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Adulthood in Law and Culture

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Vivian E. Hamilton*

Young people today come of age in a cultural and economic milieu that prolongs their attainment of the traditional markers of adulthood. Their subjective conceptions of the transition to adulthood also depart radically from the traditional conception, with its emphasis on discrete transition events (including marriage and entry into the workforce). Instead, the modern transition to adulthood is a gradual process comprising the acquisition of general capabilities, rather than the achievement of externally constructed events. The state-established age of legal majority stands in marked contrast to this gradual and prolonged process. Not only does it categorically establish the inception of adult status, but states in the mid-twentieth century adopted laws lowering statewide ages of majority from twenty-one to eighteen.

Setting legal adulthood at eighteen fails to accord with the trajectory of individual development, the time needed to acquire the skills and education demanded of individuals in the modern labor market, and even the social experiences of young people coming of age in modern America. In other words, the legal construction of adulthood is starkly at odds with its social and cultural constructions.

Moreover, we now understand that young people reliably attain different capacities at distinct stages of development. Thus across a range of policymaking contexts, any categorical rule will fail to take account either of context-specific capacities or deficiencies. The core commitments of the liberal democratic state, however, require it to extend to individuals those rights which they have attained the capacity to exercise—in other words, to recognize and account for context-specific capacities.

An ever-growing number of exceptions to the age of majority confirms its diminishing utility as a presumptive marker of adult capacity. Abandoning altogether the presumptive age of legal majority in favor of context-specific rules advances the state's liberal ends and better aligns the legal and socio-cultural constructions of adulthood. The developmental and behavioral sciences can and should supplement more traditional policymaking considerations. Finally, existing law, already rife with exceptions to the age of majority, demonstrates that context-specific decision making imposes no undue burden on lawmakers.

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The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. . . . [H]owever, a line must be drawn. . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood.¹

—*Roper v. Simmons*, 543 U.S. 551, 574 (2005)

1. The *Roper* Court went on to hold that age eighteen is “the age at which the line for death eligibility ought to rest.” *Roper v. Simmons*, 543 U.S. 551, 574 (2005). Several years after *Roper*, the Court held that juveniles convicted of nonhomicide offenses could not be sentenced to life without the possibility of parole. *Graham v. Florida*, 560 U.S. 48 (2010). Most recently, the Court held that juveniles convicted of crimes, including murder, could not be subjected to sentencing schemes that mandated sentences of life without the possibility of parole. *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

I. INTRODUCTION

The age of majority is the gateway to adult legal status, presumptively converting legal incapacity to capacity.² Young people attaining adult legal status will, for example: lose the presumptive entitlement to parental support; lose the ability to disavow contracts due to age-based incapacity; gain the ability to participate in civic and political life; and, if convicted of a serious-enough criminal offense, become susceptible to sentences of life imprisonment or death.³

Today, the near universal U.S. age of majority is eighteen, but it has historically fluctuated from the mid-teens to the mid-twenties both here and abroad.⁴ Fluctuations in the age of majority have generally accorded with changes in the nature of the capacities required of society's adult citizens and the age by which individuals tend to attain those capacities.⁵ Historically, young people have crossed the legal—and social—threshold to adulthood upon gaining the capacities to perform the types of work required of a given time and place, to bear arms and fight on behalf of the state, and/or to form and support a family.

The U.S. age of majority was lowered from twenty-one to eighteen, however, for reasons quite unrelated to capacity.⁶ Yet research across disciplines demonstrates that setting the age of majority at eighteen fails to accord with the trajectory of individual development, the time necessary to acquire the skills and abilities demanded of individuals in the modern labor market and broader socio-economic context, and even the social experiences of young people coming of age in modern American culture. The legal construction of adulthood is thus starkly at odds with the social meaning and experiences of adulthood.

Neither raising nor lowering the age of majority will redress its deficiencies. Instead, individuals predictably acquire different capabilities across the course of their development and exercise them

2. See discussion *infra* subpart II.B; see also, e.g., CAL. FAM. CODE § 6501 (West 1992) (“An adult is an individual who is 18 years of age or older.”); VA. CODE ANN. § 1-204 (2005) (“For the purposes of all [Virginia] laws . . . unless an exception is specifically provided in this Code, a person shall be an adult, shall be of full age, and shall reach the age of majority when he becomes 18 years of age.”); Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 559 (2000) (“Currently, legal adulthood begins at age eighteen.”).

3. See discussion *infra* subpart II.B.

4. See discussion *infra* subpart II.A.

5. See discussion *infra* subpart II.A.

6. See discussion *infra* subpart II.A.

with varying levels of competence in different contexts.⁷ Thus, while eighteen is a singularly inapt age at which to set majority across virtually every legal context to which it applies, I argue that *no* categorical age of majority can reliably capture the context-specific acquisition of various capacities.

The inadequacy of the categorical age of majority is reflected in the ever-growing number of exceptions to it. These exceptions aim to adapt rules to better conform to the needs of society and capacities (or incapacities) of young people. The exceptions have historically tended towards extending rights to individuals younger than the age of majority. Thus young people will have exercised many of the rights technically reserved to adults—entering contracts, deciding medical treatment, even marrying—long before reaching adult status.⁸

Increasingly, however, legal exceptions extend rules that once applied strictly to minors to individuals past the age of majority.⁹ In doing so, these exceptions to presumptive majority recognize that most young individuals will enter adulthood unready to assume some of the most significant attributes of their new status, such as the financial self-sufficiency intimated by adults' legal disentanglement to parental support.

For most young adults, financial dependency will instead continue well into their adult years. For the first time in over a century, more adults aged eighteen to thirty-four live in their parents' house than in any other living arrangement.¹⁰ The Federal Dependent Coverage Mandate, part of the Patient Protection and Affordable Care Act (ACA), is but one example of this type of legally mandated exception. The ACA expanded the availability of health insurance for young adults by allowing those aged nineteen to twenty-six to remain covered as dependents under their parents' plans.¹¹ In doing so, it

7. See, e.g., Paul Arshagouni, "But I'm an Adult Now . . . Sort of": *Adolescent Consent in Health Care Decisionmaking and the Adolescent Brain*, 9 J. HEALTH CARE L. & POL'Y 315, 360 (2006); see also discussion *infra* subpart III.C (discussing exceptions to the age of majority).

8. See discussion *infra* subpart II.C.

9. See discussion *infra* subpart II.C.5.

10. Richard Fry, *For First Time in Modern Era, Living with Parents Edges Out Other Living Arrangements for 18- to 34-Year-Olds*, PEW RES. CTR. 4 (May 24, 2016), http://www.pewsocialtrends.org/files/2016/05/2016-05-24_living-arrangement-final.pdf.

11. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of 42 U.S.C.).

highlights the ongoing dependence that now characterizes the early years of adulthood.¹²

Scholars and jurists alike have critiqued the body of law affecting young people as lacking coherence.¹³ Much of the criticism focuses on the challenges posed by attaching different legal consequences to different ages. Our collection of laws is indeed flawed, but these critics miss the mark. Instead, individuals acquire different capabilities across the course of their development and exercise them with varying levels of competence in different contexts.¹⁴

Some scholars have argued for exceptions to the age of majority in specific legal contexts. These arguments have included, for example, extending the entitlement to child support¹⁵ or foster care¹⁶ beyond the age of majority and extending the right to make certain medical or procreative decisions without adult intervention to individuals who have not yet attained majority.¹⁷ Others have argued against the presumption of incapacity of minors (children¹⁸ or adolescents¹⁹) in favor of presumed capacity, with some arguing for the recognition of the variable capacities of minors at different ages.²⁰

This Article diverges from earlier critiques in its call for dismantling altogether the age of majority—thus doing away with the conception of adulthood as a distinct legal status. The core

12. *Id.* The ACA, sometimes referred to as “Health Reform” or “Obamacare,” is a major federal health reform measure aiming to make healthcare coverage universal and affordable.

13. *See, e.g.*, *Roper v. Simmons*, 543 U.S. 551 (2005) (Scalia, J., dissenting) (criticizing differences in the legal treatment of adolescents in the abortion and juvenile justice contexts); Jonathan Todres, *Maturity*, 48 HOUS. L. REV. 1107, 1109-10 (2012) (arguing that by approaching “the concept of maturity in a piecemeal and issue-specific fashion,” the law has developed “a legal construct of maturity that is anything but consistent or coherent”).

14. *See, e.g.*, Arshagouni, *supra* note 7; *see also* discussion *infra* subpart III.C (discussing cognitive and socio-emotional development).

15. *See* Monica Hof Wallace, *A Federal Referendum: Extending Child Support for Higher Education*, 58 U. KAN. L. REV. 665, 666 (2010).

16. *See* Keely A. Magyar, *Betwixt and Between but Being Booted Nonetheless: A Developmental Perspective on Aging Out of Foster Care*, 79 TEMP. L. REV. 557, 558 (2006).

17. *See* J. Shoshanna Ehrlich, *Shifting Boundaries: Abortion, Criminal Culpability and the Indeterminate Legal Status of Adolescents*, 18 WIS. WOMEN’S L.J. 77, 91 (2003).

18. *See* Hillary Rodham, *Children’s Rights: A Legal Perspective*, in CHILDREN’S RIGHTS: CONTEMPORARY PERSPECTIVES 21, 33 (Patricia A. Vardin & Ilene N. Brody eds., 1979); Henry H. Foster & Doris Jonas Freed, *Needed: A Bill of Rights for Children*, STUDENT LAW., Oct. 1973, at 22, 55.

19. *See* Rhonda Gay Hartman, *Adolescent Autonomy: Clarifying an Ageless Conundrum*, 51 HASTINGS L.J. 1265, 1362 (2000).

20. *See* Rodham, *supra* note 18; Foster & Freed, *supra* note 18.

commitments of the liberal democratic state require extending to individuals the right to exercise those self-regarding capacities of which they are capable. That end calls for adopting context-specific rules informed by insights from the social and developmental sciences, which can help explain the development of capabilities and their exercise in different contexts.

Jettisoning the presumptive age of majority in law would have the secondary benefit of eroding what has become the cultural archetype of adulthood. Studies have revealed that young people conceive of the adult status as a state of individualism and independence.²¹ It is a normative construction that not only undermines the importance of community but is also markedly incongruent with the ongoing dependence typical of today's young adults.

Part II sets the age of majority in historical and legal contexts. Insights from social history and anthropology help explain cultural and structural factors that influence adult status and the conception of adulthood. This Part thus describes the legal construction of adulthood and how the line between minority and adulthood came to be drawn at age eighteen. It demonstrates that setting the age of majority at eighteen was an ill-conceived move set in motion by the wartime need to lower the draft age and facilitated by what was a subsequent historical aberration—the rapid transition to adulthood that occurred during a postwar industrial economy that enabled young people with few skills to earn high wages, thereby enabling them to marry and establish households at young ages.

The legal construction of adult status is starkly at odds with the modern social meaning and experiences of adulthood. Part III provides a social history of the transition to adulthood and describes the sociocultural construction of modern adulthood. Young people today conceive of adulthood differently than they have in the past. They come of age in a cultural and economic context that prolongs their achievement of certain traditional markers of adulthood. For example, in a service-based postindustrial economy, the vast majority of well-paying jobs require some postsecondary education or training. Individuals achieve financial independence, marriage, and parenthood a full decade or more after reaching legal adult status. Along with insights from the developmental sciences into relevant aspects of development from adolescence through early adulthood, this survey

21. See discussion *infra* Part IV.

makes plain the incongruence between adult status as constructed by U.S. law and adult status as conceptualized and experienced by individuals.

Part IV argues that the disjunction between social and legal constructions of adulthood harms individuals and contravenes the core commitments of the liberal democratic state. It proposes that lawmakers implement fully what they have already begun to implement piecemeal—abandoning the presumptive age of legal majority and adopting legal rules that account for the context-specific acquisition of capabilities. It argues that today’s lawmakers would be remiss to ignore relevant and readily available research across the social and developmental sciences, in addition to more traditional policy considerations. Indeed, some legislators, jurists, and legal scholars have begun to consider the implications of some of this research.²²

The age of majority is a construct that has quite lost any social or legal utility it may have once had, and it should thus be abandoned. The remainder of this Article examines it, details its flaws, and proposes a principled and pragmatic alternative to it.

II. THE LEGALLY CONSTRUCTED STATUS OF ADULTHOOD

Sir Henry Maine’s observation about the movement away from status in progressive societies may hold true as a general matter across legal realms, but counterexamples abound.²³ In law, “status” denotes a group sharing some set of attributes that justifies its membership being governed by a common set of rules.²⁴ Legal statuses can thus facilitate the efficient functioning of a complex society. “Corporation,”

22. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 574 (2005) (holding unconstitutional the imposition of the death penalty for crimes committed by an offender younger than age eighteen). Almost entirely ignored, however, though particularly useful in the legislative contexts which are this Article’s primary focus, are the contributions of behavioral decision research. This research offers a framework and methods for studying and assessing decision-making competence and accounts for both individual and situational variability. Baruch Fischhoff, *Assessing Adolescent Decision-Making Competence*, 28 *DEVELOPMENTAL REV.* 12, 13 (2008).

23. HENRY SUMNER MAINE, *ANCIENT LAW: ITS CONNECTION WITH THE EARLY HISTORY OF SOCIETY AND ITS RELATION TO MODERN IDEAS* 165 (5th ed. 1873) (“[T]he movement of the progressive societies has hitherto been a movement *from Status to Contract*.”); see also Vivian Hamilton, *Principles of U.S. Family Law*, 75 *FORDHAM L. REV.* 31, 38–41 (2006) (discussing the resistance to change of certain aspects of the marital status).

24. “Status” in the legal context is defined as “[t]he fact or position of belonging to a group which is subject to certain legal rights or limitations.” *Status*, *OXFORD ENGLISH DICTIONARY* (3d ed. 2012).

“marriage,” and “minor,” for example, are all legal statuses defined and governed by distinct sets of legal rules. “Adult” is another.

Like the law generally, statuses shape and are shaped over time by social forces. Their meanings can be at once legally and socially constructed, and they thus evolve along with changing social circumstances. The status of “wife,” for example, once comprised the near total legal incapacity imposed by the doctrine of coverture.²⁵ Social pressure led to the revising of the status through the repeal of coverture with states’ adoption of Married Women’s Property Acts and eventually to the formal equality of wives and husbands.²⁶

Childhood and adulthood are also socially and legally constructed statuses whose meanings have varied dramatically over time and across cultures.²⁷ Despite what may appear to be the inevitability of our current binary classification system, in which individuals are either minors or adults, the progression from childhood to adulthood is fluid and not readily amenable to biological definition.²⁸ Instead, structural (e.g., legal and economic norms) and cultural (e.g., social norms) changes have influenced the course and timing of individuals’ transitions to adulthood.

The age of majority has historically fluctuated depending on the capacities required of adults at different times and places. It has also varied according to the capacities required of different social roles that young individuals were destined to fill. In Medieval England, for example, the age of majority for English males destined for the military status of knighthood was twenty-one, before which they would not have completed the training nor gained the strength required of them. However, young men destined for agricultural life attained adult status at the significantly younger age of fifteen, by which they would have gained the capacity to engage in agricultural

25. NANCY F. COTT, PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION 10-12 (2000).

26. See, e.g., NORMA BASCH, IN THE EYES OF THE LAW: WOMEN, MARRIAGE, AND PROPERTY IN NINETEENTH-CENTURY NEW YORK 158-59 (1982). Marital status itself, moreover, continues to evolve, most recently when the Supreme Court held that same-sex couples have a constitutional right to marry. See *Obergefell v. Hodges*, 135 S. Ct. 2584, 2608 (2015).

27. See, e.g., BARBARA BENNETT WOODHOUSE, HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN’S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE 26 (2008) (“The timing of transition from childhood to adulthood is strongly influenced by issues of class and culture as well as by issues of race and gender.”); Annette Ruth Appell, *The Pre-Political Child of Child-Centered Jurisprudence*, 46 HOUS. L. REV. 703, 706 (2009) (arguing that childhood is a “socially constructed category deeply connected to race, gender, class, and citizenship”).

28. See Scott, *supra* note 2, at 548.

work.²⁹ The following subparts survey the historical evolution of the legal age of majority, significant aspects of the modern construction of the legal status, and exceptions to that presumptive legal status.

A. *The Age of Majority: A Brief History*

Early Roman law set the age of majority at the age by which individuals would presumably have attained the intellectual capacities required to exercise full citizenship, manage their affairs, and become parents and the heads of families themselves—age fifteen for males.³⁰ But while the onset of puberty may have signaled the physical capacity to become parents, the Romans apparently believed that it failed to coincide with young males' attainment of full intellectual maturity. Accordingly, Roman law placed free males who were technically "of full years and rights" under the temporary guardianship of adults known as *Curatores*.³¹ A *Curator's* approval was required to validate young males' formal acts or contracts until they reached twenty-five years of age.³² Indeed, Roman law used the terms "minority" and "majority" in reference, not to age fifteen, but instead to age twenty-five—the age of *plenam maturitatem*, or *full maturity*.³³

Throughout other parts of Europe, the attainment of physical capacity—particularly the ability to participate in warfare—determined legal maturity.³⁴ The age of majority between the ninth and eleventh centuries was fifteen for males.³⁵ When the nature of warfare changed during the Middle Ages so did the age of majority.³⁶ The increasing weight of defensive armor and growing use of mounted cavalry required both greater strength and skill on the part of the English knights who fought on behalf of the crown.³⁷ The age of

29. T.E. James, *The Age of Majority*, 4 AM. J. LEGAL HIST. 22, 30 (1960).

30. MAINE, *supra* note 23, at 155; James, *supra* note 29, at 25.

31. MAINE, *supra* note 23, at 156.

32. *Id.* at 156-57.

33. *Id.* at 156; James, *supra* note 29, at 33.

34. James, *supra* note 29, at 25. The age of majority freed an individual from the wardship or tutelage of his adult guardian, entitled him to marry, and required him to claim his inheritance. *Id.* at 30-31.

35. *Id.* at 24-25. Historians have noted that, while fifteen was the age of majority in ninth- and tenth-century France, Germany, and northern Europe, there is no "clear authority" that it was also the English age of majority during that time. They consider it reasonable to assume, however, that it was. *Id.* at 26-27.

36. *Id.*

37. *Id.* at 27; *see also* 2 WM. A. SHAW, THE KNIGHTS OF ENGLAND (1906) (listing knights by year in which they were dubbed).

eligibility for knighthood (the equivalent of the age of majority at the time) increased to twenty-one, by which age young men would have gained the strength and completed the training required of those who fought in the heavy cavalry.³⁸

Not all English males were destined for the honor of military tenure. Socage tenure, for example, was an agricultural status held by tenants who worked the land of feudal lords to whom they owed rent.³⁹ The requisite capacities for those who held this status were the abilities to farm and conduct their “rustic employments.”⁴⁰ The age of majority for socage tenants seems to have originally been fourteen, though it was later raised to fifteen by local custom.⁴¹

Perhaps unsurprisingly, the age required for the elite status of knighthood was the age whose imprint would endure.⁴² English historical and common law traditions became law throughout the British Commonwealth.⁴³ Twenty-one remained the age of majority for centuries in England, as well as throughout much of the Western world and nations that incorporated English traditions.⁴⁴

The immediate historical origins of the U.S. age of majority lie in the English common law tradition.⁴⁵ The American colonies, then the United States, adopted age twenty-one as the near universal age of majority.⁴⁶ The U.S. age of majority remained unchanged from the country’s founding well into the twentieth century. In 1942 wartime needs prompted Congress to lower the age of conscription from twenty-one to eighteen, a change that would eventually lead to the lowering of the age of majority generally.⁴⁷

For a period of years following the lowering of the draft age to eighteen, the voting age (and the general age of majority) remained twenty-one. The obligation of military service, however, has long

38. See James, *supra* note 29, at 28.

39. *Id.* at 30.

40. *Id.*

41. *Id.* at 29-30.

42. *Id.* at 33.

43. See WENDELL W. CULTICE, *YOUTH’S BATTLE FOR THE BALLOT: A HISTORY OF VOTING AGE IN AMERICA* 72 (1992).

44. James, *supra* note 29, at 22, 33.

45. See *id.* at 25-26.

46. DONALD GRIER STEPHENSON, JR., *THE RIGHT TO VOTE: RIGHTS AND LIBERTIES UNDER THE LAW* 248 (2004).

47. See CULTICE, *supra* note 43, at 7, 20; see also Vivian E. Hamilton, *Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority*, 77 *BROOK. L. REV.* 1447, 1461-62 (2012) [hereinafter Hamilton, *Democratic Inclusion*] (discussing the influence of the Second World War on public sentiment and Congress’ initiative to lower the voting age to eighteen).

been linked to the right to political participation.⁴⁸ Thus Congressional debates to subject eighteen-year-olds to the draft were soon followed by proposals to also extend to eighteen-year-olds the right to vote.⁴⁹ These proposals led to the eventual passage of the Twenty-Sixth Amendment in 1971, lowering the voting age to eighteen in both state and federal elections.⁵⁰

Once eighteen had become the age of conscription and of the franchise, it began to replace twenty-one across a range of contexts and has been adopted as the near universal age of majority.⁵¹ Forty-four states have adopted eighteen as the presumptive age of legal majority.⁵² Six have set their ages of majority higher, with five states setting it at nineteen and one at twenty-one.⁵³

Eighteen has thus become firmly entrenched as the presumptive age of majority, replacing in just a few decades its centuries-old predecessor. Its widespread adoption notably reflected a desire for a certain sort of consistency rather than a widely held consensus that young people reached maturity or generally attained adult-like capabilities before age twenty-one.

The impetus for lowering the age of majority, of course, was the immediate need for large numbers of soldiers to participate in U.S. wartime efforts. Although having less to do with maturity of judgment than with physical maturity, other age-based limitations previously imposed on young people between eighteen and twenty fell alongside the age of conscription. The following subpart briefly describes some of the more significant of the legal changes that currently accompany the attainment of the age of majority.⁵⁴

48. AKHIL REED AMAR, *AMERICA'S CONSTITUTION: A BIOGRAPHY* 19 (2005) ("In classic republican theory, the rights of collective self-government stood shoulder to shoulder with the responsibilities of collective self-defense."); see ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 36 (2000).

49. CULTICE, *supra* note 43, at 22.

50. U.S. CONST. amend. XXVI, § 1 ("The right of citizens . . . eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.").

51. *Termination of Support—Age of Majority*, NAT'L CONF. ST. LEGISLATURES, <http://www.ncsl.org/research/human-services/termination-of-child-support-age-of-majority.aspx> (last updated Mar. 2015) (listing statutory citations for the ages of majority of each U.S. state and territory).

52. *Id.*

53. *Id.*

54. For more exhaustive discussions of the effects of majority, see Larry Cunningham, *A Question of Capacity: Towards a Comprehensive and Consistent Vision of Children and Their Status Under Law*, 10 U.C. DAVIS J. JUV. L. & POL'Y 275, 285-364 (2006); Todres, *supra* note 13, at 1121-41.

B. *Legal Effects of Majority: An Overview*

Today, the legal age of majority reflects a presumption that typical individuals of that age are “mature enough to function in society as adults, to care for themselves, and to make their own self-interested decisions.”⁵⁵ Every state has adopted a legal age of majority through various legislative or judicial measures.⁵⁶

Designated statutory provisions establishing statewide ages of majority, for example, generally provide that upon reaching the established age, a person “shall be an adult for all purposes whatsoever and have the same legal capacity, rights, powers, privileges, duties, liabilities and responsibilities.”⁵⁷ Some states have adopted an age of majority indirectly, usually through statutory provisions that establish the age at which parents’ duty of support presumptively terminates.⁵⁸ Finally, common and statutory law frequently address more directly other age-related laws—both those that comport with the age of majority and those that act as exceptions to it. The following subparts briefly identify some of the more significant of the civil effects that attend the age of majority.

1. Disentitlement to Parental and/or State Support

There is a strong presumption that a young person’s entitlement to parental support ends at majority, generally age eighteen.⁵⁹ A number of states allow the extension of support orders past eighteen if a child is enrolled in but has not yet graduated from high school.⁶⁰

Similarly, young people presumptively age out of foster care once they turn eighteen or, in some states, nineteen.⁶¹ Some states provide for continuing foster care past age eighteen when the young person is enrolled in some sort of educational or rehabilitative program.⁶² Others give their courts discretion to determine whether to

55. Scott, *supra* note 2.

56. *See, e.g., id.*

57. *See, e.g.,* CONN. GEN. STAT. § 1-1d (2015) (lowering the statewide age of majority from twenty-one to eighteen).

58. *See, e.g., id.*

59. *Termination of Support—Age of Majority, supra* note 51. Forty-four states set the age of majority at eighteen. *Id.*

60. *See, e.g., id.* For example, twenty-four states will allow the extension of support orders to age nineteen if certain conditions are met; some other states permit extensions beyond nineteen. *Id.*

61. *See Magyar, supra* note 16, at 564-73.

62. The states include Arkansas, Connecticut, Massachusetts, Pennsylvania, South Carolina, South Dakota, and Tennessee. *See* ARK. CODE ANN. § 9-27-306(a)(1)(B)(ii) (2016); CONN. GEN. STAT. § 17a-93(1) (2015); MASS. GEN. LAWS ch. 119, § 23(f) (2016); 42

continue state custody past age eighteen based on factors that can include the young person's best interests or need for services.⁶³ Only a few states' statutes explicitly provide for retaining custody for the purpose of helping a young person successfully transition to independence.⁶⁴ Dedicated federal funds exist to help states provide foster care only to individuals younger than eighteen and eighteen-year-olds enrolled in high school who will likely graduate before their nineteenth birthdays.⁶⁵

By ending parental and state support obligations at majority, the law treats those who are aged eighteen and over or who have completed a high school education as capable of financial independence and responsible for their own financial support.⁶⁶ A high school education may in previous decades have enabled financial self-sufficiency, but as Part IV demonstrates, high school alone rarely suffices. In the modern economy, well-paying jobs providing the opportunity for middle-class living typically require postsecondary education or training.⁶⁷ The legal effects of the age of majority operate to leave high school graduates without parental support before allowing them a sufficient opportunity to attain financial security. In doing so, the age of majority both disserves young people and ineffectively meets the workforce needs of the employers that drive the nation's economy.

PA. CONS. STAT. § 6302 (2016); S.C. CODE ANN. § 63-3-510(B) (2008); S.D. CODIFIED LAWS § 26-6-6.1 (2015); TENN. CODE ANN. § 37-1-102(b)(5)(G) (2016).

63. These states include Alaska, Illinois, Iowa, and New Jersey. See ALASKA STAT. § 47.10.080(c)(1)(B) (2015); 705 ILL. COMP. STAT. 405/2-31(1) (1987); IOWA CODE § 232.102(1)(b) (2016); N.J. STAT. ANN. § 30:4C-2.3 (West 2016).

64. These states include Arizona, Arkansas, Kentucky, and New Jersey. See ARIZ. REV. STAT. ANN. § 8-521.01(A)-(B) (2016); ARK. CODE ANN. § 9-27-306(a)(1)(B)(ii) (2016); KY. REV. STAT. ANN. § 620.140(1)(d) (West 2016); N.J. STAT. ANN. § 30:4C-2.3 (West 2016).

65. 42 U.S.C. §§ 608a, 619(2)(B), 672 (2012). The Foster Care Independence Act (FCIA) permits states to use federal money to fund independent living programs for young people aged eighteen to twenty-one. Foster Care Independence Act of 1999, Pub. L. No. 106-169, § 121, 113 Stat. 1822, 1829-30 (codified as amended at 42 U.S.C. § 1396d(w)). Only about half of young people between eighteen and twenty-one are eligible for the room and board allotment provided by the statute, which totals just over \$1400 annually per individual. See Magyar, *supra* note 16, at 563; Cynthia Andrews Scarcella et al., *The Cost of Protecting Vulnerable Children IV: How Child Welfare Funding Fared During the Recession*, URBAN INST. 16-18 (2004), <http://www.urban.org/research/publication/cost-protecting-vulnerable-children-iv> (select "Download PDF").

66. The law in just under half of the states assumes that financial dependence will end, not necessarily at age eighteen, but instead upon the young person's graduation from high school. Magyar, *supra* note 16, at 564.

67. See discussion *infra* subpart IV.C.

2. Freedom from Parental Authority

Legal adults gain independence from parental authority. During their children's minority, parents have not only a legally enforceable obligation to provide for the support of their children; they also have a constitutional right to the "custody and control" of their children.⁶⁸ "Custody and control" encompasses the ability to make all manner of decisions on their behalf.⁶⁹

The state exercises its *parens patriae* power to enact regulations that interfere with parental authority in areas including education and public health.⁷⁰ Otherwise, the state generally defers to parents' child-rearing practices so long as their caregiving does not fall to a level that would constitute statutorily defined abuse or neglect.⁷¹

Parents' day-to-day authority over their children is thus universally acknowledged and respected; at the same time, its contours are rarely formally defined. Parents decide where their children will live, where they will attend school, which doctors will attend them, which medical procedures they will undergo, and every aspect of how they will be raised—their daily schedules, activities, diets, etc. Once an individual is identified as a parent, community actors such as school officials and health care providers afford them the decision-making authority that attend that status.⁷²

68. See *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925) (holding unconstitutional state legislation requiring that all children be educated in public schools and recognizing parents' rights "to direct the upbringing and education of children under their control"); *Meyer v. Nebraska*, 262 U.S. 390, 399-400 (1923) (holding unconstitutional state legislation restricting the teaching of foreign languages in elementary schools and recognizing parents' rights to "establish a home and bring up children").

69. See *Troxel v. Granville*, 530 U.S. 57, 72 (2000) (plurality opinion) (holding unconstitutional a state third-party visitation statute that permitted any person to petition a court for visitation with a child at any time because the statute "failed to accord the determination of . . . a fit custodial parent[] any material weight"). The plurality in *Troxel* stated "that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and . . . 'to direct the upbringing and education of children under their control.'" *Id.* at 65-66 (first quoting *Meyer*, 262 U.S. at 399; then quoting *Soc'y of Sisters*, 268 U.S. at 534-35).

70. See, e.g., *Soc'y of Sisters*, 268 U.S. at 534 (noting "the power of the State reasonably to regulate all schools [and] to require that all children of proper age attend some school"); *Meyer*, 262 U.S. at 401 (observing that "the state may do much, go very far, indeed" to advance the general welfare infringing upon parents' rights).

71. See Emily Buss, *Adrift in the Middle: Parental Rights After Troxel v. Granville*, 2000 SUP. CT. REV. 279, 287-96 (arguing in favor of state noninterference in parenting generally).

72. A notable exception exists in the case of noncustodial parents, in which case a biological parent's authority may be limited by judicial decree.

Just as many aspects of the parent's authority tend to exist informally, its technical cessation once a child reaches the age of majority also tends to occur informally. However, two legal doctrines—invoked, ironically, when there is a failure or absence of presumptive parental authority—help delineate the contours of parental authority.

The first is the doctrine of emancipation, which confers upon a minor “the rights, duties, privileges, and responsibilities provided by the civil law to a person who has reached the age of majority under civil law.”⁷³ Generally, minors found to be living independent of their parents and supporting themselves may be declared emancipated.⁷⁴ Most states provide for some form of emancipation through either statutory or common law.⁷⁵ However, not all states have formally adopted the doctrine, and some that have done so provide only a limited array of rights to emancipated minors.⁷⁶ Certain transition events most commonly appear as justification for a child's emancipation—the child's marriage, pregnancy, or military service.⁷⁷ The rights of emancipated minors typically allow them to enter contracts (such as lease agreements), receive certain forms of public assistance usually reserved to heads of household, and retain their own earnings.⁷⁸ Emancipation also relieves parents of the duty to support the minor child.⁷⁹

The second legal mechanism, the ungovernability action, permits parents to initiate a judicial action seeking to have a minor child found “ungovernable.”⁸⁰ A minor may be brought under court supervision if

73. HAW. REV. STAT. § 577-25 (2015). See generally Carol Sanger & Eleanor Willemssen, *Minor Changes: Emancipating Children in Modern Times*, 25 U. MICH. J.L. REFORM 239 (1992) (describing the legal processes by which minors may become emancipated).

74. See Sanger & Willemssen, *supra* note 73, at 240.

75. See *id.* at 240-41.

76. See Bethany Stasiak, *Statutory and Judicial Emancipation of Minors in the United States*, BOS. COOP NETWORK (2002), http://bostoncoop.net/lcd/emancipation/emancipation_deliverable.pdf.

77. See *id.*

78. See, e.g., KAN. STAT. ANN., § 38-102 (2015) (providing only for the minor's right to enter contracts, including those involving real and personal property); WIS. STAT. § 48.987 (2015) (providing that a self-supporting minor is entitled to his or her own earnings); N.Y. COMP. CODES R. & REGS. tit. 18, § 349.5 (2016) (providing for the granting of public assistance to eligible emancipated minors).

79. See William E. Dean, Note, *Ireland v. Ireland: Judicial Emancipation of Minors in Idaho: Protecting the Best Interests of the Child or Conferring a Windfall upon the Parent?*, 31 IDAHO L. REV. 205, 215 (1994).

80. See generally Randy Frances Kandel & Anne Griffiths, *Reconfiguring Personhood: From Ungovernability to Parent Adolescent Autonomy Conflict Actions*, 53

the minor is found to be a “habitual truant or is incorrigible, ungovernable, or habitually disobedient and beyond the lawful control of his or her parents, guardian or lawful custodian.”⁸¹ State statutes adopt intentionally vague standards under which a young person’s actions, albeit lawful but which violate the parents’ mores and expectations, may justify a court’s determination that the youth should be in the custody of a social services department for placement and treatment in a foster home or other institution.⁸² These actions can include engaging in sexual relationships over parents’ objections, being truant from school, violating curfews, and general disobedience.⁸³

Emancipated minors step into the shoes of their parents, exercising for themselves the authority that parents would normally exercise over them. Parents who successfully have a child adjudicated ungovernable allow the state, at least temporarily, to substitute its *parens patriae* power for parental control. Ungovernability actions illustrate the sort of authority parents are entitled to exercise over their children and with which children are expected to comply. Even if a child’s actions stop short of criminal or delinquent behavior—such as general noncompliance with parents’ wishes—the state may act to reinforce parental authority. Thus both emancipation and ungovernability actions help illustrate the scope of parental authority.

3. Contract Rights

On reaching the age of majority, individuals may disaffirm contracts entered during their minority.⁸⁴ The common law has for centuries provided minors this protection, known as the infancy defense or infancy doctrine.⁸⁵ The infancy doctrine has historically existed to protect young people from squandering their wealth or from falling prey to unscrupulous adults who would take advantage of their inexperience in the marketplace.⁸⁶ Disaffirmance does not generally

SYRACUSE L. REV. 995 (2003) (describing and critiquing the ungovernability action as a means of resolving parent-child conflict and proposing in its stead a form of civil action that prioritizes not only parental decision-making rights but also adolescent autonomy rights).

81. N.Y. FAM. CT. ACT § 732 (McKinney 2010).

82. Kandel & Griffiths, *supra* note 80, at 997.

83. *Id.*

84. 7 JOSEPH M. PERILLO, CORBIN ON CONTRACTS § 27.2 (rev. ed. 2002); 5 SAMUEL WILLISTON & RICHARD LORD, A TREATISE ON THE LAW OF CONTRACTS §§ 9:3-:5 (4th ed. 1993).

85. See 5 WILLISTON & LORD, *supra* note 84, § 9:2.

86. Larry A. DiMatteo, *Deconstructing the Myth of the “Infancy Law Doctrine”*: From Incapacity to Accountability, 21 OHIO N.U. L. REV. 481, 481 n.3 (1995).

permit the rescinding individual to reap the benefit of the voided contract. Instead, each party generally must return to the other any consideration given.⁸⁷

A 2009 federal statute, the Credit Card Accountability, Responsibility, and Disclosure Act (CARD Act), goes further than the infancy doctrine in providing protection to minors.⁸⁸ The CARD Act prohibits any contract for a credit card entered by an individual younger than twenty-one unless one of two exceptions apply: (1) an adult twenty-one years or older cosigns and accepts joint liability for any debt incurred pursuant to the contract; or (2) the individual demonstrates “independent means of repaying” any debt incurred.⁸⁹

Common and statutory law have both created several exceptions to the infancy defense.⁹⁰ One of these exceptions prevents the later disaffirmance of contracts that provide minors the “necessaries of life.”⁹¹ Thus when minors purchase basic necessities, the exception aims to counteract one of the potential drawbacks of the infancy defense—merchants’ unwillingness to conduct business with minors for fear of later disaffirmance.⁹² Other statutorily created exceptions prohibit the disaffirmance of certain types of contracts where legislatures deemed finality and certainty to outweigh the right of disaffirmance.⁹³ These exceptions commonly include insurance contracts, child support agreements, and student loans.⁹⁴

87. 7 PERILLO, *supra* note 84, § 27.6. The common law imposed no duty on the minor to return consideration or goods no longer in the minor’s possession. Modern courts, however, have been more willing to require minors to make restitution to the adult contracting party in such circumstances. *Id.*

88. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, § 301, 123 Stat. 1734, 1747-48 (codified at 15 U.S.C. § 1637(c) (2012)).

89. *Id.* For a critique of the CARD Act, see Andrew A. Schwartz, *Old Enough To Fight, Old Enough To Swipe: A Critique of the Infancy Rule in the Federal Credit CARD Act*, 2011 UTAH L. REV. 407. Schwartz argues that the Act’s provisions “run[] badly afoul of th[e] broad societal consensus [that eighteen-year-olds are adults], roll[] back the clock to medieval times, and undermine[] the dignity of eighteen-year-olds.” *Id.* at 408. He also argues that because the Act makes credit more difficult for young people to obtain, it stifles youthful entrepreneurship and thus deprives society of the potential benefits of these ventures. *Id.*

90. 7 PERILLO, *supra* note 84, § 27.8; 5 WILLISTON & LORD, *supra* note 84, § 9:18; DiMatteo, *supra* note 86, at 488-89.

91. Sources cited *supra* note 90.

92. Irving M. Mehler, *Infant Contractual Responsibility: A Time for Reappraisal and Realistic Adjustment?*, 11 U. KAN. L. REV. 361, 364-65 (1963).

93. DiMatteo, *supra* note 86, at 483 n.10.

94. 7 PERILLO, *supra* note 84, § 27.3; 5 WILLISTON & LORD, *supra* note 84, § 9:6; DiMatteo, *supra* note 86, at 513.

It is only once individuals enter adulthood that merchants may transact business with them without fear of disaffirmance. Yet the threat of disaffirmance does little to dissuade merchants or hinder minors from conducting business. Minors are instead active and significant participants in the marketplace, as both consumers and sellers. Market research into a single year of their economic activity estimated that minors spent nearly \$190 billion in economic transactions and estimated their spending to increase to nearly \$209 billion by 2011, despite a projected 3% decline in teen population.⁹⁵ Scholars observe that teens' spending power, particularly through increasing online spending in which they can participate in economic activity in virtual anonymity, gives minors "the potential to cause serious economic consequences to online businesses by disaffirming contracts in droves."⁹⁶ Yet there is scant evidence of any impending economic calamity.

While the right to contract is regularly touted as one of the rights of adulthood, it is in reality a right that is regularly exercised by minors. This regular involvement in market transactions arguably renders the right to contract an almost-irrelevant marker of the transition to adult status. Indeed, for decades, both scholars and jurists have been calling for the doctrine's overhaul or outright repeal.⁹⁷

Critics of the infancy doctrine argue that adolescents have sufficient capacity to enter contracts to which they should be held. The doctrine may have the perverse effect of permitting market-savvy individuals to later disavow contracts that they were sufficiently capable to enter as minors.⁹⁸ More recently, commentators have pointed to the growing body of developmental research tending to confirm the cognitive capacity of adolescents to enter contracts.⁹⁹ To

95. Vahe Habeshian, *By 2011, Teen Market Shrinks, Spending Clout Soars to \$200B*, MARKETINGPROFS (June 29, 2007), <http://www.marketingprofs.com/opinions/2007/19516/by-2011-teen-market-shrinks-spending-clout-soars-to-200b>; *Teen Market To Surpass \$200 Billion by 2011, Despite Population Decline*, MARKETINGCHARTS (June 28, 2007), <http://www.marketingcharts.com/traditional/teen-market-to-surpass-200-billion-by-2011-despite-population-decline-817/>.

96. Cheryl B. Preston, *CyberInfants*, 39 PEPP. L. REV. 225, 268 (2012).

97. See, e.g., *Kiefer v. Fred Howe Motors, Inc.*, 158 N.W.2d 288, 290 (Wis. 1968) (acknowledging the defects of the infancy doctrine but suggesting that the legislature was the proper branch to alter the doctrine rather than the court); DiMatteo, *supra* note 86, at 518; Mehler, *supra* note 92, at 364.

98. DiMatteo, *supra* note 86, at 485.

99. See, e.g., Michael Glassman & Donna Kamo, *On Establishing a Housing Right of Contract for Homeless Youth in America*, 7 SEATTLE J. FOR SOC. JUST. 437, 453 (2009) ("The suggestion that youth under fifteen are not capable of understanding the social contract

the extent the infancy doctrine flies in the face of social reality, provides unneeded protection to (at least a subset of) minors, and contravenes the core moral underpinning of contract law itself—the keeping of promises—it is ripe for revision.¹⁰⁰

4. The Right to Full Labor Market Participation

Federal and state laws impose restrictions on the types and hours of employment in which individuals younger than eighteen may engage. Federal law, through the Fair Labor Standards Act (FLSA), curtails the employment of individuals younger than sixteen, but it imposes relatively few restrictions on the employment of those aged sixteen and older.¹⁰¹ The FLSA instead leaves sixteen- and seventeen-year-olds largely free to engage in paid employment in nonhazardous occupations.¹⁰² Many states, however, have adopted measures that extend greater protections to older teens with the goal of preventing their paid work from interfering with their health or education. These measures generally impose limits on the number of hours sixteen- and seventeen-year-olds may work.¹⁰³ Once workers reach age eighteen, they are no longer subject to these special protections.

The provisions of the FLSA and other labor regulations that free individuals from restrictions on their employment upon reaching the age of majority roughly correspond with the completion of high school. As noted above and discussed more fully below, economic changes have made postsecondary education increasingly necessary to obtaining middle-class income. Due to increases in the costs of that education and parents' unwillingness or inability to provide ongoing financial support, more students today than in recent decades find it necessary to work either full- or part-time while enrolled in school.¹⁰⁴

is not supported by developmental research"); Cunningham, *supra* note 54, at 292 (noting the absence of “effort to change the infancy doctrine despite criticism from academics and even courts [and] despite the . . . widespread agreement among psychologists that children’s cognitive abilities develop at a far earlier age than originally thought”).

100. See Cunningham, *supra* note 54, at 293-94; Hartman, *supra* note 19, at 1303-04.

101. 29 U.S.C. §§ 206-07, 212 (2012); 29 C.F.R. § 570.2(a) (2011). Federal regulations prohibit the employment of all individuals under eighteen in hazardous occupations. 29 C.F.R. § 570.2(a)(1)(ii); see also 29 C.F.R. § 570.50-.68 (listing hazardous occupations).

102. The Act imposes no work hour restrictions on individuals aged sixteen and over. 29 C.F.R. §§ 570.2(a)(1)(i), .35, .70(a).

103. See, e.g., N.Y. LAB. LAW § 143 (McKinney 2016).

104. Anne H. Gauthier & Frank F. Furstenberg Jr., *Historical Trends in Patterns of Time Use Among Young Adults in Developed Countries*, in ON THE FRONTIER OF

It is regrettable that the difficulty of financing postsecondary education requires many students to combine work and school, increasing the length of time required to complete their educations and obtain desirable employment. Ameliorating this difficulty might entail any number of policy revisions. Those efforts arguably ought not occur, however, by way of revisions to existing labor protections.

5. The Right to Political and Civic Participation

With few exceptions, individuals acquire the rights and duties of political and civic participation at age eighteen. The national voting age is eighteen.¹⁰⁵ States have the authority to set the voting age lower, but the Twenty-Sixth Amendment prevents their setting it higher.¹⁰⁶ Some states permit seventeen-year-olds to vote in primary elections if they will turn eighteen by the general election, but no state has chosen to allow individuals younger than eighteen to vote.¹⁰⁷ There has been a global move to lower the voting age, as well as scattered efforts in several U.S. states and municipalities to do so.¹⁰⁸ To date, only one municipality—the city of Takoma Park, Maryland has enacted legislation lowering the voting age to sixteen for local elections.¹⁰⁹

The national age for draft eligibility and voluntary enlistment in any of the branches of the military absent parental consent is eighteen.¹¹⁰ Individuals who obtain parental consent may voluntarily enlist at seventeen.¹¹¹

The age at which individuals become eligible to sit on federal juries is eighteen, lowered from twenty-one in 1972 by amendment to the federal Jury Selection and Service Act.¹¹² In the states, there is

ADULTHOOD: THEORY, RESEARCH, AND PUBLIC POLICY 150, 159 (Richard A. Settersten Jr. et al. eds., 2005).

105. See Hamilton, *Democratic Inclusion*, *supra* note 47, at 1448.

106. U.S. CONST. amend. XXVI, § 1 (“The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”).

107. See *17-Year-Old Primary Voting*, FAIRVOTE, <http://archive3.fairvote.org/reforms/universal-voter-registration/17-year-old-primary-voting-2/> (last visited Sept. 4, 2016).

108. See Hamilton, *Democratic Inclusion*, *supra* note 47, at 1465-74 (listing nations that have already lowered the voting age and those with pending efforts to do so).

109. Lindsay A. Powers, *Takoma Park Grants 16-Year-Olds Right to Vote*, WASH. POST (May 14, 2013), https://www.washingtonpost.com/local/takoma-park-grants-16-year-olds-right-to-vote/2013/05/14/b27c52c4-bccd-11e2-89c9-3be8095fe767_story.html.

110. 10 U.S.C. § 505(a) (2012).

111. *Id.*

112. Act of Apr. 6, 1972, Pub. L. No. 92-269, 86 Stat. 117 (amending 28 U.S.C. § 1865(b)(1) (1970)) (setting the age of eligibility to serve on federal grand or petit juries at twenty-one).

only slightly more variation in the age of jury eligibility, and these closely track the states' respective ages of majority.¹¹³ Thus, the near universal age at which individuals become eligible for jury service is eighteen (in forty-six states and the District of Columbia);¹¹⁴ the age for jury service eligibility is nineteen in two states¹¹⁵ and twenty-one in two other states.¹¹⁶

Although individuals acquire most rights to civic and political participation upon reaching the age of majority, it is not unusual for governments to impose separate age requirements on holders of various state and federal offices. Both federal and state constitutional provisions require individuals to meet higher age requirements in order to qualify to hold certain offices.¹¹⁷

6. The Right to Medical and Procreative Choice

The authority to make medical decisions affecting minors presumptively rests with their parents.¹¹⁸ Only upon reaching the age of majority are individuals categorically entitled to make their own medical decisions.¹¹⁹ Minors may consent to treatment in some circumstances, including in cases of emergency, in cases involving reproductive health care (such as contraceptive services, prenatal care, and examination and treatment for sexual assault and sexually transmitted diseases), and in cases involving mental health care (which extends to outpatient substance abuse and mental health treatment).¹²⁰

113. *Compare Termination of Support—Age of Majority*, *supra* note 51 (providing age of majority of individual states), *with* *Roper v. Simmons*, 543 U.S. 551 (2005) (giving jury qualification age for individual states).

114. *Roper*, 543 U.S. 551 app. (listing minimum age for jury service in forty-eight states and the District of Columbia); OR. REV. STAT. § 10.030(2)(c) (2009); 42 PA. CONS. STAT. § 4502 (2016).

115. ALA. CODE § 12-16-60(a)(1) (2016); NEB. REV. STAT. § 25-1601(1) (2015).

116. MISS. CODE ANN. § 13-5-1 (2016); MO. REV. STAT. § 494.425(1) (2015).

117. *See, e.g.*, U.S. CONST. art. I.

118. B. Jessie Hill, *Medical Decision Making by and on Behalf of Adolescents: Reconsidering First Principles*, 15 J. HEALTH CARE L. & POL'Y 37, 38 (2012); Kimberly M. Mutcherson, *Whose Body Is It Anyway? An Updated Model of Healthcare Decision-Making Rights for Adolescents*, 14 CORNELL J.L. & PUB. POL'Y 251, 259 (2005).

119. David M. Vukadinovich, *Minors' Rights To Consent to Treatment: Navigating the Complexity of State Laws*, 37 J. HEALTH L. 667, 667-68 (2004) ("While the law is clear with regard to the right of competent adults to consent to or refuse medical treatment, state statutes generally are more complicated when the patient is a minor.").

120. Rhonda Gay Hartman, *Coming of Age: Devising Legislation for Adolescent Medical Decision-Making*, 28 AM. J.L. & MED. 409, 416-27 (2002); Hill, *supra* note 118, at 42-43.

States may require minors to obtain parental consent prior to obtaining an abortion. But states must provide for an alternative bypass procedure where a neutral third-party must consent to the abortion upon finding either that (1) the minor is sufficiently mature and informed to make the decision independently or (2) an abortion would be in her best interests.¹²¹ Generally, emancipated minors and minors determined on an individualized basis to possess adequate maturity (pursuant to what is known as the “mature minor” doctrine) may also make their own medical decisions.¹²²

C. *Exceptions to the Age of Majority*

A survey of just a number of the legal exceptions to the presumptive age of majority, like the one that follows, leads to two conclusions about the age of majority itself. First, the proliferation of exceptions to it demonstrates that the age of majority insufficiently meets current social needs. That the exceptions alter legal consequences for individuals variously past the age of majority and those who have not yet attained it, moreover, suggests that perhaps *no* categorical age of majority can adequately meet social needs.

Second, the existence of exceptions that apply in specific legal contexts demonstrates that it is not unduly burdensome for lawmakers to engage in this sort of context-specific rulemaking. Stated differently, categorical rules like the age of majority serve useful purposes by eliminating uncertainty and advancing efficiency. Yet lawmaking that impacts young people has already begun to alter in order to better address, in comparison to the presumptive age of majority, the needs of society and capacities or incapacities of young people.

121. See *Bellotti v. Baird*, 443 U.S. 622, 647-48 (1979); *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 72-76 (1976). For a cogent analysis of these cases that concludes that they fail to meaningfully expand children’s broader claims to constitutional rights, see Martin Guggenheim, *Minor Rights: The Adolescent Abortion Cases*, 30 HOFSTRA L. REV. 589 (2002).

122. Andrew Newman, *Adolescent Consent to Routine Medical and Surgical Treatment*, 22 J. LEGAL MED. 501, 504-08 (2001) (discussing and critiquing exceptions applied to emancipated and “mature” minors and arguing in favor of a bright-line rule allowing all individuals over age sixteen to make medical decisions).

1. Contract Rights, Labor Market Participation, and the Right to Medical and Procreative Choice (Redux)

Young people do not formally acquire the rights to contract, fully participate in the labor market, or independently make medical and procreative choices until reaching the age of legal majority. However, as previously discussed, exceptions to each of these rules allow minors to engage regularly in these activities prior to attaining majority.¹²³ In each of these contexts, the exceptions better describe the reality of young people's experiences—and the needs of society—than does the presumptive rule.

2. Giving Sexual Consent

Every state has established a minimum age at which individuals may consent to sex. Seven states have set the age of sexual consent at eighteen—the legal age of majority in those states. The remainder have set the age of consent below the age of majority.¹²⁴ The most common age adopted by states is sixteen, while four states have set the age of sexual consent at age fourteen.¹²⁵

Although sexual consent laws on occasion lead to the criminal prosecution of teenagers who engage in consensual sex, states have generally revised their laws so that only individuals who are significantly older than the minor below the age of consent are subject to prosecution.¹²⁶ Historically, statutory rape laws aimed to protect women and restrict their sexual activity.¹²⁷ Today, the age of sexual consent and statutory rape laws that rely on the age differential between the victim and perpetrator reflect pragmatic responses to the prevalence of teenage sexual activity. Indeed, nearly half of all high school students surveyed in 2009 reported having engaged in sexual intercourse.¹²⁸

123. See discussion *supra* subpart I.B.

124. See Jennifer Ann Drobac, *Sex and the Workplace: "Consenting" Adolescents and a Conflict of Laws*, 79 WASH. L. REV. 471, 486 (2004).

125. *Id.*; see also Todres, *supra* note 13, at 1139-41 (discussing state laws on age of consent).

126. Asaph Glosser et al., *Statutory Rape: A Guide to State Laws and Reporting Requirements*, DEPT. HEALTH & HUM. SERVICES, ES-1, 6 tbl.1, 6-8 (2004), <http://aspe.hhs.gov/hsp/08/SR/StateLaws/report.pdf>.

127. See Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387, 401-02 (1984).

128. Danice K. Eaton et al., *Youth Risk Behavior Surveillance—United States, 2009*, MORBIDITY & MORTALITY WKLY. REP., June 2010, at 98 tbl.61.

3. The Right To Drive

Although car crashes kill more teens than any other cause, the United States grants drivers' licenses earlier than any other nation in the developed world.¹²⁹ Every state issues licenses to individuals younger than eighteen, with most states setting the age of licensure at sixteen.¹³⁰ A few states set the driving age at fourteen or fifteen, and only one—New Jersey—has set it higher, at age seventeen.¹³¹

The youngest drivers crash at the highest rates. Crash rates are consistently highest among sixteen-year-olds and decline substantially with each year of increasing age.¹³² Younger novice drivers have significantly higher crash rates than do older novices.¹³³ This evidence has led most states to adopt graduated licensing systems which permit novice drivers to gain experience but impose on them restrictions (e.g., passenger limits and night-time driving restrictions) aimed at reducing their exposure to hazardous driving contexts.¹³⁴

4. The Right To Purchase, Possess, and Consume Alcohol

Congress conditioned states' receipt of federal highway funds on their imposing a drinking age of twenty-one.¹³⁵ In light of high rates of alcohol-related injuries and death, many states readily raised their drinking ages.¹³⁶ Some lawmakers argued against what they viewed as inconsistent and unfair treatment of young people eighteen and older. They reasoned that young people who were subject to the draft and permitted to enlist voluntarily in the armed services ought not be denied the adult right to consume alcohol.¹³⁷ While arguments against raising the drinking age above states' ages of majority failed, some

129. See Vivian E. Hamilton, *Liberty Without Capacity: Why States Should Ban Adolescent Driving*, 48 GA. L. REV. 1019 (2014) [hereinafter Hamilton, *Liberty Without Capacity*].

130. *Id.* at 1021.

131. *Id.* at 1034.

132. *Id.*

133. *Id.* at 1029-30.

134. *Id.* at 1031.

135. 23 U.S.C. § 158 (2012); *South Dakota v. Dole*, 483 U.S. 203 (1987) (upholding statute as a valid exercise of Congressional spending power).

136. Michael P. Rosenthal, *The Minimum Drinking Age for Young People: An Observation*, 92 DICK. L. REV. 649, 653-54 (1988).

137. See Cunningham, *supra* note 54, at 298 (discussing debate and defeat of bill sponsored by Wisconsin state legislator to lower the drinking age for service members to nineteen).

scholars have suggested that the psychological research on adolescent and emerging adult capacity supports lowering the drinking age.¹³⁸

5. Continued Entitlement to Parental Support and Benefits

The Dependent Coverage Mandate of the ACA expanded the availability of health insurance for young adults by allowing those aged nineteen to twenty-six to remain covered as dependents under their parents' plans.¹³⁹ Minors have long received medical coverage through their parents' employer-provided health plans.¹⁴⁰ After age eighteen or graduating from college, however, minors were reclassified as adults and lost their dependent status, along with the derivative health benefits that attended it.¹⁴¹ These young adults obtained health coverage only with difficulty, if at all.¹⁴² One in three young adults aged nineteen to twenty-five had no health insurance in 2010.¹⁴³ The effect of the Dependent Coverage Mandate was dramatic, and parents rushed to add their adult children to their health plans.¹⁴⁴ By the end of 2011, parents had extended health insurance to 6.6 million young adults who had been ineligible for such coverage before the ACA's passage.¹⁴⁵

138. *See id.* at 297.

139. Sara R. Collins et al., *Young, Uninsured, and in Debt: Why Young Adults Lack Health Insurance and How the Affordable Care Act Is Helping*, COMMONWEALTH FUND 2 (June 2012), http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2012/Jun/1604_collins_young_uninsured_in_debt_v4.pdf [hereinafter Collins et al., *Why Young Adults Lack Health Insurance*].

140. *Id.* at 3. Children who receive health coverage through Medicaid or the Children's Health Insurance Program are reclassified as adults on their nineteenth birthdays and, with the exceptions of pregnant women or parents of children with very low incomes, also lose their health coverage. *Id.* at 1.

141. *Id.* at 15 n.4.

142. Sara R. Collins et al., *Realizing Health Reform's Potential: How the Affordable Care Act Is Helping Young Adults Stay Covered*, COMMONWEALTH FUND 1 (May 2011), http://www.commonwealthfund.org/~media/files/publications/issue-brief/2011/may/1508_collins_how_aca_is_helping_young_adults_reform_brief_v5_corrected.pdf [hereinafter Collins et al., *Realizing Health Reform's Potential*].

143. Robin A. Cohen & Michael E. Martinez, *Health Insurance Coverage: Early Release of Estimates from the National Health Interview Survey, January–March 2011*, CDC (Sept. 2011), <http://www.cdc.gov/nchs/data/nhis/earlyrelease/insur201109.pdf> (finding 33.9% of nineteen- to twenty-five-year-olds to be uninsured in 2010); Carmen DeNavas-Walt et al., *Income, Poverty, and Health Insurance Coverage in the United States: 2011*, U.S. CENSUS BUREAU (Sept. 2012), <http://www.census.gov/prod/2012pubs/p60-243.pdf> (finding 29.8% of nineteen- to twenty-five-year-olds to be uninsured in 2010).

144. Collins et al., *Realizing Health Reform's Potential*, *supra* note 142, at 1.

145. Cohen & Martinez, *supra* note 143; *see also* Yaa Akosa Antwi et al., *Effects of Federal Policy To Insure Young Adults: Evidence from the 2010 Affordable Care Act Dependent Coverage Mandate*, (Nat'l Bureau of Econ. Research, Working Paper No. 18200,

The Dependent Coverage Mandate extends to a wide swath of legal adults a benefit long associated with minor and dependent status. Its very title signals that this cohort of legal adults commonly remains reliant on others in significant respects. As such, they lack the independence that is one of the characteristic markers of adulthood, despite having formally attained that legal status.

III. ADULTHOOD DEINSTITUTIONALIZED

This Part discusses the nature of the transition to adulthood, which is not at all fixed nor definite.¹⁴⁶ It is instead variable, not only with respect to its timing (whether it occurs earlier or later in a young person's life), but also with respect to its substance (those characteristics whose attainment mark adult status). Put another way, changes over time alter the social context in which young people come of age, which in turn influences both the age at which they reach adult status and the manner by which they reach it.

Variations in social contexts have gone a long way toward shaping young people's transitions to and conceptions of adulthood. In the United States and other western countries, the transition to adulthood is both exceptionally unstructured and prolonged. This Part argues that the nature of the transition has contributed to a modern conception of adulthood itself as a status achieved only gradually and not dependent on the attainment of specific external events, such as marriage or the completion of education.¹⁴⁷ Part IV will discuss the policy implications of the historical developments discussed in this Part.

A. *Structural Influences on the Transition to Adulthood*

Historians of society have identified five significant events that have, for more than a century, marked the transition from minority to adulthood for most young Americans. These have been: (1) marrying; (2) leaving their parents' homes; (3) establishing

June 2012) (reporting on the health insurance and labor market implications of the recent Affordable Care Act).

146. Jeffrey Jensen Arnett, *Emerging Adulthood: Understanding the New Way of Coming of Age*, in *EMERGING ADULTS IN AMERICA: COMING OF AGE IN THE 21ST CENTURY* 3, 4 (Jeffrey Jensen Arnett & Jennifer Lynn Tanner eds., 2006) [hereinafter Arnett, *Understanding the New Way of Coming of Age*] ("The timing and meaning of . . . reaching full adult status [] is different today than it was 50 or 100 years ago . . .").

147. Jeffrey Jensen Arnett, *Suffering, Selfish, Slackers? Myths and Reality About Emerging Adults*, 36 *J. YOUTH & ADOLESCENCE* 23, 25 (2007); see also *infra* subpart III.B (discussing the socio-cultural conceptions of modern adulthood).

households of their own; (4) completing their educations or leaving school; and (5) entering the workforce.¹⁴⁸ While a minority of the young population has always taken other paths to adulthood (e.g., never marrying or remaining resident with their parents), the dominance of this five-part pathway to adulthood has made it the modern “bedrock of social organization,” channeling most Americans onto “paths to a narrowly conceived adulthood.”¹⁴⁹

Most young Americans thus experienced each of the five transition events along the course to adulthood. The timing of the events and the order in which they have tended to occur, however, have varied in important ways over time.¹⁵⁰ A whole range of interrelated social contexts have influenced these variations, with structural changes having particular salience for young people coming of age in the twentieth and early twenty-first centuries. Scholars now characterize the transition to adulthood during this period of roughly one hundred years, not as a continuous evolution or trend, but as separable into three discrete but related eras.

The first era spans 1900 to 1950. During this period, young people both discontinued their educations and entered the workforce at early ages—in their teen years.¹⁵¹ Although employed full-time, they nonetheless tended to remain in their parents’ households, delaying marriage. Because the wages earned by young people were relatively low, full-time employment generally provided insufficient income to enable them immediately to set up independent households.¹⁵² Instead, young people continued to rely on the financial and residential security of their parents’ households for a number of years following their entry into the paid workforce.¹⁵³ Parents, in turn, relied on their children’s labor and earnings, their own economic instability due largely to across-the-board job insecurity and the exclusion of married women from the workplace.¹⁵⁴

The socio-economic context of this first period of the twentieth century contributed to an extended period of intergenerational interdependence. Young people did not complete the five-part

148. John Modell et al., *Social Change and Transitions to Adulthood in Historical Perspective*, 1 J. FAM. HIST. 7 (1976).

149. Jordan Stanger-Ross et al., *Falling Far from the Tree: Transitions to Adulthood and the Social History of Twentieth-Century America*, 29 SOC. SCI. HIST. 625, 626 (2005).

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.* at 638.

154. *Id.*

transition to adulthood—which would include moving from their parents’ households into their own and marrying—until relatively late in life.¹⁵⁵

The nature of young people’s transition to adulthood changed during a distinct second era, extending from approximately 1950 into the 1970s. Significant changes in the institutional and economic context that characterized this period prompted equally significant changes in the transition to adulthood. Wartime and postwar industrialization and the introduction of government social programs together contributed to a period of unprecedented economic prosperity in the decades that followed.¹⁵⁶

Government programs introduced during this era included Social Security and old-age pensions, which lessened older Americans’ reliance on their children’s wages.¹⁵⁷ New Deal programs guaranteeing private investments facilitated individual and family saving. Other programs underwrote and made loans to homeowners, making home ownership more readily available to younger buyers.¹⁵⁸

The military needs brought on by the nation’s involvement in World War II provided abundant job opportunities for service members themselves and for those away from the battlefields whose labor was needed to support the war effort.¹⁵⁹ Manufacturing accelerated during the war, and postwar industrialization ushered in an era of unprecedented economic opportunity.¹⁶⁰ Jobs in manufacturing generally required neither formal education nor high levels of skill, encouraging young people to enter the workforce at younger ages. Only one in three adults took the time to complete high school during this period, and one in sixteen completed college.¹⁶¹ Industries’ need for laborers in the postwar economy nonetheless led to continued job opportunities and increasing wages, particularly for young men.¹⁶²

Three factors in particular contributed to young people’s leaving their parents’ homes and marrying at ages younger than at any time in

155. *Id.* at 626.

156. *Id.* at 640.

157. *Id.* at 639.

158. *Id.*

159. *Id.*

160. Catherine A. Fitch & Steven Ruggles, *Historical Trends in Marriage Formation: The United States 1850-1990*, in *THE TIES THAT BIND: PERSPECTIVES ON MARRIAGE AND COHABITATION* 59, 65 (Linda J. Waite et al. eds., 2000).

161. *Percent of People 25 Years and Over Who Have Completed High School or College, by Race, Hispanic Origin and Sex: Selected Years 1940 to 2004*, U.S. CENSUS BUREAU, tbl.A-2 (Mar. 2005), www.census.gov/population/socdemo/education/tabA-2.pdf.

162. Stanger-Ross et al., *supra* note 149, at 640.

the nation's history: (1) their ability to earn high wages at young ages; (2) the implementation of government programs that supported homeownership; and (3) government-provided support for higher education, particularly for former service members.¹⁶³

This midcentury era of early and rapid transition to adulthood and family life where men's labor paid them a wage sufficient to support a family represented an historical aberration, not a new norm.¹⁶⁴ Nonetheless, just as the "single-earner, breadwinner-homemaker marriage" of the 1950s became entrenched in the collective memory as the "traditional" family,¹⁶⁵ it is possible that shifts in the timing of these transitions that occurred during this period became entrenched as the normative transition to adulthood. If so, adoption of this conception, in which young people became capable of establishing households, marrying, and gaining financial independence by their late teens, may help explain the readiness with which Americans accepted the across-the-board lowering of the legal age of majority that occurred shortly after this historical period.

The third era, which continues today, began in the 1970s. By the end of that decade, the decline of industry made low-skilled manufacturing jobs scarce. Moreover, well-paying jobs in what was becoming a service- and technology-based postindustrial economy increasingly required higher levels of formal education.¹⁶⁶ College enrollment increased in the immediate aftermath of the Great Recession, which led to more young adults remaining in (or returning to) their parents' households.¹⁶⁷ Employment and relative earning for young men declined, with wages in particular falling significantly from 2000 to 2010.¹⁶⁸

Many of the jobs in the modern economy pay less than the manufacturing jobs of the twentieth century.¹⁶⁹ The best of these jobs also require higher education.¹⁷⁰ According to one report, two-thirds

163. *Id.* at 640-41; Michael R. Haines, *Long Term Marriage Patterns in the United States from Colonial Times to the Present* 35-36 (Nat'l Bureau of Econ. Research, Historical Paper No. 80, 1996).

164. Stanger-Ross et al., *supra* note 149, at 627.

165. Andrew J. Cherlin, *The Deinstitutionalization of American Marriage*, 66 J. MARRIAGE & FAM. 848, 851 (2004).

166. Stanger-Ross et al., *supra* note 149, at 642-43.

167. Fry, *supra* note 10, at 6.

168. *Id.*

169. JEFFREY JENSEN ARNETT, EMERGING ADULTHOOD: THE WINDING ROAD FROM THE LATE TEENS THROUGH THE TWENTIES 145 (2004) [hereinafter ARNETT, THE WINDING ROAD].

170. *Id.*

of high-growth, high-wage jobs require employees to have a college degree.¹⁷¹

Individuals thus began spending more years gaining higher levels of education and participating in the workforce, both to finance their educations and to build financial resources for their future needs.¹⁷² While engaged in these activities, they delayed marriage and forming households of their own. Instead, they tended to spend this protracted period of the transition to adulthood in relative autonomy, despite often spending part of the period living in the parents' households.¹⁷³ Young people today thus take longer to complete the five-part transition to adulthood than they did in the past, undertaking each traditional transition event at a later age than in previous decades.¹⁷⁴

Viewing the “dramatic shifts” in the path to adulthood in the historical context in which they transpired helps “serve to undermine a normative understanding of the transition to adulthood and to point, instead, to its deeply historical dynamics.”¹⁷⁵ Young people's conceptions of the transition to adulthood, examined in the following subpart, emphasize the variable aspects of the pathway to adulthood and the variable meaning of adulthood itself.

B. Socio-Cultural Conceptions of Modern Adulthood

Psychologist Jeffrey Arnett conducted a series of studies across the United States to identify contemporary conceptions of adulthood among young people themselves.¹⁷⁶ The studies found that their conceptions depart radically from the traditional conception of the transition to adulthood.

Young people rarely list any of the five transition events (i.e., marrying, leaving parents' homes, establishing independent households, completing educations or leaving school, and entering the workforce) that have long defined the attainment of adult status.

171. John M. Bridgeland et al., *Raising the Compulsory School Attendance Age: The Case for Reform*, CIVIC ENTERPRISES (2007), <http://files.eric.ed.gov/fulltext/ED503356.pdf>.

172. Stanger-Ross et al., *supra* note 149, at 643. Andrew Cherlin characterized the 1950s, during which individuals married young and families could live comfortably on the wages of one spouse, as “the most unusual time for family life in the past century.” ANDREW J. CHERLIN, *THE MARRIAGE-GO-ROUND: THE STATE OF MARRIAGE AND THE FAMILY IN AMERICA TODAY* 6 (2009).

173. Stanger-Ross et al., *supra* note 149, at 643-44.

174. *Id.* at 645.

175. *Id.*

176. ARNETT, *THE WINDING ROAD*, *supra* note 169, at 14-15; Arnett, *Understanding the New Way of Coming of Age*, *supra* note 146, at 12.

Instead, researchers have consistently found that individuals perceive the most significant markers of adulthood to be: (1) accepting responsibility for oneself; (2) making independent decisions; and (3) attaining financial independence.¹⁷⁷

For the young people who participated in the studies, accepting responsibility for oneself connotes shouldering the responsibilities previously assumed by parents rather than expecting parents to deal with the consequences of one's actions.¹⁷⁸ Independent decision making to them connotes making important life decisions oneself, outside the influence of one's parents.¹⁷⁹ And to be financially independent means no longer relying on one's parents to pay one's bills.¹⁸⁰

Researchers in other industrialized countries have conducted similar studies, and results have been remarkably uniform across regions as well as across ethnic and socio-economic groups.¹⁸¹ These results hold even in regions with culturally or religiously significant coming-of-age milestones.¹⁸² In the Jewish tradition, for example, the bar mitzvah has long marked the adolescent boy's transition to adulthood and his assumption of the religious obligations of adult Jewish males.¹⁸³ Similarly, in Latin cultures, the quinceañera celebration marks the adolescent girl's transition to adulthood.¹⁸⁴ Yet studies conducted in Israel and Argentina, where each ceremony is celebrated almost universally, revealed that while these ceremonial milestones might be significant cultural and religious events, they are not significant markers of adulthood.¹⁸⁵ Instead, individuals in these cultures, as in other industrialized regions where researchers conducted similar studies, view the three responsibility- and independence-related criteria as the more meaningful markers of adult status.¹⁸⁶

177. See sources cited *supra* note 176.

178. ARNETT, *THE WINDING ROAD*, *supra* note 169, at 48.

179. *Id.*

180. *Id.*

181. Arnett, *Understanding the New Way of Coming of Age*, *supra* note 146, at 12.

182. See Todres, *supra* note 13, at 1148-49 (describing coming-of-age ceremonies across several cultural traditions).

183. *Id.*

184. *Id.*

185. Alicia Facio & Fabiana Micocci, *Emerging Adulthood in Argentina*, in EXPLORING CULTURAL CONCEPTIONS OF THE TRANSITION TO ADULTHOOD 21, 30 (Jeffrey Jensen Arnett & Nancy L. Galambos eds., 2003); Ofra Mayselless & Miri Scharf, *What Does It Mean to Be an Adult?: The Israeli Experience*, in *supra*, at 5, 15-16.

186. See sources cited *supra* note 185; see also Larry J. Nelson et al., *The Influence of Culture in Emerging Adulthood: Perspectives of Chinese College Students*, 28 INT'L. J. OF

These findings also point to what appears to be a fundamental historical shift in two respects. First, in cultures across the globe, and for most of American history, marriage has been the singular event marking the attainment of full adult status.¹⁸⁷ Marriage continues to be an important social institution in the United States, but individuals no longer rank marriage as necessary, or even important, in making the transition to adulthood. It is losing—or has perhaps already lost—its historical primacy as a marker of adult status.¹⁸⁸

Second, as Arnett explains, individuals achieve each of the three markers gradually rather than experiencing them as the transition events previously discussed—in other words, as “milestones that take place at a specific time and that a person clearly either has or has not reached,” such as getting married or completing education.¹⁸⁹ This absence of readily identifiable markers may contribute to what young people who have attained the age of legal majority consistently report with respect to their status: Despite having formally reached legal adult status, young people in the process of developing what they perceive to be the markers of adulthood report that they do not consider themselves adults. Instead, they feel as though they occupy a status somewhere between adolescence and full adulthood.¹⁹⁰

Arnett has termed this in-between period “emerging adulthood,” which he characterizes as a distinct developmental period spanning approximately ages eighteen to twenty-five.¹⁹¹ He emphasizes that it is a status largely experienced by young people in wealthier, developed nations rather than a universal stage of development. Nonetheless, his theory of emerging adulthood finds additional empirical support in the developmental sciences. The following subpart turns to the developmental aspects of the transition to adulthood.

BEHAV. DEV. 26 (2004) (finding that most Chinese college students feel that adulthood is indicated by successful acceptance of responsibilities rather than traditional markers of transition such as marriage).

187. Anthropologists and historians of American society both identify marriage as having long served this social function. *See, e.g.*, JOSEPH F. KETT, RITES OF PASSAGE: ADOLESCENCE IN AMERICA 1790 TO THE PRESENT 247 (1977); ALICE SCHLEGEL & HERBERT BARRY III, ADOLESCENCE: AN ANTHROPOLOGICAL INQUIRY 92-93 (1991).

188. ARNETT, *THE WINDING ROAD*, *supra* note 169, at 208.

189. Arnett, *Understanding the New Way of Coming of Age*, *supra* note 146, at 12.

190. *Id.*

191. Jeffrey Jensen Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 AM. PSYCHOLOGIST 469, 469 (2000).

C. *Cognitive and Socio-Emotional Development from Adolescence Through Emerging and Early Adulthood*

The state's use of a categorical age of majority represents a rough judgment about the development of maturity and competence.¹⁹² This subpart briefly surveys aspects of individual development that may bear on our understanding of that development and the course of young people's attainment of various capabilities. It begins with the development of general cognitive capacity over the course of adolescence, defined by researchers as the developmental period (rather than a period defined strictly by chronological age) following childhood and spanning approximately ages twelve to seventeen.¹⁹³

General cognitive capacity includes the abilities to understand and logically reason from facts, process information, and assess the nature of a given situation.¹⁹⁴ These basic cognitive abilities improve more or less linearly throughout childhood and reach mature levels by midadolescence—approximately age sixteen.¹⁹⁵ Researchers have concluded that the reasoning and basic information-processing capacities of the typical sixteen-year-old are “essentially indistinguishable” from those of adults.¹⁹⁶

However, not all cognitive processes mature by midadolescence. Some processes, including certain aspects of working memory, continue to specialize and develop into adulthood, maturing only in the early twenties.¹⁹⁷ Working memory is involved in a number of complex mental abilities, including the ability to filter irrelevant information and suppress inappropriate actions.¹⁹⁸

Studies have confirmed adolescents' competence to make rational decisions, but the contexts in which adolescents make decisions can drastically affect the quality of their decision making.¹⁹⁹

192. Scott, *supra* note 2, at 559-60.

193. Charles Geier & Beatriz Luna, *The Maturation of Incentive Processing and Cognitive Control*, 93 PHARMACOLOGY, BIOCHEMISTRY & BEHAV. 212, 212 (2009).

194. Laurence Steinberg et al., *Are Adolescents Less Mature Than Adults?: Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA “Flip-Flop,”* 64 AM. PSYCHOLOGIST 583, 590-92 (2009) [hereinafter Steinberg et al., *Less Mature Than Adults?*].

195. *Id.*; Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 DEVELOPMENTAL REV. 78, 80 (2008) [hereinafter Steinberg, *Adolescent Risk-Taking*].

196. Steinberg et al., *Less Mature Than Adults?*, *supra* note 194, at 592.

197. Beatriz Luna et al., *What Has fMRI Told Us About the Development of Cognitive Control Through Adolescence?*, 72 BRAIN & COGNITION 101, 105 (2010).

198. *Id.* at 101.

199. Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental*

When adolescents make decisions in contexts involving stressors that require them to exercise psychosocial maturity and regulatory competence—for example, “[i]n the heat of passion, . . . on the spur of the moment, in unfamiliar situations, . . . and when behavioral inhibition is required”—their decision making suffers.²⁰⁰ Researchers have come to refer to this phenomenon as the “competence-performance distinction.”²⁰¹

Researchers have also found adolescents to be as “knowledgeable, logical, reality-based, and accurate in the ways in which they think about risky activity . . . as their elders.”²⁰² When making decisions about risk, adolescents’ decision-making process does differ in significant respects from that of adults. Compared to adults, for example, adolescents tend to weigh and value benefits more heavily than they do risks.²⁰³ This tendency alone, though, seems inadequate to explain what are typical characteristics of adolescent behavior—impulsivity, risk taking, and sensation seeking.²⁰⁴

Developmental neuroscientists, aided by technological developments over the last decade that allow them to observe the brain as it performs different tasks, now posit that the development of neural systems along different timelines can help explain adolescent risk taking and poor decision making despite adolescents’ apparent cognitive abilities, as well as other aspects of adolescent behavior.²⁰⁵

The first neural system, referred to as the *socio-emotional* system, involves social-information-processing and reward seeking and processing.²⁰⁶ Activity in neural reward systems peaks rapidly

Study, 41 DEVELOPMENTAL PSYCHOL. 625, 625 (2005); Valerie F. Reyna & Frank Farley, *Risk and Rationality in Adolescent Decision Making: Implications for Theory, Practice, and Public Policy*, 7 PSYCHOL. SCI. PUB. INT. 1, 2, 11 (2006); Steinberg, *Adolescent Risk-Taking*, *supra* note 195.

200. Reyna & Farley, *supra* note 199, at 12.

201. Jennifer L. Woolard et al., *Theoretical and Methodological Issues in Studying Children’s Capacities in Legal Contexts*, 20 L. & HUM. BEHAV. 219, 220 (1996).

202. Steinberg, *Adolescent Risk-Taking*, *supra* note 195.

203. See Fischhoff, *supra* note 22, at 19-20; Geier & Luna, *supra* note 193, at 213.

204. Sara B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESCENT HEALTH 216, 218 (2009); Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 79.

205. Stephanie Burnett et al., *The Social Brain in Adolescence: Evidence from Functional Magnetic Resonance Imaging and Behavioural Studies*, 35 NEUROSCIENCE & BIOBEHAVIORAL REVIEWS 1654, 1660 (2011); B.J. Casey et al., *The Adolescent Brain*, 1124 ANNALS N.Y. ACAD. SCI. 111, 111-15 (2008).

206. Geier & Luna, *supra* note 193, at 216-17; see Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 83. The socio-emotional system includes “the amygdala, nucleus accumbens, orbitofrontal cortex, medial prefrontal cortex, and superior temporal sulcus.” *Id.*

around the time of pubertal maturation (in early adolescence) and then declines.²⁰⁷ It is this peak in activity, neuroscientists believe, that leads to heightened reward salience—that is, adolescents experience rewarding stimuli as even more rewarding than during either childhood or adulthood. This helps explain adolescent sensation-seeking behaviors in which they seek out new and highly stimulating experiences and willingly taking risks in order to attain them.²⁰⁸

The system referred to as the *cognitive control* system, involving abilities to intentionally coordinate and engage in goal-directed behavior, follows a different developmental trajectory. Its development is more gradual and linear than that of the socio-emotional system.²⁰⁹ Along with other structural changes in the brain, this developmental trajectory correlates with the steady improvement of basic cognitive processes into adolescence, with the maturation of basic cognitive processes largely complete by midadolescence.²¹⁰

In sum, adolescents' basic cognitive abilities mature by age sixteen and give them the capacity to learn, process information, reason, and make rational decisions. Self-regulatory capacities continue to develop, however, making adolescents susceptible to the confounding influence of their heightened sensitivity to reward.²¹¹ This heightened sensitivity, which peaks around midadolescence, inclines adolescents towards sensation seeking, risk taking, and impulsivity.²¹² Self-regulatory immaturity can dominate or overwhelm

207. Geier & Luna, *supra* note 193, at 216-17. For a technical discussion of this aspect of brain development, see CHARLES A. NELSON ET AL., NEUROSCIENCE OF COGNITIVE DEVELOPMENT: THE ROLE OF EXPERIENCE AND THE DEVELOPING BRAIN 24 (2006).

208. Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 85.

209. *Id.* at 93. For technical discussions of these developmental processes, see Nitin Gogtay & Paul M. Thompson, *Mapping Gray Matter Development: Implications for Typical Development and Vulnerability to Psychopathology*, 72 BRAIN & COGNITION 6, 7 (2010); Tomáš Paus, *Mapping Brain Maturation and Cognitive Development During Adolescence*, 9 TRENDS COGNITIVE SCI. 60, 62 (2005); and Arthur W. Toga et al., *Mapping Brain Maturation*, 29 TRENDS NEUROSCIENCES 148, 149-50 (2006).

210. Luna et al., *supra* note 197, at 101; Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 93-94. The system includes the prefrontal cortex (involved in executive, decision-making, and self-regulatory functions), “association” areas (which connect different regions of the brain and support the complex integration of functions), and parts of the corpus callosum (which connects the left and right hemispheres of the brain). Beatriz Luna, *Developmental Changes in Cognitive Control Through Adolescence*, in ADVANCES IN CHILD DEVELOPMENT AND BEHAVIOR 233, 240 (Patricia Bauer ed., 2009); Luna et al., *supra* note 197, at 101; Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 93-94.

211. Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 83.

212. *Id.* at 89.

cognitive processes and drive adolescent behaviors, particularly in high-pressure contexts and those triggering heightened emotion.²¹³

Brain development continues well into the mid-twenties. Advanced cognitive capacities, including higher-order and executive functions such as strategic planning, continue to improve linearly through late adolescence and early adulthood.²¹⁴ These improvements correlate with structural changes that increase connections within and between different regions of the brain.²¹⁵

Improved coordination of affect (the external expression of emotions) and cognition correlates with increased connectivity between regions of the brain involved in social and emotional information processing and those involved in cognitive processes.²¹⁶ Thus emotional regulation and impulse control both improve through adolescence and into the mid-twenties. The continuation of developmental processes into the postadolescent period provides some neurobiological support that buttresses the behavioral case for categorizing “emerging adulthood” as a distinct period of development.²¹⁷

IV. DISMANTLING THE CATEGORICAL AGE OF MAJORITY

Part II demonstrated that the categorical age of majority fails to comport with the legal reality created by a host of rules whose adoption has imposed a growing number of exceptions to its presumptive operation. Part III demonstrated that young people’s transition to adulthood, subjective construction of the transition to adulthood, and individual developmental processes all contemplate a gradual and prolonged process comprising the acquisition of general capabilities—not the achievement of externally constructed events. These capabilities, moreover, vary across contexts. Thus young people tend to attain the capacity for financial independence relatively late in life but attain the capacity for making informed and rational decisions about their own medical care relatively early in life.

Informed by the preceding Parts, this Part contends that the exceptions to the presumptive age of majority better address the needs

213. Luna, *supra* note 210, at 257; Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 96-98.

214. Steinberg, *Adolescent Risk-Taking*, *supra* note 195, at 94-96. These include response inhibition, planning, and spatial working memory. *Id.*

215. *Id.*

216. *Id.*

217. JEFFREY JENSEN ARNETT, ADOLESCENCE AND EMERGING ADULTHOOD: A CULTURAL APPROACH 14 (5th ed. 2013).

of society and young people alike. It argues for the explicit adoption of a “rule comprising exceptions”—in other words, for the abandonment altogether of the presumptive age of legal majority in favor of context-specific rules. The state’s commitment to individual liberty supports such an approach because it extends to individuals those rights which they have attained the capacity to exercise.

This Part also argues that other commitments, namely commitments to community, mitigate against the retention of adulthood as a categorical legal status. Finally, it provides guidance to lawmakers seeking to assess capacity in certain contexts, offering insights from behavioral decision research, and proposes the adoption of a number of policy measures consistent with the policymaking approach advanced here. The subparts that follow elaborate these arguments.

A. *Context-Specific Competence*

Young people reliably attain different capabilities at distinct stages of development.²¹⁸ Accordingly, across a range of policymaking contexts, a categorical rule will fail to take account either of context-specific capacities or of ongoing deficiencies. This subpart first argues that the core commitments of the liberal democratic state require it to account for context-specific capabilities.²¹⁹ It next argues that the state’s commitment to community (in tension with individual liberty but important nonetheless) provides further support for jettisoning adulthood as status.

1. Individual Competence and Core Commitments of the Liberal Democratic State

Individual liberty is the core value of the liberal constitutional democratic state, and safeguarding its citizens’ liberty is therefore the state’s primary end.²²⁰ The minimum entitlement of all citizens is the basic liberty to decide one’s life course for oneself, and it is the state’s

218. See discussion *supra* subpart III.C.

219. Behavioral scientists have posited one definition of context as “a culturally defined situation that (a) occurs in a particular time and place and (b) contains actors who perform culturally defined roles.” James P. Byrnes, *The Development of Self-Regulated Decision Making*, in *THE DEVELOPMENT OF JUDGMENT AND DECISION MAKING IN CHILDREN AND ADOLESCENTS* 5, 7 (Janis E. Jacobs & Paul A. Klaczynski eds., 2005).

220. I elaborate these arguments and settle on a version of liberty embraced by certain liberal theorists in Vivian E. Hamilton, *Immature Citizens and the State*, 2010 BYU L. REV. 1055, 1068-74 [hereinafter Hamilton, *Immature Citizens*].

duty to guarantee it.²²¹ Those individuals whose capabilities in some respect remain immature have two basic categories of interests that the state should take account of in its decision making: welfare interests and autonomy interests.²²² Their welfare interests pertain to their well-being, irrespective of any affirmative choice they make, including an interest in being protected from their own deficiencies. Their autonomy-related interests pertain to their exercising those specific liberties of which they are capable.²²³

Simply put, lawmakers should work to become more cognizant of and responsive to young people's capacities and extend to them age- and context-specific liberties to make the self-regarding decisions of which they are capable.²²⁴ This decision-making process can indeed be a complex one, although the developmental and behavioral sciences can (and ought to) supplement the more traditional policymaking considerations. The following subpart briefly discusses the assessment of context-specific capacity—a task which necessarily retains some level of imprecision.

Respected scholars, including Professor Elizabeth Scott, have argued against abandoning the age of majority as a categorical rule.²²⁵ Scott reasons that, although like all categorical rules it includes some level of imprecision, the age of majority serves society's purposes relatively well by advancing the goals of certainty and administrative efficiency.²²⁶ Moreover, to the extent it underestimates young persons' capacities in certain legal contexts (such as the minors' competence to execute contracts) and delays their ability to exercise certain rights, the harms are generally slight, and temporary.²²⁷

Although I agree with Scott's identification of the costs and benefits of the categorical rule, I would weigh them differently. Existing law, rife with exceptions to the age of majority, demonstrates

221. *Id.* at 1074.

222. *Id.* at 1095.

223. *Id.*

224. *Id.* at 1128. For a discussion of children's status as rights holders separate from their possessing any specific capacity, see JAMES G. DWYER, *THE RELATIONSHIP RIGHTS OF CHILDREN* 291-307 (2006).

225. See Scott, *supra* note 2 (arguing in favor of recognizing the legal status of adolescence in the juvenile justice context but retaining the presumptive age of majority in other contexts where it currently applies).

226. See, e.g., *id.* at 560 ("The use of a [categorical age of majority] to designate the end of childhood ignores individual variations in developmental maturity as well as varying maturity demands across the range of legal rights and responsibilities. Nonetheless, it generally functions quite well.").

227. *Id.*

that context-specific decision-making poses no undue burden on lawmakers. The argument that failure to extend liberties despite individual capacity imposes minimal harm elides the primacy of the state's obligation to individual liberty. Where capacity exists, the justification for denying that liberty (or vesting it in a parent or guardian) disappears. Further, with respect to certain rights, delay itself can constitute denial. For example, the sixteen-year-old who would refuse surgery to correct a nonfatal congenital defect will be denied the right to do so if her parents consent to the procedure. For the young patient, acquiring the right to make her own medical decisions after reaching majority provides no relief from the earlier denial of that right.

2. Adult Status, Autonomy, and Relationship

As discussed above, young people in today's developed nations identify as markers of adulthood: (1) accepting responsibility for oneself; (2) making independent decisions; and (3) attaining financial independence.²²⁸ At one level, this construction of adulthood is altogether unobjectionable. Most parents, after all, work to raise their children to be responsible, financially independent adults.

At another level, this conception of adulthood is deeply troubling. Conspicuously absent from it are notions of obligation to community or family, or indeed any recognition of the role of ongoing connection and interdependence.²²⁹ The current conception of adulthood instead emphasizes as normative the attainment of individual autonomy and independence. The absence of notions of community is particularly notable in light of the growing importance of ongoing familial support to young people coming of age today.

As discussed above, contemporary young people travel a prolonged path to independence, particularly financial independence. Many young people continue to be at least partially dependent on and tied to their natal families well past the legal age of adulthood.²³⁰ In 2014 more adults aged eighteen to thirty-four lived with parents than

228. See discussion *supra* subpart III.B.

229. Feminists have drawn attention to the ways in which notions of autonomy and individuality have operated to reinforce traditionally hierarchical relationships and minimized relationships and interdependencies. See, e.g., MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH: A THEORY OF DEPENDENCY* (2004); Katherine Hunt Federle, *On the Road to Reconceiving Rights for Children: A Postfeminist Analysis of the Capacity Principle*, 42 DEPAUL L. REV. 983, 1017-19 (1993).

230. See, e.g., Stanger-Ross et al., *supra* note 149, at 643-44.

with a spouse or partner in their own household, and the trend continues to increase.²³¹

To the extent it expresses a societal expectation or norm of across-the-board independence (decisional, financial, etc.), the current conception of adulthood is out of step with the experiences of today's young people. To the extent that the law conveys a normative expectation that they are adults and thus ought to possess adult characteristics, their inability to have done so by the legally prescribed age may be both experienced and perceived as failure.

Not attaining the characteristics of adulthood by the legal age of majority, however, merely reflects the particular social context—including the economic context—in which they are coming of age.

The state's affirmative duty to take action for the purpose of expressing the importance of connection and interdependence is arguably quite limited. But doing so presents lawmakers with what seems a rare opportunity to advance individual liberty (by rejecting the categorical rule in favor of rules more tailored to individual capacities) while also expressing the importance of relationships and community.

B. Assessing Capacity: Lessons from Existing Law and Science

Categorical rules like an age of legal majority advance goals of administrative efficiency and certainty.²³² The existence of a categorical rule spares the decision maker in a given case the task of making burdensome (and likely unreliable) individualized assessments of capacity. Yet as argued above, lawmakers in the liberal state have a duty to assess the capacities of immature citizens in legal contexts.²³³

In any given context, the interplay of various factors will influence capacity. It is possible to characterize age-related capacity as a function of: (1) patterns of cognitive and socio-emotional development; (2) the nature of the capacity being exercised (e.g., characteristics of the task to be performed or the decision to be made); (3) the context in which the capacity will be exercised; and (4) the broader social, cultural, and economic milieu.

The interrelationship of factors in these categories shapes in predictable ways the typical individual's capacity, for example, to

231. See Fry, *supra* note 10.

232. Scott, *supra* note 2, at 560.

233. Hamilton, *Immature Citizens*, *supra* note 220, at 1095.

make a decision in a certain context or perform a given task. Identifying and accounting for the relevant aspects of these influences on the exercise of capacity can significantly improve policymakers' predictive power.

What, if anything, can brain science contribute to lawmaking or policymaking? It is now well known that the developmental sciences have shed light on aspects of child and adolescent behavior that has important policymaking implications.²³⁴ The most widely touted of these has been lawmaking in the area of juvenile justice.²³⁵ Casual observation can—and has—led to erroneous generalizations about behavior. These mistaken generalizations in turn have led to misguided policymaking. For example, adolescent impulsivity and susceptibility to peer pressure in certain situations have led to the conclusion that they lack the capacity to make reliably mature voting decisions in elections or medical decisions in a doctor's office.²³⁶ Conversely, adolescents' ability to learn the mechanics of motor vehicle operation has led to the conclusion that they have the capacity to operate them competently.²³⁷ Both conclusions are wrong, and insights from the psychological and neurological sciences help explain why.

C. *Reconciling Law, Culture, and Capacity: An Example*

One of the central tensions between social and legal adulthood is that individuals are likely to attain fundamental decision-making capacities before they can realistically attain financial stability and self-sufficiency.²³⁸ Yet a near universal consequence of reaching the age of majority is distentitlement to parental support. Indeed, for many young people approaching the age of majority, perhaps one of the most significant changes attending their new status (especially,

234. See Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 64 AM. PSYCHOLOGIST 739, 740 (2009) (“[W]e know a good deal about brain development during adolescence that usefully informs policy discussions”); cf. Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV. 89, 95 (2009) (“[L]egal decisionmakers acting in a policymaking role—usually legislatures but sometimes the courts—therefore ought to consider developmental neuroscience one source among many upon which to draw when making legally relevant assumptions about adolescents as a group. To go further is unwarranted and unwise.”).

235. See, e.g., ELIZABETH S. SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* (2008).

236. See Hamilton, *Democratic Inclusion*, *supra* note 47, at 1447.

237. See Hamilton, *Liberty Without Capacity*, *supra* note 129.

238. See discussion *supra* subparts II.A. & II.C.

perhaps, for individuals who have a parent who may be grudgingly subject to an order of support) is the expiration of parents' obligation to provide them with support.

As discussed above, it was against a background of economic prosperity that states, upon lowering the ages of conscription and voting, also lowered the age of majority generally. Young people who had previously been minors until age twenty-one (during a period when they arguably had less need of its protections until that age) became adults at eighteen. With that status, they gained the legal rights of adulthood. At the same time, they lost the right of parental support and even the special protections afforded minors by the state through its role as *parens patriae*.

In the intervening decades since lowering the age of majority, however, well-paying manufacturing jobs have all but disappeared. The incomes of workers with a high school degree or less have declined steeply, and their unemployment rates are particularly high. The largest share of jobs in the current economy has moved from manufacturing to the information and services sector, and as discussed above, the best of these jobs require postsecondary education. Failing to recognize the importance of supporting young people as they strive to become the sorts of workers required in today's economy disserves them in the short term, and the larger society in the longer term. State lawmakers should thus seriously consider raising, perhaps to twenty-one, the age through which parents are obligated to support their children.

V. CONCLUSION

Young people's conception of adulthood, and their experience of becoming adults, bears little resemblance to the legal construction of adulthood as status. Although they formally attain adult status upon reaching the legal age of majority, that formal marker has remarkably little meaning in young people's lives. What is now socially meaningful is the gradual attainment of the various indicia of adulthood—responsibility for oneself, autonomous decision making, and financial self-sufficiency.

I have argued in this Article that the categorical age of majority contravenes a legal reality constructed by the proliferation of exceptions to it, young people's social experience and subjective constructive of the transition to adulthood, and the capacities gained (and deficiencies retained) over the predictable course of individual developmental processes. By retaining it, the state fails its foremost

obligation to safeguard the basic liberties of its citizens. Legal consequences linked to the age of majority are best amended to attach to the specific age to which they pertain—whether or not that is the current age of majority.

I suggest further that the time may have come to jettison not only adulthood as legal status but also adulthood as social construct. Doing so presents the state with a rare opportunity to simultaneously safeguard individual autonomy rights through context-specific rulemaking and also advance the importance of community relationships and the interdependencies of citizens, even in liberal society.