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Pinocchio in Littleton

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William A. Kell*

In this Article, Professor Kell proposes a substantial change in policy direction in the wake of school shootings and other tragedies involving young people's abilities to make mature decisions. First, the Article questions the current state of the law which exclusively deems young people to be mature based on "birthdays and bad acts," rather than on any concept of demonstrated or earned levels of responsibility. Next, an alternative legal framework is envisioned recognizing young people as increasingly competent citizens who must develop psychosocial maturity, including learning how to judge and utilize advice from others such as parents and peers, weigh risks, and forgo short-term gain for longer-term satisfaction. This alternative framework is then applied to identify initial steps toward legal reform in the contexts of education, employment, community, and government. In conclusion, the Article calls for the development of new stories, framed by law, to foster opportunities for young people to mature and exercise their decision-making abilities.

INTRODUCTION

As a parent and children's attorney, I have spent some time reading children's books; the most frightening, to me, is *Pinocchio*.¹ We all remember the little puppet given life, with the promise to become a real person, if he shows character and learns right from wrong.² On the way to his first day of school, Pinocchio is led astray by a shady fox and cat who sell him into involuntary servitude.³ After escaping, he again fails to choose the straight and narrow path; rather Pinocchio follows a band of hoodlums who travel to a

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1. WALT DISNEY'S PINOCCHIO (1986).
2. *Id.* at 14.
3. *Id.* at 26-37.

sinister island where there are no adults.⁴ There he stuffs himself with sweets and shoots pool until he begins to transform, literally, into a mule.⁵ After another narrow escape, he then decides to risk his life to rescue his father, Geppetto, from the belly of a whale.⁶ He drowns in the process,⁷ but because of his brave act, a fairy brings him back to life with a touch of her wand and makes him “real.”⁸

Frankly, I find Pinocchio’s ordeal disturbing. Why did it have to be so hard to learn the consequences of doing wrong? Who was watching out for him, helping him to learn how to make better decisions?⁹ When Pinocchio later becomes real by the touch of a fairy’s wand, I always wonder how we know Pinocchio will do better next time. Why is it less likely that tomorrow’s headlines might read:

COBBLER’S SON CHARGED IN DRUG SALE

FOX, LOCAL ATTORNEY TO REPRESENT YOUTH

2 SLAIN BY TEEN DRUNK DRIVER, FORMER PUPPET

Youth Without Strings, Without Hope: A Look Inside Juvenile Detention

A SPECIAL REPORT

Or what if it were a whole lot worse? The shootings at schools in recent years, most notoriously the massacre at Columbine High School in Littleton, Colorado,¹⁰ have shaken us all into recognizing how bad young people’s decision making can get—how much

4. *Id.* at 56–61.

5. *Id.* at 63–70.

6. *Id.* at 78.

7. *Id.* at 90.

8. *Id.* at 92–94.

9. Jiminy Cricket, deputized by a fairy to be Pinocchio’s mentor, *id.* at 16, was usually absent at critical moments—leaving him mostly to rescue Pinocchio from the consequences of his poor decisions. *Id.* at 49, 70. Geppetto was of course totally absent, not even taking the time to make sure Pinocchio got to school on his first day. *Id.* at 22.

10. On April 20, 1999, two Columbine High School students, Eric Harris and Dylan Klebold, carried out a planned attack at their high school, killing twelve fellow students before taking their own lives. Sam Howe Verhovek, *Sounds from a Massacre: ‘Oh God, Kids, Stay Down,’* N.Y. TIMES, Apr. 24, 1999, at A1.

damage they can do to themselves and others. It is striking that, with all this urgent reflection on adolescent decision making, very little has been proposed that would change the ways that the maturity of young people is fostered and recognized. Like Geppetto, our society tends to leave the development of maturity in young people to chance. Like the fairy with her wand, law uniformly recognizes maturity in young people only upon the occurrence of *events*—either the child's bad acts or birthdays—making no real attempt to match responsibility with the child's capacity. And like Pinocchio himself, young people deemed by law to be "responsible" are left alone to handle the cruelest consequences life can provide.

Before a new story can be written, we must first examine how law conceptualizes decision making by young people. When the law recognizes a child's authority to make decisions or imposes responsibility based on birthdays, the implication is that maturity springs forth suddenly—turning "on" what earlier was "off." Similarly, when the law grants authority to make decisions or recognizes responsibility on the basis of certain acts, the implication is that all children have maturity but some choose not to use it.¹¹ Neither conception mirrors actual adolescent development. Most importantly, neither conception gives society any reason to take a more active role in promoting maturity in young people.

This dissonance between law and child development exacerbates an already perilous situation in our society. With more serious and present dangers facing young people than ever before and fewer adults available to guide them, we cannot afford to have law serve only to identify responsibility or to threaten or punish those who do not practice it. Instead, because maturity is a capacity developed through use over time, much as muscles are developed through repeated exercise, law must begin to allow young people to exercise and build maturity. Similarly, law should address the needs of all young people to mature, rather than focusing exclusively on the stereotypical teen predator.¹² The only accurate

11. Such a conceptualization finds parallels with current welfare reform initiatives, which emphasize severe disincentives (revoking of living supports) for a welfare recipient for failure to comply with work requirements. See Joel F. Handler, "Constructing the Political Spectacle": *The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History*, 56 *BROOK. L. REV.* 899, 902–05 (1990). Far less emphasis is present, either in law or programmatic support, for the actual building of skills required to develop self-sufficiency. See *id.*

12. See Elizabeth Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 *J. CRIM. L. & CRIMINOLOGY* 137, 139 (1997) (asserting that the justice system needs to take into account the fact that most offenders are simply

generalization of young people as a group is that they all face the challenge of acquiring good decision-making skills long before the age of majority. Good decision-making skills are not created by magic, but by safely practicing them in a variety of contexts.

Law should play a critical role in providing opportunities and incentives toward the development of maturity. To accomplish this, law should recognize maturity as reality presents it. Young people should be presented with opportunities to attain, through personal development and practice, the capacity to handle authority. These far-reaching changes would be the most promising, long-term strategy to address tragedies like Littleton: not by legislating more magical ways to turn young people into adults, whether they are ready to handle the consequences or not.¹³ Instead, our society

acting in accordance with a developmental stage, and that given time many will mature out of antisocial behavior).

13. Many states have already responded in this manner, proposing more "waiver" legislation to prosecute kids as adults at younger and younger ages. For example, in Indiana, a minor age ten or older who commits murder may be tried as an adult. IND. CODE ANN. § 31-30-3-4 (Michie 1997). In Texas, the court may waive juvenile status for a child over ten years old who is alleged to have committed a capital felony or murder. TEX. FAM. CODE ANN. § 54.02(j) (West Supp. 2000). In Vermont, a juvenile age ten or older who commits one of the enumerated offenses may be transferred to adult court. VT. STAT. ANN. tit. 33, § 5506(a) (1991 & Supp. 1999). The enumerated offenses include arson, assault, and robbery with a dangerous weapon, assault, and robbery causing bodily injury, aggravated assault, murder, manslaughter, kidnapping, unlawful restraint, sexual assault, aggravated sexual assault, and burglary of an occupied dwelling. *Id.* There are twenty-four states that set fourteen as the age for transfer by judicial waiver. ALA. CODE § 12-15-34(a) (Supp. 1998); COLO. REV. STAT. ANN. § 19-2-518(1)(a)(I)(B) (West 1999); FLA. STAT. ANN. § 985.226(2) (West Supp. 2000); HAW. REV. STAT. § 571-22(b)(1) (Supp. 1998); IDAHO CODE § 20-508(1)(b) (Supp. 1999); IND. CODE ANN. § 31-30-3-2 (Michie 1997); IOWA CODE ANN. § 232.45(6) (West Supp. 1999); KAN. STAT. ANN. § 38-1636(a)(2) (Supp. 1998); KY. REV. STAT. ANN. § 635.020(2) (Banks-Baldwin 1999); LA. CHILDREN'S CODE ANN. art. 857 (West Supp. 2000); MICH. COMP. LAWS ANN. § 712A.4 (West Supp. 1999); MINN. STAT. ANN. § 260B.125 (West Supp. 2000); MONT. CODE ANN. § 41-5-1602 (1999); NEV. REV. STAT. ANN. § 62.080 (Michie Supp. 1999); N.J. STAT. ANN. § 2A:4A-26 (West Supp. 2000); N.M. STAT. ANN. § 32A-2-3 (Michie Supp. 1999); N.D. CENT. CODE § 27-20-34(1)(b) & (c) (Supp. 1999); OHIO REV. CODE ANN. § 2151.26(B) (West Supp. 1999); 42 PA. CONS. STAT. ANN. § 6355(a)(1) (West 1982 & Supp. 1999); S.C. CODE ANN. § 20-7-7605(5) & (9) (Law. Co-op. Supp. 1999); TEX. FAM. CODE ANN. § 54.02(a) & (j) (West Supp. 2000); UTAH CODE ANN. §§ 78-3a-502(3), 78-3a-603 (1996 & Supp. 1999); VA. CODE ANN. § 16.1-269.1(A) (Michie 1999); WIS. STAT. ANN. § 938.18 (West Supp. 1999). In New York, legislation recently was proposed to lower the age at which a child can be prosecuted as an adult for murder from age fourteen to age thirteen. S.B. 1581, 2001 Leg., 224th Sess. (N.Y. 2001); A.B. 2315, 2001 Leg., 224th Sess. (N.Y. 2001).

It is generally understood that the recent nature of the Littleton shooting helped the federal Violent and Repeat Juvenile Offenders Accountability and Rehabilitation Act sail through the U.S. Senate just four months later. The bill was introduced on Jan. 20, 1999, and passed the Senate with amendments 73-25 on May 20, 1999. Roll Call Vote No. 140, 145 CONG. REC. 55,732 (1999), available at <http://thomas.loc.gov>. Violent and Repeat Juvenile Offenders Accountability and Rehabilitation Act, S. 254, 106th Cong. (1999). As proposed, S. 254 would have weakened the Juvenile Justice and Delinquency Prevention Act

needs to take tragedies like Littleton as a call to begin actively seeking ways for young people to positively and gradually attain personhood, by encouraging opportunities to practice maturity in meaningful contexts.

Part I of this Article examines the current treatment of young people as decision makers under the law, and discusses the societal costs and dangers inherent in such an approach. Part II offers an alternative legal framework which more accurately recognizes young people as increasingly competent citizens whose decision-making skills need opportunities to develop. Part III takes a first step toward applying this alternative framework in four critical contexts for young people: the realms of education, employment, community, and government. In conclusion, the Article identifies several social barriers for young people and adults to overcome as they develop new stories, framed by law, in which young people's maturity can be fostered.

I. HOW LAW AND LEGISLATURES TODAY TREAT YOUNG PEOPLE AS DECISION MAKERS

A. Personhood by "Events:" *Bad Acts and Birthdays*

A survey of state and federal laws which establish the rights of minors would immediately make clear that the law provides virtually no opportunities for young people to gain greater decision-making authority through the demonstration of maturity. Instead, the operative portion of most laws affecting children's agency turns on the occurrence of *events*: "bright line" rules which assume mature decision-making abilities in anyone who has reached a certain *birthday*.¹⁴ Moreover, increasingly states are taking this a step

of 1974, 42 U.S.C. § 5601 (1994), requiring the separation of incarcerated juveniles from incarcerated adults, and would have realigned federal spending priorities from preventive juvenile programs to confinement programs. A competing version in the House, H.R. 1501, was also passed in the 106th Congress and sent to a House/Senate Conference Committee to be reconciled with S. 254. The two bills were not reconciled before the 106th Congress ended. Telephone Interview with Elena Tompkins, Special Counsel to the Administrator, Office of Juvenile Justice & Delinquency Prevention, U.S. Dep't of Justice (May 16, 2001). Another version of the House bill, H.R. 863 was introduced in the 107th Congress, but it currently contains only the "accountability" provisions (confinement programs and harsher sentencing provisions). As this Article went to print, a competing version in the Senate was about to be introduced. *Id.*

14. Sometimes age restrictions are further conditioned by parental consent. For example, New York allows young people, after reaching age sixteen, to test for a driver's license. N.Y. VEH. & TRAFFIC LAW § 502(2)(d) (McKinney Supp. 2001). The statute goes

further with children who commit violence by enacting laws that presume a child to be a mature and responsible decision maker once he or she has committed a certain *act*.¹⁵ Not unlike the fairy in young Pinocchio's life who makes him "real" with a touch of her wand, states continue to demonstrate their own skill with the magic wand by granting full personhood to young people with the wink of an eye (or a birthday, or an act).¹⁶

Last year, I worked with a middle school class of thirteen-year-olds to examine the current "social contract" with young people.¹⁷ I asked them to tell me what they knew about when the law treated them as "mature enough" to be able to drive, to make a contract,

further to allow parents to effectively revoke a young person's license to drive even after the successful completion of the driving test, up until the youth's eighteenth birthday. *Id.* § 502(2)(c)-(d). Statutes including such conditions thus utilize parental consent as a proxy, albeit imperfectly, for parental guidance.

15. See, e.g., waiver laws, *supra* note 13. The three most common methods of transferring young offenders into the adult system of prosecution and punishment have been referred to as "statutory waiver," "judicial waiver," and "prosecutorial waiver." Statutory waiver, most recently seen in New Hampshire and Wisconsin, is effectuated by legislatively designating adult courts as having original jurisdiction for certain categories of crimes, or certain age offenders. See N.H. REV. STAT. ANN. § 21-H: 2 (West 2000); WIS. STAT. ANN. § 938.02(1) (West 2000). So for example, in Wisconsin, adulthood for criminal purposes has been "defined down" so that all seventeen-year-old offenders are prosecuted in adult court. See WIS. STAT. ANN. § 938.02(1) (West 2000); PATRICIA TORBET ET AL., JUVENILES FACING CRIMINAL SANCTIONS: THREE STATES THAT CHANGED THE RULES xi (2000). Judicial waiver allows the transfer decision to be made by a court with exclusive juvenile court jurisdiction, based on the judge's assessment of the circumstances of the offense and the young offender's potential for rehabilitation. See *Kent v. United States*, 383 U.S. 541, 561 (1966) (holding that "it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor."). Prosecutorial waiver gives local district attorneys the option of filing proceedings against a young defendant in either a juvenile or adult criminal court. E.g., ARK. CODE ANN. § 9-27-318(b) (Michie 1998); WYO. STAT. ANN. §§ 14-6-203(c)-(f), 14-6-211 (Lexis 1999). Today there are a number of hybrids employing aspects of all three forms of waiver. For example, Minnesota allows levying adult sanctions on some juveniles who are found guilty in a juvenile court. MINN. STAT. ANN. § 260B.130 (West Supp. 2001). New Mexico gives the juvenile court discretion to impose adult sentences. N.M. STAT. ANN. § 32A-2-20 (Michie 1978); see also TORBET ET AL., *supra*, at 17-38 (analyzing the changes in New Mexico and Minnesota).

16. State efforts to "waive" young offenders into the adult system of prosecution and punishment have increased dramatically: from 7200 cases in 1985 to 12,300 cases in 1994, a seventy-one percent increase. *Judicial Decision and Disposition*, JUVENILE COURT STATISTICS 1994, Dec. 1996, at 13. For every 1000 juvenile cases handled formally by the courts, about fourteen were waived to adult court in 1994. *Id.* This contrasts with the fact that the amount of serious violent crime committed by juveniles is actually less today than it was twenty years ago, diminishing twenty-seven percent alone between 1993 and 1997. *OJJDP Statistical Briefing Book* (Sept. 30, 1999), at <http://ojjdp.ncjrs.org/ojstatbb/qa135.html> (on file with the *University of Michigan Journal of Law Reform*) (utilizing data from the Bureau of Justice Statistics' 1973-1997 National Crime Victimization Survey).

17. The term "social contract" has been used to describe those mutual expectations between society and the individual, contained either in law or social mores. See, e.g., *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (stating that states generally respect parental autonomy, so long as minimal standards of care for children are met).

to hold a job, to get married, and to exercise other aspects of decision-making authority. After brainstorming possible answers and identifying the correct answers based on existing law,¹⁸ I asked them to explain the differences. Why, for example, does New York law treat them as not mature enough to make a contract until age eighteen, but mature enough to be prosecuted and incarcerated as an adult for a violent act as early as thirteen?¹⁹ Why can you get a work permit at age fourteen, drive to work only when you have reached sixteen, or get a tattoo only after you turn eighteen?²⁰ The students' responses varied somewhat, but a central theme emerged: the belief that decision-making authority is bestowed upon young people according to the arbitrary whims of adults, with no apparent relation to young people's efforts to demonstrate maturity.

What kind of incentive toward maturity does such a system offer? If anything, the arbitrariness inherent in the current system promotes the sense among young people of society as an exclusive hierarchy of power, with adults meting out recognition and reward according to their own caprices. Personhood as reflected in legal decision-making authority is rarely gained by hard work or demonstrated maturity in different contexts, but instead by immutable characteristics or fateful mistakes. With adulthood sequestered out of reach by the simple operation of time for young people, despite their best efforts and belief in their abilities, perspective can easily

18. These "rights" in New York are, respectively, driving: sixteen with parental consent (N.Y. VEH. & TRAFFIC LAW § 502(2)(d) (McKinney Supp. 2001)); contracting: eighteen (N.Y. GEN. OBLIGATIONS LAW § 3-101(1) (McKinney Supp. 2001)); working: fourteen to sixteen with a permit, and only in a limited set of workplaces (N.Y. EDUC. LAW § 3216(1) (McKinney 1995), N.Y. LABOR LAW § 131 (McKinney 1986)); and marrying: fourteen with consent of the minor's parents and a supreme court justice or judge of the family court (N.Y. DOM. REL. LAW § 15 (McKinney 1999)).

19. N.Y. PENAL LAW § 30.00(2) (McKinney Supp. 2001). Some of the more controversial differences in New York law were not raised for discussion. For example, at any age young people can obtain treatment for sexually transmitted diseases without parental consent, but it is more difficult to obtain treatment for alcohol or drug problems. *See, e.g.*, N.Y. MENTAL HYG. LAW § 22.11 (requiring treatment providers to determine, prior to treatment, that informing a minor patient's parents would have a "detrimental effect," and that providing treatment would be consistent with the child's best interests). A minor's right to consent to an abortion also presents a challenging dilemma: how could a minor be found to be too immature to make a decision to terminate her pregnancy, but at the same time mature enough to become a mother? In New York, unlike most states, there is no law requiring that a minor obtain parental consent to terminate her pregnancy. *See generally* Bellotti v. Baird, 443 U.S. 622 (1979) (recognizing the need for a judicial waiver in certain cases where a mature minor seeks an abortion without parental consent).

20. *See* A.B. 5081, S.B. 2574, 224th Ann. Legis. Sess. (N.Y. 2001). *See also* A.B. 4958 (N.Y. 2001) to amend the N.Y. Public Health Law to add new Article 14-A, § 1420 Declaration of Public Policy: "The legislature hereby finds and declares that body-piercing and tattooing poses substantial hazards to public health."

be lost. To some young people, the vision of themselves having a future as an adult can seem too remote to wait for.²¹

It is interesting to note that in recent years, federal and state governments have re-examined laws that recognize maturity in eighteen through twenty-one-year-olds and the bright line rules therein, making alterations in the name of protecting the community, protecting young adults, or both. The federal government, through financial incentives to states, has now successfully raised the legal drinking age to twenty-one.²² Similarly, many states require that parents support their children financially until age twenty-one.²³ One legislative proposal that has been recently considered in Congress seeks to raise the age for handgun ownership to twenty-one.²⁴ Such approaches, although still emphasizing bright line rules, further demonstrate public uneasiness about the potential consequences of using the "age of majority" as a proxy for the "age of maturity."²⁵

21. Recall how Eric Harris left an apparent suicide note stating "this is the way we want to go out." Kevin Johnson & Martin Kasindorf, *Colo. Gunmen Left Powerful Bomb*, USA TODAY, Apr. 23, 1999, at A1. Similarly, Thomas Solomon, the young gunman who shot six students at his high school in Conyers, Georgia, one month after the Columbine killings, was motivated in part by his despair over a recent breakup with his girlfriend. See Darryl E. Owens, *The Pain of Teenage Breakups; The Latest School Shooting Has Focused Attention on Why Some Children Can Handle Heartbreak and Others Can't*, ORLANDO SENTINEL, May 26, 1999, at E1.

22. 23 U.S.C. § 158 (1994).

23. See, e.g., N.Y. DOM. REL. LAW § 240 (McKinney 2001); ILL. COMP. STAT. ANN. 305 5/10-2 (West 1993); IND. CODE ANN. § 31-16-6-6 (West 2000).

24. H.R. 85, 106th Cong. (1999) would prohibit, with certain exceptions, the transfer to or possession of a handgun by a person under twenty-one-years-old. H.R. 85, 106th Cong. (1999). See, e.g., Press Release, Office of the Governor of New York, Governor Pataki Signs Legislation to Combat Gun Violence (Aug. 10, 2000), at http://www.state.ny.us/governor/press/year00/aug9_00.htm (on file with the *University of Michigan Journal of Law Reform*).

25. It is interesting to note that in the Littleton shooting case, Dylan Klebold was only a few months away from being deemed "mature enough" to buy his own arsenal of assault weapons. See COLO. REV. STAT. ANN. § 18-12-108.5 (Supp. 1996). Instead, he had to obtain his semi-automatic pistol through his eighteen-year-old girlfriend, who, having already reached the presumptive age of maturity, obliged Klebold's request. See Fox Butterfield, *Terror in Littleton: The Weapons; Most Crime Guns Are Bought, Not Stolen*, N.Y. TIMES, Apr. 30, 1999, at A26 (discussing how gun tracing by the firearms bureau revealed that three of the four guns used in the Columbine attack were purchased at Denver-area gun shows, by Robyn Anderson, Dylan Klebold's eighteen-year-old girlfriend). Consistent with the current system for young people under eighteen-years-old, these new "bright line" rules raising the age of majority up to twenty-one would still make no effort to ensure the acquisition of adequate levels of maturity for eighteen-, nineteen-, or twenty-year-olds by the time they turn twenty-one. For example, Colorado now requires purchasers of guns from unlicensed dealers, such as those at gun shows, to undergo the same criminal background check required of purchasers who buy from licensed dealers. COLO. REV. STAT. ANN. § 12-26.1-101 (West 2001). Tom Mauser, whose son, Daniel, was killed in the Columbine shootings, was one of the main proponents of this legislation approved by Colorado voters. Editorial, *A Salute to SAFE*, DENVER POST, Nov. 12, 2000, at M4.

*B. Contemporary Drawbacks: When Maturity Is
Determined by Events or Acts*

When law and society leave the development of maturity in young people mostly to chance, we quickly discover how cruel the lessons can be. The unforgiving misfortunes that mark our society have become harsher, the snares more hidden yet sure, and the guidance required for safe travel into adulthood harder to come by. Young people in trouble are quickly becoming the newest group of exiles, with social programs to assist and include them frequently dismissed as coddling and politically correct altruism.²⁶ Also, as we have seen in the aftermath of Littleton, the popular wisdom appears to be that the process of raising mature young people has become increasingly inscrutable.²⁷ After all, if the Littleton massacre could be committed by two middle-class suburban adolescents doing reasonably well in school, it seems that any young person could commit such atrocities. Many media stories on the tragedy have conveyed a foreboding, cynical sentiment: what else can be done to reach this disaffected population that has not already been tried?²⁸

Today, it is not sufficient to raise children as they were raised in the 1950s, 1960s, or the 1970s. For young people to have a reasonable chance to enter adulthood safely, society must take a

26. Recall, for example, how the use of federal delinquency prevention funds for midnight basketball leagues was derided in Congress, despite winning widespread praise on the local level for its effectiveness in fostering positive peer-oriented activities. See Melissa Healy, *Making After School Special Education: National Parks Push to Fund Programs for Latchkey Kids Gains Steam*, L.A. TIMES, May 18, 1998, at A1 (recounting the particular success stories of after-school programs as well as the political obstacles impeding their federal funding, including some rhetoric by Republicans that they are nothing more than "social pork"); *Sen. Edward Kennedy Is Trying to Revive Efforts*, ASSOC. PRESS POL. SERV., Mar. 13, 1998, available at 1998 WL 7391891 (detailing a bill introduced by Sen. Ted Kennedy (D-Mass.) allocating \$7.25 billion for after-school programs in a five-year period). No action was taken on Sen. Kennedy's proposed legislation, America After School Act, S. 1697, 105th Cong. (1998), after it was referred to the Committee on Labor and Human Resources on Mar. 2, 1998. Bill Summary & Status for the 105th Congress, at <http://thomas.loc.gov>.

27. See, e.g., Sheryl Gay Stolberg, *By the Numbers; Science Looks at Littleton, and Shrugs*, N.Y. TIMES, May 9, 1999, § 4, at 1 (arguing that risk is a necessary part of student life, no matter what preventive measures are taken, and further asserting that such measures should focus on instrumentalities of school violence rather than the infinitely variable underlying causes).

28. *Id.*; see also Pam Belluck & Jodi Wilgoren, *Caring Parents, No Answers, in Columbine Killers' Pasts*, N.Y. TIMES, June 29, 1999, at A1 (discussing the disciplinary steps taken by law enforcement officials and the parents of the Columbine shooters prior to the massacre). Such sentiments echo those that contributed to the demise of federal entitlements guaranteeing a "safety net" for the poor, i.e., why do we need more anti-poverty programs—when we've spent so much and there's still poverty?

more active role in helping children to mature. As discussed below, two factors make this a more perilous challenge than in the past. First, young people face more difficult and dangerous choices than ever before. In many communities across America, drugs are readily available that can quickly addict or kill; a single sexual encounter can transmit terminal disease; and young people have ready access to guns and materials that promote hate and glorify violence. Second, young people today are likely to have less help in choosing wisely—parents and other key adults tend to be more inaccessible due to demands of employers and family budgets, as well as the lack of supportive, extended family arrangements. Although traditionalists tend to blame working women for the lack of parental availability,²⁹ it is clear that the “invisible hand” of the market has done little to free parents to play an effective mentoring role in the development of their children’s decision-making abilities.

1. Choices Are Harder, Consequences Are More Dangerous— Although youth of every generation have had to make efforts to avoid dangers such as drug or alcohol addiction, unwanted pregnancy, and violence, bad decisions in these contexts today can have more severe and longlasting legal consequences.³⁰ For example, the risks of addiction today are particularly heightened by commonly available illegal drugs with potencies unmatched at any time in our past.³¹ However, instead of making efforts to help

29. See, e.g., ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* 97–108 (1987) (counterposing the “nature” of men and women and the effect feminism has on destroying traditional conceptions of the latter).

30. See, e.g., New York’s “Rockefeller” drug laws, which impose multi-year mandatory prison sentences for possessing or dealing relatively small amounts of illegal drugs. N.Y. PENAL LAW §§ 70.00, 70.15, 220.00-65, 221.00-55 (McKinney 1998 & Supp. 2001). Almost sixty percent of drug offenders in New York prisons were convicted of the lowest three classes of felonies, which involve only minute drug amounts (e.g., 0.5 grams of cocaine). 1999 Briefing Paper for the League of Women Voters of New York State, *Rockefeller Drug Laws: Should They Be Reformed?* (November 1999), at <http://www.lwvny.org/balancingjustice/brief.html> (on file with the *University of Michigan Journal of Law Reform*). One mandatory sentencing provision requires a sentence of fifteen years to life for persons convicted of possessing four ounces or selling two ounces of narcotics. *Id.* Critics maintain that the laws give prosecutors far too much discretion and judges far too little discretion, and that consequently drug offenders receive much harsher penalties than they otherwise would. *Id.*; see also *Cruel and Usual: Disproportionate Sentences for New York Drug Offenders*, HUM. RTS. WATCH, March 1997 (describing disproportionate prosecution and imprisonment of members of minority groups, and questioning multi-year prison sentences for predominantly non-violent offenders).

31. Many drugs today have a greater level of potency than they did just ten years ago. Street heroin, for instance, has traditionally ranged in purity from one to ten percent, yet more recent street heroin has ranged in purity from one to ninety-eight percent with an average purity of thirty-five percent. *Drugs of Abuse*, at <http://www.usdoj.gov/dea/concern/abuse/chap2/narcotic/heroin.htm> (last visited Jan. 23, 2001) (on file with the *University of Michigan Journal of Law Reform*). Potency of marijuana has also increased dramatically since

young people develop maturity necessary to react prudently to the dangers of addiction generally, government action has targeted only illicit drug use, leaving young people's more widespread use of alcohol or tobacco relatively unrestrained.³² Instead of pouring resources into addiction prevention or rehabilitation generally, government policy has tended to focus on interdiction³³ (for example, drug-sniffing dogs in schools)³⁴ or catching and punishing young people after the fact³⁵ (for example, drug testing). In the area of sexuality, the prevalence of HIV and other sexually transmitted diseases has heightened the risk involved in sexual experimentation to include the possibility of contracting a life-threatening illness

the 1970s. In 1974 for instance, the average THC (the active component of marijuana, hashish, and other forms of cannabis) content of illicit marijuana was less than one percent. *Id.* at <http://www.usdoj.gov/dea/concern/abuse/chap6/marijuan.htm> (last visited Jan. 23, 2001) (on file with the *University of Michigan Journal of Law Reform*). In early 1994, potency was on average five percent. *Id.* The THC of today's marijuana ranges up to seventeen percent. *Id.*

32. See DEP'T OF HEALTH & HUMAN SERVS., SUMMARY OF FINDINGS FROM THE 1999 NAT'L HOUSEHOLD SURVEY ON DRUG ABUSE (1999), available at <http://www.samhsa.gov/oas/NHSDA/1999/TitlePage.htm> (on file with the *University of Michigan Journal of Law Reform*). Anti-smoking campaigns present a stark contrast to the billions of dollars America has spent on eliminating drug trafficking. Although the recent Philip Morris "Think, Don't Smoke" campaign, which has had only moderate success in keeping the number of teen smokers down, cost a highly publicized \$100 million, the high cost of the campaign is only a fraction of the \$206 billion settlement agreed on between forty-six states and the tobacco conglomerate. See, e.g., Robert Worth, *The Truth Is, Anti-Smoking Ads Work*, PALM BEACH POST, Mar. 28, 1999, at 1E. As to drug intervention programs like DARE (Drug Abuse Resistance Education), follow-up studies have found little difference between DARE graduates and people subject to normal controls in drug use, drug attitudes, or self-esteem, and no difference in overall outcome after ten years elapsed time. See, e.g., Donald R. Lyman et al., *Project DARE: No Effects at 10-Year Follow-Up*, 67 J. CONSULTING & CLINICAL PSYCHOL. 590, 593 (1999).

33. See OFFICE OF NAT'L DRUG CONTROL POL'Y, NATIONAL DRUG CONTROL STRATEGY 2001 ANNUAL REPORT 1, 117-21 (2001); see also John Nichols, *A Few Suggestions for the Democrats*, CAP. TIMES (Madison, Wis.), Aug. 7, 2000, at A9.

34. Contrast those cases that found a school's use of drug sniffing dogs to be a reasonable versus an unreasonable search. Compare *Jones v. Latexo Indep. Sch. Dist.*, 499 F. Supp. 223, 235 (E.D. Tex. 1980) and *Doe v. Renfrow*, 475 F. Supp. 1012, 1019 (N.D. Ind. 1979), *aff'd*, 631 F.2d 91 (7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1981), with *Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470 (5th Cir. 1982), *cert. denied*, 463 U.S. 1207 (1983) (finding canine sniffing of students' lockers and automobiles not to constitute a search at all). These efforts to "catch" kids rely on a relatively unformed doctrine of adolescents' diminished personhood in law. Hence it was easy for the Court to assert that the seriousness of the drug problem in one school justified the bodily invasion of mandatory drug testing for student athletes. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 664-65 (1995). Similarly, young people were determined to have a diminished expectation of privacy in their personal belongings at school. *New Jersey v. T.L.O.*, 469 U.S. 325, 347-48 (1985).

35. See *Vernonia*, 515 U.S. at 649-50; see also *Todd v. Rush County Schs.*, 133 F.3d 984, 985 (7th Cir. 1998) (holding that Rush County Schools' drug testing program subjecting all students who wish to participate in extracurricular activities to random and suspicionless urine testing for cigarette, alcohol, and drug use survives scrutiny under the Fourteenth Amendment).

from a single unprotected sexual encounter.³⁶ The consequences of teen pregnancy have also been heightened, in large part by recent welfare reform initiatives that stigmatize, police, and restrict essential support for teen mothers.³⁷ As to guns and violence, although youth culture has always mirrored violent adult culture to some extent, the instruments of violence have gradually become more accessible and dangerous.³⁸ According to the United States

36. According to the Centers for Disease Control and Prevention 1999 Youth Risk Behavior Survey Results, 49.9% of high-school-aged persons have already experienced sexual intercourse. Centers for Disease Control and Prevention, *Young People at Risk: HIV/AIDS Among America's Youth*, at <http://www.cdc.gov/hiv/pubs/facts/youth.htm> (last visited Mar. 17, 2001) (on file with the *University of Michigan Journal of Law Reform*). It is estimated by the CDC that at least half of all new HIV infections in the United States are among people under twenty-five, and the majority of young people are infected via sexual contact. *Id.* Those who might still hold the belief that the main at-risk group is homosexual men should take note of the fact that sixty-two percent of HIV infections in the thirteen- to nineteen-year-old age group occur among young women who became HIV positive from heterosexual sexual contact. *HIV/AIDS Surveillance Rep.*, Table 22: Estimated AIDS Incidence in Adolescents and Adults Under Age 25, by Sex and Exposure Category, Diagnosed in 1999, and Cumulative Totals through 1999, United States, at <http://www.cdc.gov/hiv/stats/hasr1201/table22.htm> (last visited Mar. 24, 2001) (on file with the *University of Michigan Journal of Law Reform*). Post-exposure prophylaxis also has been found to have an eighty-one percent efficacy rate in preventing HIV infection in doctors who have had accidental needle sticks. See Jeffrey T. Kirchner, *Prophylaxis Following Exposure to HIV*, 57 AM. FAMILY PHYSICIAN 1672, 1672 (1998) (showing the use of zidovudine after exposure to an HIV-infected needle reduces the risk of infection by eighty-one percent). Despite this progress, the CDC is quick to remind us that such treatments should only be used in individuals who have had occupational exposure. See Lawrence K. Altman, *U.S. Warns on Some Use of a Fighter Against H.I.V.*, N.Y. TIMES, Jan. 5, 2001, at A12 (relating the CDC's warning not to prescribe a standard HIV prevention drug to healthy health care workers stuck by needles because the drug can produce severe liver damage). Treatment of those whose exposure is non-occupational (sexual contact, drug use) is still limited to the HIV "cocktail" of nucleotide analogue reverse transcriptase inhibitors (e.g. AZT), non-nucleotide reverse transcriptase inhibitors (e.g. Nevirapine), and protease inhibitors (e.g. indinavir). See generally BERNARD N. FIELDS ET AL., FIELDS VIROLOGY, ch. 16 (3d ed. 1996). Finally, clinical trials of a possible HIV vaccine are currently underway in Thailand. See Jessica Berman, *Thailand Attacks AIDS with Two-Pronged Approach*, 353 LANCET 1600, 1600 (1999) (discussing the four-year clinical trial, which involves administering the AIDSVAX vaccine to intravenous drug users at methadone clinics in Bangkok).

37. See Personal Responsibility and Work Opportunity Restoration Act of 1996, Pub. L. No. 104-193 (codified as amended at 42 U.S.C. § 608 (1996)). To receive what in most states amounts to minimal assistance, teen parents must work toward their high school diploma or GED or participate in alternative education or training. 42 U.S.C. § 408(a)(4) (codified as amended at 42 U.S.C. § 608 (1996)). States must also deny assistance to teens who are not living either at home or in an approved adult-supervised living situation. *Id.* at § 408(a)(5) (codified as amended at 42 U.S.C. § 608 (1996)).

38. U.S. DEP'T OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION ANNUAL REPORT (1999), available at http://www.ncjrs.org/html/ojjdp/ojjdp_annualrpt99/ (last visited Jan. 4, 2001) [hereinafter OJJDP ANNUAL REPORT] (on file with the *University of Michigan Journal of Law Reform*). Violent crime is actually down from 1994. Arrest rates for young people involved in violent crime (murder, rape, robbery, aggravated assault) are down, dropping over twelve percent between 1995 and 1996. *Id.* As models, those of our generation are not much help: the amount of violent and non-violent youth crime actually peaked in the 1950s, and this amount has remained relatively stable

Office of Juvenile Justice and Delinquency Prevention, the number of young people killed by guns in the United States doubled between 1984 and 1994—increasing from eight to sixteen children per day.³⁹ Gun murders committed by children also quadrupled during that same ten-year period, from over 500 per year to over 2000 per year.⁴⁰ Last year, approximately fourteen young people per day were killed by gun violence in the United States⁴¹—nearly the same number killed in Littleton on April 22, 1999.⁴² Not surprisingly, the number of guns available has increased exponentially; today there are approximately 200 million firearms in American homes, almost one for every man, woman, and child.⁴³

2. *Key Adults Are Harder to Come By*—Two of the most gradual yet dramatic changes that have occurred in American culture since the 1950s are the increased number of parents in the workforce and the attenuation of extended family structures. In 1973 only about fifty percent of all mothers of school age children were in the workforce, but today this number is seventy-five percent.⁴⁴ Similarly, the trend away from having extended family members in the household has also been linked to the increased need of older adults to support themselves, given that there are few jobs sufficient to support a family with a dependent adult at home.⁴⁵ Most parents work today because they have to—the vast majority of American families have seen their earning power diminish steadily

until the substantial rise in gun violence between 1984 and 1994. *Id.* See generally MIKE A. MALES, *THE SCAPEGOAT GENERATION: AMERICA'S WAR ON ADOLESCENTS* 1–44 (1996) (analyzing legal and social treatment of adolescents and concluding that legislative efforts to “protect” youth are often misguided efforts designed to keep young people disenfranchised and to avoid real reforms of society-wide problems, e.g., addiction, crime).

39. OJJDP ANNUAL REPORT, *supra* note 38.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* Forty-three percent of American homes with both guns and children had at least one unlocked firearm, a gun that was not locked away or had no trigger lock, and nearly ten percent of all gun owners keep their firearms unlocked and loaded, meaning a total of thirteen percent of American homes with children and guns (1.4 million homes with 2.6 million children) store firearms in a manner accessible to children. Daniel B. Wood, *Where School Shooters Get Their Guns*, CHRISTIAN SCI. MONITOR, Mar. 12, 2001, at 1 (discussing the findings of a recent survey conducted by the *American Journal of Public Health*). Fortunately, the percentage of all households with guns has declined slightly since the 1970s, now representing approximately thirty-five percent of all households. Children's Defense Fund, *The State of America's Children: Yearbook 2000* (2000) [hereinafter *CDF Yearbook 2000*].

44. *CDF Yearbook 2000*, *supra* note 43.

45. *Id.* See generally EVA COCHRAN & MON COCHRAN, *CHILD CARE THAT WORKS: A PARENT'S GUIDE TO FINDING QUALITY CHILD CARE* (1997) (providing guidance for finding quality child care in light of the limited options available for working parents).

since the 1950s.⁴⁶ Increasing numbers of parents—fathers and mothers—also seek to excel in professional realms regardless of financial necessity.⁴⁷ Of course, most parents seek to balance such financial and professional concerns with the pressing need to raise their children and be close to them at critical times during their development.⁴⁸ What is missing are legal strictures or incentives designed to provide parents the flexibility to act effectively as both a parent and a worker, eliminating burdens that hinder the development of effective mentoring relationships between parents and their children.⁴⁹

Although employers have increasingly provided leave time for employees to be with young children or dependent adults when needed, little is known about whether parents of teens have been able to take similar advantage of such allowances.⁵⁰ In those rare cases where employers do make accommodation available, for example, in the form of paid time off work, adjustable hours, or job sharing, parent employees (usually women) still tend to encounter stigmatization within the workplace that limits their ability to advance.⁵¹ Interestingly, even where the use of flexible workplace policies is not overtly nor subtly discouraged, the employees themselves may choose work over home life, finding in work some of the encouragement, quiet, or camaraderie missing at home.⁵² Particularly given the stresses inherent in adolescent rebellion, parents can have attractive incentives to be away from home and their children at a critical time when their guidance is needed.⁵³ It

46. *CDF Yearbook 2000, supra* note 43.

47. *Id.*

48. *Id.*

49. *See, e.g.,* Family and Medical Leave Act of 1993, 29 U.S.C. § 2611 (1994) (granting certain employees with dependent children or adult relatives unpaid leave); *see also CDF Yearbook 2000, supra* note 43, at 20, 57.

50. *See generally* Families and Work Institute, *Families and Work Institute, Executive Summary: 1998 Business Work-Life Study* (1998).

51. *See* ARLIE RUSSELL HOCHSCHILD, *THE TIME BIND: WHEN WORK BECOMES HOME AND HOME BECOMES WORK* 198, 245–50 (1997) (explaining how officials with the authority and skill to institute family-friendly policies lack interest in doing so, advocates for such plans lack authority, and supervisors and managers are often hostile to any programs suggesting work-family balance).

52. *Id.* at 245–50.

53. One dramatic societal change requiring increased parental supervision of children has been the proliferation of the Internet, which has provided children with unprecedented access to knowledge and communication with other people. Unfortunately, this access can provide instant contact with violent fantasy games, hate groups, and other anti-social and destructive sources of information that few parents would ever consciously allow into their homes. Currently there are hundreds of websites featuring racist, anti-Semitic, or other hate group information. *See* Keith Perine, *The Trouble with Regulating Hatred Online*, at <http://www.cnn.com/2000/TEC./07/25/regulating.hatred.idg/index.html> (last visited Feb. 11, 2001) (on file with the *University of Michigan Journal of Law Reform*)

is noteworthy that the time period in which most juvenile crime is committed is between 3:00 p.m. and 7:00 p.m. on weekdays—not coincidentally a time when fewer adults tend to be at home and few school or community-sponsored activities are available for young people.⁵⁴

II. AN ORGANIC SOCIOLEGAL MODEL TO HELP YOUNG PEOPLE DEVELOP MATURITY

If society were committed to improving the decision making of young people, lawmakers would begin to look at young people as developmental psychologists do—individuals who develop maturity gradually over time by exercising decision-making abilities as they are given increasing levels of authority. Instead of using arbitrary ages and acts as proxies for maturity, law and social institutions would create some opportunities for young people to gain authority as they demonstrate mature decision-making capacity. “Knowing the ropes,” “earning your wings,” “paying your dues,” instead of being useless clichés, would describe aspects of an actual

(showing how the Internet is an inexpensive and easy way for hate groups to reach vast audiences and estimating that there are 500 hate sites on the Internet, according to an East Coast group that tracks hate sites). This generation of young people has become the de facto experimental group, a generation growing up with a level of access to information and electronic interaction with others that has never existed before. Many researchers and professional organizations, including the American Psychological Association, assert that there is a demonstrable link between young people’s contact to violent imagery and later violent activity. Cf. Steven J. Kirsh, *Seeing the World Through Mortal Kombat Colored Glasses: Violent Video Games and the Development of a Short-Term Hostile Attribution Bias*, 5 CHILDHOOD: A GLOBAL J. CHILD RES. 177, 181 (1998) (showing that there is “some support for the contention that violent video games lead to the development of a short-term hostile attribution bias”) and Leonard Berkowitz & Anthony LePage, *Weapons as Aggression-Eliciting Stimuli*, 7 J. PERSONALITY & SOC. PSYCHOL. 202 (1967) (giving results of experiment whereby male undergraduates’ levels of aggression were found to increase when they were exposed to weaponry).

54. According to the U.S. Department of Education, over twenty-eight million school-age children have both parents or their only parent in the workforce. Office of Educational Research and Improvement, U.S. Dep’t of Educ., *Bringing Education to After-School Programs*, available at http://www.ed.gov/pubs/After_School_Programs/Title.html (Summer 1999) (on file with the *University of Michigan Journal of Law Reform*). At least five million children—and possibly as many as fifteen million—are left alone at home each week. *Id.* Social scientists have generally observed that school-age children who are unsupervised during the hours after school are more likely to receive poor grades and drop out of school than those who are involved in supervised, constructive activities. See, e.g., Beth M. Miller et al., *I Wish the Kids Didn’t Watch So Much TV: Out of School Time in Three Low Income Communities* (Wellesley, Mass.: Center for Research on Women, Wellesley College, School-Age Child Care Project, 1996); Jill Posner & Deborah Lowe Vandell, *Low-Income Children’s After-School Care: Are There Beneficial Effects of After-School Programs?*, 65 CHILD DEV. 440, 440–56 (1994).

system which provides support to young people in becoming better decision makers.

A legal system designed to foster maturity in youth would alter, in some critical areas, existing expectations for young people in our society. In these areas, law could be more careful in the granting of authority at the same time as it could fuel society-wide efforts to help young people mature by practicing authority. An improved, "maturity-enhancing" legal framework for young people would be based on five core principles:

1. legislatures should address the needs of all youth, not just the most troubled few;
2. given the process of adolescent development, law should allow opportunities for young people to acquire authority as they show maturity;
3. maturity is developed through practice, particularly with a caring mentor;
4. maturity development is enhanced when young people can make decisions in meaningful contexts; and
5. maturity development is enhanced when young people can mentor others or otherwise practice empathy.

The last principle, in particular, seeks to implement the aims of existing expectations for adults, i.e., societal respect for individual choice when it is exercised with due respect for the rights of others.⁵⁵ Adoption of the above principles would begin to transform an ineffective system—one devoted solely to the punishment of a small population of delinquent youth, one that grants legal authority without inquiry as to maturity, and one that leaves the development of maturity in youth to random and limited chances to practice decision making—into a meaningful system that empowers young people.

55. The need to revisit and revise societal expectations for youth is particularly appropriate given the myriad ways that society has, over time, increased the dangers and consequences for young people, while leaving them to handle these conditions largely on their own. See generally DAVID ELKIND, *ALL GROWN UP & NO PLACE TO GO: TEENAGERS IN CRISIS* 3-6, 51-52, 88, 208-09 (1984) (discussing the effects of foisting "premature adulthood" on teenagers while at the same time neglecting to provide a support system for them).

*A. Legislatures Should Address the Needs of All Youth,
Not Just the Most Troubled Few*

Social science research identifies three categories of youth: (1) those with no involvement with the juvenile justice system; (2) those with fleeting involvement; and (3) those with early and chronic involvement.⁵⁶ The vast majority of young people fall into the first category, and those with fleeting involvement far outnumber those chronically involved.⁵⁷

This research should be promising news. However, legislative initiatives affecting young people in recent years appear to be driven by an overriding vision of youth as a homogenous population falling into the third category—in legislators' minds, the chronically anti-social predator.⁵⁸ Although in recent years states have continued to enact more restrictions diverting teens from the juvenile court system, most states had already enacted such legislation prior to the time of the Columbine tragedy.⁵⁹ Other recent legislative measures enacted in the same vein have addressed an odd variety of adolescent activities restricting choices in tattooing, body piercing, and snowmobile driving and requiring young people to address their teachers as "sir" or "ma'am."⁶⁰ Ironically, the most logical new restriction that might follow from Littleton—a ban on gun ownership or possession by anyone under twenty-one years old—appears to have little chance of passage as of this writing.⁶¹ The message to the overwhelming majority of young people, those with little or no juvenile system involvement, is that government is committed to one type of legislating: the formulation of more severe consequences for the worst decisions, not

56. See Scott & Grisso, *supra* note 12, at 140, 153–54.

57. *Id.* at 154–55.

58. See excerpts from floor debate: federal Violent and Repeat Juvenile Offenders Accountability and Rehabilitation Act, S. 254, 106th Cong. (1999).

59. See generally OJJDP ANNUAL REPORT, *supra* note 38.

60. See, e.g., *supra* note 20 (tattooing and body piercing); MICH. STAT. ANN. § 13A.82108 (Michie 1997) (snowmobiling); LA. REV. STAT. ANN. § 17:416.12 (West 2001) (addressing teachers).

61. See, e.g., S.B. 106 in the Colorado legislature, which would have made possession of a handgun by an "underage person," defined as a person under age twenty-one, a Class 2 misdemeanor. S.B. 106, 62d Gen. Assem., 2d Reg. Sess. (Colo. 2000). Unfortunately, this bill never got out of committee. Another Colorado bill, H.B. 1243, prohibiting the ownership and possession of firearms other than handguns, by a *juvenile*, defined as a person under age eighteen, did pass the legislature. H.B. 1243, 62d Gen. Assem., 2d Reg. Sess. (Colo. 2000) was signed by the governor of Colorado and enacted into law, COLO. REV. STAT. § 18-12-108.7 (2000), on May 19, 2000. H.R. 85, 106th Cong. (1999) would prohibit, with certain exceptions, the transfer to or possession of a handgun by a person under twenty-one years old. H.R. 85, 106th Cong. (1999).

encouraging the development of positive, mature decision making by youth.

*B. Given the Process of Adolescent Development, Law Should
Provide Opportunities for Young People to Acquire
Authority as They Show Maturity*

One might conclude from recent congressional debate on the federal Violent and Repeat Juvenile Offenders Accountability and Rehabilitation Act⁶² that children become good decision makers primarily by praying in school or observing the Ten Commandments on school walls.⁶³ A number of legislators also trace bad decision making to the availability of day care, contraception, and the teaching of evolution in schools.⁶⁴ Unfortunately, the legislative response to Littleton demonstrates little or no familiarity with social science research on the development of maturity in young people.

In attempting to build a comprehensive model of children's decision making, early social science research emphasized the importance of young people's cognitive abilities, as reflected in the conceptual framework of "informed consent."⁶⁵ This framework

62. S. 254, 106th Cong. (1999); see *supra* note 13.

63. House Amendment 200 (amending H.R. 1501) was passed on June 17, 1999, by a 248-130 vote, allowing the posting of the Ten Commandments in classrooms. Roll No. 221, at <http://thomas.loc.gov>; see Alison Mitchell & Frank Bruni, *House Vote Deals a Stinging Defeat to Gun Controls*, N.Y. TIMES, June 18, 1999, at A1.

64. For example, House Majority Whip Tom DeLay (R-Tex.), during debate on H.R. 1501, read a letter written by Addison Dawson to the *San Angelo Standard-Times*, published on Apr. 27, 1999, and attributing the Littleton tragedy to the following factors:

[W]e place our children in day care centers where they learn their socialization skills among their peers under the law of the jungle, while employees who have no vested interest in the children look on and make sure that no blood is spilled. . . . [W]e have sterilized and contracepted our families down to sizes so small that the children we do have are . . . spoiled. . . . [O]ur school systems teach the children that they are nothing but glorified apes who have evolutionized out of some primordial soup of mud.

145 CONG. REC. H4366 (daily ed. June 16, 1999) (statement of Rep. DeLay).

In introducing the letter, DeLay described it as "blow[ing] away all the smoke that clouds a particular issue After I make this statement, I do not think anybody else needs to speak. We just need to vote." *Id.* In actuality, longitudinal studies by the High Scope Institute and others have demonstrated that the availability of quality child care dramatically reduces a young person's chances of eventually becoming involved with the juvenile court. See generally COCHRAN & COCHRAN, *supra* note 45.

65. THOMAS GRISSO, EVALUATING COMPETENCIES: FORENSIC ASSESSMENTS AND INSTRUMENTS 311-25 (1986) (discussing informed consent regarding competency to consent for medical treatment); Bruce Ambuel & Julien Rappaport, *Developmental Trends in Adoles-*

and supporting research examining young people's cognitive abilities is succinctly described in the amicus brief submitted by the American Psychological Association (APA) in the United States Supreme Court's consideration of the case of *Hartigan v. Zbaraz*,⁶⁶ where Illinois physicians challenged a state law requiring parental notification when a minor seeks an abortion:

Cognitive capacity develops in a predictable sequence of stages, from simple reflexive reactions in infancy to the comprehension of abstractions and future consequences in early adolescence (citation omitted). The ability to comprehend future consequences, called "formal operations," is most relevant to the [minor's] decisions affected by the [Illinois] Act. The cognitive ability developed in the period of formal operations is most closely akin to the "capacity to consent." In the period of formal operations children acquire the capacity to generate many possible solutions to a problem, to think about each possible solution hypothetically, to imagine its consequences before they occur, to consider both immediate and longer-range consequences, and to weigh and balance these various potential outcomes to reach a conclusion about the decision to be made. Once the period of formal operations is complete, an individual has the decision making abilities of an adult.⁶⁷

The APA brief notes that early adolescents (ages ten to thirteen years) begin to learn how to organize their environment

cents' Psychological and Legal Competence to Consent to Abortion, 16 LAW & HUM. BEHAV. 129, 149-51 (1992) (proposing informed consent, as opposed to parental consent, regarding minors' access to abortion); Thomas Grisso & Linda Vierling, *Minors' Consent to Treatment: A Developmental Perspective*, 9 PROF. PSYCHOL. 412, 416-25 (1978) (evaluating developmental considerations that affect a child's ability to meet the legal standards of consent); Elizabeth Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 221-40 (1995) (challenging use of informed consent standard for comparing adult and adolescent decision making); Walter J. Wadlington, *Consent to Medical Care for Minors: The Legal Framework*, in CHILDREN'S COMPETENCE TO CONSENT 57, 65 (Gary B. Melton et al. eds., 1983) (discussing the special problems of informed consent with regard to minors); Lois A. Weithorn & Susan B. Campbell, *The Competency of Children and Adolescents to Make Informed Treatment Decisions*, 53 CHILD DEV. 1589, 1589 (1982) (measuring developmental differences in competency to make informed treatment decisions).

66. 484 U.S. 171 (1987).

67. Brief of Amicus Curiae, American Psychological Association, at 13-14, *Hartigan v. Zbaraz*, 484 U.S. 171 (1987) (No. 85-673) (citation omitted). See generally Gary Melton, *Towards Personhood for Adolescents: Autonomy and Privacy as Values in Public Policy*, 38 AM. PSYCHOL. 99 (1983) (asserting the need for law to take account of adolescent maturation in decision-making abilities prior to their eighteenth birthday).

coherently and conceptually.⁶⁸ By the onset of late adolescence (fourteen to seventeen), “almost all minors with at least average intellectual ability possess the capacity for formal operations that characterizes the problem-solving process of adults.”⁶⁹ In addition, the brief describes other aspects of social and moral development relevant to the capacity to give informed consent in the medical treatment context. For example, research by Laurence Kohlberg on the development of moral reasoning asserts that the adult capacity to form moral principles, which can be utilized in reaching decisions and guiding one’s own behavior, begins to emerge in early adolescence, with full development by ages fourteen to fifteen.⁷⁰

More recent social science research has moved beyond this primarily cognitive model of adolescent decision making, looking for ways to expand the conceptual framework to include more psychosocial factors.⁷¹ In this regard, some have criticized the APA’s position in the minors’ consent to abortion cases, arguing that it presents an incomplete picture of the relevant factors involved when examining and evaluating young people’s decision-making abilities.⁷² Professors Elizabeth Scott, Jennifer Woolard, and N. Dickon Reppucci have proposed a multifaceted concept of “maturity” which includes such factors as peer influence, parental influence, risk-taking tendencies, short-term/long-term perspective taking, and empathic abilities.⁷³ When new and past research related

68. Brief of Amicus Curiae, American Psychological Association, at 14, *Hartigan v. Zbaraz*, 484 U.S. 171 (1987) (No. 85-673).

69. *Id.* (citing Daniel P. Keating, *Thinking Processes in Adolescence*, in *HANDBOOK OF ADOLESCENT PSYCHOLOGY* (Joseph Adelson ed., 1980)).

70. Lawrence Kohlberg, *The Development of Children’s Orientations Toward a Moral Order*, 6 *VITA HUMANA* 11, 30–31 (1963) (asserting that children as they age pass through distinct stages of moral reasoning marked by increased complexity and ability to consider relevant factors).

71. See generally Scott et al., *supra* note 65, at 229–35 (proposing that researchers use a decision-making framework designed to evaluate “judgment” rather than an informed consent standard); see also Elizabeth Cauffman & Laurence Steinberg, *Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making*, 20 *LAW & HUM. BEHAV.* 249, 249–65 (1996) (contrasting the use of age differences in cognitive factors in traditional analysis of adult versus adolescent decision making, with research emphasizing psychosocial aspects of maturity of judgment); David Scherer & N. Dickon Reppucci, *Adolescents’ Capacities to Provide Voluntary Informed Consent: The Effects of Parental Influence and Medical Dilemmas*, 12 *LAW & HUM. BEHAV.* 123, 136 (1988) (showing that adolescents’ consent is influenced by both parental influence and the gravity of a medical dilemma); Jennifer Woolard et al., *Theoretical and Methodological Issues in Studying Children’s Capacities in Legal Contexts*, 20 *LAW & HUM. BEHAV.* 219, 222–23 (1996) (discussing how situational effects can cause a child’s performance to deviate from his or her capacity).

72. See Cauffman & Steinberg, *supra* note 71, at 250–51; Scott et al., *supra* note 65, at 226–35.

73. See generally Cauffman & Steinberg, *supra* note 71; Scott et al., *supra* note 65.

to these factors is examined, a more complex picture emerges. For example, Professors Elizabeth Cauffman and Laurence Steinberg, in working with both delinquent and nondelinquent adolescent populations, found the most significant differences in psychosocial maturity to be between those sixteen years of age and younger versus those seventeen years of age and older.⁷⁴ At the same time, recent studies by Professors Cauffman and Steinberg have also found that mature decision making exists at substantial levels in children as young as twelve, with greater numbers of young people exhibiting maturity in each successive age grouping.⁷⁵ Not surprisingly, Cauffman and Steinberg also identified significant amounts of "immature" decision making even after the age of majority.⁷⁶

74. Cauffman & Steinberg, *supra* note 71, at 268.

75. *See id.* at 254.

76. *See id.* Some have criticized the research methods utilized in many of these studies for utilizing adolescents' responses to hypothetical questions about what decision they might make in an imagined situation (e.g., would you shoplift if you knew you wouldn't get caught?). *See id.* at 268; *see also* Scherer & Reppucci, *supra* note 71, at 135 (discussing studies of parental influence on decision making related to medical treatment). In addition, many have equated "mature decision making" behavior with young people's assertions of compliance with or deference to established law (e.g., observing city curfew). Cauffman & Steinberg, *supra* note 71. For example, Cauffman and Steinberg use "maturity" questionnaires in their studies that present dilemmas for young people that usually involve some transgression of law. *See id.* This approach may not adequately account for the fact that many "morally advanced" decisions are made on the basis of concepts of philosophy and justice, not simple compliance with established law. *See* Kohlberg, *supra* note 70. In a rare study where adolescent decision making was observed as it was occurring in an actual setting, results appeared to confirm the assertions of the APA's description of youth decision making in the abortion consent context. A 1992 study by Ambuel and Rappaport examined youth decision making observed as part of pregnancy counseling at a women's medical clinic and tested prior theoretical assumptions about the ability of minors to give informed consent. Ambuel & Rappaport, *supra* note 65, *passim*. The study embedded the research measures within the routine operations of the clinic, in order to maximize ecological validity. *Id.* at 135. Participants in the study were young women from thirteen to twenty-one years of age who came to the clinic for a pregnancy test and subsequent counseling. When the women arrived, they were asked to complete a questionnaire that gathered demographic and background information, and standard psychological measures were utilized to assess their general cognitive problem-solving skills and emotional experience related to the pregnancy. *Id.* at 134-37. Finally, the participants completed a detailed "Reasoning About Pregnancy" interview with a pregnancy counselor trained in interviewing skills, asking such questions as "I'm interested in how you explain this decision to yourself. In your own mind, what are the advantages and disadvantages of parenthood and abortion?", and "I'm interested in how you think your decision to continue the pregnancy or have an abortion might affect other people in your life." *Id.* at 137. Participants' responses were collected on audiotape, and then reviewed blindly and scored for two independent variables (decision conflict and social support) and four criteria of competence (volition, global quality, consequences, and richness). *Id.* at 138. Ambuel and Rappaport's results appeared to confirm the findings of other developmental research: there seem to be no substantial differences between the decision-making processes of middle or later adolescents and legal adults. *Id.* at 147. They asserted further that this competence appears to be present even in an "emotionally challenging, real-world decision" made in the context of pregnancy. *Id.* at 148. Also consistent with prior research, the study defined "mature" decision making as "(a) understanding the

There is no assertion in the literature that these developmental milestones are somehow innate or substantially determined by biology.⁷⁷ Instead, social science demonstrates that these decision-making abilities increase over time,⁷⁸ and are enhanced by several factors, including the presence of mentors, as well as opportunities to practice.⁷⁹ In contrast, the present legal system promotes narrow inquiries about maturity.⁸⁰ Although the law's analysis of criminal responsibility should be retained, the breadth of such inquiries should be expanded and used in a wider variety of youth decision-making contexts. Law should embrace a developmental model to provide for the recognition of positive as well as criminal responsibility, to match the developmental model of the acquisition of maturity described by social science.

*C. Maturity Is Developed Through Practice, Particularly
with a Caring Mentor*

The developmental literature, as well as common parental experience, shows that young people's decision making can be improved by having opportunities to make meaningful decisions under safe conditions.⁸¹ For example, Professor Gary Melton argues that "legal socialization," the process of learning and understanding one's obligations and rights in society, "depends largely on actual participation in legal decision making and the experience of conflict of ideas."⁸² He also notes that participation by young people tends to produce other benefits, including the development of individuation, a sense of personal efficacy, in-

nature and probable consequences of one's situation; (b) thoroughly considering consequences associated with each alternative, including both risks and benefits; (c) comparing alternatives based upon this evaluation of consequences; (d) integrating personal values and goals; and (e) making a voluntary, proactive decision that is not overly influenced by others." *Id.* at 132.

77. See generally Ambuel & Rappaport, *supra* note 65; Cauffman & Steinberg, *supra* note 71; Scott et al., *supra* note 65.

78. See generally Cauffman & Steinberg, *supra* note 71; Scott et al., *supra* note 65.

79. See *infra* Part II.C.

80. For example, was fifteen-year-old Thomas Solomon mature enough to understand the gravity of his actions on May 20, 1999, when he started shooting at a school in Conyers, Georgia? Kevin Sack, *Youth With 2 Guns Shoots 6 at Georgia School*, N.Y. TIMES, May 21, 1999, at A1.

81. Melton, *supra* note 67, at 101; see CHILDREN'S COMPETENCE TO CONSENT, *supra* note 65, at 22-23; GRISSE, *supra* note 65, at 228; Weithorn & Campbell, *supra* note 65, at 1596.

82. Melton, *supra* note 67, at 101 (citation omitted).

creased self-control, and increased incentives to excel in academic and other environments.⁸³

The importance of mentorship, in which young people work through problems with the participation of a competent, caring person, is further described in research by developmental psychologists such as L.S. Vygotsky. Vygotsky describes how children are more likely to develop new skills, particularly decision-making skills, with the help of a mentor.⁸⁴ Vygotsky proposes that what children can do with the assistance of others might be more indicative of their mental development than what they can do alone.⁸⁵ Recent studies of the effectiveness of mentorship programs such as Big Brothers Big Sisters of America describe similar benefits in youth decision making in a variety of contexts, including staying in school and away from involvement in drugs or juvenile crime.⁸⁶

Current law presumes that young people learn exclusively from parents, teachers, and from legal strictures limiting their behavior. Traditional family law doctrine, in particular, tends to recognize parents as the sole legitimate mentors for children.⁸⁷

83. *Id.*

84. L.S. VYGOTSKY, *MIND IN SOCIETY: THE DEVELOPMENT OF HIGHER PSYCHOLOGICAL PROCESSES* 84–91 (Michael Cole et al. eds., 1978) (1930) (describing the influence of mentors through the zone of proximal development, the distance between the actual developmental level as determined by independent problem solving and the level of potential development as determined through problem solving under adult guidance).

85. *Id.* at 85.

86. See STEPHEN F. HAMILTON, *APPRENTICESHIP FOR ADULTHOOD* 62–103 (1990) (describing international approaches to successful academic and vocational schooling with mentors and apprenticeships); CYNTHIA L. SIPE ET AL., *SUPPORT FOR YOUTH: A PROFILE OF THREE COMMUNITIES* 81 (1998) (concluding that “[y]outh who are engaged in more activities, have more leadership experiences and more adult support also tend to have higher self-efficacy, better grades and be less involved in risk activity.”).

87. There are no laws giving anyone other than parents and court-recognized legal custodians the authority to teach or mentor a child. Indeed, parents are generally seen as exclusive mentors. See *Wisconsin v. Yoder*, 406 U.S. 205, 234–36 (1972) (finding that Wisconsin’s compulsory school attendance law unduly burdened the Free Exercise Clause of the First Amendment by forcing Amish parents to send their children to public school after the eighth grade in violation of core Amish religious beliefs). One reason that law recognizes the “exclusivity” of mentorship in parents is that it is consistent with the exclusivity of parental responsibility for their children’s actions according to traditional tort law principles. This doctrine has more recently been expanded into the criminal context in some jurisdictions in the form of “parental responsibility” laws, which levy criminal sanctions against parents for their children’s criminal acts. See, e.g., Victoria E. Freile, *Dryden OKs Parental Responsibility Law*, ITHACA J., Dec. 17, 1999, at 1A (describing a municipal law holding parents accountable for the actions of their children under the age of sixteen, and subjecting the parents to fines up to \$300 and jail for up to fifteen days). Ironically, “parental responsibility” laws have flourished at the same time that juvenile waiver laws have proliferated to hold young people responsible for their bad acts just as adults: as fully independent actors unconnected to others. In the area of family law, the doctrine of exclusive guardianship/mentorship may need to be adjusted to allow for other key adults to

In contrast, the social science literature identifies a broad range of persons capable of playing effective mentoring roles, including, but not limited to, teachers, relatives, counselors, and even peers.⁸⁸ Given studies that report decreased time for family interaction,⁸⁹ the law should do more to recognize and facilitate a range of mentors who can help channel disaffected teens toward opportunities to practice maturity.

*D. Maturity Development Is Enhanced When Young People
Can Make Decisions in Meaningful Contexts*

Adolescent decision making may take very different forms depending on the context in which the decisions are made. For example, decisions about taking drugs or having sex might be made in different ways, and present different degrees of difficulty than decisions about schooling or medical treatment.⁹⁰ With this

be involved in helping the child mature (according to an apprenticeship, or Big Brothers Big Sisters of America model). Professors Martha Fineman and Martha Minow have each described the need for greater community involvement to assist parents in their critical mentoring role, emphasizing the need to develop new concepts of dependency. See MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* 177–98 (1995); Martha Minow, *Children's Rights: Where We've Been, and Where We're Going*, 68 *TEMP. L. REV.* 1573, 1583–84 (1995); Martha Minow, *Rights for the Next Generation: A Feminist Approach to Children's Rights*, 9 *HARV. WOMEN'S L.J.* 1, 8–9 (1986). Professor Fineman has added to this a call for increased recognition of “family privacy,” which would protect parental autonomy against governmental regulation of parental choices, for example, in the context of welfare reform. See Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 *AM. U. J. GENDER, SOC. POL'Y & L.* 13, 19–20 (2000). See generally FINEMAN, *supra*. Concepts of family privacy could still reasonably provide for the recognition of the emerging autonomy and complexity of young people's social relationships as they mature, without leaving the family unit vulnerable to unwarranted governmental second-guessing.

88. See sources cited *supra* note 86; cf. HILLARY RODHAM CLINTON, *IT TAKES A VILLAGE AND OTHER LESSONS CHILDREN TEACH US passim* (1996) (espousing a personal view that all of the elements that make up a community need to work in harmony to protect and raise children in today's world).

89. See generally DAVID ELKIND, *THE HURRIED CHILD* (1981) (proposing that modern society tends to “hurry” children into adulthood with stressful consequences).

90. In two studies of adolescent decision making by Ambuel & Rappaport, *supra* note 65, and Scherer & Reppucci, *supra* note 71, adolescents approached even two different kinds of medical decisions (elective surgery and abortion) in fairly different ways. In the former, parental influence often played a prominent role in the youth's decision-making processes, although in the decision to terminate a pregnancy, the youth tended to focus more on future and personal ramifications. There were not just differences in which relevant factors to consider, but the two studies noted differing abilities, developmentally influenced, to perceive the existence of relevant factors and/or weigh them in a considered fashion. Ambuel & Rappaport, *supra* note 65, at 144–45; Scherer & Reppucci, *supra* note 71, at 132.

idea in mind, there has been a substantial body of recent research looking at youth decision making in a number of contexts, including juvenile justice,⁹¹ consent to medical or mental health treatment,⁹² sexual behavior,⁹³ pregnancy and abortion,⁹⁴

91. See Catherine A. Crosby & N. Dickon Reppucci, *The Legal System and Adolescents*, in HANDBOOK OF CLINICAL RESEARCH AND PRACTICE WITH ADOLESCENTS 281, 282–88 (Patrick Tolan et al. eds., 1993) (discussing the current social science research and legal doctrine with regard to adolescent legal rights); Thomas Grisso, *The Competence of Adolescents as Trial Defendants*, 3 PSYCHOL., PUB. POL'Y & L. 3, 17–20 (1997) (questioning whether adolescents have the necessary reasoning and judgment skills to be considered capable to stand trial); Thomas Grisso, *Society's Retributive Response to Juvenile Violence: A Developmental Perspective*, 20 LAW & HUM. BEHAV. 229, 232–35 (1996) (discussing how adolescents' response to everyday situations may affect the risk of engaging in aggressive behavior, and calling for this to be taken into account when determining their culpability); Stephanie Hoyt & David Scherer, *Female Juvenile Delinquency: Misunderstood by the Juvenile Justice System, Neglected by Social Science*, 22 LAW & HUM. BEHAV. 81, 82, 101–03 (1998) (recognizing the need for gender-specific theories of delinquency); N. Dickon Reppucci, *Adolescent Development and Juvenile Justice*, 27 AM. J. COMMUNITY PSYCHOL. 307, 321 (1999) (calling for a greater understanding of adolescent competence in legal contexts); Hans Steiner & Elizabeth Cauffman, *Juvenile Justice, Delinquency, and Psychiatry*, in 7 CHILD & ADOLESCENT PSYCHIATRIC CLINICS N. AM.: THE CHILD PSYCHIATRIST IN THE COMMUNITY 653, 662 (1998) (calling for increased use of child psychiatrists in diagnosis and treatment of delinquent youths); Hans Steiner et al., *Personality Traits in Juvenile Delinquents: Relation to Criminal Behavior and Recidivism*, 38 J. AM. ACAD. CHILD & ADOLESCENT PSYCHOL. *passim* (Mar. 1999).

92. See THE ADOLESCENT ALONE: DECISION MAKING IN HEALTH CARE IN THE UNITED STATES 100 (Jeffrey Blustein et al. eds., 1999). See generally Ronald W. Belter & Thomas Grisso, *Children's Recognition of Rights Violations in Counseling*, 15 PROF. PSYCHOL. RES. & PRAC. 899 (1984); Crosby & Reppucci, *supra* note 91; Grisso & Vierling, *supra* note 65; Scherer & Reppucci, *supra* note 71; Weithorn & Campbell, *supra* note 65.

93. See Baruch Fischhoff et al., *Adolescent Vulnerability*, 7 APPLIED & PREVENTIVE PSYCHOL. 77 *passim* (1998); Joannette M. Pete & Lydia DeSantis, *Sexual Decision Making in Young Black Adolescent Females*, 25 ADOLESCENCE 145 *passim* (1990) (analyzing the factors that influenced the decisions of fourteen-year-old, black, pregnant, or recently delivered girls to become sexually active); Susan L. Rosenthal et al., *Issues Related to the Sexual Decision-making of Inner-City Adolescent Girls*, 31 ADOLESCENCE 731 *passim* (1996) (discussing the factors adolescent girls consider in making decisions regarding sex).

94. See Ambuel & Rappaport, *supra* note 65, at 149–51 (proposing informed consent, as opposed to parental consent, regarding minors' access to abortion); Crosby & Reppucci, *supra* note 91, *passim*; Victoria Foster & Norman Sprinthall, *Developmental Profiles of Adolescents and Young Adults Choosing Abortion: Stage Sequence, Decalage, and Implications for Policy*, 27 ADOLESCENCE 655 *passim* (1992); Courtney Gordon, *Adolescent Decision Making: A Broadly Based Theory and its Application to the Prevention of Early Pregnancy*, 31 ADOLESCENCE 561 *passim* (1996); Kathleen Herr, *Adoption vs. Parenting Decisions Among Pregnant Adolescents*, 24 ADOLESCENCE 795 *passim* (1989); Anne Norris, *Letter re: 'Decision-Making Patterns in Adolescent Mothers'*, 24 IMAGE: J. NURSING SCHOLARSHIP 164 *passim* (1992) (arguing that both adults and adolescents engage in risk taking when concerns about negative consequences are not highly activated in the person's memory); Carmen Ortiz & Ena Vazquez Nuttall, *Adolescent Pregnancy: Effects of Family Support, Education and Religion on the Decision to Carry or Terminate Among Puerto Rican Teenagers*, 22 ADOLESCENCE 897 *passim* (1987); Jennifer Soper, *Straddling the Line: Adolescent Pregnancy and Questions of Capacity*, 23 LAW & PSYCHOL. REV. 195, 204–08 (1999) (discussing how the legal system's definition of capacity affects adolescents' decision making with regards to child rearing and abortion); Sarah Strauss & Bernadine Clarke, *Decision-making Patterns in Adolescent Mothers*, 24 IMAGE: J. NURSING SCHOLARSHIP 69 *passim*

smoking/alcohol/substance abuse,⁹⁵ and school performance.⁹⁶

Many young people take advantage of decision-making opportunities in the two primary areas where law allows children to progress and achieve recognition today: school and sports. Adults are happy to see a child excel and acquire stature as a student or athlete, and to reward him with concomitant grants of greater autonomy in these two realms commensurate with their increased trust and belief in his decision-making abilities.⁹⁷ But many young people cannot make their mark in these traditional realms, either by choice or due to hindrances of poverty, discrimination, family breakups, domestic violence, or other circumstances.⁹⁸ We need to find ways to include these young people as well, allowing them opportunities to earn recognition and authority as they mature. Recent experience suggests that as young people get older, they

(1992) (calling for nurses to incorporate an adolescent's level of maturity with regard to decision making when making assessments and designing interventions); Keith Warren & Ray Johnson, *Family Environment, Affect, Ambivalence and Decisions About Unplanned Adolescent Pregnancy*, 24 *ADOLESCENCE* 505 *passim* (1989).

95. See Martin Covington & Carol Omelich, *Perceived Costs and Benefits of Cigarette Smoking Among Adolescents: Need Instrumentality, Self-Anger, and Anxiety Factors*, in *ANXIETY: RECENT DEVELOPMENTS IN COGNITIVE, PSYCHOPHYSIOLOGICAL, AND HEALTH RESEARCH* 245, 245–61 (Donald Forgays et al. eds., 1992) (investigating the perceived costs and benefits of cigarette use and their relationship to decisions to smoke); Anne C. Fletcher et al., *Parental Monitoring and Peer Influences on Adolescent Substance Use, in COERCION AND PUNISHMENT IN LONG-TERM PERSPECTIVES* 259, 259–71 (studying adolescent drug and alcohol abuse) (Joan McCord ed., 1995); Judy Davis Grimes & John Swisher, *Educational Factors Influencing Adolescent Decision Making Regarding Use of Alcohol and Drugs*, 35 *J. ALCOHOL & DRUG EDUC.* 1 *passim* (1989); Nina Mounts & Laurence Steinberg, *An Ecological Analysis of Peer Influence on Adolescent Grade Point Average and Drug Use*, 31 *DEV. PSYCHOL.* 915 *passim* (1995); David Snow et al., *Two-Year Follow Up of a Social Cognitive Intervention to Prevent Substance Use*, 22 *J. DRUG EDUC.* 101 *passim* (1992).

96. See Greg J. Duncan, *Families and Neighbors as Sources of Disadvantage in the Schooling Decisions of White and Black Adolescents*, 103 *AM. J. EDUC.* 20 *passim* (Nov. 1994); Kristan L. Glasgow et al., *Parenting Styles, Adolescents' Attributions, and Educational Outcomes in Nine Heterogeneous High Schools*, 68 *CHILD DEV.* 507 *passim* (1997); David Moshman, *Adolescent Reasoning and Adolescent Rights*, 36 *HUM. DEV.* 27 *passim* (1993); Mounts & Steinberg, *supra* note 95, *passim*; Laurence Steinberg et al., *Ethnic Differences in Adolescent Achievement: An Ecological Perspective*, 47 *AM. PSYCHOL.* 723, 723–29 (1992).

97. Although academic performance in school historically has been used as the primary indicator of a child's well-being, a recent study cautions parents that grades may not be as good a proxy as they once were as to how children are developing as decision makers. See generally PATRICIA HERSCH, *A TRIBE APART: A JOURNEY INTO THE HEART OF AMERICAN ADOLESCENCE* (1998).

98. See generally JONATHAN KOZOL, *DEATH AT AN EARLY AGE: THE DESTRUCTION OF THE HEARTS AND MINDS OF NEGRO CHILDREN IN THE BOSTON PUBLIC SCHOOLS* (1967) (discussing discrimination, segregation, and integration in Boston public schools) [hereinafter KOZOL, *DEATH AT AN EARLY AGE*]; JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* (1991) (describing the long-term effects of disparate and inadequate resources in public education in the United States) [hereinafter KOZOL, *SAVAGE INEQUALITIES*]; *CDF Yearbook 2000*, *supra* note 43, at 61–77.

are eager to seek out and exercise authority wherever they can.⁹⁹ Without more constructive realms in which to achieve stature, young people may seek to establish personhood in other areas traditionally unoccupied or unmanaged by adults—including drugs, sex, petty crime, and tragically, violence.¹⁰⁰

One additional problem with limiting children's exercise of maturity to the school context is that schools have other competing agendas, from fostering an educational environment to maintaining crowd control.¹⁰¹ Schools' scarce resources tend to be directed toward those students who will confine their attempts to exercise authority to those limited occasions when the school gives them choices.¹⁰² When young people act out because they are not satisfied with these choices, or when they are not getting the educational services they need, schools may respond by categorizing them in narrow and often unhelpful ways. If a student's inability to conform can be explained by a documented learning problem or disability, then the school can classify the student as "special ed."¹⁰³ Under federal and state law, schools are then obligated to make additional efforts to individualize the educational services directed to this class of students.¹⁰⁴ However, there are a substantial number of children who cannot or choose not to be evaluated or labeled "special ed."¹⁰⁵ Schools often classify these

99. See generally THE CHANGING BORDERS OF JUVENILE JUSTICE: TRANSFER OF ADOLESCENTS TO THE CRIMINAL COURT (Jeffrey Fagan & Franklin E. Zimring eds., 2000) (using a cross-disciplinary approach to investigate adolescent development and its implications for juvenile justice policy).

100. Recall Eric Harris's written entry in a friend's yearbook: "Hey, don't follow your dreams or goals or any of that, follow your animal instincts. If it moves, kill it, if it doesn't, burn it." Belluck & Wilgoren, *supra* note 28, at A1.

101. See generally, KOZOL, DEATH AT AN EARLY AGE, *supra* note 98 (describing the author's experiences as a substitute teacher in a racially segregated fourth-grade classroom in Boston); KOZOL, SAVAGE INEQUALITIES, *supra* note 98 (describing the many noneducational roles public schools invariably play in low-income communities).

102. See, e.g., N.Y. EDUC. LAW § 3214.3-a (McKinney Supp. 2001) (A student may be suspended "who is insubordinate or disorderly or violent or disruptive, or whose conduct otherwise endangers the safety, morals, health or welfare of others.").

103. Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1491o (1994 & Supp. 1999); § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. States have codified and often added to these federal guidelines. For example, New York has codified these as N.Y. EDUC. LAW §§ 4401-4408 (McKinney 1995); N.Y. COMP. CODES R. & REGS. tit 8, §§ 100.2(k), 200.1-200.21 (1999).

104. See, e.g., N.Y. EDUC. LAW §§ 4401-4408 (1995); N.Y. COMP. CODES R. & REGS. tit 8, §§ 100.2(k), 200.1-200.21 (1999).

105. For example, only in recent years have mental health professionals identified Attention Deficit and Hyperactivity Disorder (ADHD) as a particular diagnosis for young people who years earlier would have been criticized as merely "unmotivated" or "belligerent." See Children and Adults with Attention-Deficit/Hyperactivity Disorder, CHADD Facts: The Disability Named AD/HD: An Overview of Attention-Deficit/Hyperactivity Disorder, at http://www.chadd.org/facts/add_facts01.htm# (last visited Apr. 10, 2001) (on file

students as “trouble makers,” by means of the suspension process, which frees the school from virtually any legal obligation to provide anything beyond minimal tutoring services at home.¹⁰⁶ These children are essentially ignored or cast out by means of the suspension process, in essence, fired from their first, and sometimes only, real opportunity to demonstrate maturity.

Outside of school, a wide variety of contexts exist within which maturity might be practiced and encouraged. It is critical that these contexts be both meaningful to the teen and relevant to the adult world, such that the teen will have the chance to show readiness to handle some of the responsibilities of legal “personhood” that come with the age of majority. What is meaningful to one child versus another will be in large part culturally determined. It would be tempting to focus shallowly on some of the traditional “badges” all young people eventually acquire when they reach a certain age or commit a certain act and treat these as uniformly “meaningful” indicia of authority which all young people desire to the same degree—for example, the ability to test for a driver’s license,¹⁰⁷ the ability to vote, the ability to buy alcohol or firearms.

However, in developing a legal system more actively involved in enhancing competency in young people, it is important to eschew this limited focus and look behind the superficial “badges” to identify those underlying aspects of mature decision making that foster and perpetuate personal growth. Examples could include (1) having the chance to direct, supervise, or collaborate with others; (2) having to make decisions that will have substantial effects for oneself or others; (3) having to assess risk and/or choices between immediate satisfaction versus long-term gain; (4) being able

with the *University of Michigan Journal of Law Reform*); see also Natalie Angier, *The Debilitating Malady Called Boyhood*, N.Y. TIMES, July 24, 1994, § 4, at 1; Lawrence Diller, Editorial, *Would Tom Sawyer Have Been Prescribed Ritalin?*, S.F. CHRON., Mar. 18, 1999, at A25. Given the potential stigmatization by peers and teachers, a number of children have, with parental approval, refused to be evaluated.

106. See, e.g., N.Y. EDUC. LAW § 3214.3-e (McKinney Supp. 2001); Matter of Malpica, 20 N.Y. Ed. Dep’t Rep. 365 (1981); Matter of Gesner, 20 N.Y. Ed. Dep’t Rep. 326 (1980). Even this limited obligation to provide alternative education services may end when the child exceeds the statutory age of compulsory education. See, e.g., Reid v. Nyquist, 319 N.Y.S.2d 53, 55–56 (N.Y. Sup. Ct. 1971) (holding school district not required to provide alternative education to suspended student beyond age sixteen).

107. Outside of the abortion consent context, see *supra* discussion notes 19 and 76, the only concrete “maturity” test widely available for young people is the driving test. However, there are other assessment tools that have been generated and tested by social science and others, which could guide the development of maturity evaluation procedures in other contexts. See generally Ambuel & Rappaport, *supra* note 65 (evaluating competency of decisions related to abortion and parenthood); “The Youth Indicators Project” (involving assessments of job readiness), available from the National Youth Employment Coalition, at <http://www.nyec.org> (on file with the *University of Michigan Journal of Law Reform*).

to make mistakes without inflicting significant harm; (5) having conditions where it is safe to evaluate certain decisions after the fact and to analyze what went wrong; and particularly important, (6) having the opportunity to receive recognition for successfully handling authority.

A sociolegal system designed to foster maturity should allow decision-making opportunities for young people that include some of these factors, with an eye toward what is meaningful for the youth in question.¹⁰⁸ In sum, what constitutes authority in a meaningful context for a young person will likely be influenced by his racial, ethnic, gender, or socioeconomic background.¹⁰⁹ Given this, law

108. A society more actively involved in developing maturity will necessarily want to seek the participation of young people themselves in identifying what are meaningful contexts for decision making. There is a strong potential for adults to be self-referential and biased when they try to infer what would be "meaningful" for young people. Some successful efforts have been made in communities across the nation to promote more dialogue with young people through community forums (e.g., TeenSpeak, a series of town meetings held in Ithaca, New York, which began prior to the Littleton shootings. See *Local Teens Tackle Today's Challenges*, ITHACA J., Feb. 22, 1999, at 1A). It is critical in promoting dialogue between young people and adults for young people to understand that their opinions actually do matter, and that adults want them to exercise some authority. This idea, counter to predominant adult discourse toward young people, may take time to sink in. Many young people have been trained to speak in the language of disempowerment or disaffection: answering "I don't know" or "I don't care" even in situations where their rights and lives are likely to be substantially affected by their response. See generally HERSCH, *supra* note 97; Emily Buss, "You're My What?": *The Problem of Children's Misperceptions of Their Lawyers' Roles*, 64 *FORDHAM L. REV.* 1699 (1996); William A. Kell, *Voices Lost and Found: Training Ethical Lawyers for Children*, 73 *IND. L.J.* 635 (1998). Young people might also be involved through the broader replication of a number of empirical studies that have surveyed the views of young people about how to solve entrenched social problems of abuse, see generally JAMES GARBARINO & FRANCES M. STOTT, *WHAT CHILDREN CAN TELL US* (1989); poor legal representation, see generally Janet A. Chaplan, *Youth Perspectives on Lawyer's Ethics: Report on Seven Interviews*, 64 *FORDHAM L. REV.* 1763 (1996); and youth violence, see generally JAMES GARBARINO, *LOST BOYS: WHY OUR SONS TURN VIOLENT AND HOW WE CAN SAVE THEM* (1999).

The need to find decision-making opportunities that have meaningful contexts unavoidably raises the question, what accommodation is appropriate for what is currently meaningful, but possibly destructively so (e.g., Harris's and Klebold's avid publishing of pro-violent text on a website)? Should the new social order seek to redirect or reshape young peoples' desires so that what is "meaningful" is also socially enriching? But just as attorneys need to listen intently during client interviews for the client's underlying interests, those working to develop an improved maturity-enhancing system may need to work with young people to help them identify and pursue their underlying interests toward attaining full, mature adulthood. See generally DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 46-68 (1991) (describing the importance of active listening skills for effective legal advocacy); WILLIAM URY, *GETTING PAST NO: NEGOTIATING WITH DIFFICULT PEOPLE* 37-40 (1997) (illustrating how lawyers in negotiation need to focus on parties' underlying interests instead of on stated positions). See also *infra* note 109.

109. For example, in Jewish culture, the bar or bat mitzvah occurring at age thirteen has an abundance of meaning to many young people. Being allowed to be up on the bema, to read from the Torah, and to lead a service involves both particularized meaning to a Jewish adolescent, and it includes many of the generally desirable characteristics of decision making described above (i.e., having substantial effect on others, leading others, taking

and society must expand the very limited contexts in which young people can earn responsibility in order to engage a broader segment of young people in developing maturity.

risks, being able (afterward) to process mistakes safely, and receiving recognition for handling the responsibility in a mature fashion).

In his book *Reaching Up for Manhood*, Geoffrey Canada talks of the need to refocus what has become meaningful for some young African Americans. GEOFFREY CANADA, REACHING UP FOR MANHOOD: TRANSFORMING THE LIVES OF BOYS IN AMERICA 301–31 (1998) [hereinafter CANADA, REACHING UP]. He notes that relentless marketing of products to African American youth has destructively intertwined much of their sense of personhood with the acquisition of certain material goods, like sneakers and clothing. He notes that although there are other important contextual factors particular to African American youth (e.g., practicing authority within family structures), there are also meanings shared across cultures:

There are too many boys in America who, after school or during the summer, find all they have is the equivalent of what we had as children—an old beat-up mattress, a second-story window, and a need for adventure. In a world where dangers proliferate, the results are predictable.

Id. at 20; see also GEOFFREY CANADA, FIST STICK KNIFE GUN: A PERSONAL HISTORY OF VIOLENCE IN AMERICA *passim* (1995) (describing youth culture in low-income and minority neighborhoods). In particular, Canada describes the need to revise how boys develop their sense of manhood:

Our beliefs about maleness, the mythology that surrounds being male, has led many boys to ruin. The image of male as strong is mixed with the image of male as violent. Male as virile gets confused with male as promiscuous. Male as adventurous equals male as reckless. Male as intelligent often gets mixed with male as arrogant, racist, and sexist.

CANADA, REACHING UP, *supra*, at xii–xiii. Canada calls for the creation of opportunities for boys to “flirt with danger,” but through activities that contain controlled risks. *Id.* at 131. Similarly, Canada and others have also attempted to chart the chasm in meaning between the different contexts of gender. *Id.* at xiii. See generally GARBARINO & STOTT, *supra* note 108, at 96–97; CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT (1982); DEBORAH TANNEN, YOU JUST DON’T UNDERSTAND: WOMEN AND MEN IN CONVERSATION (1990). Young girls face a media and cultural onslaught that, for example, urges them to entwine their body image with their sense of self-worth. See JOAN JACOBS BRUMBERG, THE BODY PROJECT: AN INTIMATE HISTORY OF AMERICAN GIRLS 97–98 (1997) (describing how changes in the way society perceives or portrays women’s bodies has negatively affected young girls); Michelle Oberman, *Turning Girls into Women: Re-evaluating Modern Statutory Rape Law*, 85 J. CRIM. L. & CRIMINOLOGY 15, 67–68 (1994) (asserting that society promotes the message that women must be involved in “romantic” relationships with men in order to be fulfilled and happy). Similarly, girls tend to receive much encouragement exclusively for decisions that reflect care for and responsiveness to others, and little encouragement for other important decision-making behavior involved in the exercise of leadership or innovation. See generally GILLIGAN, *supra* (describing the effect of influences in women’s lives on how they view themselves).

E. Maturity Development Is Enhanced When Young People Can Mentor Others or Otherwise Practice Empathy

Decision-making opportunities requiring the exercise of empathy are particularly important for young people seeking to assume the terms of the existing social contract for adults. The existing social contract for adults promotes individual choice as exercised with due respect for others.¹¹⁰ The exercise of power without empathy or concern for others was brutally demonstrated by the young gunmen in Littleton and in other school shootings.¹¹¹ Opportunities to mentor others, or to participate in collective social action, are especially valuable for this purpose, given the ongoing positive feedback and respect that mentors generally enjoy.¹¹²

When a teen helps a younger person acquire coping skills or substantive knowledge, the teen's decision-making and empathy skills are simultaneously engaged, potentially strengthening both.¹¹³ In addition, the teen involved in the mentoring is usually mentored as well by an experienced adult supervisor, creating another layer of social relationship. In many such programs, for example, Big Brothers Big Sisters of America, there are several levels of supervisory oversight,¹¹⁴ so that a young person who demonstrates consistently good decision making as a mentor can progress to positions of higher responsibility.¹¹⁵

110. See, e.g., *Prince v. Massachusetts*, 321 U.S. 158, 167–68 (1944).

111. One unidentified student at Columbine, hiding behind a desk during the shooting, commented, "They [Harris and Klebold] were laughing and whooping and hollering about what they did One of them said 'Oh look at this guy's brains and the blood'" Belluck & Wilgoren, *supra* note 28, at A1. Recall the famous study conducted by Stanley Milgram in 1963 where subjects were assigned the position of "teacher" and directed to "teach" the other subject (actually a confederate of the experimenters who was always assigned to be the "student") to remember lists of word pairs by administering more and more powerful electric shocks as "motivation." Stanley Milgram, *Behavioral Study of Obedience*, 67 J. ABNORMAL & SOC. PSYCHOL. 371, 373 (1963). Very few thought twice about administering the shocks, or questioning the experimenters' authority when given direct orders, even after the students (who were not actually hooked up to any device) screamed, complained of severe chest pain, or seemed to have lost consciousness. *Id.* at 375–76.

112. For more on the importance of mentoring see *supra* note 87.

113. See *supra* text accompanying notes 84–86.

114. See Kathryn Furano et al., *Big Brothers/Big Sisters: A Study of Program Practices, in MENTORING, A SYNTHESIS OF P/PV'S RESEARCH 1988–1995*, at 42, 44–45 (1993).

115. Ideally, a cultural expectation of young people's (and adults') participation in mentoring others should be instilled, possibly also fueled by financial incentives, such as governmental contributions to a college/small business fund. See, e.g., Americorps Program, at <http://www.americorps.org> (last visited May 23, 2001). It should be noted that as to federal funds for mentoring programs, current demand far exceeds available funding. For example, by 1999, approximately 400,000 children had been served by the 21st Century

In contrast, current law and culture describe young people as objects of education and social intervention, not as potential catalysts. In school, law segregates young people into grades with very limited interaction between the older or more advanced and those less developed. Outside of school, publicly or privately imposed age limitations restrict adolescents' opportunities to earn positions of authority over others.¹¹⁶ An education system that stratifies and sequesters students by differences in age without utilizing this as an opportunity for mentorship is more likely to build social hierarchies than maturity.

III. HOW LAW CAN CONTRIBUTE TO A SOCIETY ACTIVELY ENGAGED IN BUILDING MATURITY

Society's immediate task is to identify, expand, and create new opportunities to channel young people's urges in directions that are meaningful, socially conscious, and likely to prepare them to exercise wisely the level of autonomy that adulthood conveys. If the goal is for young people to make it safely to age eighteen and be ready immediately to assume adult responsibility, we cannot afford simply to limit adolescents' development of agency to the realms of school and sports, and then threaten, ostracize, or cast out those who do not mature in those contexts.¹¹⁷ We have learned,

Community Learning Centers, only a fraction of those who could participate. *Bringing Education to After-School Programs*, *supra* note 54.

116. For example, although many people as young as thirteen years old have already begun to babysit for other families in their homes, if an after-school program wanted to hire them as counselors for younger children they likely would have to incur higher liability insurance rates. Addressing these kinds of private disincentives to involve teens in meaningful activities should also be part of efforts to create a more active maturity-building society. State insurance regulations should be revised to require insurance companies to link higher rates for liability and other insurance coverage to documented increases in payouts or risk factors, instead of mere presumptions that young people are less able.

117. See generally THOMAS HINE, *THE RISE AND FALL OF THE AMERICAN TEENAGER* (1999) (calling for teens to be treated as "beginner adults", by giving them real responsibilities and encouragement to participate fully in all aspects of society). It should be noted that although all youth need to develop maturity, those that fall the farthest short have tended to maintain an exclusive hold on public attention. Any social system, even one shaped by the legal reforms proposed in this writing, will produce a number of young people who will be unable to handle any new levels of responsibility. However, under a legal and social infrastructure devoted to the active encouragement of maturity, the identification of immature, troubled young people whose decision-making skills place them and others at risk would also be an anticipated and desired outcome. Whenever young people are given the chance to excel and demonstrate maturity, this gives more opportunity for adults to be around them, to listen to them, to monitor their progress, and to assess their ability to handle more. So, for example, a maturity-building program designed to involve youth in small business

at our collective peril, that these young decision makers cannot safely be excluded or contained.¹¹⁸

A good start would be to alter the expectations of youth, and the adults who work with them, in several key contexts: *school*, *work*, *community*, and *government*. To succeed, legal structures that limit young people's decision-making authority in each of these contexts would need alteration. In school, by law and practice, young people have had virtually no authority to participate in planning their educational program unless they have been classified as disabled.¹¹⁹ In work, up until recently, legislatures focused only on young people's needs for protection in the workplace, without addressing the broader needs of young people for work experience. In their communities, young people are generally occupied with peers socially or anti-socially, and, in either case, given little opportunity or encouragement to become builders of neighborhood infrastructures. Finally, in government, adults have traditionally served as the sole proxy for a presumed silent generation of youth. In all of the above contexts, greater participation and options for youth would serve the developmental needs of the vast majority of young people, while involving society more actively in promoting maturity.

A. Increasing Youth Participation in Education

Although courts have commonly found that young people have a right to education under state laws,¹²⁰ the option of

ventures, offered after-school hours, might have pulled in a teen like Harris or Klebold, given their demonstrated interest and expertise with computers. Such a program might offer the opportunity for young people to learn entrepreneurship in a classroom setting, assist them in developing ideas for new businesses, and allow them to compete for small start-up grants. Whether such a program could have turned these young men toward constructive ways of making their mark is questionable. However, what is likely is that involvement in this kind of maturity-building program would have brought them into more intense contact with adult mentors and overseers, any of whom might have spotted signs of trouble earlier.

118. Such an approach would also be consistent with current calls for revision and recommitment to the original rehabilitative aims of the juvenile court, recently celebrating its centennial year. See generally *Symposium on the Future of the Juvenile Court*, 88 J. CRIM. L. & CRIMINOLOGY 1-241 (1997).

119. Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1491o (1994 & Supp. 1999) (requiring that schools develop individualized educational plans for children determined to need special education services).

120. *Plyler v. Doe*, 457 U.S. 202, 220 (1982) (stating that education is a substantive and important right guaranteed by state law and that there is no rational basis to withhold education from children not legally admitted to the United States); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29 (1973) (stating that the state guarantee of public education does not create the right to a particular or equitable per pupil school funding level);

"individualizing" a young person's educational plan has generally been a special opportunity afforded only to disabled children.¹²¹ The assumption has been that for those students with no identified disability, education is equally and readily accessible. In fact, students bring a variety of impediments to school with them, including problems of poor self-esteem, poverty, harmful family relationships, and others,¹²² and they may also acquire more in interactions with peers and school staff. None of these could be characterized as disabilities, nevertheless, such impediments can dramatically alter a student's belief in his abilities and his motivation to learn.¹²³

Law can establish new expectations for student involvement in designing an educational program that speaks to and motivates them.¹²⁴ This effort could begin by amending the state and federal laws to require "reasonable efforts" by schools to set, review, and amend educational goals with students individually.¹²⁵ Such a re-

Mazevski v. Horseheads Cent. Sch. Dist., 950 F. Supp. 69, 72 (W.D.N.Y. 1997) (stating that the state-guaranteed right to education does not entitle the students to participate in marching band).

121. See *supra* note 119.

122. See generally KOZOL, SAVAGE INEQUALITIES, *supra* note 98.

123. See generally KOZOL, DEATH AT AN EARLY AGE, *supra* note 98.

124. Alternative schools traditionally have allowed young people to participate in designing their curriculum, which has generally been shown to increase their motivation to learn and sense of self-worth. See generally A.S. NEILL, SUMMERHILL SCHOOL: A NEW VIEW OF CHILDHOOD (1996) (chronicling the successful efforts of Neill, who founded the first alternative school in England, and whose methods of reaching difficult students by appealing to their intellectual curiosity and allowing them to help shape their own education were applied in the United States).

125. Such a right to a more individualized educational program could be established through either a revision in federal law or through law reform efforts to pass legislation in the individual state legislatures. The federal government derives its authority to legislate in the area of public education from Article 1, § 8 of the United States Constitution, which describes the power of Congress to provide for the general welfare, as well as the Equal Protection Clause of the Fourteenth Amendment. At present, though, the substantive right to free public education in each state is primarily secured by state law. In New York, for example, the right to free public education is set forth in the state constitution, declaring that the legislature "shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." N.Y. CONST. art. 11, § 1. However, certain federal laws do attempt to set minimum requirements governing certain aspects of a child's education. See, for example, the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1487, which requires individualized education planning for children with disabilities and other special needs. More recently, federal law has also attempted to shape the school environment nationwide by setting school safety and health guidelines. This is accomplished mainly by making federal funds available to districts in exchange for compliance with certain requirements. For example, the Gun-Free Schools Act, 20 U.S.C. § 8921, requires states to pass laws to expel a student from school property if s/he has brought a firearm to school, and the Safe and Drug-Free Schools and Communities Act, 20 U.S.C. §§ 7101 et seq., requires schools to implement a comprehensive drug and violence prevention program. In all states, state law mandates certain standards and practices as ensuring free and appropriate education for children, calling for local planning

quirement would bring the wisdom of the Individuals with Disabilities Education Act to the majority of young people.¹²⁶ Ideally, each student would have one teacher or administrator assigned as “advisor,” who would have adequate relief from other responsibilities to be able to devote time and attention to periodic “check-ins” with young advisees to monitor and improve student and school investment in educational programming.¹²⁷ Consistent with calls from each major political party for greater public investment in public education, this “advisor” function could be handled by better trained, more plentiful school guidance staff.¹²⁸ Under such a system, students could also earn the opportunity to design and get school approval for one course per year. School approval could be given according to teacher observations regarding the student’s capacity to handle the responsibility, with the assumption that such a course involves adequate supervision by a school instructor or by a community mentor if the course will involve an apprenticeship or other placement.¹²⁹

One maturity-building development already underway in some communities could be institutionalized by a change in law mandating participation of mature students on school site-based management committees.¹³⁰ In contrast to student council, where the most popular students campaign to acquire positions with little

laws to reduce class sizes, *see, e.g.*, CAL. EDUC. CODE §§ 41375–41376 (2000) (setting targets for class sizes) and requiring certain testing to be conducted, *see, e.g.*, N.Y. COMP. CODES R. & REGS. tit. 8, § 100.3(b)(2), 100.4(d)(1)–(5) (2001).

126. Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–1491o (1994 & Supp. 1999).

127. The budgetary impact of having teachers and staff more involved in individualizing student educational planning might be significant, but could be integrated into proposed budgetary initiatives designed to improve security in schools. With more adults in contact with young people on a regular basis, it is more likely that serious anti-social, disaffected teens will receive the attention they need before they act out in violence. The cost of additional counselors or advisory staff would be a more effective and budget-conscious investment than the substantial funding now being contemplated at the federal and local level for increased security guards, metal detectors, and questionably reliable software designed to profile and catch “predators” before violence occurs.

128. Unfortunately, following the Littleton shootings, a proposed amendment to H.R. 1501 to fund more school counselors was defeated in the House of Representatives by a vote of 233 to 191. *See* 145 CONG. REC. H4572 (daily ed. June 17, 1999).

129. Having students participate in designing a portion of their curriculum would likely increase student engagement in the educational work of the schools, mirroring the kind of increased personal investment and productivity documented in workplace settings when employees are given more decision-making control. *See, e.g.* FRAN REES, HOW TO LEAD WORK TEAMS 8–9 (1991); ARTHUR SHRIBERG ET AL., PRACTICING LEADERSHIP: PRINCIPLES AND APPLICATIONS 135–36 (1997).

130. *See, e.g.*, 8 N.Y. COMP. CODES R. & REGS. tit.8, § 100.11(c)(1) (2001) (authorizing local districts to include students in site-based decision making regarding educational programming).

actual authority, students serving on the site-based management committees would actually participate in shaping school policy and programming.¹³¹ Besides increasing the maturity of the student members of the committee, an annual election process could further the maturity of many by involving the student body in the formulation of a substantive agenda to bring before the committee for consideration.

B. Increasing Work Opportunities and Connections Between Work- and School-Based Learning

Helping young people gain the experience they need to compete in a tight job market can have intrinsic benefits, both in developing maturity and improving prospects for long-term self-sufficiency.¹³² Historically though, federal and state legislation have been dominated by a protectionist vision for young people. Since the early 1900s, child labor laws have guarded against workplace harms to children's physical, moral, and academic development.¹³³

131. Another equally effective approach would be for state education laws to authorize or require school boards to include student representatives. Arguably, the authority to create committees with student members to serve in an advisory capacity to the board would already be within the scope of implied powers for local boards. *See, e.g., Ithaca, N.Y., City Sch. Dist. Policy 2370.1* (Aug. 15, 1995) (requiring four high school student representatives and one middle school representative and establishing their role as "consultative and advisory" although non-voting); *see also* Victoria Freile, *Dryden Student Revels in His Contribution to School Board*, ITHACA J., June 3, 2000, at 3A.

132. Although adult unemployment rates have generally fallen to record levels in recent years, this masks the somewhat higher percentages of unemployed youth, with higher percentages of unemployment for minority youth. About eight percent of sixteen- to nineteen-year-olds in the United States in 1997 were neither working nor enrolled in school. FED. INTERAGENCY FORUM ON CHILD AND FAMILY STATISTICS, AMERICA'S CHILDREN: KEY NATIONAL INDICATORS FOR WELL-BEING 51 (1999) [hereinafter AMERICA'S CHILDREN]. The comparable non-employed/non-enrolled rate for African American youths in 1998 was thirteen percent and for Hispanic American youths fourteen percent. *Id.* Young people in single-parent households tend to be employed less often than youth in two-parent families, although many single-parent teens may be hindered in job searching and employment due to home responsibilities (e.g., caring for siblings). U.S. DEP'T OF LAB., REPORT ON THE YOUTH LABOR FORCE (June 2000) [hereinafter USDOL YOUTH REPORT].

133. Young people under sixteen are generally prohibited from working in settings that include heavy machinery, radiation, or toxic materials. 29 U.S.C. § 212 (1994). By federal law, young people's time outside of school is regulated to restrict the number and scheduling of work hours so that work does not interfere with school attendance. 29 U.S.C. § 214(b)(1)(B) (1994). Overall, such regulations have been in place for decades with little if any change since then. Although workplace injuries for young people continued to grow annually in the late 1980s, increased efforts to enforce existing labor laws have resulted in a forty-nine percent decrease in work days lost to injuries between 1992 and 1997. *See* USDOL YOUTH REPORT, *supra* note 132, at 62.

Since the 1960s, temporary summer job programs have been an annual staple to keep youth off the streets.¹³⁴ However, in recent years two federal legislative initiatives have begun to articulate another vision—one that treats young people as emerging adults who can benefit from more opportunities to acquire responsibility in the workplace.¹³⁵ The Workforce Investment Act of 1998¹³⁶ (WIA) addressed the need for comprehensive locally based planning to increase job readiness and employment rates. The WIA specifically provides for local Youth Councils to oversee such planning for young people.¹³⁷ The national School-to-Work Program, created by federal legislation as a collaborative project between the United States Departments of Education and Labor, encourages the development of pilot programs in school districts to improve linkages for learning between school and work.¹³⁸ Although these recent legislative initiatives have gone far to challenge traditional expectations for young people and work, there are several legal changes that could broaden the impact of these programs.

The WIA takes an important step by recognizing that young people can and should have the opportunity to excel in areas

134. See Alfred Charles, *Morial Asks Firms to Hire Teen-Agers*, TIMES-PICAYUNE (New Orleans, La.), June 29, 1994, at B1 (outlining the mayor's plan to give 1500 local teenagers temporary summer jobs in city government); Lori Grange, *Job Programs Something Special in Summer for Disadvantaged Youths*, L.A. TIMES, June 9, 1989, at B14 (relating comedian Whoopi Goldberg's experience with a San Diego program called Hire-a-Youth, designed to train and find temporary jobs for disadvantaged youths); *200 Disneyland Summer Jobs Will Go to L.A. Youths*, L.A. TIMES, June 17, 1992, at D5 (presenting Disneyland's plan to hire teenagers from South Los Angeles to work in temporary summer jobs such as ride operators, cooks, and gift sellers); Richard Phalon, *'Think Summer' New Job Slogan*, N.Y. TIMES, Feb. 23, 1969, § 1, at 35 (discussing founding of Coalition Jobs, an alliance between New York businessmen and the city's urban coalition, to persuade 6000 local employers to find temporary summer jobs for disadvantaged youths); Tori Weston, *Summer Jobs Program Gets a Big Boost*, PROV. J.-BULL., July 22, 1997, at 6C (considering the work of a coalition formed by Providence's four private colleges and universities and six private hospitals to fund temporary summer employment for local teenagers). Such programs are not without detractors: recall the congressional outrage and subsequent funding cutbacks over federal funding for "midnight basketball" leagues. See 42 U.S.C. § 11903a(c)(C)(3) (1994) (authorizing the Department of Housing and Urban Development to give federal grants to midnight basketball programs in public housing projects to eliminate drugs and drug-related problems), *repealed by Act*, Oct. 21, 1998, Pub. L. No. 105-276, Title V, Subtitle G, § 582(a)(13), 112 Stat. 2643.

135. Although many types of employment have the potential to teach important job readiness and life skills, many of the more menial, low-paying jobs provide little in the way of opportunities for mentorship or encouragement to gain more responsibility. For example, the fast food industry's chronically low wages and high rates of turnover have tended to discourage supervisor "investment" in developing the capacities of young workers. Most of these jobs also have few, if any, connections to school-based learning, so that the primary concern is "interference" rather than integration with classroom learning.

136. 29 U.S.C. § 2832(h) (Supp. IV 1998).

137. *Id.*

138. 20 U.S.C. § 6111 (1994).

outside of school and sports. Indeed, the WIA is one of the few pieces of legislation that treat young people as emerging members of the workforce, who need opportunities to acquire and exercise positive responsibilities.¹³⁹ Under the WIA, local communities must prepare comprehensive plans for improving the employability of low-income adults and youth.¹⁴⁰ The WIA also involves "Youth Councils," which are responsible for identifying local needs and making decisions to fund projects pursuant to the local plan.¹⁴¹

Local school-to-work initiatives, fostered in part by the federal School-to-Work Program, take the WIA's objectives one step further, integrating learning related to work readiness with school-based learning.¹⁴² As one case in point, high schools in Binghamton, New York, established relationships with local employers in three types of industries: health care, administration and office technology, and manufacturing and engineering technology.¹⁴³ Over three years, young people gradually worked their way to levels of responsibility traditionally reserved for adult workers, holding positions of responsibility in areas of physical therapy, microscopy, computer technology, and electronics manufacturing.¹⁴⁴

139. 20 U.S.C. § 6102 (1994).

140. 29 U.S.C. § 2833 (1994); *see also* John J. Heldrich Center for Workforce Development, Johns Hopkins University, & the National Youth Employment Coalition, *Recipes for Success: Youth Council Guide to Creating a Youth Development System Under WIA* (July 2000) [hereinafter *WIA Recipes for Success*].

141. 29 U.S.C. § 2832(h)(4) (1994) (describing the required duties of a mandatory youth council). *See generally* MARY AGNES HAMILTON & STEPHEN HAMILTON, *LEARNING WELL AT WORK: CHOICES FOR QUALITY* (1997) [hereinafter *HAMILTON & HAMILTON, LEARNING AT WORK*] (providing guidance for planning work-directed learning programs for youth); STEPHEN HAMILTON & MARY AGNES HAMILTON, *BUILDING STRONG SCHOOL-TO-WORK SYSTEMS: ILLUSTRATIONS OF KEY COMPONENTS* (1999) [hereinafter *HAMILTON & HAMILTON, BUILDING STRONG SYSTEMS*] (presenting and discussing detailed examples of various school-to-work programs throughout the country).

142. *See generally* *HAMILTON & HAMILTON, LEARNING AT WORK*, *supra* note 141.

143. *See generally* *HAMILTON & HAMILTON, BUILDING STRONG SYSTEMS*, *supra* note 141; *HAMILTON & HAMILTON, LEARNING AT WORK*, *supra* note 141, at 2-3.

144. Research project director Professor Stephen Hamilton describes eight types of work-based learning activities, divided into three distinct categories, each characterized by a different level of intensity:

1. Visits to Workplaces:
 - Field trips*: onetime visits to observe;
 - Job Shadowing*: longer term, sometimes multiple visits to observe by following a worker
2. Worklike Experience:
 - Service learning and unpaid internships*: voluntary service, not necessarily with a career focus
 - Youth-run enterprises*: workplaces created to give youth employment and management experiences
3. Employment:

Many students also worked on special research projects designing improved systems in information management, personnel procedures, and other technical areas which were turned in for credit.¹⁴⁵ The response of high school student Lisa Black, who served as an accounts analyst at Doron Precision Systems, Inc. in Binghamton, was typical:

I was basically Miss Accounts Payable while the lady I work with was on maternity leave because I knew what was going on. When I went on vacation, everything went crazy. I came back and the treasurer said, 'We missed you so much.' It makes me feel important that I am doing something that's beneficial to the company. I'm not just there to file.¹⁴⁶

What stands out about the Broome County project and others like it is how work-based learning is integrated with, and enhanced, by school-based learning.¹⁴⁷ Students participate in work-based learning during non-school hours before or after school, instead of during evenings or weekends. For example, work-based learning about working within organizational hierarchies, dealing with consumers, or gaining technical skills, is revisited and furthered in classroom discussions in different courses. One particularly important aspect of the Broome County program and other similar programs is that the above work experiences were not reserved only for those "tracked" away from college.¹⁴⁸ Scholars

Youth jobs: jobs ordinarily open to teenagers but often not learning opportunities

Subsidized employment training: paid work as part of a training program

Cooperative education and paid internships: school-related work experience

Youth apprenticeship: long term (over several years) work and learning program leading to certification.

HAMILTON & HAMILTON, *LEARNING AT WORK*, *supra* note 141, at 6.

In the Binghamton schools program, for example, lower intensity experiences such as field trips were begun as early as kindergarten, whereas job shadowing, and subsidized employment training would not begin until ninth grade for students. *Id.*

145. *Id.* at 2, 22, 29.

146. *Id.* at 11.

147. *Id.* at 2.

148. *Id.* at 5. School-to-Work programs have been criticized when they follow too closely the "apprenticeship" program model practiced in Germany and several other countries. HAMILTON, *supra* note 86, at 16, 75. Under the German model, substantial resources are committed to the education of all children, but around age fourteen students begin to be directed, according to a variety of past assessments, toward college or apprenticeships. *Id.* at 79-86. There are legitimate concerns about the potential for unfairness in "tracking" under such a system, particularly if disproportionate numbers of minorities and poor children end up being directed away from college and prospects for higher paying careers. In 1997, fourteen percent of young adults ages eighteen to twenty-four, who were not currently

emphasize the importance of apprenticeship and other school-to-work programs by pointing to several factors, including the dilution of negative peer relationships for apprentices who can build more positive relationships with co-workers, and the very real and immediate concern that delinquent or self-destructive behavior can result in poor productivity and firing.¹⁴⁹ There is an assumption that all young people can benefit from exercising responsibility and gaining work experience, regardless of their career plans.¹⁵⁰

Additional legal reforms could further these important legislative initiatives and increase young people's opportunities related to work. First, despite WIA and School-to-Work's emphasis on connecting with schools, the current push for educational standards has ignored the potential benefits of work-based learning, consequently valuing classroom attendance and factual memorization over all other forms of learning.¹⁵¹ For example, currently a battle is being waged in New York between those seeking to maintain and expand testing related to reading, writing, fact retention, and test-taking skills and those who want to revise the methodology to assess a broader level of skills. New York's alternative school movement has advocated the acceptance of student-produced "portfolios" that can identify learning that has occurred in other

enrolled in high school, had not completed high school either with a diploma, general equivalence degree (GED), or other credential. AMERICA'S CHILDREN, *supra* note 132, at 50. The comparable high school drop-out rate for non-Hispanic African Americans was seventeen percent, and for Hispanic Americans twenty-three percent. *Id.*

149. AMERICA'S CHILDREN, *supra* note 132, at 120-33.

150. Such opportunities are also good for creating "social capital," (i.e., adult references who can help open doors to other employment or educational opportunities). Young people with well-off or "connected" parents have increasingly been able to find summer jobs or post-high school jobs that allow them to build a strong resume (e.g., working in a well-known business-related firm). See Mary Williams Walsh, *Summer Work is Out of Favor with the Young*, N.Y. TIMES, June 18, 2000, § 1, at 1 (discussing how economic expansion has allowed parents to offer their children opportunities to use their summers to enhance their college applications through prestigious internships and programs, making it more difficult for employers to find teenagers to fill traditional summer jobs such as lifeguarding). Although these kinds of references can have clout because of the employer, handling a position of significant responsibility in a less prestigious workplace can also stand out to a prospective employer or college admissions office. One of the WIA's goals is to help low-income youth acquire jobs that will provide strong references. See 29 U.S.C. § 2854 (1994).

151. Traditional federal and state child labor laws have unwittingly emphasized this dichotomy by limiting the number of young people's hours spent in employment during non-school hours. For example, federal law prohibits young people ages fourteen to sixteen years of age from working more than eighteen hours per week during the school year, as well as working after 7:00 p.m. on the night before a school day. 29 C.F.R. § 570.35(a) (2000).

key areas.¹⁵² In sum, in order to further the important aims of the WIA and School-to-Work initiatives, state and federal educational standards contained in law need to include provisions for testing knowledge gained outside as well as inside the classroom.

Second, law can give further incentives to schools to create effective School-to-Work experiences by requiring that young people participate in community work projects prior to graduation. For example, New York has authorized local districts to require community service as a prerequisite for graduation.¹⁵³ Originally challenged unsuccessfully as directing young people into "involuntary servitude," courts and school administrators have recognized the importance of involving young people with local social needs.¹⁵⁴ Again, the value of this learning approach can and should be increased by having teachers take an active role in integrating lessons learned in the community with the classroom curriculum.¹⁵⁵

Finally, other work experiences for young people could be expanded through increased opportunities for involvement in entrepreneurship and small business.¹⁵⁶ More than many adults, young people tend to be better attuned to the needs of other youth, and thus they may have an advantage in finding a market "niche" within their peer community.¹⁵⁷

152. Such "portfolios" can include research reports, video observations, and other materials demonstrating the attainment of learning. See, e.g., *Alternative Community School, What Makes Us the Alternative?*, at <http://www.icsd.k12.ny.us/acs/info.htm> (last visited May 23, 2001) (on file with the *University of Michigan Journal of Law Reform*); see also Lynette Holloway, *Education's Chief Says Regents Test Won't Be Waived*, N.Y. TIMES, Jan. 27, 2000, at A1 (outlining the state education commissioner's decision to reject end-of-year "portfolios" as substitutes for the state regents exam, which is required for high school graduation).

153. *Immediato v. Rye Neck Sch. Dist.*, 73 F.3d 454 *passim* (2d Cir. 1996), *cert. denied*, 117 S. Ct. 60 (1996).

154. *Id.* at 458-60.

155. HAMILTON & HAMILTON, *BUILDING STRONG SYSTEMS*, *supra* note 141, at 7-8.

156. See generally STEVE MARIOTTI, *THE YOUNG ENTREPRENEUR'S GUIDE TO STARTING AND RUNNING A BUSINESS* (1996) (providing a step-by-step approach to young people interested in starting independent small businesses).

157. Unfortunately, young people are also at a substantial disadvantage in starting businesses due to their limited credit histories, and due to traditional legal doctrine that deems them unable to sign a contract. See, e.g., N.Y. GEN. OBLIGATIONS LAW § 3-101 (1989). Given the millions of dollars spent on marketing products to young people, it is ironic that youth enjoy so few real economic rights in law. With few exceptions, young people cannot validly sign a contract to purchase goods, services, or property, or to enter into any kind of rental agreement. Generally, children may disavow contracts they entered into as minors up until or immediately after reaching their eighteenth birthday. For example, in New York, a minor can revoke a contract willingly agreed to, with several exceptions. One exception is when the contract is for a necessity. "Necessity" is a relative term, usually applied to those items that are required to maintain the minor's existence. See *Siganoff v. Metro. Distrib.*, 111 N.Y.S.2d 21, 24-25 (1951) (entitling doctor to payment from contract for children's medical care). In addition, young people's authority to save money for themselves is usually limited by child support statutes. See, e.g., N.Y. DOM. REL. LAW § 240 (McKinney Supp.

In most significant transactions related to the business, a young person will most likely need a parent or guardian (or someone with a more extensive credit history) to “sign on.”¹⁵⁸ Of course, such a commitment from an adult should not be entered into without a full understanding of the legal liabilities involved. The Small Business Administration (SBA) could assist young entrepreneurs in several ways, and in this example, could develop and publish a legal handbook to explain in lay terms what adults need to know when they enter into a business relationship with a young person. Also, as with all start-ups or struggling businesses, the SBA should be clearly authorized and directed by federal statute to provide loan guarantees as needed to local banks who lend to young entrepreneurs. In sum, young entrepreneurs face credit and contractual barriers that adult entrepreneurs do not. If government cannot diminish all or even some of these barriers, then at least it can make sure that the parties involved are well-informed so that they can make sound decisions about how they can help finance or otherwise support the young entrepreneur.

C. Increasing Youth Participation in Community Leadership and Renewal

Every day, young people and adults recognize local problems that need to be addressed for their neighborhoods to thrive. But rarely are young people’s strengths—their available time, energy, and interest in exercising authority—enlisted in efforts to improve their communities. Whether creating community beautification projects, implementing “neighborhood watch” programs, or developing new social services, young people should have opportunities and incentives to assume formal leadership roles.¹⁵⁹ Schools can also help facilitate the involvement of young people in community development projects by helping organize students

2001). New York is one of many states that deems a child’s wages to belong to his or her parent(s), apparently consistent with common law concepts of children as property, whose income should inure to the benefit of the child’s “owner.” *See id.*

158. *See, e.g.,* Jan Norman, *Flipping Burgers? Yeah, Right—Try CEO*, NEWS & OBSERVER (Raleigh, N.C.), Apr. 30, 2000, at E14 (discussing examples of teens who started their own businesses, often with the investment and encouragement of their parents).

159. By law, adults must be responsible for financial and contract-related aspects regarding corporate start-up and supervision, but in some states young people can also acquire significant legal authority within corporate structures. *See, e.g.,* N.Y. NOT-FOR-PROFIT CORP. LAW § 701(a) (McKinney 1997) (allowing boards of directors of non-profit corporations designed to provide youth services to have board members ages sixteen to eighteen, provided they do not constitute more than half of the board).

and allowing class time for planning. One example is the Treetops 2000 project in Ithaca, New York. The Treetops project was spearheaded by students who used class time to help design and build an observation tower in a nature preserve.¹⁶⁰ Schools can also serve as referral points to local volunteer opportunities for teens. Participation in these endeavors helps young people get the chance to feel effective and to play an important, respected role in their community.¹⁶¹

In order to accommodate broadened work opportunities, insurance law will also need to be revisited and improved to allow for greater leadership participation by youth. Agencies interested in having young people assume leadership roles may have to face substantially higher insurance liability premiums based on risk assessments that presume anyone under eighteen is less capable and thus should not have a position of significant authority. To address this barrier, state insurance departments need no legal change so much as the motivation to enforce existing age discrimination prohibitions to protect the younger as well as the older members of the population.¹⁶² If such prohibitions were enforced, insurance carriers would be required to justify risk assessments that make stereotyped and unwarranted assumptions about young people and their ability to handle responsibility.

In addition, many community development projects are fueled by federal, and increasingly, state, and local funding initiatives,¹⁶³ the regulations for which might also need to be amended to allow persons under age eighteen to submit proposals and/or have positions of authority in program implementation. As mentioned earlier, a society more actively involved in enhancing maturity should expand mentorship opportunities for young people, particularly in contexts that have great potential for increasing their

160. See Margaret Claiborne, *Branching Out*, ITHACA J., Sept. 18, 1999, at 1A.

161. Such efforts would necessarily broaden the concept of what constitutes "community development," beyond creating businesses or jobs to include enhancing the maturity of youth. See, e.g., MARIOTTI, *supra* note 156, at 3.

162. See Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634 (1994). This limits protection from age discrimination to those over the age of forty. However, the New Jersey Supreme Court recently broke with its prior decisions and allowed an age discrimination claim by a twenty-five-year-old bank employee who was fired and replaced by someone older. See *Bergen Com. Bank v. Sisler*, 723 A.2d 944, 953 (N.J. 1999) (holding that the state legislature must have concluded that younger individuals should also be entitled to bring claims under the state's discrimination law).

163. See John Foster-Bey, *Building Communities: Making the Link Between Regional Economies and Local Community Development*, 8 STAN. L. & POL'Y REV. 25, 28-29 (1997) (discussing the move in the 1980s from federally funded community development projects to state and local initiatives).

sense of connection to the community and caring for people less fortunate.¹⁶⁴

D. Increasing Youth Participation in Government

State and local law provide few opportunities for young people to participate in or develop leadership skills in the context of collective political or governmental action. This is true even when policies or laws being considered may have dramatic effects on young people's lives.¹⁶⁵ It is primarily in response to great tragedies like Littleton that government leaders choose to inquire about the views of young people,¹⁶⁶ and usually in some time-limited or scripted "town meeting"-like format. On major pieces of legislation affecting young people, such as the current federal Violent and Repeat Juvenile Offenders Accountability and Rehabilitation Act,¹⁶⁷ legislators have always had the investigative power to bring in knowledgeable witnesses or representatives of affected populations;¹⁶⁸ rarely if ever do they use such power to seek information from young people.¹⁶⁹ Only a couple of youths testified about the

164. See *supra* Part II.C.

165. Today there are a handful of political action groups focused on the empowerment of young people, including YouthBuild, SLNC, and others, although the benefits of having youth involved in political action do not require that such action be devoted to improving young people's status or access to services. For information regarding YouthBuild, see <http://www.ybboston.org>; for SLNC, see <http://www.childrensdefense.org/slnc.htm>. Another key initiative to support new funding and opportunities for youth development is the proposed "Young Americans Act" (patterned after the popular "Older Americans Act") which counts among its backers U.S. Secretary of State Colin Powell. Nat'l Youth Dev. Info. Ctr., *Younger Americans Act Policy Proposal—6/7/00*, at <http://www.nydic.org/youngam6700.html> (last visited May 23, 2001) (on file with the *University of Michigan Journal of Law Reform*); Telephone Interview with Samuel Halperin, Director, American Youth Policy Forum (Aug. 1, 2000).

166. Again, the law tends to respond best to young people in relation to events, but tends to be at a loss when called upon to respond to their ongoing developmental needs. See *supra* Part I.

167. S. 254, 106th Cong. (1999).

168. See *Buckley v. Valeo*, 424 U.S. 1, 137–38 (1976) (asserting that investigative powers are among those legislative powers that Congress may delegate to congressional committees and administrative agencies).

169. Some might wonder what useful information young people could contribute to the formulation of youth policy. First, as described earlier, legislators tend to treat young people as a homogenous population, missing important distinctions that could affect the chances that a particular youth-related legislative initiative will succeed. Second, accepted principles of due process would dictate the need for legislators to give those populations most affected by proposed legislation an opportunity to be heard. Third, and particularly important, as youth participate in greater numbers in the consideration of initiatives designed for their benefit, studies suggest that they are more likely to have a sense of

Violent and Repeat Repeat Juvenile Offenders Accountability and Rehabilitation Act,¹⁷⁰ which if enacted would substantially cut back on the federal government's commitment to funding juvenile prevention efforts and to keeping young incarcerated offenders physically separated from adult criminals.¹⁷¹

Two legal changes would have the potential to increase youth investment in political participation. First, it should be a requirement of any significant state or federal legislation affecting youth that the legislative committee charged with drafting the legislation take testimony, if possible, directly from spokespeople of the affected groups. Given that young people are limited in their nonschool hours and access to the means of political organization, legislatures can and should do more to give notice of proposed legislation and the invitation of public comment in ways that will reach young people.¹⁷² Similarly, instead of casting about for young people to survey when pressing social issues suggest the need for a "youth perspective," state or local governments should provide for a standing youth advisory board to participate in the development of policy. The role of such a board would be to involve youth in evaluating and formulating initiatives, as well as to communicate with affected young constituents. The experience of running for a position on such a board would undoubtedly require the exercise of substantial decision-making skills, and the responsibilities involved for a youth representing a community's young people would present numerous opportunities to exercise and build maturity.¹⁷³

One innovative form of political and governmental participation, "Teen Court," has shown promise for developing young people's maturity by involving them in the enforcement of com-

ownership and desire to cooperate with such initiatives. See discussion *supra* Part II, for studies noting increased employee investment in and cooperation with corporate activities for allowing greater control in activity design. See also *supra* note 129 and accompanying text.

170. S. 254, 106th Cong. (1999). See discussion *supra* note 13.

171. Telephone Interview with Cheryl Johnson, Education Counsel, U.S. House of Representatives, Education and Workforce Committee (May 6, 2001).

172. As part of schools' mission to instill good habits of citizenship, it would make sense for legislative bodies to encourage and create ongoing informational links with civics or social studies classes. Teachers and students could utilize non-partisan legislative services (e.g. The Library of Congress—THOMAS Legislative Information at <http://thomas.loc.org>) to examine proposed legislation or appropriations as they affect young people or others, illustrating the idea that citizen input is critical and welcomed.

173. A combination of authority mixed with empathy would need to be practiced, for example, by the youth advisory board member in surveying and informing constituents. As with any electoral process, fair procedures for nominating and electing youth advisory committee members would have to be developed. In this regard, voting rights scholars could be very helpful in designing new ways for disenfranchised youth to participate in choosing the board members who will represent them.

munity standards of conduct.¹⁷⁴ Teen Courts established in Atlanta, Indianapolis, and other parts of the country receive referrals of misdemeanor or school misconduct cases, which are then resolved through a quasi-judicial process using young people in key roles as prosecutor, defender, and jury member.¹⁷⁵ Whenever an offender is convicted, sanctions such as victim restitution or community service are imposed by the teen jury and enforced through collaborative arrangements with local probation or school disciplinary staff. Delinquency codes should be amended to allow for the creation of such programs and for prosecutorial transfers to Teen Courts. Teen Courts should also be integrated into the middle school or high school "civics" curriculum to allow students to participate as pseudo-attorneys or jury members.

CONCLUSION

Legal support for the fostering of maturity in young people would be a promising, if overdue response to tragedies such as Littleton.¹⁷⁶ What is not needed are more draconian laws designed to scare, confine, or cast children out for their bad decisions. We are reminded with each new deeply flawed decision, that these laws do nothing to help young people become better decision makers. Leaving young people to themselves, like Pinocchio, then casting out those who make the worst decisions to face all the cruel consequences that we can muster, does not make us more safe. As one public service advertisement devised by law enforcement officers described it: "Lock up a 13 year old with murderers, rapists and robbers, and guess what he'll want to be when he grows up?"¹⁷⁷

Instead, we need to invite young people into "adult" society, by taking a more active role in helping them build mature decision-making skills. Young people need to learn how to be better, more mature decision makers guided not by chance, or by the few, but by the many. We need law to delineate more effective ways for

174. See, e.g., OJJDP ANNUAL REPORT, *supra* note 38.

175. *Id.*

176. Such an approach should not be seen as a panacea. Many other protective and rehabilitative measures are also greatly needed to help young people prepare for and attain adulthood safely, including saner gun access laws, greater counseling availability for young people, greater adult attention and intervention when warning signs are seen.

177. The Coalition to Prevent Juvenile Crime, Advertisement, WASH. TIMES, June 11, 1997, quoted in, Justice Policy Institute, *The Rights Juveniles Face When They Are Incarcerated with Adults*, at <http://www.cjcr.org/jpi/risks.html> (July 1997) (on file with the *University of Michigan Journal of Law Reform*).

young people to attain “personhood” by allowing some avenues to gain authority commensurate with their developing abilities. At the outset, there may be formidable barriers to the creation of a sociolegal system that more actively promotes maturity. Some barriers are common to any substantial reform movement, including the fears and entrenched expectations of the dominant (adult) culture,¹⁷⁸ but also the tendencies of some legislative or media players to demonize or defuse reform efforts.¹⁷⁹ Other barriers will be specific to young people, a group reflecting varied stages of an extended process of development.¹⁸⁰ For example,

178. Assisting young people in earning authority is likely to make a dominant adult culture particularly uncomfortable. Given media images of young people as idiots or devious hellions, why would anyone want to allow them to make any decisions whatsoever? The problem, of course, is that our youth will not magically become capable adults without having many opportunities to practice adult-like decision making beforehand. A society more actively involved in building maturity will likely shake our own conceptions of what defines adulthood. Every day adults encounter teens on the street, who are young, strong, and full of ideas and questions about authority. To some adults this vision evokes pride and hope for the future; to others, especially post-Littleton, the same vision produces anxiety and distrust. For the latter adults, a comforting thought has always been readily available: the socially reinforced assumption that adults have greater authority, greater insight, and greater power to control their lives and the lives of young people. A society that more actively promotes maturity will necessarily blur these distinctions: an adult encountering a sixteen-year-old may be surprised to find that the youth is also a small business entrepreneur, or an advisor to the County Board of Representatives. Adults will likely feel discomfort in this scenario because they can no longer distinguish themselves so readily from young people: the youth they encounter will no longer be marked (as “them”) by having so little of what adults (“us”) take for granted. However, with a new societal commitment and legal structure actively building maturity, such a realization by adults should, over time, develop into an increased sense of safety and reassurance.

179. An initial step should be for young people and sympathetic adults to combat stigmatization of young people in the press and in media images. Similar efforts will be needed to emphasize commonalities between young people’s aspirations and needs and those of adults. Finally, the movement will need to continue media focus and information sharing on what has succeeded in building maturity in young people. A White House conference examining effective programs would be an ideal follow-up to the conference focused on school violence, which was convened soon after the Littleton shootings. To bring about law reform using the legislative process, advocates should seek ways to link maturity building in young people to other popular movements and themes, particularly efforts to improve education, community development, and prospects for self-sufficiency. As another example, new legislation allowing parents time off to participate in important mentoring responsibilities for children (e.g., teacher conferences) could be added to other recent amendments being considered to strengthen the Medical and Family Leave Act of 1993, which has traditionally been a favorite of voters. Both major political parties nationally and locally still seem to be searching for something positive to say and do in response to Littleton that will not alienate traditional supporters. Getting behind efforts to actively build maturity in young people, more than merely providing for the posting of the Ten Commandments, could address the concerns of a large population of voters looking for constructive responses to Littleton and other recent youth tragedies.

180. To equate young people with other formerly disenfranchised populations—African Americans, women, and others—ignores the core issue of children’s developing decision-making capacity. As a group, in many ways adolescents fit the traditional mold of

reform movements have historically been organized and led by those most directly affected by present injustices.¹⁸¹ Young people may be unique in their present limitations, created in large part by adults through both law and logistics, to lead a reform movement on their own behalf.¹⁸²

With this kind of societal commitment to raise more mature generations of young people and the legal means to allow more opportunities to practice maturity, we can begin to create newer, less frightening stories about young people's progression to adult-

an "oppressed" minority: no right to vote, severe restrictions on economic power, discrimination on the basis of personal characteristics, and little say in major decisions affecting their lives. On the other hand, there are clear departures: as described earlier, society structures the lives of children so that decision-making power is statistically more likely to be in the hands of the most capable, at least until a person reaches eighteen years old. See generally Martin Guggenheim, *A Paradigm for Determining the Role of Counsel for Children*, 64 *FORDHAM L. REV.* 1399, 1432 (1996) (discussing the impact of the law's treatment of children with particular attention to the role of counsel); Lee Teitelbaum, *Children's Rights and the Problem of Equal Respect*, 27 *HOFSTRA L. REV.* 799, 821-22 (1999) (arguing that rights theory is inconsistent with what we understand about the psychological and moral development of children and with our expectations of children); contra Barbara Bennett Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parents' Rights*, 14 *CARDOZO L. REV.* 1747, 1749 (1993) (arguing that it is parents' rights that currently undermine the values of responsibility and mutuality necessary to child welfare and development). "Uniformly able" describes no distinct portion of the world population, yet adults are by law given the benefit of the doubt. What mitigates this for young people, and for adults who might support a more active maturity-building society, is the fact that this disenfranchised, presumed-less-able minority will eventually "grow out of it." All will someday find themselves "free at last" with the simple passage of time. This explains some, but not all, of the lack of movement by young people and sympathetic adults to organize and press for a society more actively promoting maturity and youth participation.

181. See generally JUAN WILLIAMS, *EYES ON THE PRIZE: AMERICA'S CIVIL RIGHTS YEARS, 1954-1965* (1987) (providing an oral history of the first ten years of the Civil Rights movement). A substantial barrier to youth self-advocacy is no doubt the structured, financially dependent status that young people live under until they become eighteen years old. With school, social relationships, and sometimes employment taking up most available time, there appears to be little chance that droves of young people will be out in the streets protesting anytime soon.

182. Other historically disempowered groups such as women and minorities have won the chance to exercise greater authority over their lives, but only after years of sometimes violent political struggle. Those seeking a "revolution" to win greater opportunities for young people to earn and exercise authority will likely have to walk a different path. In this journey, the experience of advocates for the disabled might be of some use. For example, a "quiet revolution" of sorts over the past three decades toward greater autonomy for disabled persons resulted in the passage of the Americans With Disabilities Act (ADA) in 1990. 42 U.S.C. §§ 12101-12213 (1990). The ADA and its legislative progeny have set into place new expectations in law and society for how persons with disabilities are to be treated, challenging the historical entrenchment of institutions that presumed only the participation of able-bodied adults. Although a variety of cases now making their way through the appellate process will further delineate the bounds of these laws, the fact that such significant progress has been made suggests the potential for a different kind of revolution for disenfranchised groups such as young people.

hood. For Pinocchio, and his contemporary peers, there could be real potential for better headlines in our future:

**HIGH SCHOOL LETS MATURE
*KIDS DESIGN CLASSES***

**NEW LESSONS LEARNED IN SCHOOL,
BUSINESS, AND THE COMMUNITY**

**MEMBER AT LARGE ELECTED TO COUNTY
YOUTH ADVISORY BOARD**

Teen Earns Grant to Start Small Marionette Business

**LOAN GUARANTEES TO YOUNG ENTREPRENEURS:
"A GOOD INVESTMENT" SAYS SBA CHIEF**

