and moving away from considering maturity narrowly and only on an ad hoc basis around single issues.

Second, this Article incorporates cultural perspectives into the discourse on maturity. There is growing awareness of the importance of research on child psychology and child development, as well as more recent research on brain development.[19] Policymakers and courts draw upon the work of

17. A limited number of scholars have written on maturity and adolescence in a more holistic fashion. *See generally, e.g.*, JEFFREY JENSEN ARNETT, EMERGING ADULTHOOD: THE WINDING ROAD FROM THE LATE TEENS THROUGH THE TWENTIES (2004) (examining the period from adolescence to mid- to late-twenties as a period of continual development and referring to it as the stage of "emerging adulthood"); ROBERT EPSTEIN, THE CASE AGAINST ADOLESCENCE: REDISCOVERING THE ADULT IN EVERY TEEN (2007) (exploring and critiquing the "artificial extension of childhood" in the United States); FRANKLIN E. ZIMRING, THE CHANGING LEGAL WORLD OF ADOLESCENCE (1982) (broadly investigating the evolution of legal notions of adolescence and adulthood). More typically, however, scholars focus on maturity issues related to a single area, such as juvenile justice or medical decision-making. *See generally, e.g.*, Tara L. Kuther, *Medical Decision-Making and Minors: Issues of Consent and Assent*, 38 ADOLESCENCE 343 (2003) (providing a discussion of maturity issues related to medical decision-making, especially in the context of emancipated minors, the mature minor doctrine, and other exceptions to the general rule that those under the age of eighteen are incapable of consenting to medical treatment); Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009 (2003) (arguing for the adoption of immaturity as a mitigating condition as part of a categorical approach to juvenile justice); Kim Taylor-Thompson, *States of Mind / States of Development*, 14 STAN. L. & POL'Y REV. 143 (2003) (inquiring into the decision-making capacities of adolescents and the extent to which diminished capacities should impact the juvenile justice system).

18. Nor does this Article suggest that children's rights must be co-extensive with adults' rights. Maturity is an important determination, and protective measures for children are essential. It is important to recognize that protective measures have the effect of limiting rights (e.g., child labor laws), and thus I suggest that considering maturity-related decisions in a holistic context is vital to ensuring the law plays an optimal role vis-à-vis children's development.

19. *See, e.g.*, Paul Arshagouni, *"But I'm an Adult Now . . . Sort Of": Adolescent Consent in Health Care Decision-Making and the Adolescent Brain*, 9 J. HEALTH CARE L. & POL'Y 315, 346–59 (2006) (proposing that the various recent developments in adolescent psychology and brain development research suggest that there should be an expansion of adolescent decision-making for low-risk medical procedures "that do not involve potential

psychologists for guidance in decisions affecting children.[20] Cognitive psychology research on child development and its insights on adolescent decision-making and influences have the potential to inform the development of more appropriate and effective law and policy related to children's issues.[21] In addition, the more recent research on brain development is challenging our assumptions regarding children's capacity for decision-making[22] and informing judicial decision-making.[23] Without discounting the importance of that work, this Article focuses primarily on the juxtaposition of cultural and legal conceptions of maturity. Psychological theories and brain research can help policymakers and scholars appreciate better when a child or young person has certain capacities on par with adults.[24] In the end, however,

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adverse long-term consequences"); Steinberg & Scott, *supra* note 17, at 1011–16 (reviewing psychology research on adolescent development and concluding that adolescents are less culpable than most adults due to diminished decision-making capacity).

20. *See, e.g.*, Roper v. Simmons, 543 U.S. 551, 569–71 (2005) (relying on child development psychology research in reasoning that the death penalty is unconstitutional as applied to juvenile offenders); Snetsinger v. Mont. Univ. Sys., 104 P.3d 445, 454–55 (Mont. 2004) (Nelson, J., concurring) (citing psychological research to show that children of gay and lesbian parents develop no differently than those of straight parents to support the decision that denying health insurance to same-sex partners was unconstitutional); Cooper v. Cooper, 491 A.2d 606, 620–22 (N.J. 1984) (relying on psychological research to assist in determining the best interest of a child in a divorce).

21. *See* J. Shoshanna Ehrlich, *Shifting Boundaries: Abortion, Criminal Culpability and the Indeterminate Legal Status of Adolescents*, 18 WIS. WOMEN'S L.J. 77, 92–95 (2003) (discussing Piaget's theory of the stages of development and more recent research into the "decision-making processes of adolescents"); Gary B. Melton, *Toward "Personhood" for Adolescents: Autonomy and Privacy as Values in Public Policy*, 38 AM. PSYCHOLOGIST 99, 99–102 (1983) (examining the psychological and social benefits of recognizing adolescents' "personhood"); Elizabeth S. Scott, N. Dickon Reppucci & Jennifer L. Woolard, *Evaluating Adolescent Decision Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 224–31 (1995) (asserting that "the informed consent model is incomplete as a framework in which to compare the decision-making capacities of adolescents with adults" and espousing an approach to the issue that considers a wider array of factors).

22. *See* Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REV. 78, 92–93, 99–100 (2008) (reviewing and summarizing research on adolescent brain development and finding that heightened risk-taking in adolescents is likely biologically driven); *cf.* ARNETT, *supra* note 17, at 3–4 (noting how in American society today, young people are marrying and becoming parents at a significantly later age than compared to prior generations); Keely A. Magyar, *Betwixt and Between but Being Booted Nonetheless: A Developmental Perspective on Aging out of Foster Care*, 79 TEMP. L. REV. 557, 592 (2006) (noting recent research that evidences there is a "substantial period of time *between* adolescence and full-fledged adulthood").

23. *See, e.g.*, Graham v. Florida, 130 S. Ct. 2011, 2026 (2010) ("[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds."); *Roper*, 543 U.S. at 569–71 (relying on child development psychology research in reasoning that the death penalty is unconstitutional as applied to juvenile offenders).

24. Steinberg & Scott, *supra* note 17, at 1009–11 ("[E]merging knowledge about cognitive, psychosocial, and neurobiological development in adolescence supports the

maturity is a cultural construct.[25] Those who have traveled extensively have most likely had the experience of encountering youth in another culture and thinking "a ten-year-old at home would never act this mature" or vice versa. Yet to date, cultural conceptions have been largely ignored, even though cultural norms matter.[26] Most people are shaped more in their day-to-day lives by cultural norms than by legislation adopted in Washington, D.C., or another capital city. Jaywalking offers one example. Though it is prohibited under law in both Los Angeles and Boston, in the former, one will find few jaywalkers, while jaywalking is commonplace in Boston.[27] In this regard, behavior is shaped as much by cultural norms as by law.[28]

Finally, while not this Article's central aim, I believe that its discussion of maturity raises important questions about the nature of children's rights. As human beings, children, like adults, have individual rights. However, any parent or teacher knows that a child's capacity to exercise those rights evolves over time. How we handle questions about maturity thus has

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conclusion that juveniles should not be held to the same standards of criminal responsibility as adults."); *cf.* Steinberg, *supra* note 22, at 81 ("[T]here is no doubt that our understanding of the neural underpinnings of adolescent psychological development is shaping . . . the ways in which developmental scientists think about normative and atypical development in adolescence." (citations omitted)).

25. *See* STEVEN MINTZ, HUCK'S RAFT: A HISTORY OF AMERICAN CHILDHOOD, at viii (2004) ("[C]hildhood is not an unchanging biological stage of life but is, rather, a social and cultural construct that has changed radically over time."); Appell, *supra* note 4, at 706 (describing childhood as a "socially constructed category deeply connected to race, gender, class, and citizenship"); Jeffrey Jensen Arnett & Nancy L. Galambos, *Culture and Conceptions of Adulthood*, *in* EXPLORING CULTURAL CONCEPTIONS OF THE TRANSITION TO ADULTHOOD 91, 92–94 (Jeffrey Jensen Arnett & Nancy L. Galambos eds., 2003) (exploring various cultural conceptions of what criteria define adulthood); Deborah W. Post, *Which Wave Are You? Comments on the Collected Essays from the Seminar "To Do Feminist Legal Theory*,*"* 9 CARDOZO WOMEN'S L.J. 471, 482 (2003) ("Maturity, a normative concept, not a measure of human development, changes with time, place and position.").

26. *See* WOODHOUSE, *supra* note 16, at 26 ("The timing of transition from childhood to adulthood is strongly influenced by issues of class and culture as well as by issues of race and gender."); Elaine M. Chiu, *The Culture Differential in Parental Autonomy*, 41 U.C. DAVIS L. REV. 1773, 1775 (2008) ("Culture dictates what are optimal, appropriate, and acceptable parenting practices."); Barbara Bennett Woodhouse, *Youthful Indiscretions: Culture, Class Status, and the Passage to Adulthood*, 51 DEPAUL L. REV. 743, 745, 758–59 (2002) (finding that when youthful "indiscretions" stop being excused and punishment is imposed varies according to race).

27. L.A., CAL., MUN. CODE § 80.42.1 (2011), *available at* http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:lamc_ca (follow "Municipal Code" hyperlink; then follow "Chapter VIII Traffic" hyperlink; then follow "Division I Pedestrians" hyperlink); BOS., MASS., TRAFFIC RULES & REGS. art. XI (2003), *available at* http://www.cityofboston.gov/Images_Documents/TrafficRulesandRegulations_tcm3-1654.pdf.

28. Clearly, there is interplay between cultural norms and law, and each has the ability to shape the other. So, for example, jaywalking is generally not enforced in Boston, even though it is against the law. This lack of enforcement likely further reinforces the cultural norm of crossing the street wherever one likes.

implications for the exercise of rights of more than a quarter of the U.S. population (and more than one-third of the world's population).[29]

This Article proceeds in three parts. In Part I, I examine legal conceptions of maturity. As noted above, benchmarks of maturity in the law frequently occur at different points in time. Some of these standards have developed with maturity in mind, while others have emerged with little or no consideration of maturity. In either case, today they are powerful expressions of maturity. Law has an expressive function, and though a minimum age might have been selected for a particular activity with little understanding of or consideration for maturity, over time that standard reinforces popular views and comes to be seen as a benchmark of maturity.[30]

In this Article, I identify five maturity "indicators"[31]—political participation, independent economic power, responsibility/ accountability, bodily integrity, and family rights—and explore legal conceptions of maturity in each of these areas. Adults, or mature individuals, are presumed to have full capacity with respect to all of these indicators, and thus, legal determinations of maturity in these areas are particularly pertinent. When maturity is examined cohesively across these five indicators, inconsistencies in the law become readily apparent.

These inconsistencies challenge us to go beyond the law for answers. Science can inform as to what a child's brain is developmentally able to do or understand. However, stages of brain development alone do not fully answer questions about what a society can or should expect of its younger members. In

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29. *See* United Nations Convention on the Rights of the Child, G.A. Res. 44/25, art. 12, U.N. Doc. A/RES/44/25 (Nov. 20, 1989) [hereinafter CRC] ("States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."). *See generally* WOODHOUSE, *supra* note 16 (analyzing various issues relevant to children's rights using the individual stories of children throughout history).

30. *Cf., e.g.*, Meredith Johnson Harbach, *Is the Family a Federal Question?*, 66 WASH. & LEE L. REV. 131, 197–200 (2009) (discussing the expressive function of line drawing in the context of whether federal courts should review family law cases); Cass R. Sunstein, *Incommensurability and Valuation in Law*, 92 MICH. L. REV. 779, 822 (1994) (stating that law "affect[s] social valuations in general").

31. A brief note on terminology: In this Article, by "indicator," I mean an issue that provides an opportunity to measure how the law constructs maturity. For example, political participation is a key right in society, and thus a society's rules on when (or at what age) an individual can participate in the polity tells us something about how that society constructs maturity under law. In other words, it is an indicator for purposes of understanding that jurisdiction's legal construction of maturity. The age at which voting rights are set in that society, I consider to be a "benchmark" of or "proxy" for maturity under law.

Part II, I turn to cultural conceptions of maturity for guidance. As noted above, many scholars have looked to psychological research mapping child development or neurological research mapping brain development for guidance.[32] Both fields provide important guidance on children's evolving capacities, and my objective is not to supplant that research. Rather, I aim to supplement those insights with knowledge and perspectives from cultural discourses on and representations of maturity. An examination of cultural conceptions of maturity finds that they differ in important ways from legal conceptions. Frequently, cultural benchmarks of maturity occur at an earlier age. In addition, in various cultures, maturity is delineated clearly, often by participation in a long-standing coming-of-age ritual or ceremony. Once that ceremony has occurred and the corresponding steps have been taken, a boy or girl is deemed to have the capacity, or maturity, to assert certain rights and fulfill defined duties in his or her community. Part II reveals important differences between cultural and legal approaches to maturity.

Given the inconsistencies within and across areas of law, as well as between law and culture, a holistic assessment of maturity prompts questions regarding whether it is appropriate, feasible, or even necessary to achieve a more consistent legal construct of maturity and reconcile differences between legal and cultural conceptions of maturity. Part III begins with these questions. Such an exploration raises important questions, such as how one ensures that minority cultures are respected and not disadvantaged by any attempts to more closely align law and culture. Recognizing that reconciling law and culture in this area is an enormous undertaking beyond the scope of any single article, Part III instead offers suggestions how cultural conceptions of maturity can inform the development of a more coherent approach to maturity under the law.

In taking on this project, or more generally when exploring issues of children and the law, it is important to recognize the problems inherent in speaking of children as a single, homogenous group. There are dramatic and obvious differences among children of different ages, backgrounds, and psychological

32. *See supra* note 16 and accompanying text; *see also* Buss, *supra* note 14, at 797–805 (drawing on psychological research on child development in discussing parental rights of minors); Vivian E. Hamilton, *Immature Citizens and the State*, 2010 BYU L. REV. 1055, 1116–22 (applying research on child development to understand maturity in the context of citizenship).

development.[33] Certainly no one would suggest an infant, toddler, or small child should have the right to work, even though, as the Declaration of Independence enshrines, "all men are created equal" and "are endowed by their Creator with certain unalienable Rights."[34] The stages of child development are important and are reflected at times in legal expressions related to children.[35] This Article focuses primarily on adolescents and their experience. They are the ones most affected by bright-line rules on maturity. There are, however, ripple effects from bright-line rules, as the developmental nature of childhood requires that each child receive the necessary support and guidance at early stages of life to then be equipped to exercise the rights and assume the duties that arise in later stages.

By exploring legal constructs of maturity more cohesively and bringing cultural norms into the discourse on children and the law, this Article aims to spur a more holistic dialogue on children and the law and the central role of maturity determinations. Such a dialogue can help foster the development of more coherent laws and policies that provide children with both discipline and protection and appropriate guidance and instruction, so that they can realize their rights and develop to their fullest potential.

II. LEGAL CONCEPTIONS OF MATURITY

Legal conceptions of maturity are essential to a functioning society. Every society needs to identify who has what rights and responsibilities within that society and when. Markers of maturity, as expressed often through the age of majority, "cleave[ ] the world of legal rights and responsibilities into two dichotomous realms—the dependent realm of childhood and the self-governing realm of adulthood. Upon [reaching the age of majority], one crosses over from one side of this divide to the other."[36] As this Part reveals through its examination of legal conceptions of maturity, in reality, an individual does not cross this divide neatly at one point in time into adulthood and self-governance, but rather the law allows individuals to cross into adulthood for select activities while

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33. *See* WOODHOUSE, *supra* note 16, at 26 ("The timing of transition from childhood to adulthood is strongly influenced by issues of class and culture as well as by issues of race and gender.").

34. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

35. CRC, *supra* note 29, art. 12; *see* Ann Eileen Driggs, Note, *The Mature Minor Doctrine: Do Adolescents Have the Right to Die?*, 11 HEALTH MATRIX 687, 690–91 (2001) (discussing the use of the mature minor doctrine in medical decision-making cases).

36. Ehrlich, *supra* note 21, at 78.

holding them back with respect to others.[37] This system has created a confusing and potentially discouraging framework for children, as most often duties are imposed well before meaningful rights are granted.[38]

To examine legal conceptions of maturity, I have selected five maturity "indicators"—political participation, independent economic power, responsibility/accountability, bodily integrity, and family rights. The rights and duties that correspond with each of these indicators are understood to have accrued to adults.[39] That is, in a liberal democracy, no one would question that a mature individual has the right to participate politically in the polity (e.g., through the right to vote) or has to be accountable for his or her actions (e.g., by being sanctioned for violating the law).[40] These five indicators are fundamental rights and responsibilities that each mature individual holds in a liberal democracy.[41] Therefore, legal conceptions of what constitutes maturity with respect to each of these factors are crucial markers in the lives of adolescents.

The law relies on age benchmarks for determining when a child is mature enough to participate in the polity, exercise independent economic power, or fulfill any other right or duty. There are limitations to such an approach: "The use of a bright-line rule to designate the end of childhood ignores individual variation in developmental maturity as well as varying maturity demands across the range of legal rights and responsibilities."[42]

However, there are other reasons for establishing a clear demarcation between childhood and adulthood.[43] Clarity and

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37. For that reason, viewing emancipation statutes as the law's statement on maturity is inadequate.

38. For example, many children are treated as adults in the criminal justice system years before they are considered adult enough to vote. *See infra* notes 125–32, 146–47 and accompanying text (discussing the recent U.S. trend of trying adolescent criminal offenders as adults). *See generally* STEVE LISS, NO PLACE FOR CHILDREN: VOICES FROM JUVENILE DETENTION (2005) (chronicling the traumatic experiences of children in juvenile detention centers).

39. *See* Appell, *supra* note 4, at 714 (explaining that adults are considered "fully formed as independent, rational, autonomous individuals. Children, in contrast, are not . . . .").

40. Exceptions exist (e.g., denial of voting rights for convicted felons, reduced accountability for mentally impaired individuals).

41. There are some exceptions, such as loss of voting rights for convicted felons, but those exceptions are not relevant to this discussion.

42. C. Antoinette Clarke, *The Baby and the Bathwater: Adolescent Offending and Punitive Juvenile Justice Reform*, 53 U. KAN. L. REV. 659, 687 (2005).

43. *See id.* at 686–87 (suggesting that the binary classification scheme makes it easier to determine maturity); Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 560 (2000) ("For most purposes, no great harm results from

definitiveness in the law are essential to a well-functioning legal system and society.[44] It is neither practical nor administratively feasible to decide every case individually. It would create administrative backlogs and open the door to arbitrary decisions rooted in explicit or implicit bias.[45] If every activity for which a society believes maturity is a prerequisite would require individual assessment, individual claims would overwhelm the system, and society would either stop functioning or its members would simply ignore formal law and legal institutions and, instead, create their own informal rules.

Though categorical legal age of maturity determinations are "crude judgment[s]"[46] at best, they still offer value in terms of facilitating judicial administration and, importantly, providing notice to the citizenry as to their rights and duties. Indeed, clarity about the law's expectations for each member of society is a foundational constitutional principle.[47]

At common law, the age of majority was twenty-one years, in part because in the Middle Ages men were presumed to be capable of carrying armor at that age.[48] Today, the dominant assumption is that "legal adulthood begins at age eighteen."[49] The U.N. Convention on the Rights of the Child, the most comprehensive and widely accepted articulation of children's rights, defines a child to include "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."[50] Thus, even as eighteen is widely accepted as the default, there is simultaneous acknowledgment that there are exceptions. This Article suggests that although eighteen has garnered significant support as a

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postponing adult legal status until the designated age, or from giving parents legal authority and thereby involving them in their adolescent children's lives.").

44. *See* Erwin Chemerinsky, *A Paradox Without Principle: A Comment on the Burger Court's Jurisprudence in Separation of Powers Cases*, 60 S. CAL. L. REV. 1083, 1111 (1987) ("Clarity in the law matters."); *cf.* Connally v. Gen. Constr. Co., 269 U.S. 385, 391 (1926) (stating that a statute "must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties").

45. *See* Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 836–37 (2003) (explaining that litigating the maturity of a young offender "on a case-by-case basis is likely to be an error-prone undertaking, with the outcomes determined by factors other than immaturity").

46. Scott, *supra* note 43, at 559–61.

47. The void-for-vagueness doctrine strikes down laws that do not provide sufficient clarity of expectation for the citizenry. *See* Grayned v. City of Rockford, 408 U.S. 104, 108 (1972) (noting that due process requires that "laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited").

48. Scott, *supra* note 43, at 558.

49. *Id.* at 559.

50. CRC, *supra* note 29, art. 1.

generally accepted standard for the end of childhood,[51] the reality enshrined in the law suggests a much less cohesive articulation of the transition to adulthood or maturity. Specifically, a holistic examination of the maturity indicators identified above reveals significant inconsistencies in our legal conception of maturity with respect to rights and responsibilities considered fundamental in almost any society.

The five sections below examine proxies for each maturity indicator. For example, I look at voting rights as a proxy for participation in the polity. The proxies relied upon are select examples, but ones that are illustrative of their maturity indicator. Providing a complete catalog of every possible proxy for maturity is not only beyond the scope of this Article, but it is also not central to this Article's aims. Instead, exploring representative proxies for each maturity indicator is sufficient to reveal the inconsistencies in how the law marks maturity.

A. Political Participation

Political participation is fundamental to the ideals and workings of a liberal democracy, and every mature individual or adult is presumed to have the right to participate in the polity.[52] Two activities in particular are central to participation in the polity: voting and military service. Voting is central to participation in the polity as it provides individuals with a voice in selecting who represents them.[53] Military service is central to participation in the polity as it represents both the opportunity to

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51. The CRC has been ratified by 193 countries (only the United States and Somalia are not parties to the treaty). Only two of the 193 parties to the CRC have submitted a reservation or declaration related to Article 1 that could be read to apply to the use of eighteen as the upper boundary of childhood (Botswana, Cuba). *Ratification Status of the Convention on the Rights of the Child*, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited Jan. 27, 2012). Lichtenstein submitted a reservation on Article 1 but withdrew it in October 2009. *Id*. n.10. Other states parties have submitted understandings related to Article 1 indicating whether they believe life begins at conception or birth. *Ratification Status of the Convention on the Rights of the Child*, *supra*.

52. Voting is one of the most fundamental rights in a democracy. *See* Harper v. Va. Bd. of Elections, 383 U.S. 663, 670 (1966) (affirming the right to vote as "too precious, too fundamental to be . . . burdened or conditioned"); Wesberry v. Sanders, 376 U.S. 1, 17 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.").

53. *See* Reynolds v. Sims, 377 U.S. 533, 555 (1964) (holding that the right to vote freely for a candidate of one's choice is the essence of a democratic society, and any restriction on that right strikes at the heart of representative government); 29 C.J.S. *Elections* § 9, at 34 (2005) ("The right to vote is fundamental, because it preserves all rights and self-government." (footnote omitted)).

defend one's country, as well as a duty to serve the country if called upon to do so.[54]

On this first indicator of maturity, there is fairly widespread uniformity—both the voting age and military service age in the United States are set at eighteen years old, with only a few minor exceptions not relevant to maturity determinations.[55] That there is uniformity on these two factors is attributable to the fact that in most countries, political participation is centralized—elections and defense are coordinated at a national level, producing a single minimum age for voting and a minimum age for military service, the two of which coincide in most countries.[56] That was not always the case in the United States. Until the Vietnam War Era, the minimum age for voting was twenty-one years, well after the time a young person could be called upon to defend the nation.[57] The Twenty-Sixth Amendment to the Constitution changed that, establishing eighteen years as the national voting age.[58] Similarly, the armed forces are charged with defense of the nation, resulting in a single, uniform standard across the states for age of military service.[59] Today, eighteen is the age at which the U.S. military can call upon an individual to serve, or an individual can independently choose to enlist.[60]

Although the focus of this Article is the United States, because voting age is generally constructed at a national level, in

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54. *See* Sherman J. Clark, *The Character of Direct Democracy*, 13 J. CONTEMP. LEGAL ISSUES 341, 343–44 (2004) ("[B]oth jury service and military service are or can be constructed in ways that encourage people to take a certain ownership of and responsibility for their actions.").

55. Although some states allow individuals to register to vote before age eighteen, all states have a voting age of eighteen in the general election. U.S. CONST. amend. XXVI. However, select states, such as Ohio and West Virginia, allow seventeen-year-olds to vote in a primary election if they will turn eighteen before the general election. OHIO REV. CODE ANN. § 3503.011 (LexisNexis 2005); W. VA. CODE ANN. § 3-2-2(a) (LexisNexis 2011). With military service, the U.S. military does allow individuals to volunteer at age seventeen, provided they obtain parental consent. 10 U.S.C. § 505(a) (2006). Exceptions that are obtainable with parental consent are not included in this Article because they do not indicate a society's determination that such a child is mature, but instead that the child cannot independently choose to engage in a particular activity in question without parental authorization.

56. More than 100 countries have the same age for voting and military service. *Compare The World Factbook: Suffrage*, CENT. INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/fields/2123.html (last visited Jan. 27, 2012) (listing the various ages of enfranchisement for the nations of the world), *with The World Factbook: Military Service Age and Obligation*, CENT. INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/fields/2024.html (last visited Jan. 27, 2012) (listing the various ages of military service and obligation for the nations of the world).

57. *See infra* notes 67–68 and accompanying text.

58. U.S. CONST. amend. XXVI, § 1.

59. *See* 10 U.S.C. § 505(a) (2006).

60. *Id.* Individuals can volunteer at age seventeen with parental consent. *Id.*

this section, I look briefly beyond U.S. borders. Doing so helps inform this discussion of maturity. A global survey reveals largely consistent patterns on voting ages but also some notable exceptions. Of the 192 countries that are U.N. member states, the vast majority have adopted a voting age for national elections of eighteen years.[61] However, political maturity in some countries is seen as accruing at a different age. Sixteen countries have a voting age of twenty or twenty-one (and one has a voting age of nineteen),[62] while thirteen countries have voting ages of sixteen or seventeen.[63] A handful of other countries reflect a somewhat split approach: In Bosnia-Herzegovina, Croatia, and Slovenia, for example, the voting age is eighteen, but individuals can vote at sixteen if employed.[64] The Dominican Republic offers yet another approach, providing that the voting age is eighteen years old unless one has married, in which case there is no age requirement.[65] In certain respects, these split approaches reflect the idea that if an individual is engaged in other mature or adult-like activities, then he or she should have the right to participate in the polity.[66] This approach echoes the debates in the United States around the adoption of the Twenty-Sixth Amendment, which sought to lower the voting age from twenty-one to eighteen.[67] One of the primary concerns expressed at that time was that young individuals were being sent to fight in Vietnam and called upon to possibly sacrifice

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61. *The World Factbook: Suffrage*, *supra* note 56.

62. Voting age of twenty-one: Fiji, Kuwait, Lebanon, Malaysia, Oman, Samoa, Saudi Arabia, Singapore, Solomon Islands, Tokelau, Tonga. Voting age of twenty: Bahrain, Cameroon, Japan, Nauru, Taiwan. Voting age of nineteen: South Korea. *Id.*

63. Austria, Brazil, Cuba, Ecuador, Guernsey, Isle of Man, Jersey, and Nicaragua have a voting age of sixteen, while Indonesia, North Korea, Seychelles, Sudan, and Timor-Leste have a voting age of seventeen. *Id.*

64. *Id.*

65. *The World Factbook: Dominican Republic*, CENT. INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/geos/dr.html (select "Government") (last visited Jan. 27, 2012) ("Suffrage: 18 years of age, universal and compulsory; married persons regardless of age . . . .").

66. *See* Henry H. Foster, Jr. & Doris Jonas Freed, *A Bill of Rights for Children*, 6 FAM. L.Q. 343, 367 (1972) (arguing that minimum age laws for any activity "should have a reasonable basis in terms of the general maturity and behavior of youth with reference to the particular activity").

67. Pamela S. Karlan, *Ballots and Bullets: The Exceptional History of the Right to Vote*, 71 U. CIN. L. REV. 1345, 1358–59 (2003). The high casualty rates suffered by American youths during the Vietnam War spurred Congress to reduce the voting age. *See id.* at 1359 ("As of 1968, when Congress began hearings on a constitutional amendment, roughly a quarter of the troops, and twenty-nine percent of the casualties [of the Vietnam War], had been soldiers under the age of twenty-one."). After the Supreme Court overruled a congressional attempt to statutorily lower the voting age nationally for state elections, Congress proposed the Twenty-Sixth Amendment, which was adopted quickly. *Id.*

their lives for a country that did not allow them any voice in the polity.[68]

Although the great majority of countries, including the United States, have agreed that eighteen is the "proper" minimum age for voting, the fact that roughly thirty nations employ a different approach is evidence that eighteen is at least somewhat arbitrary.[69] Given the fundamental nature of the right to vote (and participate in the polity), arguably such an important cut-off point should be grounded in more substantial reasoning.[70]

B. Independent Economic Power

Independent economic power is a second important indicator of maturity. In examining the law's conception of maturity on this point, I focus on two proxies—the age at which an individual has the right to enter into a binding contract (the maturity to enter into one's own agreements) and the age at which an individual can choose to work (the maturity to enter the workplace and earn one's own money). I distinguish independent economic power from economic independence. Although the latter is a meaningful marker of independence, the law does not tie individual rights to whether one is economically or financially independent.[71] After all, there are individuals in their twenties, thirties, forties, and older who are not economically independent.

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68. *See* Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE L.J. 1131, 1164 n.152 (1991) ("[T]he Twenty-Sixth Amendment extending the franchise to eighteen-year-olds grew out of the perceived unfairness of any gap between the Vietnam draft age and the voting age."). Although eighteen is largely accepted without question as the minimum age for political participation, children have participated politically at younger ages at various points in history. *See* Appell, *supra* note 4, at 742 ("Even in the colonies, it was not unheard of to elect 'elite young members' to lower houses of the legislature—boys as young as fifteen. Similarly, children, boys as young as twelve and thirteen, were appointed to office. Both boys and girls participated in political action of their own or in conjunction with adults." (footnotes omitted)).

69. I use "arbitrary" as used by Harris and Teitelbaum. *See* LESLIE J. HARRIS & LEE E. TEITELBAUM, CHILDREN, PARENTS AND THE LAW: PUBLIC AND PRIVATE AUTHORITY IN THE HOME, SCHOOLS, AND JUVENILE COURTS 494 (2002) ("The age of majority is arbitrary not in the sense that it is unreasonable but in that it is variable from time to time and is often established to reflect some, but not all, levels of maturity and capacity."); *see also* Hamilton, *supra* note 32, at 1128–29, 1140–41 (suggesting that science supports the notion that children have the capacity/maturity to vote at a younger age).

70. I do not suggest that no country has selected eighteen as the voting age for valid historical or cultural reasons. It appears, however, that the U.S. experience is not wholly atypical. As noted in the text, the voting age in the United States became eighteen after Vietnam Era-related efforts to conform the voting age to the age of service in the military. *See supra* notes 67–68 and accompanying text. Though the two are now aligned, that they are aligned at eighteen is somewhat arbitrary.

71. *See* C.S.J. *Elections*, *supra* note 53, § 9, at 34 (describing the right to vote as "inherent or fundamental" (footnote omitted)).

Despite their lack of economic independence, they still have independent economic power that comes with adulthood (albeit, as a practical matter, a limited version of it).[72] Their situation contrasts with that of adolescents, whose rights to exercise independent economic power are constrained.

1. The Right to Contract. The right to contract is central to adult life as it enables individuals to engage in various important economic transactions, facilitating access to housing, health care, or other necessary or desired goods and services.[73] As the Supreme Court has recognized, the Due Process Clause of the Fourteenth Amendment includes "[w]ithout doubt . . . not merely freedom from bodily restraint but also the right of the individual to contract."[74] Children's rights to contract are constrained, as they are "perceived as having far less capability to engage in fair exchange over the long term."[75] Therefore, this limitation on rights is imposed primarily as a protective measure.[76]

In the United States, most jurisdictions have a functional minimum age for the right to contract of eighteen years old.[77] I say "functional" because states' laws on whether a minor can enter into a legally binding contract do not necessarily bar children from signing contracts.[78]

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72. *See* William S. Aquilino, *Family Relationships and Support Systems in Emerging Adulthood*, *in* EMERGING ADULTS IN AMERICA: COMING OF AGE IN THE 21ST CENTURY 193, 194–95 (Jeffrey Jensen Arnett & Jennifer Lynn Tanner eds., 2006) (stating that even though an adult might be economically dependent, he or she is still legally able to engage in various economic activities).

73. Michael Glassman & Donna Karno, *On Establishing a Housing Right to Contract for Homeless Youth in America*, 7 SEATTLE J. FOR SOC. JUST. 437, 449–50 (2009).

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

75. Glassman & Karno, *supra* note 73, at 438.

76. *See* Kathryn A. Wood, Note, *Credit Card Accountability, Responsibility and Disclosure Act of 2009: Protecting Young Consumers or Impinging on Their Financial Freedom?* 5 BROOK. J. CORP. FIN. & COM. L. 159, 159–83 (2010) (noting that laws on contract rights for minors in part are "meant to protect children from careless financial decisions and reduce the incentive for adults to enter into contracts with children"); Henry v. Root, 33 N.Y. 526, 536 (1865) (noting courts' long-standing efforts to balance "protect[ing] infants or minors from their own improvidence and folly, and to save them from the depredations and frauds practiced upon them by the designing and unprincipled" with "protect[ing] the rights of those dealing with them in good faith"). *But see* Glassman & Karno, *supra* note 73, at 456 ("Minors are denied a right to contract for housing because of an underlying authoritarian ideology that independent youth are dangerous to the community and that the granting of such rights might lead to chaos.").

77. RESTATEMENT (SECOND) OF CONTRACTS § 14 cmt. a (1981).

78. *See, e.g.*, 5 SAMUEL WILLISTON & RICHARD A. LORD, A TREATISE ON THE LAW OF CONTRACTS § 9:13, at 111 (4th ed. 2009) ("As a general principle, it is well-settled that an

Although common law typically held that minors did not have the capacity to contract, current contract law establishes that contracts entered into during infancy are generally voidable,[79] meaning that regardless of the minor's developmental capacity or level of good faith when bargaining, a minor retains the right to disaffirm most contracts upon reaching the age of majority.[80] The voidability of a minor's contract, which is the rule in most states,[81] suggests that not only can minors enter into contracts, but also that they will be bound by them unless they disaffirm.[82] Other states, such as South Carolina, Maine, and West Virginia, hold that a contract is presumed to be nonbinding, unless the minor ratifies the contract in writing once he or she reaches the age of majority.[83]

These types of provisions might provide an opportunity for an adolescent who, when older (and presumptively now mature), realizes she has made a mistake in entering into a disadvantageous contract to extricate herself from that agreement. The issue is that limiting contract rights in the name of protecting children does not account for the impact that limitation has on counterparties, and in turn on the children we seek to protect. Most counterparties are wary of entering into contracts for goods or services with adolescents because children can disavow their obligations at a later point. Indeed, businesses usually require that an adult, typically the parent or legal guardian, co-sign any contract entered into by a minor.[84] The functional result is that adolescents are limited significantly in their ability to engage in many of the day-to-day

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infant's contract is voidable during minority and for a reasonable time after the minor reaches majority . . . .").

79. 42 AM. JUR. 2D *Infants* § 46 (2010).

80. 1 E. ALLAN FARNSWORTH, FARNSWORTH ON CONTRACTS § 4.4, at 446–47 (3d ed. 2004).

81. *See id.* at 446 (noting the "prevailing view" that the contracts of minors are voidable); MONT. CODE ANN. § 41-1-302 (2009); S.D. CODIFIED LAWS §§ 57A-3-305, 26-2-3 (2004).

82. *See* WILLISTON & LORD, *supra* note 78, § 9:5, at 35–37 ("[A]s a general rule . . . an infant's contract . . . may be avoided by him and is thus voidable rather than wholly void."); *see also* Muller v. CES Credit Union, 832 N.E.2d 80, 85 (Ohio Ct. App. 2005) (holding that a minor must disaffirm within a reasonable time after reaching majority and that a delay of more than thirteen years was too long for the contract in question to be voided).

83. ME. REV. STAT. ANN. tit. 33, § 52 (1999); S.C. CODE ANN. § 63-5-310 (2010); W. VA. CODE ANN. § 55-1-1 (LexisNexis 2008).

84. *See* ROGER LEROY MILLER & GAYLORD A. JENTZ, FUNDAMENTALS OF BUSINESS LAW: EXCERPTED CASES 197 (2d ed. 2010) (recognizing that most businesses require parents to co-sign with their children to ensure parental liability in case of breach of contract).

activities of life that adults take for granted, but are in fact based on contractual agreements. This result limits an adolescent's capacity to exercise independent economic power.[85]

Within the common law tradition of contract law, an exception to the general rule that minors cannot contract has existed for necessaries.[86] Whether particular items are deemed to be "necessaries" often involves a fact-specific inquiry, with courts attempting to define the category as narrowly as possible, generally limiting the exception to such items as food, clothing, and shelter.[87] In some instances, statutory exceptions for necessaries have been established.[88] The limited exception causing minors to be bound for necessaries has been extended to other types of contracts, such as contracts for health, automobile, and life insurance, as well as educational loans.[89] For example, Arizona allows minors sixteen years or older to enter into a contract for an educational loan upon a showing of enrollment or acceptance in an institution of higher learning.[90] Florida similarly allows minors at least sixteen years old to "borrow[ ] money for their own higher educational expenses."[91]

These exceptions may allow for youth to engage in adult activities in select ways as a means of developing their skills. However, adolescents have little or no choice as to what is deemed necessary.[92] For example, Massachusetts holds that contracts are not binding on minors, except for necessaries and

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85. Whether one believes that is the correct thing to do is a separate question. This section is aimed at uncovering how young persons are treated and at what stage they are granted rights and duties associated with maturity.

86. WILLISTON & LORD, *supra* note 78, § 9:18, at 181–83.

87. *See id.* § 9:19, at 191–96. Georgia law requires the party seeking to recover from the minor to prove that either the parents refused to provide the necessaries or that the minor was emancipated by law. GA. CODE ANN. § 13-3-20(b) (2010); *see also* Mauldin v. S. Shorthand Bus. Univ., 55 S.E. 922, 922–23 (Ga. 1906) (recognizing the presumption that the parents provide necessaries to their minor children); McLean v. Jackson, 76 S.E. 792, 793 (Ga. Ct. App. 1912) ("The need of the infant, and the failure or refusal of the parent or guardian to supply him are all that need appear [to show a contract for necessaries].").

88. *E.g.*, GA. CODE ANN. § 13-3-20(b) (2010).

89. *See, e.g.*, N.Y. EDUC. LAW § 281 (McKinney 2009) (prohibiting minors age sixteen or older from disaffirming a contract to obtain an education loan); *McLean*, 76 S.E. at 793 (holding dental services to be necessary for a minor's well-being); Douglass v. Pflueger Haw., Inc., 135 P.3d 129, 135–36, 138 n.8 (Haw. 2006) ("It is apparent that the Hawai'i Legislature has, through the enactment of several statutory provisions codified the principle that contracts relating to medical care, hospital care, and drug or alcohol abuse treatment are contracts for necessaries[,] . . . [and] minors . . . cannot later disaffirm them by reason of their minority status." (internal quotation marks omitted)).

90. ARIZ. REV. STAT. ANN. § 44-140.01 (2003).

91. FLA. STAT. ANN. § 743.05 (West 2010).

92. As noted earlier, minors have no voting rights, and thus they cannot exert any influence on legislators who might decide what is "necessary."

contracts for insurance (e.g., life, accident, health, etc.).[93] Such a narrow exception would appear to reflect other considerations, including perhaps insurance companies' interest in ensuring that they can collect insurance premiums, rather than a determination that children have the "maturity" to buy life insurance, as it is not clear, for example, that it is necessary for children to have life insurance.[94]

Similar to the issue of political participation, while eighteen appears to be the prevailing norm for the point at which contract rights accrue, questions again arise as to the arbitrary nature of that cut-off point.[95] As Glassman and Karno state, "The suggestion that youth under fifteen are not capable of understanding the social contract is not supported by developmental research and literature. On the other hand, there are probably large numbers of adults over eighteen who do not understand the moral implications of the social contract."[96] Yet for individuals under eighteen years of age, the presumption is that they cannot make informed judgments about which goods or services they might seek to purchase.[97]

2. Employment Age. Employment age is another proxy for independent economic power. When individuals are prohibited from working below a certain age, it is done under the auspices of protecting children from harm.[98] In this respect, the age at which a young person is legally able to enter the workforce might also be understood as a marker of being sufficiently mature or

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93. Slaney v. Westwood Auto, Inc., 322 N.E.2d 768, 772 (Mass. 1975). Massachusetts also sets two separate age limits depending on the type of insurance. *Compare* MASS. GEN. LAWS ANN. ch. 175, § 113K (West 2011) (establishing a minimum age of sixteen years to enter into contracts for auto insurance), *with* MASS. GEN. LAWS ANN. ch. 175, § 128 (West 2011) (establishing a minimum age of fifteen years to enter into contracts for life insurance).

94. Viviana A. Zelizer, *The Price and Value of Children: The Case of Children's Insurance*, 86 AM. J. SOC. 1036, 1045–46 (1981).

95. Of the fifty states, only Alabama (nineteen years) and Mississippi (twenty-one years) establish a minimum age other than eighteen for contractual rights. ALA. CODE § 26-1-1 (LexisNexis 2009); MISS. CODE ANN. § 1-3-27 (West 1999).

96. Glassman & Karno, *supra* note 73, at 453.

97. Certainly, many children under age eighteen, especially younger children, would not be ready to exercise independent contract rights, but what about the sixteen- or seventeen-year-old who is? Here, science could inform more effective policies affecting children. Culture could too.

98. *See* WAGE & HOUR DIV., U.S. DEP'T OF LABOR, CHILD LABOR BULL. 101, CHILD LABOR PROVISIONS FOR NONAGRICULTURAL OCCUPATIONS UNDER THE FAIR LABOR STANDARDS ACT 1 (2010) [hereinafter CHILD LABOR BULLETIN], *available at* http://www.dol.gov/whd/regs/compliance/childlabor101.pdf (stating that the federal youth employment provisions "were enacted to ensure that when young people work, the work is safe and does not jeopardize their health, well-being or educational opportunities").

responsible to not need such protection and to be able to work outside the home and earn money.

The law governing children's capacity to work is a complex maze, incorporating federal, state, and municipal laws and regulations.[99] This body of law makes various distinctions based on type of work, including agricultural and nonagricultural work, hazardous and nonhazardous work, and the performing arts.[100] In many instances, there are historical reasons for these distinctions.[101] For example, the historical legacy of the American family farm underlies the law that allows children to work at a younger age on farms than in nonagricultural settings and to work at any age on family farms.[102]

Examining federal and state child labor law reveals two inherent contradictions. First, there are discrepancies in the treatment of children across different employment arenas that send mixed messages to children and limit their rights in inconsistent ways. Second, there are inconsistencies between the law's treatment of adolescents' capacities in the work arena versus contracts, and additional disparities when compared to the law on other maturity indicators.

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99. *See* 29 U.S.C. § 218 (2006) ("[N]o provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter."); Nina Krauth, Comment, *Do Farmers Reap More Than Their Child Laborers Sow? The Conflict Between the Fair Labor Standards Act and State Workers' Compensation Laws*, 5 SAN JOAQUIN AGRIC. L. REV. 213, 220–23 (1995) (discussing how the FLSA might conflict with state workers' compensation laws).

100. 29 U.S.C. § 213(c) (2006).

101. *See* Davin C. Curtiss, *The Fair Labor Standards Act and Child Labor in Agriculture*, 20 J. CORP. L. 303, 308 (1995) (noting that at the turn of the century, many believed that farm labor "strengthen[ed] the moral constitution of the child"); Marie A. Failinger, *"Too Cheap Work for Anybody but Us": Toward a Theory and Practice of Good Child Labor*, 35 RUTGERS L.J. 1035, 1047 (2004) ("[I]n some states, . . . young children may still work in the so-called 'street trades' where many were employed at the turn of the century, such as selling newspapers and shoeshining.").

102. 29 U.S.C. § 213(c) (2006); *see* Curtiss, *supra* note 101, at 308 & n.29 (citing early American writers and publicists (among them Thomas Jefferson) who believed that "children's work on the farm was entirely wholesome, that they worked outdoors in the fresh air with their parents, learning valuable lessons in family association and useful skills in farming; such work ought to be encouraged" (quoting WALTER I. TRATTNER, CRUSADE FOR THE CHILDREN: A HISTORY OF THE NATIONAL CHILD LABOR COMMITTEE AND CHILD LABOR REFORM IN AMERICA 149 (1970) (internal quotation marks omitted))); U.S. GEN. ACCOUNTING OFFICE, GAO/HEHS-98-193, CHILD LABOR IN AGRICULTURE: CHANGES NEEDED TO BETTER PROTECT HEALTH AND EDUCATIONAL OPPORTUNITIES 34 (1998), *available at* http://www.gao.gov/archive/1998/he98193.pdf (stating that small family farms formed an important part of the agricultural industry at the time the FLSA was originally enacted). *But see* Children's Act for Responsible Employment of 2009, H.R. 3564, 111th Cong. (2009) (seeking to close the gaps between agricultural and nonagricultural work regulations and enhance protections for children working on farms).

The Fair Labor Standards Act (FLSA), enacted in 1938, regulates wages, hours worked, and acceptable conditions for child labor in both agricultural and nonagricultural sectors.[103] These provisions were designed primarily to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health and well-being.[104] Moreover, the FLSA expressly permits states to enact higher standards than those established by the FLSA.[105]

Although the FLSA and state child labor laws were aimed at protecting children from harm, they do not provide blanket prohibitions on child labor. Though a child is defined as a person below the age of eighteen,[106] sixteen- and seventeen-year-olds are afforded few special protections under federal labor law beyond the prohibition on their employment in hazardous occupations, such as coal mining and logging.[107] Federal child labor provisions primarily cover children under sixteen years of age.[108] Protections come in the form of restricting employers from using child labor if it would interfere with the child's education or harm the child's health and well-being.[109] Such protections are much more limited in agricultural settings, however, allowing children as young as twelve years old to work on farms where their parents work.[110] Moreover, exceptions exist that allow minors of any age to engage in select informal sector jobs (e.g., babysitting, newspaper delivery, wreath-making),[111] work in the entertainment

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103. 29 U.S.C. §§ 206–207, 212 (2006 & Supp. II 2006).

104. CHILD LABOR BULLETIN, *supra* note 98, at 1; *see also* Barbara Bennett Woodhouse, *"Who Owns the Child?":* Meyer *and* Pierce *and the Child as Property*, 33 WM. & MARY L. REV. 995, 1062 (1992) ("[T]he political alliances for and against education and labor laws tended to be similar. The progressive 'child-savers' viewed child labor legislation and compulsory education laws as integral parts in a unified campaign to improve the lot of children. Likewise, organized labor strongly supported both child labor laws and compulsory school laws as keys to an increased living wage for working-class parents and equal opportunity for working-class children." (footnote omitted)).

105. 29 U.S.C. § 218(a) (2006).

106. CRC, *supra* note 29, art. 1.

107. *See* 29 C.F.R. §§ 570.50–.68 (2011) (addressing occupations particularly harmful to minors between the ages of sixteen and eighteen).

108. 29 C.F.R. § 570.2(a) (2011).

109. 29 C.F.R. § 570.2(a)(1)(i)–(ii) (2011).

110. 29 C.F.R. §§ 570.2(b), 570.70–.72 (2011) (addressing agricultural occupations). Although that rule may have come into existence when small family farms were the norm, today it is often the children of migrant workers working on large-scale farms away from their parents who are put in harm's way as a result of this loophole. *See* Krauth, *supra* note 99, at 236–48 (arguing for an implied right of action under the FLSA for illegally employed children).

111. 29 U.S.C. § 213(d) (2006).

industry,[112] or work in a nonhazardous business owned by their parents.[113] The assertion that child labor laws are there to protect children is undermined by the fact that the protections disappear in settings where there is significant potential for harm to children (e.g., agricultural settings).[114]

The above brief description captures the protective nature of child labor laws. Recognizing the law's expressive function and its influence in shaping perceptions, when we ask what child labor laws contribute to society's construction of maturity, a different picture emerges. Maturity in the employment setting is sixteen years of age, reflecting that at that age, a young person is deemed mature enough to enter the workplace without significant restrictions (other than restrictions on working in hazardous occupations).[115] In addition to federal regulations, many states have enacted more protective laws.[116] New York, for example, prohibits sixteen- and seventeen-year-olds enrolled in school from working more than four hours on any day preceding a school day (other than Sunday or holidays) and limits them to not more than twenty-eight hours in any week.[117] Therefore, depending on the jurisdiction, additional protections might be in place. Although these state laws offer potential and often important safeguards for children, from a maturity analysis perspective, they also limit an adolescent's right to exercise independent economic power. What about the twelve-year-old who sees his or her family struggling and wants to work on Saturdays to help the family; does that not reflect mature thinking in many respects?[118] As noted above, younger children are covered by more

112. 29 U.S.C. § 213(c)(3) (2006).

113. 29 C.F.R. § 570.2(a)(2) (2011).

114. *See* U.S. GEN. ACCOUNTING OFFICE, *supra* note 102, at 5, 26–27 (explaining that, on one hand, children in agricultural settings receive less legal protection than in other work settings and, on the other, are exposed to more danger).

115. For example, for individuals at least sixteen years of age, there are no maximum work-hour restrictions. 29 C.F.R. §§ 570.2(a)(1)(i), 570.35, 570.70(a) (2011). Employment of individuals under eighteen years old in hazardous occupations is prohibited. 29 C.F.R. § 570.2(a)(1)(ii) (2011).

116. *See, e.g.*, N.Y. LAB. LAW § 143 (McKinney 2009); MINN. STAT. ANN. § 181A.04 (West 2006) (limiting the hours a minor under sixteen may work to between 7:00 a.m. and 9:00 p.m.); S.D. CODIFIED LAWS § 60-12-1 (2009) (restricting work hours for children under sixteen based on when school is in session).

117. N.Y. LAB. LAW § 143 (McKinney 2009). It is fair to assume that the expectation at this age is that parents or legal guardians would provide for children, but nonetheless under law the additional protections for children also limit the child's rights to exercise economic power.

118. *See* WOODHOUSE, *supra* note 16, at 255 ("[W]e should respect children as workers—in school, in the community, and in the economy—and we should look hard at the developmental consequences of current trends discouraging children from engaging in meaningful work while exploiting them as consumers."). Woodhouse discusses the

extensive protections. From a maturity analysis, fourteen- and fifteen-year-olds are granted more limited labor rights, permitting them to work provided that it does not interfere with their education or exceed what is deemed to be a healthy workload.[119] In this sense, labor law provides for children to accrue more expansive rights to work and earn money as they get older.

A maturity analysis exposes many of the inconsistencies in labor laws.[120] For example, minors are more restricted in their right to work in nonagricultural sectors than in agricultural settings, though there is nothing to suggest that the former requires greater maturity.[121] Overall, there are significant differences in the rights we grant adolescents who would endeavor to enter the workforce. And these differ from the rights the law grants children to enter into contracts.

Not only are there discrepancies in how the law treats children's independent economic power (allowing them to work at a younger age than they functionally are able to contract for goods and services), but legal conceptions of maturity to exercise independent economic power do not dovetail with the age at which the law deems young persons mature enough to participate in the polity. This inconsistency is one of many across several areas of law related to children.

C. Responsibility/Accountability

Responsibility and accountability are key features of maturity. Every adult is expected to act responsibly and to be

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challenges of balancing wanting to encourage children to become productive members of society with not wanting to exploit their labor at the expense of their futures. *Id.* at 248.

119. 29 C.F.R. §§ 570.34–.35 (2011); CHILD LABOR BULLETIN, *supra* note 98, at 4–7.

120. *See* Luthien L. Niland, *The Cost of the Bright Red Strawberry: The Dangerous Failure of Pesticide Regulations to Account for Child Farmworkers*, 4 GOLDEN GATE U. ENVTL. L.J. 363, 370 (2011) (discussing the laws that allow that children as young as ten years old to work in agricultural settings under certain conditions, but not in other industries until the age of sixteen).

121. For a detailed description of how the FLSA more extensively restricts nonagricultural child laborers, see Megan McGinnis, *Child Farm Labor Under the Fair Labor Standards Act*, 20 KAN. J.L. & PUB. POL'Y 155, 168–73 (2010). McGinnis further explains that the traditional image of the child laborer was of one working on the family farm. *Id.* at 157; *see also* Dede J. Agrava, Comment, *Examining the Laws Affecting the Child Farm Worker and Their Impact on the American Taxpayer*, 16 SAN JOAQUIN AGRIC. L. REV. 37, 41–42 (2007) ("[Historically], farm work was considered a favorable work environment . . . ." (citing U.S. GEN. ACCOUNTING OFFICE, *supra* note 102, at 34)). However, "child farm workers of the modern era generally do not work on family farms; rather, they tend to work on large commercial farms." McGinnis, *supra*, at 157. While some of these children work side-by-side with their parents, many do not have the parental supervision one would expect from a child working on the family farm and thus are exposed to a range of potential harms. *Id.* at 177.

accountable for his or her actions. The social compact in any liberal democratic society provides that every individual assume certain duties and cede certain personal liberties in exchange for the benefits and protections that derive from the collective.[122] Therefore, a key component of adult life is the acceptance of responsibility to act according to the rules of society and to be held accountable for violations of the society's rules. In return, one receives the benefits of the collective and the commitment by others that they will accept the same responsibilities and duties.[123] Therefore, this accountability component of maturity in fact has two parts in the social compact—accountability to others, and the right to hold others accountable for their actions. In this section, by looking at both the age of criminal responsibility and the age for jury service, I examine how the law constructs maturity to be held accountable and maturity to judge and hold others accountable.

1. Age of Responsibility. With respect to the first two maturity indicators—participation in the polity and independent economic power—although there were differences in terms of the age at which "maturity" was achieved, the law evidenced a presumption that adolescents are not ready or mature enough to exercise those rights.[124] In the criminal context, the recent trend has been the reverse—children are being deemed mature enough to suffer adult consequences.[125] That trend was not always the case. When juvenile courts were first established in the late nineteenth century, they were based on the recognition that children are different, have reduced culpability, and have greater likelihood of successful reform.[126] Increasingly, and particularly in

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122. *See generally* John Rawls, *The Justification of Civil Disobedience*, *in* THE DUTY TO OBEY THE LAW (William A. Edmundson ed., 1999) (discussing the social contract doctrine); THE AMERICAN FOUNDING AND THE SOCIAL COMPACT (Ronald J. Pestritto & Thomas G. West eds., 2003) (providing a series of essays exploring the theory of the social compact). *Cf.* Buss, *supra* note 16, at 16–17 (noting that John Locke, John Stuart Mill, and others expressly excluded children from liberal theories of equality and liberty).

123. Peter C. Myers, *Locke on the Social Compact: An Overview*, *in* THE AMERICAN FOUNDING AND THE SOCIAL COMPACT, *supra* note 122, at 1, 16–17.

124. *See* U.S. CONST. amend. XXVI (granting the right to vote for citizens eighteen years of age and older and denying the right to citizens under eighteen); FARNSWORTH, *supra* note 80, § 4.4, at 446 (acknowledging the voidability of a minor's contracts upon attaining the age of majority).

125. *See* Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV. 89, 169 (2009) ("It is an unfortunate political reality that modern crime policy tends to be a one-way ratchet consistently trending in the direction of more punishment, less judicial discretion, and fewer chances for serious offenders, including young ones.").

126. *See* Scott & Steinberg, *supra* note 45, at 803–04 (explaining the view of nineteenth century progressive reformers that all delinquents were "wayward but

the past two decades, legislatures have moved toward imposing adult-like responsibility on children who commit so-called adult crimes.[127]

Since the mid-1990s, several types of legislative measures have facilitated a move toward treating and punishing children as though they were adults: (1) the age of judicial transfer has been lowered in many jurisdictions;[128] (2) the determination as to whether a child should stand trial as an adult is more often "not made on the basis of amenability to treatment (which is, in part, a maturity inquiry), but rather on the seriousness of the offense and criminal record";[129] (3) certain crimes by designation require adult sentencing;[130] and (4) "direct file" statutes give prosecutors discretion to charge accused individuals as children or adults.[131] Between 1992 and 1997, forty-five states amended their laws to make it easier to transfer children from the juvenile justice system to the criminal justice system, while thirty-one states changed their laws to expand sentencing options in both criminal and juvenile courts.[132]

Across different states, when and under which circumstances a child is considered mature enough to be treated as an adult in criminal law varies, further muddling the law's construction of maturity and the message to children.[133] The minimum and maximum ages for original juvenile court jurisdiction differ among the states.[134] In North Carolina, the

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innocent children whose parents had failed them, but who could be redirected with the court's firm guidance"); Candace Zierdt, *The Little Engine that Arrived at the Wrong Station: How to Get Juvenile Justice Back on the Right Track*, 33 U.S.F. L. REV. 401, 407 (1999) (stating that the juvenile court system was "designed to help and rehabilitate children instead of to simply punish them").

127. *See* Graham v. Florida 130 S. Ct. 2011, 2018 (2010) (noting that Florida law allows prosecutors to choose whether to try sixteen- and seventeen-year-olds as adults for most felonies). *But see* Roper v. Simmons, 543 U.S. 551, 575 (2005) (holding that offenders who committed a crime when they were under the age of eighteen cannot receive the death penalty).

128. Scott, *supra* note 43, at 584 & n.145.

129. *Id.* at 584.

130. *Id.* at 584–85.

131. Benjamin Steiner & Emily Wright, *Assessing the Relative Effects of State Direct File Waiver Laws on Violent Juvenile Crime: Deterrence or Irrelevance?*, 96 J. CRIM. L. & CRIMINOLOGY 1451, 1455 (2006) (stating that the goal of "direct file" provisions is to "deter future juvenile crime, whether specifically through harsher sanctioning of the transferred juvenile or more generally through the threat of increased punishment to other potential youth offenders").

132. HOWARD N. SNYDER & MELISSA SICKMUND, NAT'L CTR. FOR JUVENILE JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 96 (2006), *available at* http://www.ojjdp.gov/ojstatbb/nr2006/downloads/NR2006.pdf.

133. *Id.* at 103.

134. *Id.*

youngest age for juvenile court jurisdiction is six years of age, while it is seven years in New York and ten in Texas.[135] Age of transfer varies among states and among different offenses within each jurisdiction.[136]

In Illinois, for example, discretionary transfer is available for any criminal offense committed by a child of thirteen years of age if the court finds "it is not in the best interests of the public" to proceed against the child as a juvenile.[137] Illinois law mandates that the greatest weight be given to the seriousness of the offense and the child's prior record of delinquency, not whether the child understood her actions or can be rehabilitated.[138] Depending on the crime, in Illinois, a child may be subject to mandatory transfer, presumptive transfer, or statutory exclusions requiring that she be tried as an adult.[139]

Florida, by comparison, allows for discretionary waiver at age fourteen, and requires that it be based on a consideration of numerous factors, including maturity of the child and likelihood of rehabilitation.[140] On the other hand, Florida provides more latitude for prosecutors to direct file in the criminal court.[141] There are many other examples from other states reflecting a variety of approaches.[142]

The issue presented is that although these provisions might be explained by other rationales (e.g., requiring that juveniles accused of capital crimes be tried as adults clearly reflects a societal desire to exact punishment on those who commit serious crimes), they make much less sense from a maturity perspective.

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135. *Id.*; *see* N.Y. JUD. CT. ACTS LAW §§ 301.2(1), 302.1 (McKinney 2008) (defining a juvenile delinquent as anyone over seven and less than sixteen years old, and providing family courts with jurisdiction to determine juvenile delinquent status); N.C. GEN. STAT. §§ 7B-1501(7), 1601 (2009) (defining *delinquent juvenile* as a child between the ages of six and sixteen, and granting juvenile courts jurisdiction over such individuals); TEX. FAM. CODE ANN. §§ 51.02(2)(A), 51.04 (West 2008) (defining *child* as anyone between the ages of ten and seventeen, and granting juvenile courts jurisdiction over anyone designated a *child*).

136. SNYDER & SICKMUND, *supra* note 132, at 103, 114.

137. 705 ILL. COMP. STAT. ANN. 405/5-805(3)(a) (LexisNexis 2003).

138. *Id.*

139. 705 ILL. COMP. STAT. ANN. 405/5-805 (LexisNexis 2003).

140. FLA. STAT. ANN. § 985.556(2), (4) (West 2008).

141. *See* FLA. STAT. ANN. § 985.557(1)(a) (West 2008) (granting prosecutors relatively wide discretion to directly file for adult criminal sanctions).

142. *See, e.g.*, IDAHO CODE ANN. § 20-508(8) (2004) (giving the court a number of factors to consider when making a determination of discretionary waiver); MISS. CODE ANN. § 43-21-157(1) (West 2008) ("[T]he youth court . . . may, in its discretion, transfer jurisdiction of the alleged offense described in the petition or a lesser included offense to the criminal court which would have trial jurisdiction of such offense if committed by an adult.").

In many criminal codes, the severity of punishment is tied to the extent of harm that results from the perpetrator's actions.[143] This means that the identical act could result in different punishments if it produces different outcomes. Though understandable in certain respects, from a maturity perspective, it means we expect that somehow children will appreciate this nuance, even though research demonstrates that children do not have the capacity to understand the consequences of their actions in the same way that adults do.[144] If, as expressed in these various criminal codes, we believe that a child is not developmentally mature enough to comprehend the implications of a misdemeanor, what leads us to believe the child will understand the ramifications of a more serious crime, especially when the child's actions are identical in both instances?[145]

Children need to learn the rules of the society in which they live. They need to be disciplined when they violate the rights of others. In this context, however, important questions must be asked about children's maturity level and capacity. Is the seven-year-old New Yorker really different from the nine-year-old Texan child? The former is subject to juvenile court jurisdiction, whereas the latter is not. More important, when juxtaposed against other maturity indicators, the evidence shows that we have moved in the direction of imposing accountability at a much younger age (e.g., with children being transferred to adult courts at age

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143. *See, e.g.*, Paul H. Robinson et al., *The Modern Irrationalities of American Criminal Codes: An Empirical Study of Offense Grading*, 100 J. CRIM. L. & CRIMINOLOGY 709, 727 (2010) (noting that under Pennsylvania law, causing bodily injury is a second-degree misdemeanor, while causing serious bodily injury is a first-degree felony); Richard S. Murphy, Comment, *The Significance of Victim Harm:* Booth v. Maryland *and the Philosophy of Punishment in the Supreme Court*, 55 U. CHI. L. REV. 1303, 1327 (1988) (discussing the difference in punishment for running a red light and killing a pedestrian by running a red light).

144. *See* Hillary B. Farber, *Do You Swear to Tell the Truth, the Whole Truth, and Nothing but the Truth* Against *Your Child?*, 43 LOY. L.A. L. REV. 551, 591 (2010) ("Neuroscience and behavioral science suggest that children are not capable of *meaningfully* assessing and appreciating the consequences of their decisions. . . . There is important legal precedent for the proposition that children's cognitive and psychosocial maturity mitigate their criminal culpability.").

145. Consider that in West Virginia, a fourteen-year-old who sets fire to a vacant shed will be tried as a juvenile, but that same child setting fire to that same shed must be tried as an adult if the shed was used in connection with a dwelling, even if it is an unoccupied "dwelling," as defined by statute and case law. *See* W. VA. CODE ANN. § 49-5-10(d)(1) (LexisNexis 2009) (requiring mandatory transfer to criminal jurisdiction for juvenile defendants at least fourteen years old when there is probable cause to believe they committed first-degree arson); W. VA. CODE ANN. §§ 61-3-1 to -2 (LexisNexis 2009) (distinguishing first- from second-degree arson based on whether a structure is defined as or used in connection with a dwelling); State v. Mullins, 383 S.E.2d 47, 52 n.3 (W. Va. 1989) (emphasizing that a structure need not be occupied to be considered a dwelling for purposes of first-degree arson).

thirteen in some instances) and insisting that children are mature enough to suffer sometimes life-long consequences (with advocates of such stances arguing for "adult time for adult crime"),[146] while providing no parallel opportunity for youth to earn any corresponding rights granted to mature individuals.[147]

2. Jury Duty. The dichotomous approach to children's maturity is evident when both sides of accountability are considered. Though the law imposes responsibility and accountability on youth in their early teens, it denies them the corresponding duty or right to hold others accountable.[148] In forty-six states and the District of Columbia, individuals must reach eighteen years of age before they are eligible for jury service.[149] In Alabama and Nebraska, individuals must turn nineteen years old before being eligible,[150] and in Mississippi and Missouri, individuals must be twenty-one years old.[151] Consider

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146. *See* 705 ILL. COMP. STAT. ANN. 405/5-805(3) (LexisNexis 2003) (allowing thirteen-year-olds to be transferred into the criminal justice system by a court order). *See generally* CHARLES D. STIMSON & ANDREW M. GROSSMAN, THE HERITAGE FOUND., ADULT TIME FOR ADULT CRIMES: LIFE WITHOUT PAROLE FOR JUVENILE KILLERS AND VIOLENT TEENS 12 (2009), *available at* http://s3.amazonaws.com/thf_media/2009/pdf/sr0065.pdf (arguing for sentences of life without parole for violent juvenile offenders); David L. Myers, *Adult Crime, Adult Time: Punishing Violent Youth in the Adult Criminal Justice System*, 1 YOUTH VIOLENCE & JUV. JUST. 173, 174–76 (2003) (discussing the move to try juveniles in adult criminal court). The United States and Israel are the only countries in the world that still impose a sentence of life in prison without possibility of parole for a homicide committed as a juvenile. *See* Graham v. Florida, 130 S. Ct. 2011, 2033–34 (2010) (noting that of the eleven countries that authorize life without parole for juvenile offenders, only Israel and the United States actually impose it, and until this case, the United States was the only country to do so for nonhomicide offenses (citing Connie de la Vega & Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. REV. 983, 989 & n.18, 1002 (2008))). In 2010, the U.S. Supreme Court halted the practice of sentencing juveniles to life without parole for nonhomicide offenses. *Graham*, 130 S. Ct. at 2033 (holding that life sentences for juvenile defendants convicted of nonhomicide offenses violate the Eighth Amendment).

147. *See* Brief of Juvenile Law Center et al. as Amici Curiae in Support of Respondent at 5–6, Roper v. Simmons, 543 U.S. 551 (2005) (No. 03-633) (including a list of activities for which law restricts youth rights, ranging from voting and abortion, to purchase of alcohol and cigarettes, to body piercing and tattoos); Appell, *supra* note 4, at 713 ("Although the United States provides very basic floors of education, child protection, and temporary aid to needy families, it is not deeply engaged with the question of what children might need, as children, to have autonomy (i.e., 'actual choices') as adults.").

148. *See* Myers, *supra* note 146, at 174 (discussing the move to try juveniles in adult criminal court). *But see Roper*, 543 U.S. app. C at 583–85 (showing that nearly all states require individuals to be at least eighteen years of age before they can serve as a juror).

149. *See Roper*, 543 U.S. app. C at 583–85 (providing details on minimum age for jury service in all states and Washington, D.C., except Oregon and Pennsylvania); *see also* OR. REV. STAT. § 10.030(2)(c) (2009); 42 PA. CONS. STAT. ANN. § 4502 (West 2004).

150. ALA. CODE § 12-16-60(a)(1) (LexisNexis 2005); NEB. REV. STAT. § 25-1601(1) (2008).

151. MISS. CODE ANN. § 13-5-1 (West 1999); MO. ANN. STAT. § 494.425(1) (West 1996).

the message sent to adolescents when they learn that they might be tried as an adult years before they are allowed to voice whether the identical act is wrong when committed by another person.[152]

An examination of the responsibility/accountability component of maturity reveals two primary findings. First, although there is relative consistency in the treatment of jury service (with only four exceptions), there is significant inconsistency in jurisdictions' handling of children's maturity to be held accountable for violations of the law. Second, there is inconsistency in the law's treatment of the two sides of accountability—that is, a young person can be deemed mature enough to be equivalent to an adult for purposes of criminal liability but still be considered a child for purposes of judging others. In other words, a fourteen-year-old girl might be viewed as mature enough to "know better" and thus be tried as an adult for certain crimes, but then considered not mature enough to be able to opine on the actions of another person who commits the same crime.[153] That message to children is a rather muddled one. Such a bifurcated approach simultaneously infantilizes children who know better, while harshly punishing other children who might not. It is these

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152. *See* JUVENILE JUSTICE PROJECT, UCLA SCH. OF LAW, THE IMPACT OF PROSECUTING YOUTH IN THE ADULT CRIMINAL JUSTICE SYSTEM: A REVIEW OF THE LITERATURE 30 (2010), *available at* http://www.campaignforyouthjustice.org/documents/UCLA-Literature-Review.pdf ("The overwhelming weight of current research indicates that transfer has no deterrent effect on juveniles prosecuted under transfer laws or the general juvenile population."); David E. Arredondo, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14 STAN. L. & POL'Y REV. 13, 13 (2003) ("Simply put, there is the very real risk that the system can do more harm than good to a child who is still in the process of neurobiological, psychological, social, and moral development. Because of this, the negative consequences of careless sanctioning may be more enduring for a child (and for society) than they might be for an adult."); Sandra Graham & Colleen Halliday, *The Social Cognitive (Attributional) Perspective on Culpability in Adolescent Offenders*, *in* YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE, *supra* note 14, at 345, 354 (reporting that youth who perceive the system as unfair are "more likely to express the intention to commit crimes again and to actually engage in more criminal behavior"); Jeffrey M. Jenson & Matthew O. Howard, *Youth Crime, Public Policy, and Practice in the Juvenile Justice System: Recent Trends and Needed Reforms*, 43 SOC. WORK 324, 330–31 (1998) (suggesting that juvenile crime rates are not reduced by a public policy focused on punishment).

153. For example, in California, minors who are at least fourteen and accused of any felony in which the minor personally used a firearm are presumed not to be a proper subject for juvenile court, but minors under eighteen are not allowed to serve on a jury. CAL. WELF. & INST. CODE § 707 (West Supp. 2008); CAL. CIV. PROC. CODE § 203(a)(2) (West 2006); *see* Tate v. State, 864 So. 2d 44, 46, 54 (Fla. Dist. Ct. App. 2003) (holding that a life sentence without the possibility of parole on a twelve-year-old child convicted of first-degree murder is not cruel and unusual punishment).

types of inconsistencies that come to the forefront when one examines society's treatment of its children with a view to understanding law's construction of maturity.

D. Bodily Integrity

The right to do with our bodies as we choose is one of the most closely held individual rights of adults.[154] It is different for children, as Jennifer Rosato explains, because "[t]he child's right of bodily integrity is essentially an inchoate right until the age of majority, when the right to self-determination is legally recognized."[155] In this section, I examine the law's treatment of the right to consensual sex as a proxy for bodily integrity rights.[156]

Historically, U.S. jurisprudence on a minor's right to bodily integrity has reflected a gendered-protectionist approach.[157] The early aims of protecting "chaste young women" both ignored harm suffered by those who did not fit the description of the quintessential victim and served to constrain women's sexual freedom, reinforcing a "double standard of sexual morality."[158] Modern reforms of the statutory rape framework have sought to correct such outdated and discriminatory policies by both repealing the promiscuity defense in all jurisdictions[159] and amending statutory language in states' criminal codes to reflect gender-neutrality.[160]

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154. B. Jessie Hill, *The Constitutional Right to Make Medical Treatment Decisions: A Tale of Two Doctrines*, 86 TEX. L. REV. 277, 304 (2007).

155. Jennifer L. Rosato, *The Ultimate Test of Autonomy: Should Minors Have a Right to Make Decisions Regarding Life-Sustaining Treatment?*, 49 RUTGERS L. REV. 1, 12 (1996).

156. As with other maturity indicators, there are other proxies for bodily integrity rights, ranging from medical decision-making authority and abortion rights to the right to drink alcohol or smoke tobacco. Given the highly politicized nature of the abortion debate and the individualized determinations made in medical cases through the mature-minor doctrine, I have not included them as proxies.

157. *See* Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387, 401–02 (1984) ("On one hand, [the laws] protect females; like laws against rape, incest, child molestation, and child marriage, statutory rape laws are a statement of social disapproval of certain forms of exploitation. . . . On the other hand, statutory rape laws restrict the sexual activity of young women and reinforce the double standard of sexual morality.").

158. *Id.* at 402; SHARON G. ELSTEIN & NOY DAVIS, AM. BAR ASS'N, SEXUAL RELATIONSHIPS BETWEEN ADULT MALES AND YOUNG TEEN GIRLS: EXPLORING THE LEGAL AND SOCIAL RESPONSES 15 (1997) (internal quotation marks omitted), *available at* new.abanet.org/child/PublicDocuments/statutory_rape.pdf.

159. Sutherland, *supra* note 11, at 317–18.

160. *See* Jennifer Ann Drobac, *Sex and the Workplace: "Consenting" Adolescents and a Conflict of Laws*, 79 WASH. L. REV. 471, 484–85 (2004) (noting that the statutory rape laws protect both sexes in all fifty states). *But see* Michael M. v. Superior Court of Sonoma

Although Congress has enacted a federal statutory rape statute,[161] state law remains the primary source of criminalizing the act.[162] All states have established a minimum age at which a minor may consent to sex, with the range from sixteen to eighteen years old and the most common age being sixteen.[163] Although the initial purpose of the age-of-consent restrictions was to protect young females from older men, the modern use of these statutes often results in criminal prosecutions of teenagers who engage in consensual sex.[164]

Today, states follow one of two paradigms with regard to how they define statutory rape. A few states still rely only on the age of consent, making it a crime for anyone to engage in sexual activities with a minor below that age, regardless of the defendant's age in relation to the minor victim.[165] Under this paradigm, when peers engage in consensual sex, the older partner can be convicted under statutory rape laws and subject to the requirement that he or she registers as a sex offender.[166]

Cnty., 450 U.S. 464, 466–67, 470 (1981) (upholding a gender-specific statutory rape law against equal protection challenge by recognizing that states have a compelling state interest in protecting young women and preventing teenage pregnancy).

161. 18 U.S.C. § 2243(a) (2006) ("Whoever . . . knowingly engages in a sexual act with another person who—(1) has attained the age of 12 years but has not attained the age of 16 years; and (2) is at least four years younger than the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.").

162. ASAPH GLOSSER, KAREN GARDINER & MIKE FISHMAN, DEP'T OF HEALTH & HUMAN SERVS., STATUTORY RAPE: A GUIDE TO STATE LAWS AND REPORTING REQUIREMENTS ES-1 (2004), *available at* http://aspe.hhs.gov/hsp/08/SR/StateLaws/report.pdf.

163. GLOSSER, GARDINER & FISHMAN, *supra* note 162, at 5–7 & tbl.1; *see also* Steve James, Comment, *Romeo and Juliet Were Sex Offenders: An Analysis of the Age of Consent and a Call for Reform*, 78 UMKC L. REV. 241, 254 (2009). "Depending on the state, defendants may be exempt from prosecution [for sexual activity with a minor] if they are married to the victim." GLOSSER, GARDINER & FISHMAN, *supra* note 162, at 10.

164. *See, e.g.*, Olsen, *supra* note 157, at 414 (suggesting that statutory rape laws were meant to enable young women to protect themselves from "male sexual aggression"); Brenda Goodman, *Man Convicted as Teenager in Sex Case Is Ordered Freed by Georgia Court*, N.Y. TIMES, Oct. 27, 2007, at A9 (describing the Genarlow Wilson case, in which a teenage boy was sentenced to ten years in prison for consensual oral sex with his girlfriend; his case received significant media attention and public pressure, and he was released after serving two years). The Georgia Supreme Court called Wilson's sentence "grossly disproportionate" to the crime, which did "not rise to the level of culpability of adults who prey on children." Humphrey v. Wilson, 652 S.E.2d 501, 509 (Ga. 2007).

165. *See* GLOSSER, GARDINER & FISHMAN, *supra* note 162, at 7–8 (noting that only twelve states still rely solely on a concrete age of consent and that in twenty-seven states the age differential between the victim and perpetrator factors into a determination of the sexual act's legality).

166. *See* Emily J. Stine, Comment, *When Yes Means No, Legally: An Eighth Amendment Challenge to Classifying Consenting Teenagers as Sex Offenders*, 60 DEPAUL L. REV. 1169, 1192–95 (2011) (discussing instances in which teenagers in consensual relationships have been charged with sexual offenses and forced to register as sex offenders and arguing that such a result constitutes cruel and unusual punishment).

For example, in Massachusetts the age of consent is sixteen years old.[167] If a sixteen-year-old male were to have sex with his girlfriend, who at the time is fifteen years and eleven months old, he could be subject to prosecution.

The majority of states have moved to a graduated approach, basing their statutory rape laws on the age of the victim, the age of the defendant, and the age difference between the two.[168] For example, in North Carolina, the age of consent is sixteen.[169] However, it would not constitute statutory rape if a sixteen- or seventeen-year-old boy engaged in sexual intercourse with his fifteen-year-old girlfriend, as an exception exists when the victim is thirteen to fifteen years old, and there is less than four years age difference between the two persons.[170]

Despite each state's criminal code reflecting a policy of criminalizing sexual conduct with minors, these age-of-consent laws are selectively enforced. Survey research showed that in 2009, forty-six percent of high school students had engaged in sexual intercourse at least once.[171] Yet states are neither willing nor able to prosecute all of those cases that fall within the scope of statutory rape laws.[172] In reality, many of the cases that are prosecuted are those that are brought to the authorities' attention by the younger teenager's parents, suggesting that a minor's choice to engage in sexual activity is monitored less by the law and more by parental surveillance.[173]

Though we certainly want to protect children from violations of their bodily integrity, inconsistencies within this area of law and as compared to other indicators raise questions from a maturity perspective. For example, as noted above, in North Carolina a thirteen-year-old cannot consent to sex under the law,

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167. MASS. GEN. LAWS ANN. ch. 265, § 23 (West 2008).

168. GLOSSER, GARDINER & FISHMAN, *supra* note 162, at 6–8 & tbl.1.

169. N.C. GEN. STAT. § 14-27.7A (2009); GLOSSER, GARDINER & FISHMAN, *supra* note 162, at 88.

170. N.C. GEN. STAT. § 14-27.7A (2009).

171. Danice K. Eaton et al., Ctrs. for Disease Control & Prevention, *Youth Risk Behavior Surveillance—United States, 2009*, MORBIDITY & MORTALITY WKLY. REP., June 4, 2010, at 20, 98 tbl.61, *available at* http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf.

172. *See* ELSTEIN & DAVIS, *supra* note 158, at 21–23 (discussing the difficulties in bringing statutory rape cases and noting that only about half of prosecutors surveyed say that they "always" or "almost always" file charges in statutory rape cases).

173. *See id.* at 26 ("Close to two-thirds of the reports to police are coming from the teens' parents."); Sutherland, *supra* note 11, at 333 ("For the most part, teenagers can engage in sexual activity without fear of prosecution under age of consent laws or of sanctions for status offenses so long as their parents approve or at least overlook such activity."). But see *supra* note 12 and accompanying text on the issue of teenagers below the age of consent being prosecuted for prostitution when pimped.

unless her partner is less than four years older. This restriction makes sense from a child protection standpoint, but we must also ask how it comports with adolescent capacity and maturity. To the thirteen-year-old, whether her boyfriend is sixteen years and ten months old or seventeen years old probably changes little if anything, but the law says the difference is significant and her boyfriend could face charges (query whether her teenage boyfriend has any better appreciation of the distinction).[174] Some line-drawing must occur in the law, and statutory rape laws provide important protections for young children. The suggestion here is that maturity considerations need to be factored into any review of these laws, whether that results in reconsidering where the lines are drawn, what adults must do to educate children about the law, or other responses. Comparing the law on this issue to other areas of law further complicates the law's construction of maturity, as the thirteen-year-old girl is deemed old enough to work on a large farm, where she might be exposed to significant harms from pesticides and the dangers of large machinery, but she cannot engage in certain acts with her boyfriend even if it appears to be a loving, supportive relationship. A few years later, she is now deemed mature enough under the law to make deeply personal and important decisions about bodily integrity (and possibly with her boyfriend create a child), but is supposedly too immature to choose between a Democrat or Republican. These examples are not intended to suggest that the age of consent should be lowered, but rather that, from a maturity perspective, the law has constructed a very inconsistent picture of when a child is mature and that these inconsistencies prompt questions that merit greater attention.

E. Family Rights

The right to have a family is a foundational right of human beings.[175] Family is a central element of the human experience.

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174. Although these laws are clearly intended to keep the older individual from preying on young children, research shows that many children in their early teens are sexually active, and yet the law insists that they do not have the capacity to be sexually active. *See* Eaton et al., *supra* note 171, at 20 (finding that 46.0% of surveyed high school students and 5.9% of surveyed students under age thirteen had engaged in sexual intercourse). Many of us might say that whether the boyfriend was sixteen- or seventeen-years-old is irrelevant, as thirteen is too young. That broader question and debate, while relevant to a maturity discourse, is beyond the scope of this Article.

175. *See* Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 16(1), U.N. Doc. A/RES/217(III) (Dec. 10, 1948) ("Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.").

Although conceptions of the family are evolving, marriage remains a key component of family life for the majority of the population.[176] This section looks at the right to marry as a proxy for the law's expression of maturity in the context of family.[177]

At common law, the age of consent for marriage was fourteen for males and twelve for females.[178] Today, the great majority of states allow an individual to marry only after he or she reaches the age of majority (typically eighteen years of age, except in Nebraska, where it is nineteen, and Mississippi, where it is twenty-one).[179] Almost all states provide exceptions that allow younger individuals to marry with parental consent, a court order, or both.[180] From a maturity discourse viewpoint, the different types of exceptions create significant differences. In states that require parental consent or both parental consent and a court order, an adolescent is still viewed as not mature enough to make the decision on his or her own.[181] Therefore, from a maturity perspective, those exceptions do not change the rights

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176. Indeed, the current fight to extend marriage rights to gay couples, and the vocal opposition, is evidence that marriage is viewed as a core family right. *See, e.g.*, Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 992 (N.D. Cal. 2010) (showing that both parties in the gay-marriage dispute recognize the right to marry as a fundamental right). Other rights, such as the right to have children, are also fundamental. P.O.P.S. v. Gardner, 998 F.2d 764, 767 (9th Cir. 1993) ("The rights to marry, have children, and maintain a relationship with one's children are fundamental rights protected by the Fourteenth Amendment's Due Process Clause.").

177. Though current dialogues on who or what can constitute a family and who has the right to marry are important, they are beyond the scope of this Article. As mentioned in note 176, other rights, such as the right to have children, are core family rights. This section focuses on marriage as a proxy, rather than the right to have children, because the law's policing of the latter is primarily done indirectly through laws on age of consent or marriage.

178. 55 C.J.S. *Marriage* § 14, at 688 (2009).

179. *Teen Marriage Laws*, U.S. MARRIAGE LAWS, http://www.usmarriagelaws.com/search/united_states/teen_marriage_laws/index.shtml (last visited Jan. 27, 2012); NEB. REV. STAT. § 43-2101 (Supp. 2010); MISS. CODE ANN. § 93-1-5(a) (West 2007).

180. For example, Alaska allows minors between the ages of fourteen and eighteen to receive a marriage license upon court order absent parental consent, but only if the parents are "(A) arbitrarily and capriciously withholding consent; (B) absent or otherwise unaccountable; (C) in disagreement among themselves on the question; or (D) unfit to decide the matter." ALASKA STAT. § 25.05.171(b)(2) (2010); *see also* DEL. CODE ANN. tit. 13, § 123(b) (1999) (allowing minors to marry with a court order, absent parental consent, though parental consent is a factor in the court's determination). In Georgia, a minor at least sixteen years old may marry upon obtaining parental consent. GA. CODE ANN. §§ 19-3-2, 19-3-37 (2010). Hawaii requires both parental consent and a court order if a minor under the age of eighteen wishes to be married. HAW. REV. STAT. ANN. §§ 572-1(2), 572-2 (LexisNexis 2005).

181. *See* Moe v. Dinkins, 533 F. Supp. 623, 629 (S.D.N.Y. 1981) ("The requirement of parental consent ensures that at least one mature person will participate in the decision of a minor to marry." (citing Bellotti v. Baird, 443 U.S. 622, 635–36 (1979))), *aff'd*, 669 F.2d 67 (2d Cir. 1982).

or autonomy afforded to adolescents in a meaningful way. States in which a young person can obtain a court order but does not need parental consent come closer to allowing for independent choice regarding the decision whether to start a family, albeit a choice that must be confirmed by a judge.[182]

In a few states, such as Maryland and North Carolina, exceptions are made if the minor is expecting or has given birth to a child.[183] In terms of maturity discourse, when a state permits such exceptions, the message to children is that a young girl under the age of eighteen is not mature enough to enter into marriage, but if she becomes pregnant at fifteen, she is.[184] Is this the message we want to send? Although other reasons almost certainly underlie such exceptions—e.g., state interests in minimizing the number of children born out of wedlock or in encouraging prospective parents to marry and assume full responsibility for their offspring[185]—the result creates a real disconnect that a maturity analysis brings to the fore. Is a fifteen-year-old who is pregnant "more mature" than a seventeen-year-old who is not? One cannot dismiss outright that such laws are statements about maturity, as courts have read such age minimums for marriage as precisely that. As one district court opined, in rejecting a constitutional challenge to a statute prohibiting fourteen- to eighteen-year-olds from marrying, "The State interests in mature decision-making and in preventing unstable marriages are legitimate under its *parens patriae* power."[186] When examined

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182. *See, e.g.*, DEL. CODE ANN. tit. 13, § 123 (1999) (stating that a judge must consent to the marriage of a minor).

183. MD. CODE ANN., FAM. LAW § 2-301(a)(2), (b)(2) (LexisNexis Supp. 2010); N.C. GEN. STAT. § 51-2.1(a) (2009); *see also* Anne Bodnar, Recent Development, *House Bill 388: Family Law—Marriage of Certain Minors*, 29 U. BALT. L.F. 89, 89 (1999) ("By establishing this bright line rule requiring that a minor must be at least fifteen years old to enter into marriage, regardless of the circumstances, Maryland has recognized that minors below a certain age are incapable of making an informed decision about marriage. This law clarifies a henceforth murky area of family law and protects the interests of minors who are too young to resolve such an issue on their own.").

184. *See* Neil Mulcahy, Recent Development, *H.B. 847*, *Domestic Relations*, 23 GA. ST. U. L. REV. 79, 85–86 (2006) (quoting Georgia Representative Jay Neal as recognizing that the pregnancy exception might encourage children to get pregnant but stating, "[b]eing pregnant doesn't change the mental maturity for that teenager" (citation omitted) (internal quotation marks omitted)).

185. *See id*. at 81–82 (recognizing that Georgia's law allowing an exception to parental consent for minors to marry was based on the societal view that the man should marry the woman he impregnates). Georgia Representative Randal Mangham has implied that the exception for pregnant girls limits the number of children born out of wedlock. *Id.* at 87–88.

186. *Moe*, 533 F. Supp. at 629; *see also* People v. Benu, 385 N.Y.S.2d 222, 225 (N.Y. Crim. Ct. 1976) ("The public policy of this state is to discourage early marriage, or, at best, to demand that the parents of certain underage children consent to their assuming

from a maturity perspective, the law on family rights not only creates puzzling outcomes, it is inconsistent with legal conceptions of maturity in other areas of the law.

F. Piecing the Law Together

In going beyond the single criteria of age of majority or emancipation statutes and examining what the law says across five key maturity indicators, important themes emerge.

First, there are significant inconsistencies across the various maturity indicators, most notably between that which imposes duties on children (e.g., accountability) and that which offers rights (e.g., political participation, independent economic power). Duties frequently are triggered before rights are granted. Thus, a thirteen-year-old might be deemed an "adult" because of a criminal violation but still have to wait five years before being allowed to vote for the individuals who will speak for her in government.

Second, there are significant internal inconsistencies with respect to several of the maturity indicators. For example, independent economic power rights are granted at different ages to those who seek to exercise their rights in agricultural versus nonagricultural settings. In the criminal justice system, one can be held accountable as an adult years before he or she has a say in judging the same acts when committed by others. Moreover, on all issues (other than political participation), there are significant differences across jurisdictions within the United States.

At a minimum, these inconsistencies within and across maturity indicators should prompt an examination of, and dialogue on, the manner in which the law treats children. What is the impact on children when society imposes duties without granting any rights? What message does it send to children when society deems them old enough to be held accountable as an adult, but too immature to have a voice in judging others who commit the very same violations? By undertaking a comprehensive examination of how the law constructs maturity, we can understand better the impact of the law's inconsistencies on children and create an opportunity to ensure the integrity of law affecting children.

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the responsibilities of matrimony. For, despite reduction of voting age to eighteen and the early physical maturity of today's younger generation, there can be little doubt that children of thirteen lack the emotional maturity recognized as a critical factor in a successful marriage.").

III. CULTURAL CONCEPTIONS OF MATURITY

As Part I unveils, the law has taken a piecemeal and disjointed approach to maturity, producing inconsistencies across and within issues. A maturity analysis brings to the forefront important questions about our treatment of adolescents. In recent years, policymakers have started to pay greater attention to child development research and brain research, and these fields provide important guidance.[187] In this Part, I examine whether cultural constructs of maturity can bring clarity to the law's characterization of maturity. I suggest that, though cultural conceptions of maturity have been largely missing from the discourse on maturity under law, they are important and can inform law and policy on this issue.

Maturity is a cultured concept.[188] Though recent brain research has proffered better evidence as to when a brain is fully developed, that is not the equivalent of maturity.[189] As Deborah Post explains, "Maturity, a normative concept, not a measure of human development, changes with time, place and position."[190] Indeed, even the selection of the maturity indicators examined in this Article reflects a particular cultural conception of maturity. One of the common threads among the five indicators is the idea of autonomy. The selected criteria reflect prevailing conceptions of maturity across numerous cultures, and are consistent with results from a number of surveys examining what individuals think is representative of maturity.[191] Still, it bears noting that,

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187. *See, e.g.*, Graham v. Florida, 130 S. Ct. 2011, 2026–27 (2010) (citing recent psychological research to show "fundamental differences between juvenile and adult minds"); Roper v. Simmons, 543 U.S. 551, 569–71 (2005) (relying on developmental psychology research in reasoning that executing someone who committed a crime while a juvenile is a violation of the Eighth Amendment); Snetsinger v. Mont. Univ. Sys., 104 P.3d 445, 452, 454–55 (Mont. 2004) (citing psychological research to show that children of gay and lesbian parents develop no differently than those of straight parents to support its holding that denying health insurance to same-sex partners was unconstitutional); Cooper v. Cooper, 491 A.2d 606, 620–22 (N.J. 1984) (relying on psychological research to assist in determining the best interest of a child in a divorce), *abrogated on other grounds by* Baures v. Lewis, 770 A.2d 214, 222 (N.J. 2001); JOHN CONYERS, YOUTH PROMISE ACT, H.R. REP. NO. 111-688, pt. 1, at 24 (2010) (relying on child development research to argue for community-based juvenile violence intervention (citing ANNIE E. CASEY FOUND., A ROAD MAP FOR JUVENILE JUSTICE REFORM (2008), *available at* http://www.aecf.org/~/media/PublicationFiles/AEC180essay_booklet_MECH.pdf)); H.R. REP. NO. 111-232, at 82–85 (2009) (citing research on early childhood brain development to justify the Early Learning Challenge Fund).

188. *See supra* note 25 and accompanying text.

189. Johnson, Blum & Giedd, *supra* note 16, at 216.

190. Post, *supra* note 25, at 482. Post further explains, "In the United States, middle class and upper middle class people have extended the age of dependency (and thus immaturity) well into the twenties." *Id.*

191. Arnett & Galambos, *supra* note 25, at 92–93 (reporting that across numerous cultures, "the most widely supported criteria for adulthood were those that reflected values of independence and individualism").

at least in some respects, the strong emphasis on individual autonomy is particular to the Western liberal democratic ideal, or at least its emphasis is heightened in many Western cultures.[192] Scholars have noted that in other parts of the world, the ideal of the autonomous individual is less sought after by adolescents in certain cultures and communities where youth readily accept, for example, their parents' arranging their marriages, or where the culture emphasizes communitarian values over individualism.[193] Nonetheless, research supports the notion that the indicators relied upon in Part I as markers of maturity are among the most important indicators of maturity in the United States (which is the focus of this Article), as well as in many other countries. Moreover, they evidence when individuals in a particular society have a particular right or duty, regardless of whether individuals choose to exercise that right themselves or delegate their rights to another to make the choice on their behalf.

This Part discusses select cultural articulations of when youth arrive at maturity and highlights several common themes that emerge from an examination of cultural conceptions of coming of age and maturity. Where one finds "culture" and what serves as representative of culture is itself a large topic. A breadth of possible indicators exist. One might look to cultural norms articulated in formal religious or cultural texts (e.g., religious/cultural rituals), artistic representations (e.g., how maturity is represented in film or literature), or prevailing practices in a community (e.g., what youth today actually do).[194] Any review of cultural perspectives is necessarily limited in scope. To explore cultural conceptions of maturity, even only

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192. *See id.* at 91–92 (detailing differences in conceptions of maturity as expressed by white middle class Americans versus Asian Americans, with the former focused more on self-sufficiency and autonomy, while the latter tended to point to criteria reflecting interdependence).

193. *E.g.*, B. Bradford Brown & Reed W. Larson, *The Kaleidoscope of Adolescence: Experiences of the World's Youth at the Beginning of the 21st Century*, *in* THE WORLD'S YOUTH: ADOLESCENCE IN EIGHT REGIONS OF THE GLOBE, *supra* note 16, at 1, 2; *see also* A. Joan Metge, *Marriage in Modern Maori Society*, 57 MAN 166, 166–67 (1957) (noting that the traditional Maori marriage required unanimous consent of extended family).

194. For example, does the reality that nearly half of U.S. high schoolers report being sexually active in the past year reflect a cultural norm, in spite of what adults might wish? *See* Eaton et al., *supra* note 171, at 20. Similarly, corporate America has fully recognized the buying power and influence of children, regardless of whether laws or adult family members do. *See* JULIET B. SCHOR, BORN TO BUY: THE COMMERCIALIZED CHILD AND THE NEW CONSUMER CULTURE 19–22 (2004) (reporting that marketing firms and companies fully recognize children's consumer capacities and aggressively target them). Does the fact that children today shop much more and play less reflect an emerging cultural norm? *See id.* at 29–33 & tbl.1 (reporting on a 1997 study showing that children play less and shop more than their 1981 counterparts).

within the United States, would require looking at hundreds, if not thousands, of different cultures and traditions, and various types of expressions of those cultural beliefs and traditions.[195] This project represents an initial attempt to bring culture into the dialogue on the law on maturity and child development. It focuses initially on cultural conceptions of maturity as expressed in select religious and cultural traditions, concentrating particularly on how each marks the process and moment of coming of age. Many have been enshrined formally and thus, in certain respects, more closely resemble law than other cultural representations.

Therefore, as a starting point for a larger project on maturity, this Article focuses primarily on coming-of-age ceremonies as a proxy for culture-based maturity indicators. Before examining specific traditions, two important qualifying notes merit brief mention. First, whereas the law delineates clearly what rights or duties are obtained by reaching a certain age,[196] the literature on cultural and religious traditions is often less clear on this point. It frequently examines in depth the rituals associated with coming of age, but discusses in more general terms what specific rights or duties maturity grants to a child.[197] As a result, this Article draws on select traditions.[198] Second, many of these traditions are centuries old or more and thus do not reflect some of the principles that are commonly accepted today (e.g., gender equality).[199] In most instances, I have reported these practices as they are described in their respective traditions. While biases imbedded in various traditional practices merit attention, they are beyond the scope of this Article. The goal here is to examine how different cultures delineate the transition to maturity, and explore whether cultural conceptions can inform law on maturity.

Coming-of-age ceremonies are typically the most prominent, though not necessarily the exclusive, vehicle for a child's

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195. Arnett & Galambos, *supra* note 25, at 92–93.

196. Although the law does so subject to various exceptions and inconsistencies among the states, it nonetheless identifies the rights and duties triggered at various ages.

197. This is likely at least in part a result of the different focus disciplines such as anthropology and sociology have as compared to law. Thus, some research into coming-of-age ceremonies conducted by anthropologists or sociologists might not be focused on what rights are granted upon completion of a coming-of-age ceremony.

198. The omission of any particular tradition is not a suggestion that it doesn't offer anything to this discourse or that it is less important than those traditions mentioned.

199. *See* VENDELA VIDA, GIRLS ON THE VERGE: DEBUTANTE DIPS, DRIVE-BYS, AND OTHER INITIATIONS, at xiii–xiv (1999) (noting how girls had far fewer options in terms of initiation rituals and how traditional models only prepared girls for the roles of wife, mother, and homemaker).

transition to adulthood.[200] These rituals also parallel most closely the formal, bright-line approach of the law.[201] Equally important, coming-of-age ceremonies are not merely symbolic, but have significant meaning in the lives of the child and the community.[202] In Judaism, at thirteen and a day, for the first time, a boy is now "no longer prohibited and is also obligated—both are needed—to perform certain religious acts that adult males are required to do."[203] As Marcus explains, "In rabbinic times, bar mitzvah means 'being obligated,' . . . . It was a synonym for *bar 'oneshin*, meaning 'culpable or responsible for one's actions' as an adult Jewish male."[204] Indeed, prior to a boy turning age thirteen, in Judaism, a father was considered responsible for the actions of the child,[205] and the father's blessing when the son turns thirteen years old states that he is no longer responsible for the sins or misdeeds of his son.[206]

There are many other examples of coming-of-age ceremonies that signify, or historically have signified, an important transition in the life of an adolescent. Quinceañera, the Hispanic coming-of-age tradition for girls, celebrates a girl's transition to womanhood on her fifteenth birthday.[207] Kinaaldá, which is tied to puberty, marks girls' coming of age in Navajo communities.[208]

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200. *See, e.g.*, CHARLOTTE JOHNSON FRISBIE, KINAALDÁ: A STUDY OF THE NAVAHO GIRL'S PUBERTY CEREMONY 6–7 (1967) (discussing the public celebration of the onset of puberty in Indian tribe rituals in the United States and noting that the celebration of pubescence is implicit in debutante balls and religious confirmations); IVAN G. MARCUS, THE JEWISH LIFE CYCLE: RITES OF PASSAGE FROM BIBLICAL TO MODERN TIMES 122–23 (2004) (emphasizing the importance of the bar/bat mitzvah as a "finishing right for many Jewish adolescents").

201. *See, e.g.*, MARCUS, *supra* note 200, at 84, 87, 122–23 (noting that at the completion of his formal Jewish training, a boy of thirteen years and one day obtains the right to take on adult religious obligations following his bar mitzvah ceremony).

202. *See, e.g.*, FRISBIE, *supra* note 200, at 347–50 (noting that the Kinaaldá ceremony is an important part of the Navaho culture, "indispensible for both the girl and the community," and has both spiritual aspects as well as educational aspects (internal quotation marks omitted)).

203. MARCUS, *supra* note 200, at 84. Note that under Jewish law, twelve was the age of bat mitzvah for girls, though many Jewish communities celebrate both bar and bat mitzvahs at thirteen. *Id.* at 95, 114.

204. *Id.* at 87.

205. *Id.* at 92.

206. *Id.* at 93.

207. JULIA ALVAREZ, ONCE UPON A QUINCEAÑERA: COMING OF AGE IN THE USA 2 (2007); Karen Mary Davalos, *"*La Quinceañera*": Making Gender and Ethnic Identities*, 16 FRONTIERS 101, 110–16 (1996).

208. *See generally* FRISBIE, *supra* note 200 (providing a detailed description of the Kinaaldá and discussing its cultural and individual significance); Carol A. Markstrom & Alejandro Iborra, *Adolescent Identity Formation and Rites of Passage: The Navajo Kinaaldá Ceremony for Girls*, 13 J. RES. ON ADOLESCENCE 399, 404–10 (2003) (describing the Kinaaldá and discussing its impact on identity development). *See also* Louise Carus

Debutante balls in the American South traditionally marked a young girl's introduction to the community and her readiness for marriage.[209]

Although today many people might take the view that the age of bar or bat mitzvah or quinceañera is hardly an "adult" age, the norms and laws of particular cultural traditions frequently confer rights and duties parallel to that which the law confers at maturity. Jewish law provides that after bar mitzvah, a child is "of age to do any business," which might be analogous to having some independent economic power.[210] The child is now also of age to be counted as one in a *minyan* (traditionally a quorum of Jewish men required for certain religious purposes),[211] which in some respects is akin to participation in the polity—the right to be counted.[212] Latina girls who have had their quinceañera are permitted to attend certain events for adults and are deemed ready for marriage, a cultural parallel of sorts to legal capacity to marry.[213]

Across these and other communities, coming-of-age ceremonies are used to mark the transition to the status of mature member of the community and also indicate that the individual has new rights or duties. In this regard, they operate like legal benchmarks of maturity.

Overall, an examination of coming-of-age ceremonies and related cultural practices reveal several notable trends. As an

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Mahdi, *Preface* to CROSSROADS: THE QUEST FOR CONTEMPORARY RITES OF PASSAGE, at xiii, xv (Louise Carus Mahdi, Nancy Geyer Christopher & Michael Meade eds., 1996) ("[E]ach girl is given a sense of her own worth as a young woman and future mother of her tribe.").

209. VIDA, *supra* note 199, at xiii, 56–60. In fact, in some instances, newspaper coverage ensures that the entire community, not just those who attend a debutante ball, are aware of the 'debut' of these young girls. *See, e.g.*, Savannah Morning News, *Cotillion Club Announces Debutantes*, SAVANNAH NOW (May 10, 2008), http://savannahnow.com/savannah-morning-news/2008-05-10/cotillion-club-announces-debutantes ("Ten young ladies will be making their debut during the 2008 season. They will be presented at the Christmas Cotillion of the Cotillion Club on Dec. 19. The girls and their parents are: . . . [names listed].").

210. JOHN COOPER, THE CHILD IN JEWISH HISTORY 186 (1996). *But see* MARCUS, *supra* note 200, at 82 ("[T]wenty continued to be significant as the minimum age for buying and selling real estate . . . .").

211. MARCUS, *supra* note 200, at 97, 101. At the age of thirteen, a boy's word was valid in court. Deborah E. Lipstadt, *Bar/Bat Mitzvah*, *in* THE SECOND JEWISH CATALOG 61, 61 (Sharon Strassfeld & Michael Strassfeld eds., 1976).

212. MARCUS, *supra* note 200, at 101 (noting that following his bar mitzvah, a Jewish boy's enhanced status includes being counted as an adult male for purposes of a *minyan*, being bound by the law, and being of age to do business).

213. ALVAREZ, *supra* note 207, at 2; *see also* ISAAC KLEIN, A GUIDE TO JEWISH RELIGIOUS PRACTICE 392 (2d ed. 1992) (noting that in 1950, "the Chief Rabbinate of the State of Israel declared the minimum legal age for marriage to be sixteen").

initial matter, though there are important distinctions between legal and cultural conceptions, there is one central similarity: rituals "are cultural constructions designed to serve the perceived needs of the developing adolescent and her society and reflect current values and needs of the group."[214] Law arguably has similar aims.[215] Although cultural norms and law might have overlapping goals, they treat maturity differently in some important respects.

First, frequently, cultural norms dictate marking coming of age with a public ceremony.[216] In Judaism, the bar or bat mitzvah marks the transition to adulthood of the Jewish boy or girl.[217] Across many communities, the quinceañera ceremony serves as a transition for the Latina girl to adult woman status.[218] The Kinaaldá ceremony denotes the coming of age of Navajo girls.[219] In these and other coming-of-age ceremonies, the society or community signifies the transition from childhood to adulthood formally and publicly. This cultural transition contrasts with the law's approach in which a child reaches the age of maturity with little or no fanfare or ceremony (unless you count eighteen-year-old boys having to

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214. CAROL A. MARKSTROM, EMPOWERMENT OF NORTH AMERICAN INDIAN GIRLS: RITUAL EXPRESSIONS AT PUBERTY 343 (2008); *see also* SYLVIE LANGLAUDE, THE RIGHT OF THE CHILD TO RELIGIOUS FREEDOM IN INTERNATIONAL LAW 252–53 (2007) ("[I]t is not coercive or indoctrinating in itself to bring a child into a religious community . . . ."). Not all rituals serve children well; many, for example, reinforce notions of gender-based discrimination and disadvantage girls. *See, e.g.*, Maureen Mswela, *Female Genital Mutilation: Medico-Legal Issues*, 29 MED. & L. 523, 525–27 (2010) (discussing the health risks and rights violations associated with female genital mutilation). *But see* Chiu, *supra* note 26, at 1809, 1813 (criticizing U.S. law's prohibition on female genital surgeries as unfairly targeting minority cultures, when other surgical interventions on children—e.g., breast augmentation surgery—remain unchallenged). For additional information regarding the effect early indoctrination may have on a child, see generally Barbara Bennett Woodhouse, *Religion and Children's Rights*, *in* RELIGION AND HUMAN RIGHTS: AN INTRODUCTION 299, 300–05, 308–09 (John Witte, Jr. & M. Christian Green eds., 2012).

215. *See* G. EDWARD WHITE, JUSTICE OLIVER WENDELL HOLMES: LAW AND THE INNER SELF 180–81 (1993) (interpreting Justice Holmes's concept of the common law to necessarily "reflect current community premises and values").

216. *See, e.g.*, FRISBIE, *supra* note 200, at 6 (mentioning that coming-of-age ceremonies include debutante balls, religious confirmations, and the Kinaaldá puberty ritual); MARCUS, *supra* note 200, at 118–20 (describing the public celebration of the bar/bat mitzvah, representing the "Jewish child's last birthday party; he or she no longer is a child").

217. *See generally* MARK OPPENHEIMER, 13 AND A DAY: THE BAR AND BAT MITZVAH ACROSS AMERICA (2005) (detailing the evolution of the bar/bat mitzvah ceremony and celebrations in the United States).

218. ALVAREZ, *supra* note 207, at 2.

219. *See generally* FRISBIE, *supra* note 200, at 349 (noting the important educational aspect of the Kinaaldá ceremony is to aid the girl in assuming an adult role in the Navaho community); Markstrom & Iborra, *supra* note 208, at 407–10 (explaining that the Kinaaldá ceremony is identity-shaping for the young Navajo girl and is a "celebration of entry into womanhood").

report to their local post office to complete their selective service registration).[220]

Public acknowledgment or marking of coming of age serves several important functions. It has an expressive function, announcing to the community the transition of a young person into adulthood.[221] It serves a notice function, both to the community that the young person now has adult rights and responsibilities and to the adolescent that more is expected of him or her. It also stimulates community participation in the youth's transition to adulthood and facilitates the assigning of duties in that transition.[222]

Another significant difference between legal and cultural conceptions of maturity is that cultural coming-of-age ceremonies often occur earlier in life than legal transitions.[223] A Jewish boy marks the transition to adulthood at age thirteen years and a day.[224] Christianity, in Roman times, marked the transition at fourteen for boys and twelve for girls.[225] Quinceañera occurs at age fifteen.[226] Kinaaldá ceremonies are linked to the onset of puberty.[227] One might posit that the reason that cultural

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220. 50 U.S.C. § 453(a) (2006); *see* Christina Grof, *Rites of Passage: A Necessary Step Toward Wholeness*, *in* CROSSROADS: THE QUEST FOR CONTEMPORARY RITES OF PASSAGE, *supra* note 208, at 3, 6 (commenting on the number of researchers and scholars who recognized that modern culture is "one of the few in history that does not incorporate rites of passage, and that this has severe consequences").

221. *See* MARGARET L. ANDERSEN & HOWARD F. TAYLOR, SOCIOLOGY: UNDERSTANDING A DIVERSE SOCIETY 105 (4th ed. 2008) ("Rites of passage entail public announcement of the new status, for the benefit of both the individual and those with whom the newly anointed person will interact.").

222. *See, e.g.*, FRISBIE, *supra* note 200, at 349–50 (recognizing that during the Navajo Kinaaldá, the community provides the pubescent girl with crucial lessons that will "equip her with the knowledge necessary to assume an adult role in the society"); Lipstadt, *supra* note 211, at 67 ("[T]he Bar/Bat Mitzvah has acquired . . . importance not only because it marks an auspicious moment in a child's lifetime but also because it offers an individual, a family, a community, and in a real sense klal Yisrael—the entire community of Israel—the opportunity to celebrate and reaffirm a centuries-old heritage and tradition in a new and vital moment.").

223. *Compare* FRISBIE, *supra* note 200, at 6–7 (noting that the Kinaaldá coming-of-age ceremony often begins around the onset of menstruation), *and* MARCUS, *supra* note 200, at 84, 105–06 (stating that the modern day bar/bat mitzvah rite-of-passage begins at ages twelve for girls and thirteen and a day for boys), *with* U.S. CONST. amend. XXVI, § 1 (establishing the national voting age at eighteen), GA. CODE ANN. § 13-3-20(a) (2010) (providing that a contract of a minor is generally voidable unless ratified or affirmed by him or her after eighteen years of age), NEB. REV. STAT. § 25-1601(1) (2008) (disqualifying individuals who are not at least nineteen years old from serving on grand and petit juries), *and* NEB. REV. STAT. § 43-2101 (Supp. 2010) (establishing nineteen years as the age of majority).

224. MARCUS, *supra* note 200, at 84.

225. *Id.* at 95.

226. ALVAREZ, *supra* note 207, at 1–2.

227. FRISBIE, *supra* note 200, at 6–7. *See generally* Markstrom & Iborra, *supra* note 208, at 407–10 (noting that the Navaho Kinaaldá ceremony, as well as ceremonies for other North American Indian cultures, are linked to menarche).

bestowing of maturity occurs earlier in life than legal transitions to maturity is historical—that is, life expectancy was significantly shorter in early biblical times or even a century ago, and thus community survival depended on young persons assuming adult responsibilities at an earlier age.[228] Although that might well have influenced the development of some cultural traditions, it is notable that in some instances, the earlier coming-of-age tradition developed more recently. For example, in Judaism, maturity was marked at age twenty for biblical Israelite males.[229] The lower age of thirteen for boys and twelve for girls was a more recent development.[230]

Next, although the coming-of-age ceremony figures prominently in religious and cultural traditions related to the age of maturity, it bears noting that such ceremonies do not mark a bright-line transition in all instances. In some cultural traditions, children are permitted to take on adult responsibilities and garner adult rights ahead of their coming-of-age ceremony if they demonstrate the capacity to do so.[231] On the other end, in some traditions, not all rights accrue at the coming-of-age moment.[232] Although these deviations from a bright-line rule appear to be similar to the variations in legal conceptions of maturity, it is notable that in a number of cultural traditions, there are

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228. *See* HOWARD P. CHUDACOFF, HOW OLD ARE YOU?: AGE CONSCIOUSNESS IN AMERICAN CULTURE 22 (1989) ("Manhood could begin at age fourteen because there were few if any expectations of prolonged dependency into the late teens, or of the need to protect teenagers from the burdens of adult life."); S. M. Baugh, *Marriage and Family in Ancient Greek Society*, *in* MARRIAGE AND FAMILY IN THE BIBLICAL WORLD 103, 112 (Ken M. Campbell ed., 2003) ("Marriage at such an early age for Greek women should be interpreted in light of their average life expectancy of about thirty-six years . . . .").

229. *See* MARCUS, *supra* note 200, at 82 ("Twenty, not thirteen, marks a biblical Israelite male's time of maturity, responsibility, and adulthood." (emphasis omitted)). Biblically, only Jewish men twenty years old and older are counted in the census. OPPENHEIMER, *supra* note 217, at 13. Oppenheimer confirms, however, that the age of majority politically is separate from the minimum age for participation in religious ceremonies. *Id.*

230. *See Bar Mizwah*, THE JEWISH ENCYCLOPEDIA: A DESCRIPTIVE RECORD OF THE HISTORY, RELIGION, LITERATURE, AND CUSTOMS OF THE JEWISH PEOPLE FROM THE EARLIEST TIMES 509, 509 (Isidore Singer et al. eds., 1967) (explaining that the development of the modern bar mitzvah cannot be clearly traced prior to the fourteenth century); MARCUS, *supra* note 200, at 105, 115 (observing that although elements of the bar mitzvah ceremony appeared in early modern times, widespread adoption of the modern bar mitzvah ceremony for boys at age thirteen can be traced no earlier than the eighteenth or nineteenth century). In Reform and Conservative Judaism, girls often have their bat mitzvah at age thirteen. MARCUS, *supra* note 200, at 109; *see also Bat-Mitzvah*, REFORMJUDAISM, http://www.reformjudaism.org.uk/a-to-z-of-reform-judaism/contemporary-issues/bat-mitzvah.html (last visited Jan. 27, 2012) ("A *bat mitzvah* is a female aged 13 or above who, due to her age, gains adult privileges and responsibilities within the Jewish community . . . .").

231. MARCUS, *supra* note 200, at 92 (noting in Jewish tradition, the Talmudic authorities held that a boy could take on certain adult responsibilities when "ready").

232. *Id.* at 116.

opportunities to engage in "adult" behaviors prior to a coming-of-age ceremony, if the child demonstrates the maturity to do so.[233] In contrast, the law deviates primarily in one direction—imposing duties (i.e., criminal responsibility) on a child early without allowing any opportunity to obtain rights earlier.

Finally, the coming-of-age period in cultural and religious traditions typically is marked by an advance training period and the expectation of meeting certain levels prior to the coming-of-age ceremony.[234] This requirement is arguably one of the most significant differences between legal and cultural conceptions of maturity. Under the law, when a young person turns eighteen, she can vote (provided she registers). There is no requirement to demonstrate maturity or the capacity to exercise one's right to vote.[235] In contrast, in many cultures, there is a significant preparation period in advance of the coming-of-age ceremony to ensure that the child is ready to transition to adulthood.[236] Cultural expressions of maturity seem to require some element of demonstrating knowledge that is perhaps akin to, or a proxy for, maturity in some respects.[237] Moreover, cultural traditions frequently note who is responsible for training or preparing the child to enter into adulthood.[238]

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233. *See, e.g.*, *id.* at 92; PAUL TURNER, CONFIRMATION: THE BABY IN SOLOMON'S COURT 1 (1993) (discussing how a six-year-old boy, though young for confirmation, fits "anyone's description of catechetical age" and is thus ready for confirmation (internal quotation marks omitted)).

234. *See, e.g.*, Helen Leneman, *Introduction: Survey Results, Implications, and Evaluation* to BAR/BAT MITZVAH EDUCATION: A SOURCEBOOK 1, 9–15 (Helen Leneman ed., 1993) (discussing the training and education process leading up to the bar/bat mitzvah ceremony).

235. One might posit that the state providing education in schools is akin to that training provided in cultural settings. However, in the cultural context, the link between training and coming of age is made very clear, whereas one still obtains the right to vote at age eighteen, whether or not he or she has completed school or equivalent training. This observation is not a suggestion that the law should be used to restrict voting rights to those "qualified" to vote, as such a move would be a return to past discriminatory practices that limited voting rights. Rather, the training provided in cultural coming-of-age traditions shows the importance of the investment made in children to ensure they can be productive members of the community once they reach the appropriate age.

236. In Judaism, the child studies for many years before becoming a bar mitzvah. *See* MARCUS, *supra* note 200, at 122–23 (recognizing that for many modern Jews, the bar mitzvah is much like a graduation). Similarly, Navajo girls begin preparing for their Kinaaldá essentially from birth. MARKSTROM, *supra* note 214, at 306.

237. *See* MICHELE SALCEDO, QUINCEAÑERA!: THE ESSENTIAL GUIDE TO PLANNING THE PERFECT SWEET FIFTEEN CELEBRATION 4–5 (1997) ("Among the ancient cultures, the rite of passage from childhood to maturity also involved months of preparation and tests and trials. The young person had to prove he or she would be a responsible, contributing member of society.").

238. *See, e.g.*, MARCUS, *supra* note 200, at 82 ("The Mishnah and Talmud make it clear that a Jewish father is required to train his son to perform many commandments . . . .").

Perhaps the closest the law comes to having a preparation period is in the Graduated Driver's License (GDL) requirements.[239] Under the graduated driver's license structure, a young person is gradually granted more expansive driving rights.[240] Although these laws parallel cultural practices in some respects, in many cases, they emerged from a different starting point. GDL requirements reflect the imposition of additional constraints on adolescents' rights, rather than a graduated expansion, as some jurisdictions have used these requirements to delay granting full rights to young drivers.[241]

In short, a review of just one component of cultural expressions of maturity—coming-of-age traditions—reveals several important findings. Although law and culture have a similar goal of indoctrinating children into society and preserving societal values, there are differences in the way they seek to achieve that goal. By juxtaposing law and culture on the issue of maturity, this Part seeks to achieve two important aims. First, the hope is that this Part will mark the beginning of incorporating (or reincorporating) cultural perspectives and practices into the discourse on children and maturity. Second, this review of cultural practices highlights the inconsistencies in law and the fact that they are not anchored to much beyond the law. Law differs on the issue of maturity in significant ways from cultural

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239. *See generally* Nat'l Highway Traffic Safety Admin., U.S. Dep't of Transp., Graduated Driver Licensing System (2004), *available at* http://www.nhtsa.gov/people/injury/new-fact-sheet03/graduateddriver.pdf (describing a national model for a graduated driver's licensing system to "prolong the learning process" for young drivers and reduce the incidence of traffic accidents involving young drivers); RICHARD P. COMPTON & PATRICIA ELLISON-POTTER, U.S. DEP'T OF TRANSP., TEEN DRIVER CRASHES: A REPORT TO CONGRESS 3–5 (2008), *available at* http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/811005.pdf (describing the three stage GDL system); Michelle Browning Coughlin, Note, *Proposing a Uniform National Graduated Driver License Law to Reduce Motor-Vehicle Fatalities Among Teenagers*, 46 U. LOUISVILLE L. REV. 495, 497–98 (2008) (urging states to adopt the graduated driver licensing recommendation issued by the National Transportation Safety Board). Some states have promulgated driver licensing systems similar to the GDL recommendations. *See, e.g.*, CAL. VEH. CODE § 12814.6 (West 2010) (promulgating the Brady-Jared Teen Driver Safety Act of 1997, a provisional licensing program); MO. ANN. STAT. § 302.130 (West 2010) (providing for the issuance of a temporary instruction permit for any person at least fifteen years of age); W. VA. CODE ANN. § 17B-2-3a (LexisNexis 2009) (requiring a graduated driver's license for any person under the age of eighteen).

240. COMPTON & ELLISON-POTTER, *supra* note 239, at 3–5.

241. For example, the motivation behind California's adoption of a graduated driver's license system was to reduce the number of teenagers who can drive for the purpose of saving lives. Cal. Bill Analysis, Senate Third Reading on S.B. 1329, Assemb. Floor, Sept. 3, 1997, http://leginfo.public.ca.gov/pub/97-98/bill/sen/sb_1301-1350/sb_1329_cfa_19970903_185601_asm_floor.html; *see also* Noel E. Oman, *Panel Passes Teen-Driving, Seat-Belt Bills Both Said To Be Lifesavers*, ARK. DEMOCRAT-GAZETTE, Feb. 17, 2009, at 1B (discussing Arkansas's law increasing restrictions on teen driving).

traditions.[242] Those differences merit attention, as they present the possibility of conflicts when formal law differs from the norms and expectations of the general population. In the next Part, I explore what might be done to address these differences and suggest a starting point for bringing cultural perspectives into a more holistic dialogue on maturity under the law.

IV. TOWARD A MORE COHESIVE CONSTRUCTION OF MATURITY

In juxtaposing legal and cultural conceptions of maturity, it is evident that there are important differences between the two frameworks. Legal conceptions of maturity are internally inconsistent, and they do not fit with many cultural conceptions. This Part begins by briefly examining whether it is feasible to reconcile legal and cultural conceptions of maturity. Like the dialogues that have emerged out of recent brain research and suggestions that the law be more consistent with science, a similar question must be asked when the law departs in significant ways from cultural approaches to maturity. Following that discussion, this Part draws out several key lessons from cultural approaches to maturity. Finally, it offers suggestions for moving toward a more constructive approach to regulating children's actions.

A. Reconciling Law and Culture

As with any matrix involving two variables, there are four possible options: (1) conform A (law) to B (culture); (2) conform B to A; (3) find a middle ground and conform A and B to that compromise position; or (4) do nothing. As discussed below, each of these four options raises concerns.

Any suggestion to conform law to culture raises the immediate question of selection—which cultural practices will form the basis for the law? In heterogeneous communities such as the United States, it will likely be impossible to select one cultural tradition without disadvantaging ethnic and cultural groups that most likely are already marginalized. Perhaps one could extract common themes from all cultural practices and craft law on that basis. Further research is needed in order to

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242. *Compare* FRISBIE, *supra* note 200, at 6–7 (marking the first menstruation as the point in which a young Navaho girl is considered an adult), *and Bar Mizwah*, *supra* note 230, at 509 (establishing the age of thirteen to mark the point where boys reach the "age of religious duty and responsibility"), *with* CAL. CIV. PROC. CODE § 203(a) (West 2006) (requiring a person to be at least eighteen years old to serve on a jury), *and* Tate v. State, 864 So. 2d 44, 54 (Fla. Dist. Ct. App. 2003) (holding that sentencing a twelve-year-old to life in prison is not cruel and unusual punishment).

determine whether such an approach would add significant value or whether the common themes would need to be characterized with such generalities so as to lose any utility when attempting to craft more effective law and policy. Therefore, although conforming law to culture might facilitate compliance (at least among those individuals from majority cultures within a population)[243] and might reduce the arbitrary nature of maturity determinations as they currently play out under the law, the risk of marginalizing minority groups is significantly large so as to caution against such an approach.[244]

Conforming culture to law presents the same issue of disadvantaging minority or marginalized communities.[245] Moreover, mandating change in cultural practices related to maturity, if at all possible, might force changes in well-functioning systems and societies that have no reason or need to change (and might violate rights of groups compelled to change).[246] Although these negative outcomes outweigh positive benefits, it merits noting that reconciling law and culture in this manner has the potential to foster some positive change. Law has been used to shape societal practices in ways that have provided broad-based benefits for individuals and their communities (e.g., laws aimed at curbing smoking and promoting seat belt use).[247] However,

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243. *See* ERIC A. POSNER, LAW AND SOCIAL NORMS 110–11 (2000) (suggesting that individuals are more likely to obey the law if it conforms with their moral views); TOM R. TYLER, WHY PEOPLE OBEY THE LAW 3 (1990) ("If people view compliance with the law as appropriate because of their attitudes about how they should behave, they will voluntarily assume the obligation to follow legal rules."); *see also* JOYCELYN M. POLLOCK, ETHICAL DILEMMAS AND DECISIONS IN CRIMINAL JUSTICE 42 (2008) (discussing cultural relativism and identifying the challenges of a criminal law that is contrary to cultural norms).

244. As it stands, majority culture in any society is likely to be a major shaper of the law on maturity in that society.

245. *See* Peggy Cooper Davis, *Contested Images of Family Values: The Role of the State*, 107 HARV. L. REV. 1348, 1372 (1994) ("[T]he antislavery tradition teaches that although government is organized to maintain order, it must at the same time give reign to human capacities to form, follow, and advocate values. Laws that compromise individual and family autonomy in order to influence value-formation are inconsistent with that tradition, for they weaken the liberty and diversity-enhancing entity that is the traditional site of value-formation." (emphasis omitted) (footnotes omitted)).

246. *See id.* ("Laws that compromise individual and family autonomy in order to influence value-formation are inconsistent with [the antislavery] tradition, for they weaken the liberty and diversity-enhancing entity that is the traditional site of value-formation." (emphasis omitted)).

247. *See, e.g.*, Matthew Farrelly et al., *Evidence of a Dose-Response Relationship Between "Truth" Antismoking Ads and Youth Smoking Prevalence*, 95 AM. J. PUB. HEALTH 425, 425 (2005) (finding antismoking ads aimed at youth successful in reducing youth smoking); Vinod Vasudevan et al., *Effectiveness of Media and Enforcement Campaigns in Increasing Seat Belt Usage Rates in a State with a Secondary Seat Belt Law*, 10 TRAFFIC INJ. PREVENTION 330, 337 (2009) (attributing a significant increase in seat belt usage among drivers and passengers to the combination of a media campaign and law enforcement).

requiring culture to conform to law not only risks disadvantaging minority groups, it also creates the possibility that significant portions of the population will simply ignore a law that is perceived as draconian.[248]

The third option of selecting a middle ground offers the potential of achieving a workable compromise. Delineating a potential compromise position, however, is not the purpose of this Article. A compromise stance, while perhaps better in terms of "fairness," runs the risk of being arbitrary.[249] Selection of the compromise stance also is susceptible to the same bias toward majority cultural practices. Finally, one could simply do nothing, in which case we would be left with the disconnect between law and culture and the significant inconsistencies in the law's treatment of children across the various maturity indicators.

Without endorsing any particular approach, I submit that "doing nothing" would not be acceptable. Youth today confront a discouraging framework.[250] At a minimum, this problem calls for

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248. Already significant numbers of children (and adults) ignore various laws (e.g., drug laws). *See* Eaton et al., *supra* note 171, at 13–18 (detailing the incidence of youth engaging in high risk behaviors prohibited by law, including alcohol and drug use). On the other hand, law is used to address some harmful cultural practices. *See* Chiu, *supra* note 26, at 1801 (describing legal efforts to prevent female genital cutting); *see also* Richard A. Goodman et al., Ctrs. for Disease Control & Prevention, *Law and Public Health at CDC*, MORBIDITY & MORTALITY WKLY. REP., Dec. 22, 2006, at 29, 31, *available at* http://www.cdc.gov/mmwr/preview/mmwrhtml/su5502a11.htm (noting the success of legal and public health strategies to combat tobacco use).

249. Consider that some cultural practices are inconsistent with human rights norms. Martin Chanock, *'Culture' and Human Rights: Orientalising, Occidentalising and Authenticity*, *in* BEYOND RIGHTS TALK AND CULTURE TALK: COMPARATIVE ESSAYS ON THE POLITICS OF RIGHTS AND CULTURE 15, 16 (Mahmood Mamdani ed., 2000). Chanock states that "[t]here is little reason why the currently dominant versions of 'culture' in parts of [the world] should remain unchanged and unchallenged." *Id.* at 19. Chanock similarly warns that in many parts of the world, what is proffered as "custom" and unchangeable does not necessarily represent the cultural norms of all people in that area, but rather is the legacy of compromise between the colonial power and indigenous elites. *Id.* at 29.

250. *See* Dominguez, *supra* note 15, at 390–91 ("Throughout the United States, every morning from Monday through Friday, thousands of pre-adjudicated children . . . between the ages of ten and seventeen are paraded through a summary juvenile detention hearing on whether or not they should remain jailed until the charges made against them can be heard in a regular session of juvenile court. The overwhelming majority of these children have no understanding at all of what will happen at that hearing, or what to say, or why the first proceeding is so pivotal."); Jeffrey Fagan & Tom R. Tyler, *Legal Socialization of Children and Adolescents*, 18 SOC. JUST. RES. 217, 236 (2005) (finding adolescents' views on the legitimacy of legal actors and legal institutions and their compliance with law is shaped by how they perceive law enforcement's treatment of them and others). Scholars liken the criminal law framework to a "one-way ratchet" where criminal laws expand but never contract. *E.g.*, William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 509 (2001); Maroney, *supra* note 125, at 169. *But see* Darryl K. Brown, *Democracy and Decriminalization*, 86 TEX. L. REV. 223, 223 n.1, 225 (2007) (citing many scholars who recognize the "one-way" nature of American criminal law but arguing that the "ratchet of crime legislation turns both ways," as there are many instances of

a more informed dialogue on how best to cultivate and recognize the maturity of society's younger members. Further, it calls for a holistic approach to maturity. The current piecemeal approach to maturity makes little sense. Recall that in some jurisdictions, there is a coupling phenomenon with respect to maturity rights, whereby maturity on one indicator is tied to maturity on another. For example, the voting age in the Dominican Republic is eighteen years old, unless one has undertaken the adult act of marriage, in which case there is no age requirement.[251] In Croatia, the voting age is eighteen, but individuals can vote at sixteen if employed.[252] Similarly, several states allow a minor to marry early, if she is pregnant.[253] From a maturity perspective, note the suggestion: Because a girl is pregnant, she is now allowed to engage in the mature act of marriage.[254] Many would question whether getting pregnant at age sixteen is any sign of maturity, yet in some jurisdictions the law has created such a framework.[255] Although there are other interests at stake, and the

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decriminalization as well). Despite the fact that the goal of the criminal law is (or should be) to help foster responsible citizens, see, for example, Albert W. Alschuler, *The Changing Purposes of Criminal Punishment: A Retrospective on the Past Century and Some Thoughts About the Next*, 70 U. CHI. L. REV. 1, 8 (2003) (describing rehabilitation as a central aim of the criminal justice system), too often the law focuses on punishment at the expense of rehabilitation. *See id.* at 9–10 (describing the shift away from criminal law's rehabilitative purpose in the last part of the twentieth century); *see also* Maroney, *supra* note 125, at 124–25 (describing how courts have rejected developmental neuroscience research as a mitigating factor for juveniles and instead handed down lengthy sentences for juvenile offenders).

251. *The World Factbook: Dominican Republic*, *supra* note 65 (select "Government") ("Suffrage: 18 years of age, universal and compulsory; married persons regardless of age . . . [.]").

252. *The World Factbook: Croatia*, CENT. INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/geos/hr.html (select "Government") (last visited Jan. 27, 2012).

253. *See supra* note 183 and accompanying text.

254. In reality, other factors are driving these decisions (e.g., a goal of reducing the number of children born out of wedlock). However, when viewed through the maturity lens, the result in some instances makes little sense.

255. *See* Buss, *supra* note 14, at 788–89 ("Becoming a parent before becoming an adult is widely perceived as a bad outcome in our society. Although there is considerable disagreement about the nature and extent of the harm caused by adolescent parenting, most policy analysts and social scientists agree that adolescent parenting has some harmful effects on these parents, through lost opportunities for education, work or marriage, and on their children, through an increased risk of health, educational and developmental problems, unstable living arrangements or an attenuated relationship with their fathers." (footnotes omitted)); *see also* Mitchell *ex rel.* Fee v. Mitchell, 963 S.W.2d 222, 223 (Ky. Ct. App. 1998) ("We cannot adopt a rule that marriage by the minor somehow classifies him as more mature and intelligent than his unmarried counterpart."). Under law, marriage and enlisting in the armed forces are frequently triggers for emancipation, though they are not necessarily acknowledgment of full maturity. *See, e.g.*, Carol Sanger & Eleanor Willemsen, *Minor Changes: Emancipating Children in Modern Times*, 25 U. MICH. J.L. REFORM 239, 259–60 (1992) (discussing

law certainly is shaped by other interests in these and other circumstances (e.g., here the state interest in limiting the number of children born out of wedlock and ensuring children are cared for), if rights in one area are tied to evidence of maturity in another, then we must address maturity more holistically and ensure that the law is creating the optimal framework for children's development. Further, recalling that these law and policy decisions affect twenty-six percent of the U.S. population (and thirty-five percent of the global population), it is important that policymakers give consideration to maturity across issues when determining how to regulate the lives of children.

B. Drawing Lessons from Cultural Conceptions

There are many lessons to be drawn from the experiences of cultural approaches to maturity. Societies rely heavily on coming-of-age ceremonies and rituals to mark a young person's transition to maturity. This public component of coming of age serves important signaling functions to both the adolescent and the community. In many cultures, maturity is achieved significantly earlier than under law, suggesting that with proper guidance and structure, adolescents can and do exercise rights responsibly and take on adult-like responsibilities. On this latter point, cultural approaches conflict with what recent brain research suggests—that is, that full development occurs only later.[256] A possible explanation for the disconnect is that maturity is a cultural concept and thus, in certain communities, youth are groomed to take on rights and responsibilities associated with maturity even though their brains might still be developing.[257] This brings to the forefront one theme in particular from cultural conceptions of maturity that might offer a potential starting point for developing a better approach to maturity under the law. In cultural practices related to maturity, the community is tasked with significant responsibilities to ensure that when a child reaches the right age or the threshold of his or her coming-of-age ceremony, the family and community have prepared and equipped that child with all that is needed to evidence maturity, realize his or her rights, and contribute in a meaningful way to his or her community.[258]

California law which provides that marriage and enlistment are triggers for emancipation but that "emancipated minors are not completely adults" and still are subject to some rules applicable to minors).

256. *See* Johnson, Blum & Giedd, *supra* note 16, at 217 (explaining that brain development occurs over time and continues into an individual's twenties).

257. *See id.* (noting that definitions of maturity change as societal needs change).

258. Leneman, *supra* note 234, at 9–15; *see* MARCUS, *supra* note 200, at 82–83 (describing

Much of that preparation comes naturally through parenting, schooling, and other aspects of cultural life.[259] However, this different approach raises the issue whether the law could foster better-prepared young adults through a graduated, supportive approach to maturity. Such an approach would be consistent with research on adolescence and scholars' understanding that maturity occurs on a continuum.[260] As identified in prior sections of this Article, the law adopts a variant on this approach, for example, with driver's license requirements and employment.[261] GDL requirements, however, emerge more out of an effort to limit the driving rights of young persons.[262] Employment law in nonagricultural settings might offer a better model, as it allows children to enter the workforce for limited periods, while preserving their educational opportunities and long-term prospects.[263]

Other models need to be explored. Some scholars might suggest that a parallel exists with recently adopted laws that impose criminal liability on parents for the actions of children.[264] Such an approach does not address the experience of minors with

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the traditional obligation in Judaism that a father had to train his son to perform the commandments).

259. The State seems to rely heavily on the public school system to teach children about their civic, economic, and personal rights. *See* Michael C. Johaneck & John Puckett, *The State of Civic Education: Preparing Citizens in an Era of Accountability*, *in* THE PUBLIC SCHOOLS 130, 130, 134 (Susan Fuhrman & Marvin Lazerson eds., 2005) (reviewing the state of civic education in the United States).

260. *See* ARNETT, *supra* note 17, at 3–16 (describing the continued development of individuals throughout their teens and into their twenties, a period Arnett calls "emerging adulthood"); BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 17–18, 23–24 (1999) (discussing the social construct of adolescence and the reality that maturity occurs on a continuum); ZIMRING, *supra* note 17, at 107 (arguing that maturity can be understood by dividing phases of adolescence into binary-box classifications that account for decision-making contexts); Johnson, Blum & Giedd, *supra* note 16, at 217–18 ("[S]tudies demonstrate that brain structures and processes change throughout adolescence . . . ."); Steinberg & Scott, *supra* note 17, at 1011–12 (questioning whether the decision-making maturity of older adolescents actually approximates that of adults and arguing instead that adolescent maturity continues to develop).

261. *See supra* notes 239–41 and accompanying text (discussing Graduated Driver's License schemes); *supra* Part II.B.2 (discussing varying employment rights for children); *see also* Buss, *supra* note 14, at 820–21 (suggesting, but not championing, a graduated approach to minor parenting requiring that minors meet certain requirements before they are allowed to parent).

262. *See* Coughlin, *supra* note 239, at 497 (rationalizing restricting young people's driving rights based on a graduated system to reduce vehicle fatalities).

263. *See supra* note 109 and accompanying text.

264. *See, e.g.*, CAL. PENAL CODE § 272 (West 2008) (imposing misdemeanor charges on a parent or guardian whose child commits certain crimes); WYO. STAT. ANN. § 14-6-244 (2011) (imposing up to a $500 penalty on parents for the actions of certain delinquent youth).

the law, but only imposes additional criminal sanctions on other members of the family.[265] Rather than seeking to use the law only as a stick with youth (e.g., criminal liability at young ages, or for parents), better models need to be developed that offer youth and their families a carrot, incentivizing more responsible behaviors by children and creating opportunities for youth to engage in meaningful activities that develop their capacities.[266]

"[L]essons in accountability benefit young offenders . . . ."[267] The concern is that the law governing children's rights and responsibilities today focuses primarily on teaching accountability through criminal sanctions and restricting rights, while offering few, if any, positive incentives for responsible behaviors. Instead, youth might respond better in certain circumstances if the legal framework also provided an opportunity for them to earn expanded rights by achieving certain benchmarks or acting in a responsible manner with respect to particular issues. If an adolescent demonstrates she can exercise economic power responsibly, why not gradually introduce limited rights so she can further develop the ability to exert independent economic power in a responsible manner? Some years ago, the National Basketball Association started mandating a life-skills course for rookies because they realized that top rookies were signing multi-million dollar contracts and yet had received little guidance on even the most basic aspects of financial management and other essential life skills.[268] They are not the only ones.[269] If adults want youth to achieve maturity,

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265. For critiques of parental liability laws, see Linda A. Chapin, *Out of Control? The Uses and Abuses of Parental Liability Laws to Control Juvenile Delinquency in the United States*, 37 SANTA CLARA L. REV. 621, 654 (1997) (noting parental liability laws appear to be based on "folk wisdom" that parents should be able to control their children at all times), Leslie Joan Harris, *An Empirical Study of Parental Responsibility Laws: Sending Messages, but What Kind and to Whom?*, 2006 UTAH L. REV. 5, 10 (finding that parental responsibility laws are rarely enforced nor do people expect them to be enforced), and Elena R. Laskin, *How Parental Liability Statutes Criminalize and Stigmatize Minority Mothers*, 37 AM. CRIM. L. REV. 1195, 1206 (2000) (questioning whether punishing the parent deters juvenile crime).

266. *See, e.g.*, MARY JOHN, CHILDREN'S RIGHTS AND POWER: CHARGING UP FOR A NEW CENTURY 224–51 (2003) (describing successful examples of youth councils and children's parliaments around the world); Grof, *supra* note 220, at 11 (suggesting the need for reintroducing rites of passage and rejecting simplistic, negative initiatives such as "Just Say No" campaigns); Celia W. Dugger, *To Help Poor Be Pupils, Not Wage Earners, Brazil Pays Parents*, N.Y. TIMES, Jan. 3, 2004, at A1 (discussing Brazil's initiative to pay parents to keep their children in school).

267. Scott, *supra* note 43, at 595.

268. *See* Chris Broussard, *N.B.A. Rookies Get Lessons in Life Skills*, N.Y. TIMES, Sept. 26, 2003, at D7 (describing a six-day "crash course in life skills" for rookies).

269. *See* Susan Cole, *Teaching Real-Life Skills*, ABA BANKERS NEWS, Dec. 11, 2001, at 6 (describing the financial planning classes being taught in some high schools with the

adults need to ensure that they do what is needed to foster that successfully, and legal frameworks are part of that equation.

States could develop a graduated scale for participation in the polity. One could envision creating positive incentives for early voting rights in local elections (including perhaps a graduated approach that would eventually grant responsible youth the right to vote in all elections).[270] Following the cultural coming-of-age preparation approach, the general voting age could remain eighteen, but a young person could vote earlier if he or she had demonstrated readiness, or maturity, to do so, perhaps by completing particular coursework and meeting other relevant criteria. In fact, a member of parliament in New Zealand proffered such an approach in 2007.[271] The proposed bill sought to allow youth sixteen years of age or older to vote while introducing a mandatory civics education into the school curriculum.[272] As the member of parliament who proposed the bill explained, "Lowering the voting age and teaching them civics can help young New Zealanders get on track to being better informed, more engaged citizens."[273] Citing adverse reaction to her idea (from adults), she abandoned the bill about a month later.[274]

Drawing on the approach used in cultural coming-of-age practices, law could be developed to positively foster an

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goal of "graduating more [financially] responsible students" (citation omitted) (internal quotation marks omitted)); *Civics Education and Voting Age Bill*, GREEN PARTY OF AOTEAROA NEW ZEALAND, http://www.greens.org.nz/sites/default/files/campaigns/youth/Civedvotingage.pdf (last visited Jan. 27, 2012) (proposing a bill that would lower the voting age in conjunction with imposing civics education requirements on youth).

270. *See* Hamilton, *supra* note 32, at 1063–64, 1109 (arguing brain research is consistent with allowing youth to vote at younger age). Care would have to be taken in developing appropriate benchmarks that do not disadvantage historically disadvantaged or marginalized populations.

271. *Civics Education and Voting Age Bill*, *supra* note 269.

272. *Id.* pt. 1, cl. 5 & pt. 2, cl. 7. The bill, if adopted, would mandate national civics curriculum that "requir[ed] the delivery of . . . education about—(a) the Treaty of Waitangi; and (b) the constitutional law and conventions of New Zealand; and (c) the structure and electoral processes of central and local government in New Zealand; and (d) New Zealand's legal system; and (e) the rights and responsibilities associated with citizenship of New Zealand." *Id.* pt. 1, cl. 5.

273. Press Release, The Green Party of Aotearoa New Zealand, Bradford Launches Bill to Lower Voting Age to 16 (June 21, 2007) (internal quotation marks omitted), http://www.greens.org.nz/press-releases/bradford-launches-bill-lower-voting-age-16.

274. *Green MP Drops Bill to Lower Voting Age*, NEW ZEALAND HERALD (July 26, 2007), http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10454008; *Voting Age*, THE TITI TUDORANCEA LEARNING CENTER (Oct. 13, 2010), http://www.tititudorancea.com/z/voting_age.htm. In 2005, a similar effort to allow sixteen-year-olds to vote in local elections in Berkeley, California, also failed. Rob Capriccioso, *Lowering the Voting Age: A Tough Sell*, SPARK ACTION (June 13, 2005), http://sparkaction.org/content/lowering-voting-age-tough-sell.

adolescent's capacity to exercise independent political, civil, economic, social, and cultural rights. Such efforts would restore equilibrium in the balance between rights and duties of adolescents and other children and in the positive and negative incentives and messages adults give to them. Moreover, as adolescence is a period marked by instability,[275] providing more positive structures might help youth in finding more meaning in their lives during this challenging transitional phase of life. Ultimately, improvements in this area would have benefits for the broader community. Effectively incentivizing positive youth behavior could reduce the incidence of youth crime, drunk-driving accidents, and other negative outcomes that we currently seek to control largely, if not exclusively, through criminal sanction.[276]

V. CONCLUSION

Maturity determinations are central to the lives of children. The law's current approach to maturity is inconsistent both within and across issues affecting children, ranging from political and economic participation, to criminal justice, to family rights and bodily integrity. Moreover, legal conceptions of maturity fit awkwardly, and sometimes conflict, with cultural norms related to maturity. Today, the piecemeal approach to maturity has created a framework for young people whereby they are deemed immature persons with respect to most rights while simultaneously often being held to account for wrongdoing often as adults. That should be reexamined.

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275. Larry J. Nelson, *Rites of Passage in Emerging Adulthood: Perspectives of Young Mormons*, 2003 NEW DIRECTIONS FOR CHILD & ADOLESCENT DEV. 33, 34; *see also* Jeffrey Jensen Arnett, *Emerging Adulthood: Understanding the New Way of Coming of Age*, *in* EMERGING ADULTS IN AMERICA: COMING OF AGE IN THE 21ST CENTURY, *supra* note 72, at 3, 9 (identifying instability as one of the primary traits of the transitional period of emerging adulthood).

276. As it is, criminal law's ability to deter crime is limited at best. *See, e.g.*, Paul H. Robinson & John M. Darley, *Does Criminal Law Deter? A Behavioural Science Investigation*, 24 OXFORD J. LEGAL STUD. 173, 174 (2004) (finding that criminal law rules have little deterrent effect); Paul H. Robinson & John M. Darley, *The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best*, 91 GEO. L.J. 949, 977 (2003) ("[T]he ability of doctrinal manipulation to produce an alteration of deterrent effect is highly limited . . . ."); James A. Mercy et al., *Public Health Policy for Preventing Violence*, 12 HEALTH AFF. 7, 11 (1993) ("Although the average prison time served for a violent crime in the United States tripled between 1975 and 1989, there was no concomitant decrease in the level of violent crimes."); William N. Evans, Doreen Neville & John D. Graham, *General Deterrence of Drunk Driving: Evaluation of Recent American Policies*, 11 RISK ANALYSIS 279, 287 (1991) ("[There is] *no* evidence that any specific type of punitive legislation—with the possible exception of sobriety checkpoints—is a major contributor to the success of the national campaign [against drunk driving].").

"[T]he long term interests of adolescents converge with the interests of society."[277] These convergent interests of adolescents and society suggest the need for a more holistic approach to maturity under the law. In developing a more cohesive construction of maturity, lawmakers should also look to cultural conceptions of maturity and include them in the discourse on maturity. Doing so might help foster the development of law that better prepares youth for adulthood, by allowing them to find meaningful ways to exercise their rights, assume responsibilities, and contribute to their communities.[278] It might also help create a more sensible legal framework on maturity, one of the defining milestones in the life of every individual.

277. Scott, *supra* note 43, at 598.

278. *See* KATHLEEN FOX ET AL., NAT'L INDIAN CHILD WELFARE ASS'N, NATIVE AMERICAN YOUTH IN TRANSITION: THE PATH FROM ADOLESCENCE TO ADULTHOOD IN TWO NATIVE AMERICAN COMMUNITIES 81 (2005), *available at* http://www.hewlett.org/uploads/files/NativeAmericanYouthinTransition.pdf (noting the importance of creating a "major role" for youth in their communities); T.S. Saraswathi & Reed W. Larson, *Adolescence in Global Perspective: An Agenda for Social Policy*, *in* THE WORLD'S YOUTH: ADOLESCENCE IN EIGHT REGIONS OF THE GLOBE, *supra* note 16, at 344, 346 ("The key criterion . . . is whether adolescents are afforded opportunities to develop to their full capabilities—to prepare for an adulthood that is beneficial to themselves, their families, and their societies.").