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The Parental Rights of Minors

EMILY Buss†

When a minor becomes pregnant, she might wish to undergo an abortion, to place the child for adoption, or to raise the child herself. If she chooses abortion, the law will give her some legal protection, but that protection will be qualified by her minority.¹ To get an abortion without notifying or obtaining the consent of her parents, a state can require a court to authorize her decision, either by determining that she is mature enough to make the decision on her own, or by determining that, despite her immaturity, the decision to abort is in her best interest.² If she chooses adoption, the law allows her to relinquish her parental rights, but imposes special constraints to ensure

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¹ While the U.S. Supreme Court has held that minors, like adult women, have a constitutional right to choose to undergo an abortion, the Court has allowed states to impose special restraints on minors that would be impermissible if applied to adults. See Lambert v. Wicklund, 520 U.S. 292 (1997) (per curiam) (upholding a statute requiring parental notice of a minor's decision to obtain an abortion and allowing a judicial bypass of this procedure only in limited circumstances); Planned Parenthood v. Ashcroft, 462 U.S. 476 (1983) (upholding a statute requiring parental consent and allowing for judicial bypass under certain circumstances); H.L. v. Matheson, 450 U.S. 398 (1981) (upholding a parental notification statute without a bypass provision as applied to minors living at home who have not demonstrated their maturity). Forty-one states have enacted laws requiring some form of parental involvement before a minor can undergo an abortion. The Alan Guttmacher Institute, Occasional Paper: The Status of Major Abortion-Related Laws and Policies in the States, June, 2000 (Aug. 3, 2000), at http://www.agi-usa.org/pubs/abort_law_status.html [hereinafter Occasional Paper].

² This framework was first suggested by a plurality of the court in Bellotti v. Baird, 443 U.S. 622, 643-44 (1979) and has since been adopted, with considerable variations, by a majority of the states. See Occasional Paper, supra note 1.
that her relinquishment is knowing and voluntary. But if she chooses to keep the baby, the law gives her carte blanche, despite the harm that may come to her, to her baby, to her parents, and to society as a result. The purpose of this article is to present, and then attempt to solve, a puzzle in the law affecting children's rights: Why do we afford minors the same right as adults to assume parental authority, when we routinely refuse to grant minors co-extensive rights in other areas of the law?

The disparity between the law's treatment of minors seeking abortions and minors seeking to act as parents has been noted in some of the abortion literature, primarily to call into question the justifications given for curtailing minors' abortion rights. But a look beyond the abortion context makes clear that the approach to minors' rights in the abortion context comports with the approach taken in all areas considered by the courts, including rights related to speech, association, movement, procreation, and involuntary confinement. Moreover, the law affords a lesser degree of protection to minors in a host of other areas that have received less constitutional scrutiny, including the right to contract, the right to consent to medical care, the right to marry, the right to vote, and the right to die. Qualifying a minor's right to obtain an abortion is right in line with these other decisions and statutes. It is the law's approach to minors' parental rights that is out of step.

The Supreme Court has listed three justifications for circumscribing the constitutional rights of minors—their special vulnerability, their limited decision making capacity, and the important role parents play in controlling their upbringing—that can be applied, more broadly, to

3. See infra notes 26-27 and accompanying text.
4. Catherine Grevers Schmidt, Note, Where Privacy Fails: Equal Protection and the Abortion Rights of Minors, 68 N.Y.U. L. Rev. 597, 632 (1993) (noting that no state requires parental involvement in the decision to carry a pregnancy to term, and asserting that "[i]t is therefore questionable whether the motive behind parental notification and consent laws is a genuine concern over minors' abilities to make informed decisions, or simply the states' desires to prevent abortions despite Roe"); cf. Katheryn D. Katz, The Pregnant Child's Right to Self-Determination, 62 ALB. L. Rev. 1119, 1163-64 (1999) ("[I]t is difficult to see how forcing a minor daughter to go through pregnancy and childbirth fosters the daughter's health. The risks of childbirth are much greater for the young mother than are the risks associated with abortion but the law shields the daughter's decision to maintain the pregnancy from the parent's control.")
5. See Bellotti, 443 U.S. at 634.
account for court and legislative willingness to circumscribe children's rights in a broad variety of contexts. All three of these reasons identified by the Court offer strong justification for circumscribing a minor's parental rights: the life-long consequences of undertaking parental responsibilities as a minor are great and frequently negative; the decision to do so often reflects the minor's poor understanding of her long-term interests and the nature and extent of parenting obligations; and a minor's parental relationship with her child inevitably complicates her relationship with her own parents in ways that can undermine their ability to fulfill their parental role. Despite these strong justifications, however, no state has enacted laws to effect any limitations on parental rights when exercised by minors.

In an attempt to make sense of the laws' failure to regulate children's decision to undertake child rearing responsibilities, this article, which begins with a focus on children's rights, ends with a focus on parental rights. I will suggest that the compromise of parental rights may be particularly problematic, even if that compromise is well grounded in the deficiencies of minor parenting. Indeed, I will suggest that the law trades away parental quality for parental certainty and indivisibility, presumably on the view that these aspects of parenting are, in the aggregate, more valuable to children. I will also suggest that this trade-off may come at the expense of the very minors afforded the unqualified rights. Giving parental rights to minors may serve their children better than it serves them.

I. THE PROBLEM AND THE PUZZLE

Over 400,000 minors get pregnant every year, and of these pregnancies, half end in miscarriage or abortion, and half end in live birth. Among those minors who give birth,

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6. Because no such laws have been enacted, the Supreme Court has had no opportunity to rule on the constitutionality of state attempts to curtail minors' parental rights. One of the projects for this article is to consider whether such laws, if enacted, would withstand constitutional challenge.


8. See id. at 26-27. According to at least one report, "girls between the ages of 10 to 14 years are the fastest growing group of parents." Barbara Lowenthal
the vast majority keeps the babies. In these cases, the mother and father are rarely married and the father's involvement is generally minimal. My discussion of minor parenting is therefore, more aptly, a discussion of minor mothering. Much of what I say about minor mothers would also apply to minor fathers, but to the extent the analysis would differ, my focus is on the girls.

Becoming a parent before becoming an adult is widely perceived as a bad outcome in our society. Although there

9 See Alan Guttmacher Institute, Issues in Brief: Teenage Pregnancy and the Welfare Reform Debate (Aug. 8, 2000), available at http://www.agi-usa.org/pubs/ib5.html; PANEL ON ADOLESCENT PREGNANCY AND CHILDBEARING, RISKING THE FUTURE: ADOLESCENT SEXUALITY, PREGNANCY, AND CHILDBEARING 61 (Cheryl Hayes ed., 1987) (estimating that nearly 95% of teenagers who give birth keep the babies). Note that this information includes all teenagers, not just minors, a mismatch reflected in some other citations as well. The majority of the literature on young parents focuses on all teenage parents rather than parents under eighteen. I cite to these more general discussions where minor-specific information is not available.


11 See F. Lindsay Chase-Landsdale et al., Research and Programs for Adolescent Mothers: Missing Links and Future Promises, 40 FAM. REL. 396, 396 (1991) (reporting that the majority of teen mothers raise their children without sustained involvement of the children's fathers); ELAINE BELL KAPLAN, NOT OUR KIND OF GIRL 86-105 (1997) (reporting findings from a qualitative study of thirty-two teen mothers, ages fourteen to nineteen, that most of their babies' fathers were not involved, and many fathers broke off their relationships with the mothers when they learned of the pregnancy).

12 Among other differences, there are far fewer minor fathers than mothers, for the fathers of children born to teenage mothers are often adults. See Laura Duberstein Lindberg et al., Age Differences Between Minors Who Give Birth and Their Adult Partners, 29 FAM. PLAN. PERSP. 61 (1997) (reporting that 50% of the minor mothers between the ages of fifteen and seventeen had partners who were twenty years old or older).

13 See Frank Furstenberg, As the Pendulum Swings: Teenage Childbearing and Social Concern, 40 FAM. REL. 127 (1991) (noting that the problem of teenage parenthood has "attracted almost limitless attention from scholars,
is considerable disagreement about the nature and extent of the harm caused by adolescent parenting, most policy analysts and social scientists agree that adolescent parenting has some harmful effects on these parents, through lost opportunities for education, work or marriage, and on their children, through an increased risk of health, educational and developmental problems, unstable living arrangements or an attenuated relationship with their fathers. The costs to the minor mother and her


14. See Deborah Jones Merritt, Ending Poverty by Cutting Teenaged Births: Promise, Failure, and Paths to the Future, 57 Ohio St. L.J. 441, 455-59 (1996) (discussing studies calling into question the causal link between teenage childbirth and various adverse outcomes and noting that “the studies continue to suggest some independent effect of teenaged childbearing” on family income and mother’s education, although “these effects are smaller than previously believed”).

15. See Daniel Klepinger et al., How Does Adolescent Fertility Affect the Human Capital and Wages of Young Women, 34 J. Hum. Resources 421, 425, 443 (1999) (concluding that, “while there is considerable disagreement as to the magnitude of [the] effect,... most investigators have found that early fertility has a negative effect on educational attainment” and finding that adolescent fertility significantly reduces the human capital investment, and wages, of women and that “adolescent childbearing has major adverse socio-economic consequences”); Frank F. Furstenberg, Jr. Et Al., Adolescent Mothers in Later Life 131 (1987) (Urie Bronfenbrenner & Glen H. Elder, Jr. ed., 1987) (noting that, while teenage parents often improve their life-situation in later life, they continue to suffer from diminished economic mobility in part because their early parenthood restricted their educational and work opportunities, and in part because it “decreases the likelihood of marriage and marital stability”).

16. See Tammy L. Dukewich et al., A Longitudinal Analysis of Maternal Abuse Potential and Developmental Delays in Children of Adolescent Mothers, 23 Child Abuse & Neglect 405, 406 (1999) (citing numerous studies documenting the higher incidence of developmental delays associated with adolescent parenting); Paul Trad, Mental Health of Adolescent Mothers, 34 J. Am. Acad. Child & Adolescent Psychiatry 130, 137 (1995) (citing studies suggesting that adolescent mothers have unrealistic expectations and inaccurate perceptions of their children’s development and behaviors, engage in less verbal and interactive behavior, engage in more restrictive and punitive behavior, and demonstrate less empathy toward their children); Kristin
Adult parents frequently lament their child's decision to assume parental responsibilities rather than pursuing an abortion or an adoption, out of concern for the costs that decision will impose on their own child, on their grandchild, and on themselves. Their ability to exercise parental authority and influence over their own children is significantly compromised when one of their children becomes a parent, just as childcare responsibilities for

Anderson Moore et al., Effects on the Children Born to Adolescent Mothers, in KIDS HAVING KIDS 145, 170 (Rebecca A. Maynard ed. 1997) (finding that children raised by adolescent mothers receive lower levels of emotional support and cognitive stimulation and perform less well in school in subsequent years); David M. Stier et. al., Are Children Born to Young Mothers at Increased Risk of Maltreatment? 91 PEDIATRICS 642 (1993) (finding that children of adolescent mothers were more likely to experience a change of caretakers in the early years of life than children of even slightly older (nineteen and twenty-year-old mothers) and that, even after controlling for other sociodemographic factors, children of adolescent mothers were more likely to be neglected than the children of these older counterparts); Robert Haveman et al., Children of Early Childbearers as Young Adults, in KIDS HAVING KIDS, supra, at 257 (finding that children born to adolescent mothers are less likely to graduate from high school, and more likely to give birth out of wedlock and be economically inactive as young adults).

17. See Rebecca A. Maynard, The Costs of Adolescent Childbearing, in KIDS HAVING KIDS, supra note 16, at 284, 308 (calculating that taxpayers pay $7 billion, and the country loses $30 billion annually in lost productivity and avoidable expenditures of social service resources).

18. While some researchers have suggested that, in some communities, parents welcome their daughters' pregnancies, others have documented the strong opposition many parents express to their children's undertaking of parental responsibilities. Compare Burton, supra note 13, at 132 (finding that one of the reasons given for early childbearing was to give the adolescent's mother the opportunity she desired to fulfill the parenting role), with KAPLAN, supra note 11, at 54 (finding that, among the thirty-two African American teen parents (ages fourteen to nineteen) participating in her qualitative study, thirty-one were urged by their mothers to have abortions).

19. For the effect of adolescent parenthood on the relationship between adult and adolescent parent, see infra part IIIC. Studies also suggest that adolescent parenthood compromises the attention the senior parent affords to her other children. See Patricia East, The First Teenage Pregnancy in the Family: Does it Affect Mothers' Parenting, Attitudes, or Mother-Adolescent Communication?, 61 J. MARRIAGE & FAM 306 (1999) (finding that mothers of teenage mothers showed decreased monitoring and communication with their other children over time); see also Elaine Bell Kaplan, Black Teenage Mothers and Their Mothers: The Impact of Adolescent Childbearing on Daughters' Relations With Their Mothers, 43 SOC. PROBS. 427, 437 (noting that the conflict
their grandchild are thrust upon them.\textsuperscript{20} Incorporating an additional family member into the household also imposes a significant financial burden on these reluctant grandparents, frequently already living at or near the poverty line, and may even jeopardize the grandparents' health.\textsuperscript{21}

The near universal perception that teenage parenting should be discouraged has produced a host of legislation aimed at reducing the incidence of teenage pregnancy. These laws have attempted to attack teenage pregnancy and other problems associated with teenage sexuality from all sides, even taking approaches that reflect potentially conflicting philosophies and strategies.\textsuperscript{22} Laws provide for contraceptive counseling and services, for the free distribution of condoms in schools, and for sexual education, all on the theory that, if teenagers are having sex, information and contraceptives will reduce the bad consequences of their sexual activity. Other laws restrict minors' access to contraceptives and require the affirmative promotion of abstinence, on the theory that this approach will alter adolescent attitudes and diminish the prevalence of adolescent sex. Statutory rape laws are aimed at reducing older males' willingness to engage in sex with underage females,\textsuperscript{23} and recent welfare reform legislation included provisions aimed at eliminating welfare-based between teenage mothers and their adult mothers is exacerbated where those older mothers are still raising young children of their own).

\textsuperscript{20} See, e.g., Maureen M. Black & Katherine Nitz, \textit{Grandmother Co-Residence, Parenting, and Child Development Among Low Income, Urban Teen Mothers}, 18 \textit{J. ADOLESCENT HEALTH} 218 (1996) (noting that "current trends are for teen mothers to remain in their family of origin and share caregiving with the baby's grandmother").

\textsuperscript{21} Kaplan, \textit{supra} note 19, at 435, 440 (suggesting that the expectation that the African American extended family can support teenage mothers is unrealistic where those families live in increasing poverty and noting the disproportionate rate of stress-induced illnesses among her study sample of mothers whose children have children).


\textsuperscript{23} Many statutory rape laws are now couched in gender neutral terms, though incidence and, relatedly, enforcement is heavily gender skewed. \textit{See} Michael M. v. Superior Court of Sonoma County, 450 U.S. 464, 470-73 (1981) (upholding a gender-specific law and concluding that the gender-specific risk of pregnancy justified the distinct treatment on the basis of sex).
incentives for minors to become pregnant.\textsuperscript{24} The best solutions to the problem of teenage pregnancy are far from clear, but this has not kept lawmakers from trying.

Contrast the volume and variety of these approaches with the absolute lack of any legislation aimed at mitigating the three-generational harm imposed if and when the minor decides to keep the baby and take on parental responsibilities. In no state does the law require the minor to consult with her parents, let alone to obtain parental consent, before acting on these decisions.\textsuperscript{25} In no state does the law include minority among the factors that can justify an involuntary termination of parental rights. In no state does the law give the parents of a minor parent any special standing to seek some form of custodial authority, even shared authority, over their grandchild who resides with them and much of whose care often falls to them. The law in no way qualifies minors' legal rights to control the upbringing of their children, even if they give birth at the age of eleven.

Where a minor gives birth to a child, there appears to be only one context in which the law takes account of the mother's minority, and in this context, the special account actually promotes rather than discourages minor parenting. Where the parent who gives up her child for adoption is a minor, states will often take special care to ensure that her relinquishment of parental rights was voluntary. A minor's relinquishment might require court approval not required for adults, or might require the advice of counsel or a guardian \textit{ad litem}, in order to be valid.\textsuperscript{26} And courts will

\begin{itemize}
  \item 24. 42 U.S.C. § 608(a)(5)(A) (Supp. III 1994) (forbidding the payment of Temporary Assistance to Needy Families funds to unmarried minor parents not living with a parent, guardian, or adult relative).
  \item 25. See Patricia Donovan, \textit{The Alan Guttmacher Institute, Our Daughters' Decisions: The Conflict in State Law on Abortion and Other Issues} 13 (1992) ("[N]o state requires a minor to have parental consent to continue a pregnancy to term [and] [o]nce a teenager has borne a child, she can decide whether to raise the child herself or put it up for adoption.").
  \item 26. W. VA. CODE § 48-4-4 (1977 & Supp. 1997) ("If a person who has executed a consent to or relinquishment for adoption is under 18 years of age ... the consent or relinquishment shall be specifically reviewed and approved by the court and a guardian \textit{ad litem} may be appointed to represent the interests of the infant parent."); KAN. STAT. ANN. § 59-2115 (1994) ("Minority of a parent shall not invalidate a parent's consent or relinquishment, except that a minor parent shall have the advice of independent legal counsel as to the consequences of the consent or relinquishment prior to its execution.");
\end{itemize}
sometimes question the voluntariness of a minor’s consent to relinquishment, on the theory that minors are less likely to have understood the long-term consequences of their initial decision to relinquish and more likely to be subject to coercive pressures than adults in a similar situation.27

I take note of the court’s special concern about the voluntariness of a minor’s consent in the relinquishment context not to suggest that the concern is inappropriate there, but rather to highlight the lack of any parallel attention to how decision making is affected by minority where a minor decides to keep rather than relinquish the child. Strikingly, where deficiencies in decision making associated with immaturity would produce a childless teen and a successful adoption, the courts attend to the teen’s developmental status, thereby reducing the chance of such an outcome. But where immature decision making produces a teenage mother, the law applies no protective brakes.

The degree of harm associated with minor parenting suggests that states would take steps to discourage or control minors’ exercise of parental authority. Nevertheless, we see no such efforts at control through law beyond the efforts to prevent pregnancy already discussed. This resistance to age-based regulations of parenting cannot be attributed to the fact that such regulations would fail to take account of individual differences in the quality of minor parenting, though there are surely many good parents among minors who would not require the law’s intervention. Bright age lines never accurately capture each individual’s capabilities and qualifications, but legislatures have routinely imposed them, and courts just as routinely upheld them, nevertheless. Nor can the lack of regulation be accounted for simply by pointing to the constitutionally protected status of parental rights.28 Indeed, in many other


27. See, e.g., Adoption of Thomas, 559 N.E.2d 1230, 1233 (Mass. 1990) (concluding that a court charged with approving an adoption may, sua sponte, take evidence concerning the maturity and understanding of a minor parent at the time she consented to the adoption and can appoint a guardian ad litem to protect her interests, even when she has expressed no objection to the adoption’s going forward).

28. The Supreme Court has described a parent’s right to control the upbringing of her child as “fundamental,” most recently in Troxel vs. Granville,
areas of the law, rights afforded the highest level of constitutional protection for adults are circumscribed for all minors, based on their age alone.

The Supreme Court's scrutiny of age-based distinctions in other constitutionally protected areas bears not only on our consideration of the constitutional permissibility of regulating minor parenting, but also on the soundness, as a matter of policy, of such regulations. This is because the Court has held that age-based distinctions in treatment can only be constitutionally justified if they serve important state interests and, particularly, state interests linked to children's special developmental status. A review of the cases addressing the scope of children's constitutional rights therefore offers a comprehensive summary of the proffered justifications for minor's special legislative treatment, as well as the Court's assessment of the fit between those justifications and the regulations in question. In this next section I undertake this review of the cases to sharpen my consideration of the justifications for regulating minor parenting, and the closeness of the fit between those justifications and a variety of possible regulations.

II. THE SCOPE OF CHILDREN'S RIGHTS

In every context in which the Supreme Court has considered children's claims of constitutional rights, the Court has concluded that children's minority justifies some curtailment of the adult right in question. Children have

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U.S. __, 120 S. Ct. 2054, 2060 (2000) (plurality opinion) (stating that "[t]he liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court"); id. at 2068 (Thomas, J., concurring) (noting the Court's "recognition of a fundamental right of parents to direct the upbringing of their children"); id. at 2071 (Stevens, J., dissenting) ("Our cases leave no doubt that parents have a fundamental liberty interest in caring for and guiding their children.").

29. See Planned Parenthood of Missouri v. Danforth, 428 U.S. 52, 74-75 (1976) (noting that the state has "somewhat broader authority to regulate the activities of children than of adults," where the state has a "significant interest" that is "not present in the case of an adult").

30. See Carey v. Population Servs. Int'l, 431 U.S. 678, 692 (noting that the Court has recognized, in numerous cases, that children are protected by the Constitution, but also that "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults") (quoting Prince
some right of free speech, the Court concludes, but what
they can read, and under what circumstances they can
speak is significantly limited. Children have some right to
exercise their religion freely, but that right is subject to
more restrictions than the comparable right of parents.
Children have procreative rights, but their access to both
birth control and to abortion can be more readily
restricted. Children have due process rights when faced
with involuntary institutionalization, but those rights are
significantly weakened by their entanglement with their
parents' rights of nurture and control. Rights of criminal
procedure also apply to children, but the context in which
those claims often arise significantly diminishes their

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31. See Ginsberg v. New York, 390 U.S. 629 (1968) (holding that a state
could prohibit children's access to sexually explicit reading material whose
adult readership was protected by the First Amendment).
32. See, e.g., Hazelwood v. Kuhlmeier, 484 U.S. 260 (1988) (holding that the
First Amendment does not protect student-authored articles in a school
newspaper published as part of the school's journalism curriculum); Bethel Sch.
Dist. No. 403 v. Fraser, 478 U.S. 675, 682 (1986) (noting that the First
Amendment rights of students in the public schools "are not automatically
coeextensive with the rights of adults in other settings") (citing New Jersey v.
T.L.O., 469 U.S. 325, 340-42 (1985)). Adult speech is also subject to time, place
and manner restrictions. By significantly restricting children's speech in the
school setting, however, the Court dramatically curtails both the time and the
contexts available for children's expression in the location that most closely
approximates a public space for children.
33. See Prince, 321 U.S. at 167-68 (conceding that a statute preventing
adults from engaging in the religious activity in question would violate their
free exercise rights, but holding, nevertheless, that such a statute could
constitutionally be applied to children because "[t]he state's authority over
children's activities is broader than over like actions of adults").
34. See Carey, 431 U.S. at 692-93 (1977) (plurality opinion) (applying a less
protective balancing test than that applied to adults in assessing whether the
state's restriction of minors' access to birth control violated minors' due process
rights); Lambert v. Wicklund, 520 U.S. 292 (1997) (per curiam) (summarizing
precedents allowing restrictions on minor's access to abortions, and upholding
the constitutionality of a state parental notification requirement that provided
for a limited bypass option whereby a minor could obtain authorization for the
abortion procedure from a court).
35. See Parham v. J.R., 442 U.S. 584, 600 (1979) (concluding that the Due
Process Clause did not afford a child the same right to an independent
commitment hearing afforded to adults and asserting that since the child's
interest in not being committed "is inextricably linked with the parents' interest
in and obligation for the welfare and health of the child, the private interest at
stake is a combination of the child's and parent's concern").
In *Bellotti v. Baird*, the Court attempted to lay out its various justifications for curtailing constitutional rights when applied to children:

The unique role in our society of the family, the institution by which "we inculcate and pass down many of our most cherished values, moral and cultural," requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children. We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.

Although these three justifications are not well explained, nor clearly applied, in *Bellotti*, they do capture most of the concerns addressed in the cases and giving rise to age-based legislative distinctions. In the discussion that follows, I will offer a more complete consideration of these

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36. See, e.g., *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 654-55 (1995) (concluding that children's minority, and the "custodial and tutelary" power exercised over them by the school lessened their constitutional protection against drug testing in the school setting); *T.L.O.*, 469 U.S. at 325 (concluding that, while a child had a reasonable expectation of privacy in her purse, school officials need not have probable cause, the applicable adult standard, to justify a search); *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) (holding that the due process clause does not afford minors the right to a jury trial in a juvenile proceeding that it affords adults in a criminal proceeding). Note that all three of these cases focus on context (the schools and the juvenile courts) rather than simply on the age of the rights claimant. As in the First Amendment cases, however, the restriction of a minors' rights in some of the primary contexts in which the minor acts, and therefore in which the rights issues arise, has the effect of affording a narrower protection to minors than to adults. Moreover, the Court's analysis often blends the context in which minors operate with the status of minority, noting that the special purposes justifying special restrictions are tied to minors' unique developmental status.

37. 443 U.S. at 634 (1979).

38. Courts frequently cite to these three factors in analyzing children's challenges to age-based legal restrictions. See, e.g., *Hutchins v. District of Columbia*, 188 F.3d 531, 541 (D.C. Cir. 1999) (applying *Bellotti* factors to uphold the constitutionality of a juvenile curfew ordinance); *Schlieffer v. Meyers*, 644 F.2d 656 (7th Cir. 1981) (applying *Bellotti* factors to uphold custody determination that was inconsistent with the child's wishes); *Bush v. Dassel-Cokato Bd. of Educ.*, 745 F. Supp. 562 (D. Minn. 1990) (applying *Bellotti* factors to justify upholding a regulation which prohibited students from attending parties where alcohol was served); *State v. Barlow*, 630 A.2d 1299 (Vt. 1993) (applying *Bellotti* factors to justify upholding conviction for statutory rape).
and one other justification for the distinct treatment of children under the law and will consider the extent to which each of these justifications support restricting the protections afforded to children acting as parents.

All the justifications for children's different treatment under the law are grounded in assumptions about developmental differences between children and adults. Although the line the law draws at eighteen (or, for some purposes, sixteen or seventeen) is inevitably somewhat arbitrary, it is designed to capture, in some rough form, the age at which individuals' cognitive, emotional, social and moral development becomes relatively stable and when an individual's understanding, behavior and relationships can be expected to conform to adult standards. Before this age, the law expects, or at least allows, children to behave and think differently from adults, reflecting their incomplete and ongoing process of maturation. While these developmental assumptions are not always clearly articulated, they are omni-present in the law's treatment of children.

A. Vulnerabilities and Opportunities Associated with Children's Ongoing Development

In Bellotti, the Court points to children's "peculiar vulnerability" as its first justification for distinguishing children's legal status from that of adults. Children's vulnerability can be further divided into two sorts: a physical vulnerability associated with their reduced size and strength and the magnitude of the physiological changes they are undergoing, and a psychological vulnerability associated with their greater openness to influence. This second source of vulnerability is also a source of opportunity, and some of the greatest harms to children come from a loss of these developmental opportunities to be shaped in positive ways. Both sorts of vulnerability—vulnerability to physical harm and vulnerability to influence, whether harmful or beneficial—

39. Society's drawing of an age line helps to determine, as well as record, when developmental changes occur. Societies that set the age of adulthood much younger than we do, or that tie adult responsibilities to life events (such as the onset of puberty or the entering of a marriage) clearly affect the course of development leading up to the undertaking of those adult responsibilities.
have served as justifications for circumscribing children’s rights in numerous cases.\textsuperscript{40}

Both sorts of vulnerabilities are implicated by a minor’s decision to become a parent. Pregnancy and childbirth, themselves, expose minors to risks of physical injury greater than those faced by adults.\textsuperscript{41} Far more significant, however, are the harms associated with teen parenting. These harms are primarily the harms associated with diminished opportunities. Parenting responsibilities interfere with a minor’s ability to pursue an education and develop job skills. Minor parents are less likely to enter and remain in stable familial relationships with their children’s fathers or other men. While there is some dispute over the extent to which teenage parenting diminishes options, there can be no dispute that some diminution occurs.\textsuperscript{42} Whatever have been the historic effects of becoming a parent in adolescence, the prospects for change, for improving the opportunities for low income adolescents, are greatly

\textsuperscript{40} See, e.g., \textit{Vernonia}, 515 U.S. at 661 (noting both that “[s]chool years are the time when the physical, psychological, and addictive effects of drugs are most severe” and that “childhood losses [from drug use] in learning are lifelong and profound”); \textit{T.L.O.}, 469 U.S. at 340 (justifying curtailment of children’s Fourth Amendment rights in the school context by pointing to the school’s “legitimate need to maintain an environment in which learning can take place”); \textit{McKeiver}, 403 U.S. at 550 (noting that the goal of juvenile court is to rehabilitate young offenders and avoid an adversarial process in order to show concern, sympathy and paternal attention to these offenders); \textit{Ginsberg v. New York}, 390 U.S. 629, 641 (deferring to the legislative determination that minors’ exposure to the sexually explicit materials governed by the statute in question is “a basic factor in impairing the ethical and moral development of youth” (quoting 1955 N.Y. LAWS, ch. 836, § 540)).

Children’s special vulnerabilities are also sometimes pointed to as a justification for recognizing rights. See, e.g., \textit{Parham v. J.R.}, 442 U.S. 584, 627-28 (1979) (Brennan, J., concurring in part and dissenting in part) (“It may well be argued that children are entitled to more protection than are adults. The consequences of an erroneous commitment decision are more tragic where children are involved.... [C]hildhood is a particularly vulnerable time of life and children erroneously institutionalized during their formative years may bear the scars for the rest of their lives.”); \textit{Carey v. Population Servs. Int’l}, 431 U.S. 678, 708 (1977) (noting the inappropriateness of preventing parents from distributing contraceptives to their children, suggesting that “parental guidance... is especially appropriate in this sensitive area of child development”).

\textsuperscript{41} See \textit{Lowenthal & Lowenthal}, supra note 8, at 29 (noting that adolescents are at greater risk for health problems during pregnancy, and more likely to have prolonged and difficult labor).

\textsuperscript{42} See supra notes 14-16 and accompanying text.
reduced, or at least encumbered, where those adolescents are parents. The considerably greater risks minors face in undertaking the parental role might well justify imposing some constraints on a minor's choice to do so.

B. Deficient Decision Making Skills

Children's decision making skills change dramatically over the course of their minority. Very young children often fail to grasp the causal relationship between their choices and the consequences that follow, and grade school children commonly lack the capacity for abstract thinking needed to assess the relative value of various hypothetical futures. By adolescence, however, most individuals share adults' capacity to think abstractly and therefore their basic decision making process can be expected to look much like the process engaged in by adults. The choices they make may nevertheless be impaired by their minority in two critical respects: First, their greater impulsiveness may lead them to act, without engaging in a deliberate decision making process at all. Second, even where they engage in a deliberative process, they are likely to assign values in a manner that reflects their immaturity: They will give great weight to short-term consequences, and little weight to long-term consequences; they will attach positive rather than negative value to risks, or at least fail to account for the significant costs associated with these risks; they will place greater value than adults on how others will respond to the choices they make. To the extent we tie rights of self-determination to the quality of decisions made, it

44. See Elizabeth Cauffman & Laurence Steinberg, The Cognitive and Affective Influences On Adolescent Decision-Making, 68 TEMPLE L. REV. 1763, 1780-81 (1995) (reporting limited empirical data suggesting that impulsivity remains relatively stable between the ages of four and sixteen, and may actually increase between the ages of sixteen and nineteen, before declining over the course of adulthood).
45. See generally Elizabeth S. Scott et al., Evaluating Adolescent Decision Making in Legal Contexts, 19 LAW. & HUM BEHAV. 221 (1995) (arguing that adolescents' short-term perspective, greater willingness to take risks, and greater vulnerability to outside influences produce differences in maturity of judgment that should be taken into account in the law).
46. See Alan Meisel, The "Exceptions" to the Informed Consent Doctrine:
makes sense to curtail those rights where that quality is compromised by immaturity.

There is, of course, considerable variation in decision making skills among individuals and across contexts. Adolescents, particularly those fifteen and older, have been shown to mirror adults in their decision making process about certain issues, and adults have been shown to engage in less mature, more pre-adolescent-like decision making when confronted with complex or unfamiliar circumstances. The law nevertheless draws a bright line and substantially restricts all minors’ (and, for the most part, only minors’) authority to make decisions on their own behalf: As a general matter, minors cannot enter binding agreements, marry without parental consent, or execute legal wills. 48

Striking a Balance Between Competing Values in Medical Decisionmaking, 1979 Wis. L. Rev. 413, 439-53 (1979) (describing several different conceptions of competence to consent applied by the courts, including a conception that asks whether the particular decisions made by the patient were appropriate).

See Gary B. Melton, Children’s Competence to Consent: A Problem in Law and Science in CHILDREN’S COMPETENCE TO CONSENT 1, 15 (Gary B. Melton et al. eds., 1983) (summarizing research suggesting that, by mid-adolescence, children reason “as maturely as adult groups about hypothetical medical and mental health treatment decisions”); see also Thomas Grisso & Linda Vierling, Minors’ Consent to Treatment: A Developmental Perspective, 9 PROF. PSYCH. 412, 412 (1978) (noting that “existing evidence provides no psychological grounds for maintaining the general legal assumption that minors at age 15 and above cannot provide competent consent”).

48. See Sarah H. Ramsey, Representation of the Child in Protection Proceedings: The Determination of Decision-Making Capacity, 17 FAM. L. Q. 287, 308 (1983) (“As more is learned about decision making, it becomes clear that even with adults the existence of a decision making process does not guarantee consistency, coherence, accurate explanation, or the integration of relevant information.”).

In the case of adults, the law assumes that they possess sufficient decision making capacity and requires an individualized finding that that capacity is lacking before the adult can be deprived of decision making authority. See Marshall B. Kapp & Douglas Mossman, Measuring Decisional Capacity: Cautions on the Construction of a “Capacimeter,” 2 PSYCHOL. PUB POL’Y & L. 73, 79-93 (1996) (considering various means of assessing an adult’s capacity to provide informed consent for medical treatment).

50. See Ellwood F. Oakley, Arbitration of Employment Discrimination Claims and the Challenge of Contemporary Federalism, 47 S.C.L. REV. 475, 520 n.289 (1996) (“[C]ourts have utilized the contract maxim of lack of capacity to void the attempted exercise of the freedom to contract by infants and minors.”).

51. See, e.g., CAL. FAM. CODE § 302 (West 1994) (requiring parental consent for marriage of any individuals under eighteen); see also KY. REV. STAT. ANN § 402.020 (Banks-Baldwin 1998) (requiring parental consent for marriage of any individuals under eighteen, but allowing for judicial approval where the minor
Where children have asserted a constitutional right to make decisions for themselves, the Court has frequently pointed to this impaired decision making capacity to justify a minority-wide curtailment of the right. Indeed, the Court points to this impaired decision making capacity as one of the primary justifications for curtailing minors' abortion rights. Because minors are ill-equipped to make such an important decision on their own, the Court has concluded, they can be required to involve either a parent or a state
authority in their decision making process.\textsuperscript{55}

It is somewhat artificial to discuss minors' special vulnerabilities and their impaired decision making skills as two separate factors. Courts and legislatures are clearly most concerned about children's independent decision making in areas where bad choices will expose them to significant, long-term harm.\textsuperscript{56} Bad decisions on important matters will, almost by definition, produce severe harm. Bad decisions on trivial matters often will not. For this reason, the state has a particularly strong interest in preventing minors from exercising decision making authority over the very issues for which adults are afforded the greatest constitutional protection. We protect the right of an adult to make autonomous decisions about the matters that will most affect the course of his life, but it is precisely those decisions that we fear entrusting to children.

No decision better illustrates the kind of harmful consequences from which the State generally seeks to shield minors than the decision to take on the responsibilities of a parent. Moreover, the minor's decision to do so is commonly accounted for in terms that illustrate both types of impairments associated with adolescent decision making. In some cases, a pregnancy and the subsequent assumption of parenting responsibilities reflects a failure to engage in any meaningful decision making process: Adolescent

\textsuperscript{55} The core bypass structure, first endorsed by a plurality in \textit{Bellotti}, \textit{id.} at 643, has since been repeatedly upheld by the Court. In its most recent reaffirmation of this approach, the Court issued a per curiam ruling upholding a bypass provision struck down by the lower courts, finding that the rulings below were "inconsistent with our precedents." \textit{Lambert} v. \textit{Wicklund}, 520 U.S. 292, 299 (1997). Although the judicial bypass procedure sanctioned in numerous cases makes an individualized assessment of each pregnant minor's maturity, this individualized assessment occurs as part of a state procedure that applies to all minors, and could not constitutionally be required of adults.

\textsuperscript{56} \textit{See, e.g., Bellotti}, 443 U.S. at 635 ("The Court has held that the States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences."). It could be argued that adolescents' decision making capacity is particularly likely to be deficient where short-term benefits must be weighed against long-term risks about which they have limited understanding. Moreover, the bad decisions children reach on matters of importance are often pointed to as evidence of flaws in their decision making capacity. But the language of the Court's decisions is clear in its focus on the extent of the potential harm to the child rather than the extent of the deficiencies of the minors' decision making abilities.
impulsiveness, joined with vulnerability to pressure from a male partner, leads to unprotected sex; and a failure to take affirmative steps to pursue abortion or adoption leads a minor to assume parental responsibilities essentially by default when she gives birth. For those adolescents whose pregnancies are intended, the decision to become pregnant is likely based on an over-emphasis on the short-term appeal of assuming a grown-up role and nurturing a dependent infant, and a lack of appreciation for what is entailed in raising a child, let alone what options may be compromised by early parenting.

57. The National Campaign to Prevent Teen Pregnancy, Facts and Stats (Mar. 31, 2000), available at http://www.teenpregnancy.org/genlfact.htm (reporting that “three out of four girls and over half of boys report that girls who have sex do so because their boyfriends want them to”); see also Kaplan, supra note 218, at 40-42 (noting that the girls she interviewed explained that they engaged in sex because they felt pressured by their boyfriends to do so, not because they enjoyed it). There are those who dispute this account, suggesting that the girls are often at least as responsible as the boys for initiating sexual intercourse. See Leon Dash, When Children Want Children 9 (1989) (reporting that, among the adolescents he interviewed, “[t]he girls... were often equal—or greater—actors than their boyfriends in exploring sexuality and becoming pregnant”).

58. See Furstenberg, supra note 13, at 134 (reporting study results suggesting that many teens become parents “by default,” that is “they let parenthood happen because they view their other choices as inferior or difficult”); cf. Trad, supra note 16, at 135 (“Adolescents... account for a disproportionate number of second-trimester abortions.”).

59. There is some disagreement among researchers about the extent to which minors’ pregnancies are unintended. Compare Stankley K. Henshaw, Unintended Pregnancy in the United States, 30 Fam. Planning Persp. 24, 26 (1998) (reporting that over 80% of pregnancies of girls between the ages of fifteen to seventeen were unintended) with Dash, supra note 57, at 30 (suggesting that girls often intend to get pregnant, but tend to deny this fact when questioned).

60. Two reasons commonly offered for taking on parental responsibilities—a desire for love from the baby and a desire to assert independence from the minor’s own mother—both suggest decision making driven by the minor’s own developmental needs, rather than an understanding of the demands and rewards of parenting. See Nancy E. Adler & Peggy Dolcini, Psychological Issues in Abortion for Adolescents, in Adolescent Abortion (Gary B. Melton ed., 1986) (reporting study suggesting that, for the youngest adolescents, pregnancy “was frequently related to a desire to become closer to her mother [whereas] in the middle adolescent it was more likely to relate to competition with the mother and a struggle for autonomy”); see also Kaplan, supra note 19, at 482 (reporting her finding that minors became pregnant to “feel loved”).

61. See Trad, supra note 16, at 133-34 (stating that adolescent decision making around a pregnancy reflects poor decision making skills, difficulty envisioning the future realistically, anxiety and depression); see also Kaplan,
Immaturity of judgment is also likely to affect the quality of the decisions minors make once they have decided to undertake the parental role. An inability to appreciate the long-term stakes will prevent pregnant adolescents from engaging in the sort of planning for parenthood that would increase their chances of producing successful outcomes for themselves and for their children. Their greater self-focus and attention to the short-term make it more likely that they will engage in conduct, such as smoking or avoiding healthy weight gain, that can be harmful to the fetus. After giving birth, the same focus on short rather than long-term consequences may lead minor parents to abandon school rather than incur the significant financial burdens associated with securing childcare. Short term conflicts of authority between the minor parent and her parent, so typical in adolescence, might prevent the minor from deferring some amount of control over her child to her parents where this would serve her long-term interests, or those of her child. Impulsiveness and the pressures associated with an adolescent’s social life, not to mention simple deficits of information, might inspire a minor mother to give less than appropriate consideration to her child’s need for attention, a predictable schedule, adequate nutrition and the like.

In sum, impairments in adolescent decision making are likely to infect the adolescents’ choices from the initial participation in unprotected sex to the execution of parental responsibilities. These impairments and the results they produce might well justify imposing some constraints or

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supra note 11, at 181 (reporting that, of the thirty-two African American teen mothers she interviewed, 75% expressed regret at having become mothers so young); Susan Corona Garrett & Romeria Tidwell, Differences Between Adolescent Mothers and Nonmothers: An Interview Study, 34 ADOLESCENCE 91, 98 (1999) (reporting comments of an adolescent mother who said she had “never really thought about the financial aspects of being a mother, about the diapers, or about how often babies get sick. She envisioned ‘all the fun stuff.’”).


63. See Bernard Ineichen et al., Teenage Mothers as Breastfeeders: Attitudes and Behaviour, 20 J. ADOLESCENCE 505, 506, 508-09 (1997) (summarizing data suggesting that teenage mothers are less likely to breast feed at all, or for more than a few days, than older mothers, and that the reasons for declining to breast feed include embarrassment, pressure from their male partner, and an unwillingness to suffer the physical discomfort experienced when they try breast feeding).
C. The Parental Role

The Court has also justified curtailing a minor's right to make decisions on her own behalf by pointing to the interference such grants of authority would impose on the minor's parents' fulfillment of their parental role. In the words of the Bellotti Court, "the guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors." Echoing the language in cases expounding parental rights, the Court notes the link between protecting parental authority, on the one hand, and facilitating parents' performance of their parental duties, on the other. Only by giving parents considerable authority over their children, the Court contends, can parents fulfill their obligation to "inculcat[e] moral standards, religious beliefs, and elements of good citizenship," that will enhance a child's "chances for full growth and maturity that make participating in a free society meaningful and rewarding." The same reasoning that justifies limiting state's authority to intervene in parenting decisions, the Court concludes, also justifies limiting a child's authority to act independent of her parents.

This justification, too, is linked to minors' developmental status and, more particularly, can be tied to their unique vulnerabilities and limited decision making capacity, already discussed. Because of their decision making impairments, the law authorizes adults to act on their behalf. In most circumstances, it entrusts this responsibility to parents with the expectation that parents are in the best position, based on their superior knowledge and bonds of affection, to assess and act in their children's best interests. Parents' responsibilities include not only

64. As with children's special vulnerabilities, this concern that the law not interfere with parents' ability to fulfill their responsibilities has also been relied upon to justify striking down laws circumscribing minors' rights. See Carey v. Population Servs. Int'l, 431 U.S. 678, 708 (1976) (Powell, J., concurring) (noting that New York's law prohibiting distribution of contraceptives to minors "unjustifiably interferes with parental interests in rearing their children").


66. See Parham v. J.R., 442 U.S. 584, 602 (1979) ("The law's concept of the family rests on a presumption that parents possess what a child lacks in
protecting their children from physical and psychological harm, but also affirmatively influencing children's cognitive, emotional, social and moral development. The Court facilitates the fulfillment of these responsibilities both by interpreting parents' autonomy rights expansively and by interpreting minors' rights narrowly.

How this dual approach plays out when minor and parent are collapsed into one individual and where two individuals have potentially dueling parental claims is the ultimate subject of this article. For now, however, the focus is on the minor qua minor (and on her parent as the parent). It is useful, I think, as part of our inquiry into the full range of justifications offered to circumscribe the rights
of minors to consider how affording a minor parental rights interferes with her own parents' ability to fulfill their responsibilities to her.

Affording minors rights to make decisions for themselves can interfere with parents' fulfillment of their child rearing responsibilities in more and less direct ways. Where minors can act on their own, their parents may lose the opportunity to influence the decision itself and, just as importantly, the decision-making process through which values are developed. Ceding control of certain decisions to minors can also undermine parental control more broadly, both by undermining the minor's perception of the parents' authority and by placing obstacles, produced as a result of the single decision, in the parents' path.\(^69\)

In considering the state's interest in requiring parental consent before a minor could obtain an abortion, the \textit{Bellotti} Court suggested that the state had a "special interest... in encouraging an unmarried pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child."\(^70\) Encouraging parental involvement in the abortion decision gives parents an opportunity not only to influence the decision, but also to provide support during the process of decision making and then the abortion, itself. Providing this opportunity for influence and support on a matter of considerable importance to the minor can readily be seen as a means of facilitating a parent's meeting of his obligations to secure the successful upbringing of his child.

The extent to which a parent's ability to affect the upbringing of his child will be undermined, however, particularly if the abortion decision (and subsequent abortion) is kept secret from the parent, is open to serious question. The parent will lose the opportunity to engage the child in thinking about the moral and emotional issues implicated by the specific decision, a loss that is certainly of some significance. But because the decision and procedure have the consequence of maintaining the status quo in the family's configuration (the minor remains a childless

\(^{69}\) \textit{See Parham}, 442 U.S. at 610 (noting that ceding control to a child and encouraging an adversarial process that pits parent against child could undermine the parent-child relationship, generally, and the prospects for long-term treatment).

\(^{70}\) \textit{Bellotti}, 443 U.S. at 639.
teenager), the impairment to the parent’s control over upbringing imposed by affording the minor control over the abortion decision may be fairly limited.

Compare this event-specific impairment to the impairment imposed by the minor’s giving birth to a child and assuming parental responsibilities. In this context, affording the minor autonomy not only makes it possible for her to avoid all input from her parents over this singularly important and life-shaping decision, but it may also seriously encumber her parents’ ability to fulfill their parenting responsibility in all respects. From the moment the minor becomes a parent, lines of authority are profoundly affected for the remainder of that minor’s childhood: While the adult parents still have custodial authority over their child, they have little authority over the most important aspect of her conduct—how she behaves as a parent—and no direct authority over their child’s child. Even control over matters formerly unrelated to

71. There is surely a range of views on the difference in importance between a decision to abort and a decision to become a parent. Even among those most concerned about the psychological and moral damage caused by the decision to obtain an abortion would, I think, concede, that the decision to become a parent had at least as significant an effect on the course of the minor’s life, and many would contend that the life-effects of deciding to become a parent dramatically outweigh the effects of the decision to have an abortion.

72. See Furstenberg, supra note 13, at 132 (citing studies that suggest that complex intergenerational child care systems are frequently “unwieldy, conflict-ridden and unstable,” and concluding that “the scant evidence suggests that we should not too hastily embrace the assumption that three-generation family units invariably function as effective child care systems”); see also id. at 135 (noting that Stack’s conclusion that low-income parents rely effectively on kin and friends in child rearing may not apply as well to teen parents, where “lines of authority are unclear and the responsibilities among parents ambiguous” when marital ties are weak and family bonds are strong); Kaplan, supra note 19, at 427 (finding that black teenage parenting can produce “long-term conflict both in family relations and structure”).

73. Most minor mothers continue to live with their custodial parent (or parents) after giving birth. See East, supra note 19, at 306 (reporting that 80% of teen mothers continue to live with their family of origin for at least a year after the birth of their baby); R. Gordon et al., Young Mothers Living with Grandmothers and Living Apart, 1 Dev. Sci., 89, 90 (1997) (reporting that, even before welfare reforms conditioned welfare payments on co-residence, most of the youngest mothers lived with their mothers).

74. See Kaplan, supra note 19, at 433 (noting that, prior to becoming mothers, the teenagers argued with their mothers about issues such as homework, cleaning their room and T.V., whereas after they became pregnant, many of them fought with their mothers about their pregnancies, and their decisions to keep the babies).
PARENTAL RIGHTS OF MINORS

Parenting, such as with whom the minor can socialize, whether she attends schools or works, even whether she does her homework or household chores, will be drastically undermined by her becoming a parent: The minor will be required to grant the baby's father access to the baby, will be prevented from going to school or getting a job absent the availability of suitable child care, and will be severely restricted in the time she has available for any other household activities.

Joined with this weakening of authority often comes an increase in parental responsibilities. Adult parents frequently take on considerable responsibility for caring for the children of their children both to help their own children complete their education, get jobs, and pursue friendships, and to ensure that their grandchildren receive a minimum level of care. Even to the extent this caretaking is undertaken to improve the lot of the adolescent mother, however, it comes at the cost of parental availability and attention to that adolescent and to that adolescent's siblings. 75

Adult parents who provide child care to their grandchildren out of concern for the adequacy of their own children's parenting have the option of reporting their children to the child protection authorities, but there are many reasons, all linked to their responsibilities and feelings as parents, that they would choose not to do so. First, most parents want to protect their children from the stigma and potentially dire consequences associated with being identified as an abusive or neglectful parent. Second, entrusting the resolution of the problem to the state's child protective system would deprive adult parents of control over that resolution. Third, involving child protection authorities would place the adult parent in the role of an adverse witness, further undermining her relationship with her adolescent daughter. Finally, demonstrating sufficient abuse or neglect to justify state intervention might require the adult parent to withhold the very assistance that could help her daughter learn to parent and protect her grandchild from harm. The fact that an adult parent, like any other citizen, has authority to turn her daughter in for

75. See East, supra note 19, at 306 (finding that mothers of teenage mothers showed decreased monitoring and communication with their other children over time).
abuse or neglect will offer small comfort to a parent seeking to help her daughter in fulfillment of her own parental role.

All three of the factors set out in *Bellotti* would support curtailing parental rights when applied to minors. Becoming a parent as a minor imposes special risks, tends to be the product of flawed decision making, and will often severely undermine the parent-child relationship between a minor parent and her parents. A fourth factor, not set out in *Bellotti*, makes the case even stronger.

D. Third Party Costs

Many decisions considering the appropriateness of extending legal rights to minors take into account the special costs to third parties that would be imposed by the extension. These special costs are often tied to the special context, particularly the school setting, in which minors seek to exercise their rights. In school, potentially objectionable speech is more likely to fall on innocent, ill-prepared ears, or to disrupt other student's enjoyment of the educational benefit. In school, the harmful effects of drug use are likely to be felt by all students. Context matters in these cases because it targets the effects of the offensive conduct on other children who, like minor rights claimants, are vulnerable to special harms.

The Court in *Bellotti* makes no separate mention of potential third-party costs of a minor's independent decision to seek an abortion, though its consideration of the parental role in children's upbringing acknowledges the cost, to parents, of allowing children to make abortion decisions on

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76. *See* Hazelwood v. Kuhlmeier, 484 U.S. 260, 272 (1988) ("[A] school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics."); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986) (noting that, among the various justifications for allowing the state to prohibit lewd student speech was that such "speech could well be seriously damaging to its less mature audience, many of whom were only fourteen years old and on the threshold of awareness of human sexuality").

77. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969) (noting that the state may constitutionally restrict student speech that would "substantially interfere with [its] work . . . or impinge upon the rights of other students").

78. *See* Vernonia Sch. Dist. v. Acton, 515 U.S. 646, 663 (1995) ("[T]he effects of a drug-infested school are visited not just upon the users, but upon the entire student body and faculty, as the educational process is disrupted.").
their own. Presumably the Court does not mention other third party costs because any such costs that might be imposed in the abortion context would not be expected to vary with age. In contrast, the third-party costs imposed by the decision to undertake the responsibility of raising a child are likely to be much greater when that parent is a minor. Minor parents impose special burdens not only on their parents, but also on their children. As discussed earlier, children born to minors are more likely to have medical educational or developmental problems, are more likely to experience family instability, are more likely to be the victims of abuse or neglect, and are less likely to have consistent and long-term contact with their fathers. And finally, teen parenting imposes high costs on society as a whole. It is estimated that births to adolescents impose billions of dollars of costs on society in taxpayer burdens and lost productivity. The costs imposed on the rest of the world by minors' decisions to act as parents are widely perceived as huge. An interest in mitigating the costs to adolescents, their parents, their children, and society at large might well inspire a state to impose limits on minor's ability to exercise parental authority.

All the justifications offered to curtail minors' legal rights in other contexts clearly support curtailing minors' right to undertake parental responsibilities: Undertaking these responsibilities exposes a minor to special risks, reflects and produces bad decision making, dramatically interferes with the minor's own parents' ability to fulfill their parental responsibilities, and imposes significant costs on others. Why, then, do we see no age-based regulation of parenting? Perhaps there is something about parental rights that makes them uniquely resistant to such regulation. In considering why this might be so, it will help to begin by setting out what such age-based regulations might look like.

79. Third-party costs might include the cost to the male partner, or other arguably interested parties opposed to the abortion, and the cost to the fetus of the lost opportunity to develop into a legally recognized person, neither of which would vary with the age of the individual choosing to undergo the abortion.
There are any number of approaches a state might take in attempting to impose some constraints on a minor’s decision to take on parental responsibilities and authority. These constraints might be aimed at discouraging a pregnant minor’s initial decision to undertake the responsibilities of parenting at all (as opposed to undergoing an abortion, or giving up the child for adoption), or they might be aimed at controlling how the minor’s parental authority is exercised. We would expect the best solutions—those most sensible as a matter of policy and, relatedly, those most likely to survive constitutional challenge—to address some combination of the particular concerns associated with minor parenting discussed above. In the discussion that follows, I will suggest a range of possible approaches that would address one or more of these concerns. I will attempt to organize these approaches from most to least extreme, recognizing that, to some extent, the options defy such an ordering.

A. Establishing A Minimum Age for Parenting

At one extreme, a state might prohibit minors below a certain age from becoming parents under any circumstances. A state could still permit the pregnant minor to choose among the non-parental options—abortion or adoption—to avoid intruding on other rights and to

80. While, in theory, compelled abortion offers the state the most effective means of guarding against the harmful consequences of adolescent child bearing and child rearing, I do not consider compelled abortion an option for several reasons. First, forcing a minor to undergo an abortion would constitute a serious bodily intrusion, and while courts (and parents) have successfully compelled intrusive medical procedures where determined to serve important enough interests of the child, the complex and weighty moral and emotional issues associated with abortion counsel against such a determination in this context. Moreover, such an approach is likely to have serious pragmatic problems in implementation: Minors seeking to avoid abortions will conceal their pregnancies as long as possible until the risks and costs of the procedure are high, if not prohibitive. Finally, a program of compelled abortion is politically untenable: Political support for voluntary abortion is weak enough. We can expect that political support for compelled abortion would be nonexistent.

81. The minor could even be given the choice of adoptive parents, among those qualified by the state to adopt. For some families, the minor’s own parents
maximize the minor's involvement in decision making within the range of state-approved choices. While clear and simple, this would, indeed, be an extreme approach, leaving no room for any individual to overcome a presumption of parental incompetence, either independently, or with the help of willing familial support. Moreover, such forced intervention could as easily thwart as facilitate an adult parent's exercise of parental authority. Many parents of pregnant minors will want their children to undertake parental responsibilities, or at least will prefer this outcome to abortion or adoption. This approach could also expose the minor's baby to additional risk: Compelled relinquishment of parental rights does not guarantee the child's placement in a family, let alone a well qualified family. Children who are members of racial minority groups and children with disabilities would be placed at greatest risk by such an absolute approach.  

Somewhat less extreme would be an approach that deferred to the wishes of the minor's parents where a minor became pregnant below the designated age. Only when an adult parent consented to the minor's undertaking of parental responsibilities would a minor be allowed to do so. Again, control of the parenting decision could be separated from the choice between abortion and adoption, which could still remain with the minor. A state might justify granting parents more absolute control over their children's parenting decisions than they are constitutionally permitted to grant parents over their children's abortion decisions by pointing to the lack of any threat to the minor's bodily integrity associated with the parenting decision, and the greater implications for the adult

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82. See Amanda T. Perez, Transracial Adoption and the Federal Adoption Subsidy, 17 YALE L. & POL'Y REV. 201, 203 (1998) (noting the "severity of the gap in placement rates between minority and non-minority children").

83. See Planned Parenthood of Missouri v. Danforth, 428 U.S. 52, 74 (1976) (holding that a state "does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent").

84. It should be noted, however, that parents are afforded considerable authority to impose medical procedures on their children, even when those medical procedures constitute serious bodily intrusions. See Parham v. J.R., 442 U.S. 584, 603 (1979) (noting parents' obligation and authority to consent to surgical procedures where they judge such procedures to be in their childrens'
parents' own ability to exercise parental control associated with that decision.\footnote{See \textit{Danforth}, 428 U.S. at 75 (discussing relative effect on parenting authority of child's decision to seek an abortion and to assume parenting responsibilities).}

B. \textit{Mirroring the Abortion Approach}

In the abortion context, the Court has rejected states' attempts to give parents this sort of absolute control over a minor's decision making, but it has endorsed an approach that permits a more child-specific assessment of capabilities and circumstances. A state may require parental consent before a minor can obtain an abortion, so long as it also provides an alternative means by which a minor can secure authorization for the abortion. That alternative process must assess the minor for maturity and, must allow the minor to act on her own choice, if found to be mature. Where the minor is found to be immature, however, the process may assess the minor's interest, both in obtaining the abortion and in involving her parents in the decision making process.\footnote{See \textit{Lambert v. Wicklund}, 520 U.S. 292, 297-98 (1997).} Currently, sixteen states have legislation requiring parental consent before a minor can obtain an abortion.\footnote{See \textit{The Alan Guttmacher Institute, Paper: The Status of Major Abortion-Related Laws and Policies in the States, July 2000}, at http://www.agi-sa.org/pubs/abort_law_status.html (last visited Sept. 15, 2000) (noting that in five of these states, enforcement of the consent requirement has been enjoined by court order).}

Applying this two-pronged approach in our context would facilitate parental input into the decision making process, or, alternatively, would help to screen out, on an individualized basis, minors least prepared to make, or act on, such an important decision. Of course, a minor would have no need to resort to the alternative process where her parents agreed with her decision to undertake parental responsibilities, but where they opposed this decision, she would still have an opportunity to establish that she was mature enough to make the decision on her own behalf. In assessing her maturity, the alternative authorizer might take account of her understanding of the responsibilities of parenting and the extent to which she has appropriately...
planned to meet her own and her child’s needs. The very obligation to establish maturity in this context might encourage minors to engage in a more thoughtful process of reflection and planning.

Where the alternative reviewer determined that the minor seeking to undertake parental responsibilities was immature, it would need to consider whether allowing the minor to undertake parental responsibilities against her own parents’ wishes was nevertheless appropriate. In addition to asking whether such a parenting arrangement was in the minor’s best interests, the reviewer might appropriately take into account the interests of the minor’s potential child as well. As noted above, compelled relinquishment will not always serve the young child’s needs, even where it serves the interests of the minor mother.

Note that the timing of the decision making process would inevitably affect the range of options available. A minor could be given the opportunity to pursue the bypass procedure at any time during her pregnancy, if she hoped to avoid any threat of interference from her parents or to keep open the abortion option, should the bypass reviewer refuse to authorize her undertaking of parental responsibilities. On the other hand, a minor who failed to get parental consent or a bypass authorization during her pregnancy could still be offered an opportunity to pursue the bypass process at birth. If she waited until this point, however, she would have no legal shield against her parents’ attempts to influence her decision during her pregnancy (at some point her parents would inevitably learn about the pregnancy) and she would, of course, lose the abortion option should parenting authorization be denied at this point. While the bypass approach would allow for a more individualized assessment of the minor’s maturity and the interests of the minor and child, it still anticipates compelled relinquishment in some circumstances, an outcome which, even where endorsed by a minor’s parents, will strike most as extreme.

C. Considering Age in Involuntary Termination Proceedings

Less extreme would be state enactments that expressly included age among those factors that the court could consider in determining whether to terminate parental
rights on the grounds of unfitness, after some period of time during which the minor would be allowed to act as parent. Currently, states all provide a detailed list of circumstances, and combinations of circumstances, that reflect on a parent’s “fitness,” that can be used to justify an involuntary termination. These lists are designed to gauge past, present and future ability and willingness to fulfill parental responsibilities. While a bright line rule that all parents below a certain age are unfit will strike many, again, as inappropriate, identifying age as a factor to be considered along with others ought to be politically palatable. A statute might provide, for example, that the age of a minor could be viewed as an aggravating factor where another ground for unfitness were established. Or a parent’s young age might be identified as relevant to a calculation of the likely speed of improvement in parenting. The youngest parents can be expected to take the longest to improve their parenting abilities and commitment, and on this ground should be most vulnerable to the termination of their rights.

Locating considerations of minority in involuntary termination statutes would place the focus on protecting the minor’s child, for these statutes take no account of whether the mother’s interests are served by the termination. The separate requirement of all states that an involuntary termination of parental rights be in the child’s best interest would reduce the risk that a consideration of a parent’s minority would produce worse results for their children. Locating considerations of minority in these statutes would also have both the advantage and disadvantage of limiting the relevance of these considerations to a small number of the worst cases.

88. 2 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES 12-34 (1993) (listing and discussing common grounds for a finding of parental unfitness justifying termination of parental rights).

89. Courts could take minority status into account in assessing these and other factors supporting involuntary termination, even where age is not expressly identified among the statutory criteria. My research suggests, however, that courts rarely mention age in assessing fitness. But see In re Baby Boy Scarlett, 231 N.W.2d 8 (Iowa 1975) (endorsing the termination of a minor’s parental rights and concluding that the minor’s child’s interests would not be served by waiting for the minor to grow up).

90. See HARALAMBIE, supra note 88, at 15 (“In addition to proving unfitness, neglect, or abandonment, the petitioner must prove that termination of the parent’s rights would be in the best interests of the child.”).
Typically, the state only files for involuntary termination where there is serious evidence of parental unfitness, and where the extended family is least willing or capable of compensating for the parents' unfitness.91 While limiting the states' consideration of age to this context reduces the risk of destructive state interference in families, it also offers no assistance to adult parents struggling to keep a three-generation family intact.

D. Reallocating Custodial Authority Between the Minor Parent and Her Parents

The state might also focus its attention on improving parents' legal authority over their children who have become parents, and over their grandchildren, who threaten to compromise that authority and who impose additional obligations on them. Most expansively, domestic relations laws might be modified to award adult parents custodial control over their grandchildren through the period of the mother's minority. Under this regime, the minor would still be recognized as the mother, she would have generous rights of contact and association (forms of visitation rights), and she could exercise as much real authority over her child as her parents allowed. To work effectively, the grandparent/parents would have the right to decline this custodial authority. If a declination produced a compelled relinquishment, the arrangement would look like those discussed above, if it produced a minor parent with custodial authority, the arrangement would look like the status quo.

A state could also adjust its custody laws to expand the grandparents' custodial authority without depriving the minor parent of custody. The most obvious way to accomplish this would be to award joint custody to co-resident grandparents and minor parent during the course of the parent's minority.92 The authority shared with the

91. When the extended family steps in to assist an inadequate parent, the family is far less likely to come into the child protective service system at all and, if it does come in, the state is far less likely to seek termination of parental rights except in fairly unusual cases where the extended family caretaker seeks to adopt the child herself.

92. Note that this analysis avoids any discussion of the minor parent's partner, who has an equal right to custodial authority under the law. Because fathers of children born to minor mothers tend to have little involvement with
grandparents might include the entire bundle of custodial rights, or some limited subset that would allow grandparents to take their grandchild to the doctor, sign him up for day care or register him for school. Allocating such rights to a minors' parents need not come at the expense of the minor's authority over the child, though it would clearly eliminate her exclusive control. The joint custody arrangement could be automatically extinguished when the young parent reached majority or some other designated age.

This joint custody approach might offer the best fit with actual practice and the aspirations of the adult parents. Just as the presumptive sharing of custodial authority between a father and mother is designed to reflect the actual arrangement parties commonly make, or the arrangement the parties can comfortably modify through informal negotiations, so, too would the sharing of custody between a co-resident adult grandparent (often a single

their children and only rarely assert custodial claims, this omission, for simplicity's sake, should not skew the analysis of the practical implications of sharing custody between mother and grandparents. That being said, it is, of course, worthwhile to consider how affording grandparents custodial authority ought to affect the custodial authority of a non-resident father. Joint or exclusive custody could be awarded to a grandparent in lieu of, or in addition to, a recognition of some custodial rights in the father. To the extent increasing the total number of those with custodial claims undermines the ability of any custodian to exercise her authority effectively, it could be argued that a grandparent who lives with her grandchild and provides a significant portion of the child's care has a superior custodial claim to the non-resident father, and that it ought be the father's burden to convince a court otherwise. Alternatively, because these fathers are generally far less involved with their children than either the minor mother or her parents would like, they might safely be included among those with presumptive custodial rights absent a showing by either the mother or the custodial grandparent that their attempt to exercise those rights disserved the child's interests.

93. This more limited sharing of authority might be conceived as a form of temporary or limited guardianship, recognized in some states as a means of shifting or sharing authority during a limited period when a parent is unable to care for a child on her own. See Haralambie, supra note 88, at 641-42 (discussing temporary guardianship).

94. Again, note that fathers' equal claims, in theory, make this exclusive control more true as a matter of practice than as a matter of right. See supra note 92.

95. See P. Lindsay Chase-Landsdale et al., Research and Programs for Adolescent Mothers: Missing Links and Future Promises, 40 Fam. Rel. 396, 401 (1991) (noting that, for multi-generational families with teen mothers, "two women, the child's mother and grandmother, became the central caretakers or co-parents in the child's life").
mother herself) and minor mother reflect the status quo, as modified amicably into a host of variations. And just as the presumptive allocation secures the negotiating power of both mother and father in working out those arrangements informally, so would the sharing of custody between mother and grandmother increase the grandmother's leverage in negotiating lines of authority in the three generational household. As in the traditional two-parent couple, a presumption of shared custody would give the grandmother access to the courts when she believed her daughter's exercise of parental authority was not in her grandchild's interest. Similarly, the law could permit a minor to make an affirmative showing that sharing custody with her parents during her minority was not appropriate, or at least not necessary.

An even milder custodial shift would be to afford adult parents third-party standing to seek some custodial control over their minor child's child when they concluded that such control was in their grandchild's interest. The lack of any special standing provisions for grandparents whose children are minors is particularly striking when contrasted with the laws enacted in all fifty states giving non-resident grandparents third-party standing to seek court-ordered visits with their grandchildren. While visitation claims are

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96. Note that the sharing of custodial control over the grandchild would not give the grandparent authority to go to court to assert her authority over matters affecting the minor mother's best interests. This custodial sharing could nevertheless be expected to assist the grandparent in asserting parental control over the minor parent in two ways. First, the grandparent could challenge the minor mother's exercise of parental authority that compromised both the minor and her child's interests, and second, her ability to assert authority over the child would clearly enhance her negotiating position with the minor over the minor's own conduct, just as the sharing of custodial authority enhances an individual's negotiating position on other matters contested during a divorce.

97. While the Supreme Court recently held that Washington's application of its third-party visitation statute violated a mother's parental rights, Troxel v. Granville, __ U.S. __, 120 S. Ct. 2054 (2000), the Court's multiple opinions suggest that a more narrowly tailored statute (like those already enacted in many states) might well survive constitutional challenge. See id. at 2062 (plurality opinion) ("The problem here is not that the Washington Superior Court intervened, but that when it did so, it gave no special weight at all to the mother's determination of her daughters' best interests."); id. at 2066 (Souter, J., concurring in the judgment) (concluding that the broad language of the statute allowing "any person" to seek visitation was sufficient to render the statute unconstitutional, thereby obviating the need to consider whether a more
certainly different from claims to custodial authority, if anything, the difference in circumstances between the two groups of cases favors co-resident grandparents, whose greater involvement in and responsibility for both their child and grandchild suggest a greater claim to court assistance where that involvement meets with resistance.

E. Educating and Licensing Minor Parents

The softest approach of all would be to impose some form of educational and or licensure requirements on would-be minor parents. The expectation would be that minors who wished to become parents would be allowed to do so, so long as they met certain minimal requirements. Minors might be required to take a course that would help give them a fuller sense of their parenting obligations, both to inform their initial choice and to improve their parenting if they chose to undertake these obligations. It might also involve the development of a parenting plan, to assist them in preparing for parenting.

This kind of approach would only be as effective as its enforcement mechanisms, which ties this approach back in with the other options discussed. If keeping one’s baby were conditioned on a pre-birth education and licensure, then the minor’s failure to satisfy these conditions would put us back in the world of compelled relinquishment. If contact were withheld pending completion of these steps, then the approach would require at least a period of separation, which also amounts to a heavy-handed intervention. If the narrowly crafted statute could survive constitutional challenge); id. at 2070 (Stevens, J., dissenting) (concluding that the statute “plainly sweeps in a great deal of the permissible,” and therefore the State Supreme Court erred in finding that the broad language of the visitation statute, and the failure to require a finding of harm, violated parents’ due process rights); id. at 2078 (Kennedy, J., dissenting) (noting the variety of state statutes providing for third party visitation claims under some circumstances, and suggesting that “contemporary practice should give us some pause before rejecting the best interests of the child standard in all third-party visitation cases, as the Washington court has done”).

98. Some have urged licensing for all parents, regardless of age. See Hugh LaFollette, Licensing Parents, 9 PHIL. & PUB. AFF. 182 (1980). In addition to the liberty interests implicated when dealing with adults in this context, it would also be an enormous project. Limiting licensure to minors, or to minors whose parents have not consented to their becoming parents, would control the numbers.
failure to obtain the required licensure effected some form of the custody shift discussed above, it might motivate the minor parent to complete the necessary education and planning without undermining or forestalling her relationship with her baby in the interim. Completing the educational program and obtaining a license might also merely make the minor eligible for special benefits, but such a benign approach would come at the cost of a reduced rate of compliance. Predictably, those who would fail to meet the requirements would be those most in need of the assistance offered by this approach.

These proposals are subject to infinite variation, and there are surely other approaches not included in this discussion. Each approach has its strengths and weaknesses; some address some problems associated with minor parenting better than others. None of these proposals is clearly better than a world without regulation. But the lack of an obvious best solution hardly distinguishes this area from any other area presenting difficult policy issues and therefore cannot account for the lack of any attempts, along these or other lines, to control minor’s exercise of their parental rights. Strikingly, despite the high degree of consensus about the nature and extent of the problems associated with minor parenting, the entire fifty-state system of legal laboratories is quiet. In the following section, I will consider whether there is something about parental rights that accounts for this silence, and, more normatively, that renders them unsuitable for compromise, even when applied to minors whose rights are routinely restricted in other areas.

IV. THE SPECIAL NATURE OF PARENTAL RIGHTS

My earlier consideration of the proper scope of parental rights of minors drew on the Court’s analysis of minors’ rights in other contexts. That analysis suggests that a state’s circumscription of minors’ parental rights could readily be justified. Left to consider, however, is whether the difference between parental rights and other rights renders the generic analysis inapplicable or at least incomplete.

In the previous section, I considered two different sorts of potential interference with minors’ parental rights—interference that denied minors the opportunity to act as
parents altogether, and interference that merely qualified minors' parental authority during the period of their minority. Because the implications of the two approaches are very different, I will consider them separately. What an analysis of minor's parental rights in each context shares, however, is a common complication: It implicates the interests of two children—the minor parent and her child—whose developmental needs may not be equally served by any single solution to the rights puzzle.

A. Compelled Relinquishment

Most, I think, object intuitively to the prospect of a state's taking a baby from his birth mother against her wishes, even if that mother is a minor, and even if her parents have consented to the removal. Our objection surely reflects our assumption that those who give birth (at least where biologically related) have some sort of entitlement to their children. Such a conception of parental rights looks uncomfortably like the old property-based conception that has been appropriately criticized by champions of children's interests and widely abandoned by the courts. Conceiving of the child as property is troubling, generally, because it suggests a privileging of the parent's interests over the child's and a commodification of the child to be enjoyed or disposed of at the parent's will. Our distaste for a proprietary conception of parental rights might inspire us to question our intuitions grounded on this

99. I should note that, in discussing this issue with my colleagues, many suggested that they would have no objection to such compelled relinquishments, at least as applied to the youngest mothers.

100. Note that the link between childbirth and parental claim has become attenuated in the context of third-party assisted reproduction, where the birth mother is not the intended mother and, in some circumstances, does not contribute any of her own genetic material to the child.

101. See Barbara Bennett Woodhouse, "Who Owns the Child?": Meyer and Pierce and the Child as Property, 33 WM. & MARY L. REV. 995 (1992); Melissa LaBarge, "C" is for Constitution: Recognizing the Due Process Rights of Children in Contested Adoptions, 2 U. PA. J. CONST. L. 318, 335 (1999) ("Children are not merely chattels, belonging to their parents, but rather have fundamental interests of their own which are of constitutional dimension.") (citing In re Bridget R., 41 Cal. App. 4th 1483, 1490 (1996)).

102. Troxel, 120 S. Ct. at 2072 (Stevens, J., dissenting) ("At a minimum, our prior cases recognizing that children are, generally speaking, constitutionally protected actors require that this Court reject any suggestion that when it comes to parental rights, children are so much chattel.").
conception, but the strength of our resistance to compelled relinquishment ought also to inspire us to reconsider the value, to both parents and children, of this proprietary conception.

Far from trivializing the relationship between parent and child, a parent's sense of proprietary connection with her child arguably intensifies the value of the relationship to her. Indeed, the parent's sense of special connection with, and vast control over, her child accounts, in large part, for the depth and importance of the relationship to the parent. The injury inflicted by compelled relinquishment can be seen as especially grave precisely because the parent experiences the taking of her child as the taking of an important part of herself. Whether moved by biological instincts, culturally established expectations, or some combination of the two, a minor, too, is likely to experience compelled relinquishment of her child as a profound personal loss. Left to decide is whether the law ought to entrust the weighing of that loss against the losses associated with minor parenting to the minor or to her parents.

Perhaps the decision whether or not to undertake parenting responsibilities of one's own biological offspring is too important to be taken from anyone, even a minor bent on making the decision foolishly. While generally it is the decisions with the most far-ranging consequences that we do not want to leave to minors, perhaps this particular choice bears too fundamentally on a minor's personhood to be taken away under any circumstances. The Supreme Court's analysis in the abortion context offers some support for this conclusion, suggesting that the particularly "grave and indelible" consequences associated with the abortion decision justify curtailing a parent's control over this decision.106

103. See Katharine K. Baker, Property Rules Meet Feminist Needs: Respecting Autonomy by Valuing Connection, 59 Ohio St. L.J. 1524 (advocating a property law conception of custodial rights to ensure that a parent's level of investment in the parent-child relationship and connection with the child are given appropriate consideration).

104. See supra note 56 and accompanying text.

105. See Bellotti v. Baird, 443 U.S. 622, 642-43 (1979) (noting that, while "deference to parental authority may be permissible with respect to other choices facing a minor, the unique nature and consequences of the abortion decision make it inappropriate, 'to give a third party an absolute, and possibly
There are two ways, however, to read the Court's reliance on the importance of the abortion decision, one of which argues for imposing similar limitations on a parent's ability to intervene in a minor's decision to undertake parental responsibilities, and the other of which argues against imposing such limitations in our context. To the extent the special protection afforded to minors in the abortion context is grounded on the nature of the decision itself, then the converse decision to keep a child, with its similarly "grave and indelible" and "far-reaching" consequences ought to receive the same protection. But if the emphasis is on the harms associated with a particular outcome, namely the burden of unwanted teenage motherhood, then affording less autonomy to minors would be well justified where those minors' choices pointed them in this dangerous direction. Of course, even the more generous, outcome neutral reading of the Court's analysis only supports affording minors limited autonomy over decisions related to parenting: As in the abortion context, a minor could still be required to convince an alternative decision making authority either that teen parenthood was a good idea, or that the minor was mature enough to make this important decision on her own.

Thus far, our consideration of the minor's claim of entitlement to her child, and the harm that could come from disregarding that claim, has focused on the interests of the minor parent. As much as the property concept seems to favor the parent over the child, however, it might be the child who has a more legitimate claim to the property protection. The very notion that specific individuals hold a superior—indeed, exclusive—claim to connection with a

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106. See Bellotti, 443 U.S. at 642 (noting that "the potentially severe detriment facing a pregnant woman is not mitigated by her minority," and, indeed, "unwanted motherhood may be exceptionally burdensome for a minor").

107. While the Court has not, of course, said that minors should be afforded greater autonomy in the abortion decision making context because abortions are good for them, it could be seen as coming close in saying that such autonomy is appropriate because the outcomes of denying autonomy—namely teenage parenting—can be so bad. The fact that bypass judges authorize the vast majority of abortions sought by minors suggests that these judges view the abortion choice as a good and/or a mature choice. See, e.g., Margaret C. Crosby & Abigail English, Mandatory Parental Involvement/Judicial Bypass Laws: Do They Promote Adolescent Health?, 12 J. ADOLESCENT HEALTH 143 (1991).
child,\textsuperscript{108} may be extremely valuable to that child despite the potentially demeaning connotations of ownership associated with the claim. Children should not be commodified, and they certainly should not be freely alienable,\textsuperscript{109} but there may be a strong psychological value to a child's growing up with a sense that they are where they unambiguously and inevitably "belong." While many adopted children develop healthy and happy relationships with their adoptive parents in the absence of this sense of inevitable and immutable connection, this does not suggest that the loss of that sense is not significant.

The value of this biological connection is not that it necessarily turns minors into good parents. Indeed, the Blackstonian notion that the biological ties create natural bonds of affection which, in turn, inspire parents to pursue their children's interests\textsuperscript{111} may give too much credit to biology and not enough credit to maturity. Even where the biological connection does not inspire quality parenting, however, it can give children this sense of the inevitability and immutability of the parental connection which may offset some or all of what they lose from not being shifted to more qualified, mature parents. We know that many children do not fare particularly well with minor parents, but we do not know how they would fare with others, especially if they knew that they were taken from their birth mothers against their will.\textsuperscript{112}

\textsuperscript{108} See Baker, supra note 103, at 1576.

\textsuperscript{109} See id. at 1524 n.4 (noting that not all property rights include alienability).

\textsuperscript{110} Cf. ELIZABETH BARBOLETT, NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT AND THE ADOPTION ALTERNATIVE 3 (1999) (attacking accepted orthodoxy in the child welfare world that views children as "belonging in an essentialist sense" to their kinship and racial groups and that locks them into inadequate biological and foster homes.)

\textsuperscript{111} In Volume One of his Commentaries, William Blackstone wrote:

By begetting [children, parents] have entered into a voluntary obligation, to endeavor, as far as in them lies, that the life which they have bestowed shall be supported and preserved . . . . The municipal laws in all well-regulated states have taken care to enforce this duty though Providence has done it more effectually than any laws, by implanting in the breast of every parent that . . . in superable degree of affection, which not even the deformity of person or mind, not even the wickedness, ingratitude, and rebellion of children can totally suppress or extinguish.

\textsuperscript{1} WILLIAM BLACKSTONE, COMMENTARIES *447-48.

\textsuperscript{112} Much of the adoption literature focuses on the problems associated with the loss of the sense of inevitability and immutability in the biological connection.
There are other reasons to be concerned about the state's compelling minors to relinquish babies at birth that are not tied to a proprietary conception of parental rights. First, we might be concerned about the state's institutional competence to assign children to parents. States have not shown themselves to be particularly good at determining which children should be removed from their original families to be placed in others, as the clumsy workings of our foster care systems demonstrate. But, in our scenario, the state would have no responsibility for identifying the children to be removed, and, under the bypass proposal, would only serve to prevent some proposed removals from occurring. In our scenario, the only party who could compel removal against the minor's wishes would be the minor's parent. States would, however, be responsible for placing removed children in new families as they already are for many children placed voluntarily for adoption.

We might also worry whether it is realistic to expect the state to find alternative families for babies whose relinquishment is compelled. This would be a particular concern for babies who are members of racial minority groups whose placement prospects are generally more limited. While the diverse prospects of the child's achieving family stability elsewhere would counsel for a child-specific assessment of the appropriateness of compelled relinquishment, the prospect of a state's making race-based distinctions in determining which minors should be permitted to raise their own children is clearly disturbing. Finally, any regime that contemplates compelled relinquishment is likely to be opposed by abortion foes, who would fear the effect of such a regime on minors' willingness to carry their fetuses to term.

Counterintuitively, the strongest arguments against allowing compelled relinquishment, even where favored by the minor's parents, may focus on the interests of the young child rather than the minor parent. The young child has at least as strong an interest as the minor parent in the proprietary conception of parental rights, and the child faces some real pragmatic risks if compelled relinquishment is not linked to some guarantee that an alternative family

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113. See Perez, supra note 82, at 202-06.
will be found. The young child is in no position to protect himself from these risks, nor can any individual be relied upon to offer that protection. In contrast, the minor parent’s interests, including her interests in being shielded from the harmful consequences that could flow from compelled relinquishment, should be safe-guarded by her own parents’ involvement in the decision making. Forbidding compelled relinquishment, or limiting the availability of compelled relinquishment to circumstances where it is determined to be in the young child’s interest might well amount to a privileging of the younger child’s interests over those of the older.

B. The Re-Allocation of Custodial Control

Laws that shift or share custody (between a minor parent and her parents) or that provide third-party standing for adult parents seeking some custodial control over their grandchildren, offer a much milder response to the problems associated with minor parenting. Such laws maintain the parent-child relationship where biology has placed it, and simply re-allocate day-to-day authority to reflect the three-generational relational complexities, and the generally superior parenting qualifications, of the oldest generation. Such custodial adjustments would be designed to respond to short term needs and to leave long-term rights and relationships undisturbed.

Adjusting the allocation of custodial authority might produce some significant benefits to the minor and her child. Giving the adult parents some legal recognition of their role in caring for their grandchild would facilitate their fulfillment of that role by allowing them to take actions at school, and at the doctor’s, on the child’s behalf. More importantly, granting the adult parents some custodial authority over their grandchild is likely to help them fulfill their responsibilities to their own daughter by reducing the extent to which the daughter’s parenting and intergenerational conflicts over that parenting get in the way.

Such a reallocation would also come with considerable risks. Where the prospect of compelled relinquishment deprives the parent-child relationship of the security derived from inevitability, custody sharing arrangements deprive the parent-child relationship of the authority that
comes with indivisibility.114 Children benefit from clear lines of authority in parenting that remain constant over time.115 Shifting custody during the period of a mother's minority will undermine the child's perception of his mother's authority during that first period, and will require an adjustment of that perception when his mother becomes an adult.116 If the mother and grandparents are able to work out the shared relationship amicably, the risks to the child are likely to be minimal. Where the division of authority produces conflict, the risks increase considerably.

What is less clear, however, is whether the conflicts engendered in the context of legally shared authority would be greater or less than those engendered under the current regime where the minor parent has exclusive custodial control. On the one hand, we might expect the custodial authority of the grandparents to encourage the minor to cooperate, in order to avoid the grandparents' resort to the courts to enforce that authority. On the other hand, their ability to take conflicts to the court might reduce grandparents' commitment to cooperation. Which of these effects would predominate is ultimately an empirical question, as is the extent to which any harm to a minor's parenting engendered by those conflicts would be offset by improvements in how that minor, herself, is parented. The lack of any efforts to experiment with alternative custody arrangements, however, leaves us with no data to assess. Assuming such custodial reallocations would not shock the conscience of legislators or the courts as the compelled relinquishments might, I am unable to account for the lack of any exploratory legal development in this direction.

114. What might be objectionable about the state’s facilitating custodial redistribution designed to provide legal support for the work the adult parents are already doing is what is clearly objectionable about the grandparent visitation statutes that give non-resident grandparents standing to seek visits with their grandchildren.


116. Parental responsibilities, even if commenced during adolescence, would largely be fulfilled in adulthood. Even the youngest potential mothers would become adults by the time their children were about six years old.
C. Trading the Protections of Childhood for the Rights of Grown-ups

When parents are adults, we worry about the effect of their exercise of parental rights on their children, but we do not worry about the effect of that exercise on themselves. We assume that their exercise of parental rights serves their own interests and that the freedom to choose to become a parent and to fulfill parental responsibilities has a high value to them. But these assumptions may be inappropriate for minors. We traditionally circumscribe the exercise of rights by minors because we fear that they will make bad choices on their own behalf, both because they will assign the wrong values to the various options and because they will sometimes fail to go through the process of assigning values at all.

When I first considered the puzzle of minor’s parental rights, I made the conventional assumption that the primary beneficiary of this generous rights allocation, if there were one, would be the rights-holding minor. I juxtaposed whatever interests the minor might have in exercising these rights with all the harms that can come from their exercise to their children, their parents, society, and themselves. The special nature of parental rights, however, may produce a counter-intuitive distribution of costs and benefits between the rights holder and others when those parental rights are exercised by minors.

A minor’s child may have the most to gain from affording minors broad parental rights, and the minor, herself, may have the most to lose. This is not to say that there are not gains and losses on both sides (indeed, all sides if we include those losses suffered by the adult parents, as well), but rather that the best justifications for affording minors unqualified parental authority over their children is that these children will benefit from the certainty and constancy that it promotes. It is entirely possible (though far from established) that what children gain from this certainty and constancy more than offsets what they lose in parenting quality by remaining, without legal hesitation, in the exclusive control of their birth mothers.\(^{117}\)

\(^{117}\) Again, “exclusive” describes practice better than it describes the law, as fathers also have rights of parental control. As noted, however, the common
While the minor parents, themselves, might also be harmed by qualifications of their parental rights, the harm is less apparent, particularly where the qualifications defer to their own parents’ choices made on their behalf. Indeed it is not clear why these same qualifications, offered as a means of protecting minors in other areas of the law, would so disserve minors’ interests in the area of parental rights. For older adolescents, just as with the exercise of many other rights, it may well be misguided not to let them step into the adult role, complete with responsibilities and rights, when they feel ready to do so. But for the youngest adolescents, the same concerns we have about affording them independent control over a host of other choices seem to apply here.

Of course, it is simplistic to suggest that the minor parents’ interests are wholly distinct from those of her child. It goes without saying that a minor’s own well being will be tied to her sense of the success of her parenting. Indeed, the conflict of interest could even be characterized as an internal conflict of interest between two aspects of the minor’s development—her development as a parent, and her broader development of an individual identity. This identity development, often described as the core task of adolescent development, is facilitated by an exploration of options in work, relationships, and values. While this exploration may be most readily accomplished by adolescents with financial means or guarantees of support, it may be particularly valuable for adolescents of limited practice among children born to minor mothers is for the father to exercise little or no custodial authority over them. See supra note 11 and accompanying text.

118. See Susan J. Speiker & Lillian Bensley, Roles of Living Arrangements and Grandmother Social Support in Adolescent Mothering and Infant Attachment, 30 Dev. Psych. 102, 103 (1994) (noting that teen mothers typically experience a clash between the developmental tasks of adolescence and adulthood); Lowenthal & Lowenthal, supra note 8, at 29 (noting that the tasks of adolescent development and parenting will often conflict, “meaning that a teenage mother often will compromise one role or fail at both”); Black & Nitz, supra note 20, at 218 (1996) (noting that where parents are adolescents “problems frequently arise because the adolescent tasks of emerging autonomy, career development, and the formation of intimate relationships are not necessarily consistent with the responsibilities of parenting”).

means, whose prospects for financial and educational advancement and personal satisfaction through employment are relatively bleak. In our society, individual identity development is generally expected to precede parental development, both because the successful development as a parent is thought to benefit from a well developed sense of individual identity,\textsuperscript{120} and because the process of parental development is likely to stunt future individual growth.\textsuperscript{121}

Where our only concern were for the minor's development, we might well want to encourage this staggering of the developmental pieces by clearing a space for traditional adolescent identity development before the parental development is allowed to begin, or at least before that development is allowed to take center stage. Again, this shift in developmental focus could be accomplished aggressively, by forbidding minors from acting as parents

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\item \textsuperscript{120} See Jane Kroger, Identity in Adolescence: The Balance Between Self and Other 10-45 (1996) (setting out the link between identity formation and subsequent preparedness for intimacy, in Erikson's stage scheme of crises and resolutions); Bertram J. Cohler & Judith S. Musick, Adolescent Parenthood and the Transition to Adulthood, in Transitions Through Adolescence: Interpersonal Domains and Context 218 (Julia Graber et al. eds., 1996) ("Adolescence is to a large extent a self-oriented process, whereas parenting is other oriented—selfless, as opposed to being preoccupied with self and making sense of futurity. The Assumption of the parental role requires an abundance of precisely those emotional resources that the normal, self-centered tasks of adolescence are likely to deplete."); Trad, supra note 16, at 137 (citing studies suggesting that adolescent mothers have unrealistic expectations and inaccurate perceptions of their child's development and behaviors, engage in less verbal and interactive behavior, as well as more restrictive and punitive behavior, and demonstrate less empathy toward their children).
\item \textsuperscript{121} See Cohler & Musick, supra note 120, at 210 (suggesting that adolescents who establish an identity by becoming parents can be viewed, in Marcia's terms, as identity "foreclosed" rather than "achieved," because they have undertaken commitments, pursuant to the expectations of various others, without having engaged in a process of personal searching and exploration that Marcia, Erickson and their followers associate with a healthier, more successful identity development); Spieker & Bensley, supra note 118, at 109 (noting that co-residence of adolescent mother and grandmother facilitates the achievement of adolescent goals, such as education, but may interfere with the mother's fulfillment of the parental role, such as the establishment of a relationship of warmth with her child); Donald B. Unger & Marcia Colley, Partner and Grandmother Contact in Black and White Teen Parent Families, 13 J. Adolescent Health 546 (1992) (noting that a grandmother's assistance with childcare improved the teen's educational advancement, but interfered with the young child's development, particularly if the assistance continued into middle childhood).
\end{itemize}
before their parents thought it was developmentally appropriate for them to do so, or more gently by shifting some custodial authority to the minor's parents who are both interested in ensuring the minor's individual development and capable of reducing the parental responsibilities that would get in the way.

These changes in approach to minors' parental rights would be most effective, of course, if they discouraged minors from getting pregnant, or giving birth, or undertaking parental responsibilities in the first place. At least some of the appeal of taking these steps is tied to their association with adult status, and compromising that status is likely to discourage some minors from taking the steps at all. But the very deficiencies of decision making that lead minors into parenting are likely to make them fairly impervious to the deterrent effects of the law. Any consideration of the proper allocation of parental rights to minors must, therefore, also take account of the effect of that allocation on the next generation of children.

If, in fact, affording minors broad parental rights serves the minors' children's developmental interests, we can easily justify privileging those interests over the developmental interests of their minor parents that may be disserved by this allocation of rights. The child is clearly the more innocent party of the two, and as troubling as it is to saddle minors with the negative consequences of their immature decision making, it would be more troubling still to impose those burdens on their children.

Because the minor and child's interests are so clearly intertwined, however, the law might do better to take a less absolute approach to parental rights. While the child has an immediate interest in his minor mother's development as a parent and his mother has an immediate interest in a process of identity development likely to be cut short by a focus on parenting, both minor mother and child are likely

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122. The extent to which this motivates the decision to undertake parental responsibilities may vary with age. See, e.g., Adler & Dolcini, supra note 60, at 78 (suggesting that, for younger children, having a baby may be perceived as a way of getting closer to their own mothers, but for older adolescents, it is more likely to be perceived as a means of asserting independence from their own mothers); see also Cohler & Musick, supra note 120, at 213 (suggesting that part of the appeal of motherhood to adolescents is that it offers a means of resolving identity issues and achieving adult status without requiring the imposition of distance between an adolescent and her mother).
to benefit from successful development along both dimensions. In the short term, parenting is likely to benefit from identity development and the sense of accomplishments and possibilities associated with this development, and in the long term, parents' greater maturity and personal accomplishments will clearly expand the opportunities for their children. Conversely, successful parenting will have immediate and lasting positive effects on the minor's developing self-perception.

The hard question for policy makers is whether the law can be structured to facilitate both forms of development simultaneously, and whether the gains to minor and child would outweigh losses associated with compromising a minor's parental rights.123 While I see some promise in the custody shifting arrangements considered in this article, I am far less prepared to champion any particular solution than I am to press for the opening of the laboratories.

CONCLUSION

There is a broad consensus among courts, policymakers, and the public that minors ought not to be parents. Nevertheless, the law does nothing to stop them, once it fails to prevent the initial pregnancy. Whether the law could reduce the number or authority of minor parents without imposing greater harms on these minors or, more likely, their children, is far from clear. The unacceptability of the status quo offers states a compelling reason to try.

123. The requirement, imposed as a part of welfare reform, that minor mothers live at home and attend school as a condition of receiving welfare benefits can be seen as an attempt to combine these twin aims.