

THE LAW OF EMERGING ADULTS

CLARE RYAN*

ABSTRACT

Law tends to divide people into two groups based on age: children and adults. The age of majority provides a bright line between two quite different legal regimes. Minority is characterized by dependency, parental control, incapacity, and diminished responsibility. Adulthood is characterized by autonomy, capacity, and financial and legal responsibility. Over the course of the twentieth century, evolving understandings of adolescence in law and culture produced a staged process of increasing liberty and responsibility up to the age of majority. After eighteen, however, the presumption of adulthood remains strong.

Today, a combination of psychological and social factors has extended the process of becoming an adult well into legal adulthood. Psychologists call this life phase “emerging adulthood” and have identified it as a crucial period of transition and exploration. This Article argues that emerging adults should be treated as a distinct legal category. This life stage differs both from childhood and adulthood with regard to three key relationships: the parent-child; the individual and the market; and the individual and the state.

Laws are beginning to treat emerging adults differently. This Article examines the developing law of emerging adults, by focusing on parental support obligations, federal interventions, and punishment. Looking to the future, this Article then provides a framework for further legal reform that is guided by three principles, which reflect emerging adulthood’s unique economic vulnerability, developing autonomy, and capacity to learn from mistakes. I argue that a broad array of legal tools could provide individuals with greater autonomy than exists during minority, but greater protection than adulthood typically provides. Such tools include staging responsibilities and entitlements over time, requiring licensing or

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consultation, or extending state and parental obligations toward emerging adults.

TABLE OF CONTENTS

INTRODUCTION.....	1133
I. FROM CHILD TO ADULT	1136
A. <i>Social and Developmental Factors</i>	1136
B. <i>Childhood and Adulthood in Law</i>	1142
C. <i>Breaking the Binary</i>	1145
II. THE EMERGING LAW OF EMERGING ADULTS.....	1148
A. <i>Parental Obligations</i>	1148
B. <i>Federal Interventions</i>	1153
C. <i>Punishment</i>	1157
III. BUILDING A NEW LAW OF EMERGING ADULTS	1159
A. <i>Guiding Principles</i>	1160
B. <i>Bright Lines and Thresholds</i>	1163
C. <i>Expanding the Toolkit</i>	1167
IV. LOOKING TO THE FUTURE.....	1170
A. <i>Conditions for Change</i>	1170
B. <i>Obstacles</i>	1174
CONCLUSION	1178

INTRODUCTION

In the aftermath of the Parkland, Florida mass killing in February of 2018, two visions of young people came into focus.¹ The first was the extraordinary resilience and savvy of the students at Marjory Stoneman Douglas High School who shaped the national conversation around gun control reform. Using their facility with social media, these students galvanized a movement.² Many commentators pointed to the students' age as a defining feature in their style of advocacy.³ Some supporters suggested that the voting age should be lowered to sixteen, since many of these students could not vote against the laws that make guns so ubiquitous in American society.⁴ At the same time, one of the frequently proposed gun

1. Michelle Cottle, *How Parkland Students Changed the Gun Debate*, ATLANTIC (Feb. 28, 2018), <https://www.theatlantic.com/politics/archive/2018/02/parkland-students-power/554399/> [<https://perma.cc/BKX2-4JYB>].

2. *Id.*

3. See Emily Witt, *How the Survivors of Parkland Began the Never Again Movement*, NEW YORKER (Feb. 19, 2018), <https://www.newyorker.com/news/news-desk/how-the-survivors-of-parkland-began-the-never-again-movement> [<https://perma.cc/25RT-KL87>].

4. John Nichols, *Lower the Voting Age to 16*, NATION (Feb. 23, 2018), <https://www.thenation.com/article/lower-the-voting-age-to-16/> [<https://perma.cc/C86S-FMGW>] (proposing lowering the voting age to 16 in response to Parkland and listing jurisdictions where the voting age is younger than eighteen); Douglas Ernst, *Harvard Law Professor Wants 'Children's Crusade' for Gun Control, Lower Voting*

reforms was to raise the age of gun sales to twenty-one.⁵ After all, Nikolas Cruz was nineteen when he committed the horrific assault on the school.⁶ Recent developments in psychology and neuroscience suggest that people in their late teens to early twenties are more subject to dangerous and risky behavior and to loss of impulse control than are older adults.⁷ The Parkland story provides an extreme illustration of the competing aspects of the time between childhood and adulthood. Yet, this transitional and often contradictory period of independence/dependence and capacity/incapacity plays out in numerous quotidian contexts.

This Article explores a life stage that until recently has been neglected in legal scholarship, despite its increasing salience in psychology and culture—emerging adulthood. Emerging adulthood, a term first coined by psychologists in the early 2000s, refers to the transitional period between approximately ages eighteen and twenty-five.⁸ In twenty-first century America, emerging adults play a distinct role in society, one characterized by shifting expectations around work, responsibility, family, and education.⁹

Law lags behind this cultural shift. Since the 1970s, most US jurisdictions have set the age of majority at eighteen, which divides the law for children and for adults into a sharp binary. Throughout the twentieth century, exceptions to this binary focused on special rules for adolescents who, although legal minors, possessed the capacity and responsibility to be treated like adults for some purposes. Deviations upward from age of

Age, WASH. TIMES (Feb. 19, 2018), <https://www.washingtontimes.com/news/2018/feb/19/laurence-h-tribe-harvard-law-prof-wants-childrens/> [<https://perma.cc/E5QY-YYBY>] (reporting on a tweet from Professor Larry Tribe advocating for lowering the voting age in response to the #NeverAgain movement after Parkland).

5. President Trump endorsed the policy of raising the age on the sale of certain weapons to twenty-one as part of the response to the Parkland shootings. See Catherine Lucey & Matthew Daly, *Trump Endorses Raising Minimum Age to 21 for More Weapons*, PBS NEWS HOUR (Feb. 22, 2018, 9:49 AM), <https://www.pbs.org/newshour/politics/trump-endorsees-raising-minimum-age-to-21-for-more-weapons> [<https://perma.cc/KNZ6-HFXV>]; see also YOUNGOV, THE ECONOMIST/YOUNGOV POLL 101 (July 29–31, 2019), https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/fw0vfdqfpc/econTabReport.pdf [<https://perma.cc/E3CP-RXBQ>] (finding that 65 percent of adults polled approved of raising the minimum gun purchasing age to twenty-one).

6. Patricia Mazzei, *Parkland Shooting Suspect Lost Special-Needs Help at School When He Needed It Most*, N.Y. TIMES (Aug. 4, 2018), <https://www.nytimes.com/2018/08/04/us/parkland-florida-nikolas-cruz.html> [<https://perma.cc/Z62F-MHJ8>] (discussing how Cruz's age and legal adulthood put him in a liminal space, in which he lost help from his school and was able to legally purchase guns).

7. See Elizabeth S. Scott, Richard J. Bonnie & Laurence Steinberg, *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 FORDHAM L. REV. 641, 645–46 (2016) (describing the risk-taking behavior of emerging adults).

8. In 2000, psychologist Jeffrey Jensen Arnett coined the term “emerging adulthood” (“EA”) to describe the period between eighteen to twenty-five years old. Jeffrey Jensen Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 AM. PSYCHOLOGIST 469 (2000). Arnett suggested that a range of economic, psychological, and cultural factors made this age group developmentally distinct from older adults.

9. See *infra* Part I.A.

majority—notably the drinking age set at twenty-one—were the rare exception.¹⁰

In recent years, however, a patchwork of laws has sprung up at both the state and federal level, which treats emerging adults differently. Some examples include: young people cannot open credit cards without a co-signor until they turn twenty-one,¹¹ the Affordable Care Act permits adult children to stay on their parents' health insurance until twenty-six,¹² and a range of state laws extend parental support obligations past the age of majority.¹³

Although gaining in number and importance, new emerging adult laws are under-studied, especially outside of the criminal law realm.¹⁴ A small group of legal scholars, however, has begun developing a literature on law and emerging adults. Much of this work focuses on a single issue (such as contract capacity) or a specific area of law (such as criminal law) to examine how law might be better calibrated to current notions of maturity.¹⁵ This Article engages with this conversation to provide a trans-substantive perspective.¹⁶

To that end, I propose a set of principles to guide legal reform. New laws of emerging adulthood should be responsive to this age group's economic vulnerability, need for autonomy, and capacity to learn from mistakes. This Article unpacks these three concepts and shows how they drive both substance—what the law of emerging adults should cover—and form—the processes by which law can accomplish these aims.

10. See *infra* Part IV.A.

11. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734.

12. 42 U.S.C. § 300gg-14(a) (2018) (“A group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child until the child turns 26 years of age. Nothing in this section shall require a health plan or a health insurance issuer described in the preceding sentence to make coverage available for a child of a child receiving dependent coverage.”).

13. See *infra* Part II.A (compiling support laws).

14. The criminal law arena has probably seen the richest discussion of how age interacts with punishment and culpability. See Kevin Lapp, *Young Adults & Criminal Jurisdiction*, 56 AM. CRIM. L. REV. 357 (2019); Alexandra O. Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 TEMP. L. REV. 769 (2016); Jenny E. Carroll, *Brain Science and the Theory of Juvenile Mens Rea*, 94 N.C. L. REV. 539 (2016). For other literature addressing specific areas of law, see, for example, Wayne R. Barnes, *Arrested Development: Rethinking the Contract Age of Majority for the Twenty-First Century Adolescent*, 76 MD. L. REV. 405 (2017), and Keely A. Magyar, *Between and Between but Being Booted Nonetheless: A Developmental Perspective on Aging Out of Foster Care*, 79 TEMP. L. REV. 557 (2006).

15. See *infra* Part III.B.

16. In that respect, this Article seeks to build upon and respond to a handful of scholars whose treatment of emerging adulthood cuts across legal categories. See Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 TUL. L. REV. 55 (2016); Vivian E. Hamilton, *Immature Citizens and the State*, 2010 BYU L. REV. 1055, 1057; Scott, Bonnie & Steinberg, *supra* note 7; Jonathan Todres, *Maturity*, 48 HOUS. L. REV. 1107 (2012).

This Article proceeds in four parts. Part I presents the backdrop against which the law of emerging adults plays out. I identify the key social, psychological, and biological forces that make emerging adulthood distinct from childhood and full adulthood. By emphasizing how relationships within the family, toward the larger community, and vis-à-vis the state shift over the period of late adolescence and into adulthood, this Part demonstrates why the traditional binary of dependent children and autonomous, responsible adults is ill-suited to emerging adulthood.

Part II analyzes three contexts in which the law of emerging adults is already changing: parental obligations, federal intervention, and punishment. Each of these areas provides different insights into the challenges of treating emerging adults differently, including the risk of extending parental control over adult children, the unequal opportunities available to emerging adults depending on socioeconomic status, the role of higher education, and the delicate balance between protection and accountability. Through these examples I also engage with questions of institutional role. State and federal lawmakers, as well as courts and legislatures, participate in the construction of emerging adult laws and each provide different institutional capacities and drawbacks.

Part III then advances a set of guiding principles for both the form and substance of legal change. These principles focus on the unique vulnerabilities and capacities of emerging adulthood, namely economic dependence, developing autonomy, and learning from mistakes. This Part proposes what a new law of emerging adults should include, both in the substance of laws—such as expanding opportunities for higher education and mitigating the consequences of bad decisions—and in the form such laws should take—including staged responsibilities, conditional rights, and supported decision-making.

Part IV looks to the future: how might a new law of emerging adults be realized? Drawing lessons from historical instances of widespread transformation in age laws, and in light of contemporary events, I argue that conditions are ripe for change. This Part concludes by addressing not only the potential for change, but also the obstacles in its path.

I. FROM CHILD TO ADULT

A. Social and Developmental Factors

In order to determine whether emerging adulthood warrants its own legal category, one must first understand what makes the emerging adult experience unique. There are approximately thirty-five million eighteen-to-twenty-five-year-olds living in the United States today, making up about 10

percent of the total population.¹⁷ This section presents the evidence that their mental and emotional capacities, as well as their role in society, are distinct from that of children and older adults.

Contrasting emerging adulthood with the developmental features of adolescence, Jeffery Jensen Arnett, the psychologist who first defined “emerging adulthood,” explains:

Emerging adults have become more independent of their parents than they were as adolescents and most of them have left home, but they have not yet entered the stable, enduring commitments typical of adult life, such as a long-term job, marriage, and parenthood. During this interval of years when they are neither beholden to their parents nor committed to an assortment of adult roles, they have an exceptional opportunity to try out different ways of living and different possible choices for love and work.¹⁸

In her work on marital age, June Carbone observed that in recent years, when asked what constitutes adulthood, many young people reject chronological age or traditional markers like marriage and parenthood in favor of factors such as “accepting responsibility for oneself, making independent decisions, and becoming financially independent.”¹⁹ In popular culture, the phrase “twenty-five is the new eighteen”²⁰ suggests that where their parents and grandparents were full adults by their early twenties, young people today are still in the process of growing up.²¹

The cultural phenomenon of emerging adulthood has many features that seem to be reserved for middle class and wealthy families. These young people are more reliant on parental support, they stay in school longer, get married and have children later, and generally remain in a liminal pre-adult

17. *Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States 2018 Population Estimates*, U.S. CENSUS BUREAU, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk#> (last visited Oct. 27, 2019) (final numbers determined by adding the total population estimates for ages eighteen to twenty-five and comparing that to the total population estimate).

18. JEFFREY JENSEN ARNETT, *EMERGING ADULTHOOD: THE WINDING ROAD FROM THE LATE TEENS THROUGH THE TWENTIES* 9 (2d ed. 2015).

19. June Carbone, *Age Matters: Class, Family Formation, and Inequality*, 48 SANTA CLARA L. REV. 901, 905 (2008).

20. Bret Stetka, *Extended Adolescence: When 25 Is the New 18*, SCI. AM. (Sept. 19, 2017), <https://www.scientificamerican.com/article/extended-adolescence-when-25-is-the-new-181/> [<https://perma.cc/J5QY-G2W9>] (commenting on cultural shifts among young people including greater reliance on parents and a reduction in behavior like alcohol use and sexual activity).

21. For a study comparing twenty-one-to-thirty-six-year-olds today to their grandparents' generation, see Richard Fry et al., *How Millennials Today Compare with Their Grandparents 50 Years Ago*, PEW RES. CTR. (Mar. 16, 2018), <http://www.pewresearch.org/fact-tank/2018/03/16/how-millennial-s-compare-with-their-grandparents/> [<https://perma.cc/3HMY-4AF2>] (observing, among other things, that emerging adults today are more detached from major institutions such as marriage, religion, the military, and political parties).

space for much longer.²² Carbone’s work, for instance, draws from research showing that for the upper quartile of women, maternal age at the birth of the first child rose from twenty-six to thirty-two by 2000, a fact that Carbone links to a larger phenomenon in which for “the college educated portion of the population, non-marital birth rates are below 10%, divorce rates have fallen back to the levels of the sixties, paternal involvement in childrearing has doubled, and maternal workforce participation has become the norm.”²³ Marriage and parenthood, for this section of the population, occurs only after the “supervised and subsidized pathway to adulthood.”²⁴ She concludes, therefore, that this middle and upper class model of adulthood:

doubly disadvantages the poor. They disproportionately lack access to the new, approved pathways to adulthood that postpone childrearing, and include post-secondary education, subsidized internships, contraception, and (if necessary) abortion. At the same time, the societal structure and support that guided more traditional family formation (e.g., high school romances and unintended pregnancies that lead to early marriage) have atrophied.²⁵

An image of young people enjoying an extended period of exploration and dependence only tells a part of the story. Factors like socioeconomic status, race, gender, sexual orientation, physical and mental health, as well as the specifics of a family dynamic or individual personality, produce quite different opportunities and options by the time a young person turns eighteen.²⁶ Some emerging adults remain deeply embedded in their childhood households and roles, while others are themselves parents of young children. Different communities within the United States mark the passage to adulthood through a range of rituals and social expectations;²⁷

22. See, e.g., Kerry Abrams & Kathryn Barber, *Domicile Dismantled*, 92 IND. L.J. 387, 410 (2017) (describing emerging adults returning home after college or relying on parental support for low-paying, but high reward career choices).

23. Carbone, *supra* note 19, at 902.

24. *Id.* at 903.

25. *Id.* (footnote omitted).

26. The psychological studies that gave rise to the notion of emerging adulthood are subject to a common critique, that they focus on samples that are “WEIRD” or “western, educated, industrialized, rich, and democratic.” Although recently researchers have endeavored to move beyond relying on American college students as samples, this critique does raise a valid question about how generalizable the concept of “emerging adulthood” actually is. For that reason, I seek to show how the benefits of a longer developmental period of exploration and education might be extended to larger numbers of American young people, but I do not contend that every person who is chronologically eighteen to twenty-five experiences the conditions of emerging adulthood described in the literature. For more on the WEIRD problem in psychology research, see B. Azar, *Are Your Findings ‘WEIRD’?*, AM. PSYCHOL. ASS’N (May 2010), <https://www.apa.org/monitor/2010/05/weird.aspx> [<https://perma.cc/S7SV-WTRK>].

27. See, e.g., Stuart Schoenfeld, *Age and Identity*, in *AGE IN AMERICA: THE COLONIAL ERA TO THE PRESENT* 259 (Corinne T. Field & Nicholas L. Syrett eds., 2015) (describing age rituals in the

expectations around the parent-child relationship vary across class and culture, as do plans for postsecondary education.

Nevertheless, there are aspects of emerging adulthood shared by those who fit into this chronological age, even if their lived experiences diverge. This section seeks to present some broad trends that cut across different identities, while remaining conscious of the ways in which these social and economic changes have vastly different repercussions for emerging adults with a diverse range of experiences. A complex set of factors combine to produce the emerging adult experience. Some of these are legal and social conditions, while others are psychological and developmental. The term “emerging adulthood,” at least as I use it, refers neither to a purely psychological stage nor a cultural phenomenon, but a combination of the two. It is both that emerging adults share certain developmental features and that the economic and social conditions of twenty-first century America tend to affect emerging adults differently from other age groups.

One central feature of emerging adulthood is the role of education, which permeates the emerging adult experience. Current population survey data suggest that approximately 74 percent of eighteen-year-olds, about 60 percent of twenty-year-olds, and 23 percent of twenty-four-year-olds were enrolled in high school or higher education.²⁸ Many of these are young people completing high school diplomas, but the percentage of emerging adults who are enrolled in some form of higher education is significant.²⁹

Universities occupy a special place in the twenty-first century emerging adult’s life, both for those who are enrolled in higher education and those who are not. For some, college can be a testing ground for adulthood, often offering a more protective and supportive environment than one would find in the “real world.” For others, access to higher education poses one of the most significant barriers to social mobility in our society.³⁰ The prohibitive cost of higher education, as well as the fundamentally unequal preparation that young people receive in the college application process, serves as a crucial gate to professional success.³¹ It also acts as a powerful social sorter,

American Jewish community); Todres, *supra* note 16, at 1160 (emphasizing the importance of coming-of-age ceremonies).

28. *School Enrollment in the United States: October 2017—Detailed Tables*, U.S. CENSUS BUREAU (Dec. 11, 2018), <https://www.census.gov/data/tables/2017/demo/school-enrollment/2017-cps.html> (follow “TABLE 1: All Races” hyperlink). These numbers include only the non-institutionalized civilian population.

29. *Id.* (classifying the age groups by level of education).

30. See Rachel F. Moran, *City on a Hill: The Democratic Promise of Higher Education*, 7 U.C. IRVINE L. REV. 73 (2017).

31. For a detailed report on the most recent data on college cost, number of students who attend higher education and what types of institutions they attend, see PELL INST. FOR THE STUDY OF OPPORTUNITY IN HIGHER EDUC., INDICATORS OF HIGHER EDUCATION EQUITY IN THE UNITED STATES (2019), <http://pellinstitute.org/indicators/> [<https://perma.cc/RVJ7-BD2M>].

as people tend to befriend and marry people with their same level of educational attainment.³²

Higher education is not only important because large numbers of young people are enrolled in some form of post-secondary schooling, but also because of the economic and social stratification of the United States based on educational attainment. For example, the mean earnings (for all ages after twenty-five) for individuals with bachelor's degrees in 2017 were \$70,668, compared to \$40,851 for someone with a high school diploma. Add professional degrees to the list and the mean earnings jump to \$140,106.³³ In 2018, the average weekly salary for a person with a bachelor's degree was \$1,286, compared to \$713 for those with a high school diploma.³⁴ This means that the opportunities young people have in their twenties may well shape their life course.³⁵

Another crucial pivot point for emerging adults is their sense of self in relation to others. Some developmental psychologists who study emerging adults emphasize the changing nature of relationships. According to this view of emerging adulthood: “[R]ecentering is the critical and dynamic shift between individual and society that takes place across emerging adulthood during which other-regulated behavior . . . is replaced with self-regulated behavior toward the goal of . . . the ability to meet the demands of adulthood.”³⁶

Neuroscientists have also identified changes in brain development that extend far later into life than previously thought. In the last decade, neuroscience research has revealed that the human brain continues to develop well into the twenties.³⁷ This development is linked to features like decision-making, risk assessment, and emotional regulation.³⁸

The connection between social science data on emerging adults and legal scholarship remains thin, but a handful of significant collaborations between

32. See, e.g., Claire Cain Miller & Quoc Trung Bui, *Equality in Marriages Grows, and So Does Class Divide*, N.Y. TIMES (Feb. 27, 2016), <https://www.nytimes.com/2016/02/23/upshot/rise-in-marriages-of-equals-and-in-division-by-class.html> [<https://perma.cc/ET2A-FJ8H>].

33. News Release, *Usual Weekly Earnings of Wage and Salary Workers*, BUREAU LAB. STAT. (Oct. 16, 2018), <https://www.bls.gov/news.release/pdf/wkyeng.pdf>.

34. *Id.*

35. The term “21st Century Skills” refers to a global curriculum that focuses on capacities like communication, teamwork, creativity, and leadership that lead to financial success. These skills are often the type emphasized in higher education. See 21ST CENTURY SKILLS: RETHINKING HOW STUDENTS LEARN (James Bellanca & Ron Brandt eds., 2010).

36. Jennifer Lynn Tanner, *Recentering During Emerging Adulthood*, in EMERGING ADULTS IN AMERICA: COMING OF AGE IN THE 21ST CENTURY 21, 22 (Jeffrey Jensen Arnett & Jennifer Lynn Tanner eds., 2006).

37. For a review of the state of brain development research for adolescents and young adults, see Elizabeth Scott et al., *Brain Development, Social Context, and Justice Policy*, 57 WASH. U. J.L. & POL’Y 13 (2018).

38. See EVELINE A. CRONE, THE ADOLESCENT BRAIN: CHANGES IN LEARNING, DECISION-MAKING AND SOCIAL RELATIONS 4 (2017).

legal and medical scholars have occurred.³⁹ Recent work highlights the potential of using this research to justify a different approach to emerging adults in the criminal justice system, arguing that “a categorical assumption that eighteen-year-olds conform to the conventional expectations of adults in their maturity, competence, and independence sometimes can undermine social welfare.”⁴⁰ This scholarship, however, also cautions against the risk of overreliance on social science data that can be misunderstood or distorted in a legal context.⁴¹

Taking heed of the concerns articulated by legal and medical researchers, this Article does not take the position that the law of emerging adults should be based on individualized assessments of mental capacity. Rather, the purpose of this information is to underscore that law’s assumptions about adulthood are based on beliefs about human development that seem less and less to accord with our social and scientific views. That should suggest, at a minimum, that the value of these threshold ages as a marker for maturity is weak. It also suggests that reforms predicated on forcing young people to grow up faster or embrace their full adult responsibility might not work, or at least might not be consistent with contemporary understandings of human development.⁴²

The combination of social and developmental forces paints the picture of a transitional age, where education and relationships are central features, and in which a person’s full capacities have not yet crystallized. So, if you ask a twenty-year-old living in the United States today whether she is an adult, her answer might be “not yet,” or, “not all the time.”⁴³ And if you were to ask her parents whether they still feel responsible for her, financially or emotionally, the answer might easily be “yes.”⁴⁴ But the law, with some notable exceptions, holds the exact opposite. The twenty-year-old is an

39. See Scott et al., *supra* note 37.

40. Scott, Bonnie & Steinberg, *supra* note 7, at 658.

41. *Id.* at 643.

42. See Emily Buss, *What the Law Should (and Should Not) Learn from Child Development Research*, 38 HOFSTRA L. REV. 13 (2009).

43. ARNETT, *supra* note 18, at 14–15 (compiling interviews with eighteen-to-twenty-five-year-olds); see also Julie Beck, *When Are You Really an Adult?*, ATLANTIC (Jan. 5, 2016), <https://www.theatlantic.com/health/archive/2016/01/when-are-you-really-an-adult/422487/> [<https://perma.cc/XRE6-292L>] (collecting anecdotal accounts of what it means to be an adult in twenty-first century America, while contrasting these accounts with historical notions of adulthood).

44. Although the numbers vary in different polls and studies, many sources suggest that more than half of American parents may be contributing financially to an adult child. See, e.g., *Family Support in Graying Societies*, PEW RES. CTR. (May 21, 2015), <http://www.pewsocialtrends.org/2015/05/21/5-hel ping-adult-children/> [<https://perma.cc/4WY7-6T7K>] (reporting that in 2015, 61 percent of parents with adult children reported providing financial support to their child within the last year); D’vera Cohn & Jeffrey S. Passel, *A Record 64 Million Americans Live in Multigenerational Households*, PEW RES. CTR. (Apr. 5, 2018), <http://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/> [<https://perma.cc/PXH3-Z23V>] (noting that in 2016, 20 percent of the U.S. population lived in households with two or more adult generations).

adult, and her parents have no legal responsibility toward her, but neither do they have any legal authority to dictate her choices.

B. *Childhood and Adulthood in Law*

This section examines the traditional binary between childhood and adulthood in law. With the experience of emerging adults as a backdrop, I argue that this binary, which contrasts incapacity and dependence for children with autonomy and responsibility for adults, is a poor fit for the way that people reach adulthood today. To illustrate the divide between law and lived experience, I break down the component parts of how age law constructs the categories of child and adult.

Age laws define three types of relationships: family, state, and community/market. For children, these three relationships are grounded in expectations of protection, care, and control. By contrast, adult engagement with the world is governed by rules that prioritize autonomy and equality. That is not to say that children lack all autonomous rights or that adults operate entirely independent of paternalist rules, but rather to highlight the categorical extremes. The following table illustrates how these relationships change with age. The rows represent life stages, the columns are the settings in which children and adults have different legal roles. The boxes report the attributes of the relationship as it varies by age.

	Parent-Child	Individual-3 rd Party	Citizen-State
Childhood	Care/Control/Support	Filtered through Parents	<i>Parens Patriae</i>
Adulthood	Independence	Equal Actors	Responsible Citizen

In childhood, the model of parental custody and control, coupled with financial obligations toward the child, predominates.⁴⁵ As the U.S. Supreme Court proclaimed in *Troxel v. Granville*, “[t]he liberty 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.”⁴⁶ Custodial parents have the right to choose their child’s educational and religious

45. For a comprehensive analysis, grounded in the *Third Restatement on Children and the Law*, see Clare Huntington & Elizabeth S. Scott, *Conceptualizing Legal Childhood in the Twenty-First Century*, MICH. L. REV. (forthcoming), <https://ssrn.com/abstract=3448689>.

46. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (compiling case law).

experiences, approve who can spend time with the child, choose where the child lives, choose whether the child can work, and determine what happens to the child's wages, among other crucial life decisions.⁴⁷ In exchange, children are entitled to care and support from their parents.⁴⁸

Where minors are concerned, the state serves as *parens patriae*, a default custodian in the event that parents are unable or deemed unsuitable to care for the child.⁴⁹ In practice, the state can often be a punitive force in children's lives, as critiques of the juvenile justice system make clear.⁵⁰ As a matter of legal theory, however, the state's primary function is protective.⁵¹ This paternalist state can also infringe on children's liberty in a manner that would be unconstitutional for adults, such as when it permits schools to restrict speech.⁵²

A child's rights and responsibilities in relation to third parties are mediated through the parent or guardian. Custodial parents have the authority to decide who can interact with their children, where the child goes to school, and to which communities she belongs.⁵³ As a recent critique of parental control model observes: "Far from being left alone to make their

47. See Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448, 1454–55 (2018) (describing the constitutional framework of parental rights).

48. See Marsha Garrison, *Autonomy or Community? An Evaluation of Two Models of Parental Obligation*, 86 CALIF. L. REV. 41 (1998).

49. See, e.g., Gregory Thomas, *Limitations on Parens Patriae: The State and the Parent/Child Relationship*, 16 J. CONTEMP. LEGAL ISSUES 51, 51–52 (2007) ("Government's *parens patriae* power—a species of paternalism—derives from the ancient prerogative of the British Crown to act as the guardian of persons such as children and the mentally disabled who were 'legally unable, on account of mental incapacity . . . to take proper care of themselves and their property.'" (alteration in original) (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592 (1982))) (noting, also, the expansion of *parens patriae* powers in the nineteenth and twentieth centuries to include child protection, juvenile justice, and compulsory education statutes).

50. See Barry C. Feld, *Punishing Kids in Juvenile and Criminal Courts*, 47 CRIME & JUST. 417, 418–19 (2018) ("Contemporary juvenile justice policies reflect the harsh legacy of the 1980s and 1990s Get-tough policies include extensive pretrial detention, punitive delinquency sanctions, increased transfer to criminal courts, and severe sentences as adults, all rife with racial disparities."). For reports on minors held in solitary confinement, see THE ARTHUR LIMAN PUB. INTEREST PROGRAM, AIMING TO REDUCE TIME-IN-CELL 42–46 (Nov. 2016), <https://law.yale.edu/system/files/area/center/liman/document/aimingtoreducetic.pdf> [https://perma.cc/DY9X-C2TU] (reporting on individuals under eighteen held in restricted housing).

51. See Huntington & Scott, *supra* note 45, at 2 (describing the state's role in protecting children through what they term the "Child Wellbeing" framework).

52. See, e.g., *Morse v. Frederick*, 551 U.S. 393, 396 (2007) (noting that a student's First Amendment rights in public school are not coextensive with an adult's rights). A recent review of constitutional law relating to children concluded that

[c]haracterizations of children's vulnerability to physical or psychological harm play an essential jurisprudential role in justifying or restricting state action that may limit or expand the constitutional rights of others, such as parents, guardians, or the children themselves. At the heart of state authority to regulate children are its *parens patriae* and police power interests.

Lois A. Weithorn, *A Constitutional Jurisprudence of Children's Vulnerability*, 69 HASTINGS L.J. 179, 233 (2017).

53. However, they may not actually be able to enforce this power as a practical matter.

own choices, children are directed by their parents and the state into relationships, activities, educational instruction, and ways of life not of their own choosing.”⁵⁴

Although young people are an important consumer force, their economic power is filtered through their parents’ power over any wages the child receives, as well as by the infancy doctrine under which contracts made with minors are voidable.⁵⁵ Although children may wield significant wealth from within the protection of the family unit, minors have little independent economic power. Furthermore, children are prohibited from engaging in certain market activities—such as purchasing cigarettes, lottery tickets, pornography, guns, and alcohol—that are available to adults.

The law of adulthood provides the mirror image in each realm. The relationship between parents and their adult children stands in stark contrast to rules governing minor children. Unless the adult is deemed incompetent, put under guardianship, or subject to a statutory support rule, an adult’s parents have no legal obligations toward her.⁵⁶ Under the current system, the age of majority severs this legal bond between parent and child.⁵⁷

In theory, at least, adults can expect to be treated with equal constitutional rights and regard as other adults, to be held responsible for their actions in criminal and civil law, and to operate free of arbitrary or unjustified interference from the state. Again, the state does not always interact with individuals in this idealized manner, but the norms underlying the adult-state relationship stand in significant contrast to those present in the child-state relationship.

With respect to third parties, adults are treated as responsible, competent, and autonomous. This means that they are free to engage in market activity without age-based restrictions and are held responsible for the consequences of their actions in both contract and tort. Indeed, classifications based on age after the threshold of majority are subject to constitutional and statutory scrutiny. Although the Equal Protection Clause has done little work in the

54. Dailey & Rosenbury, *supra* note 47, at 1463.

55. See Cheryl B. Preston & Brandon T. Crowther, *Infancy Doctrine Inquiries*, 52 SANTA CLARA L. REV. 47, 50 (2012) (“The infancy doctrine protects persons under the legally designated age of adulthood from both ‘crafty adults’ and their own bad judgment. The doctrine is based on the presumption that minors are generally easily exploitable and less capable of understanding the nature of legal obligations that come with a contract. For ease of administration and clarity in application, the rule was settled with a categorical age cutoff line without regard to whether any particular individual is mature or infantile.” (footnotes omitted)).

56. See Sande L. Buhai, *Parental Support of Adult Children with Disabilities*, 91 MINN. L. REV. 710, 721 (2007) (describing the range of state law approaches to adult children).

57. This is except for matters of inheritance and trusts, where the nature of the relationship might shield the parties for certain taxation rules or might govern intestate rules, and so on. This aspect of the adult parent-child relationship is beyond the scope of this Article.

domain of age, where the low bar of rational basis review is applied,⁵⁸ age discrimination laws do prohibit some considerations of age as the individual interacts with third parties.⁵⁹

C. *Breaking the Binary*

The early twenty-first century is not the first era to see a radical shift in what it means to grow up. In 1904, G. Stanley Hall introduced a striking new concept into the American vocabulary, which he called “adolescence.”⁶⁰ His transformative notion was that individuals went through a distinct developmental period of mental and psychological maturation between childhood and adulthood.⁶¹ “Adolescence” took hold in psychology and popular culture, and eventually the law followed. Throughout the twentieth century, law began to treat adolescents differently. Laws regulating contract capacity, labor, marital consent, and criminal culpability started to track cultural conceptions of development.⁶² No longer was someone made an adult by fiat, often through public ritual at a designated age.⁶³ Instead, adulthood came gradually, as the person matured.⁶⁴ Whereas a nineteenth-century American might have thought it absurd to have special laws governing the transition to adulthood, by the end of the twentieth century, these considerations were commonplace. The belief that adolescence represented a real—and legally cognizable—life stage was well settled.⁶⁵

In the later part of the twentieth century, Frank Zimring’s foundational book *The Changing Legal World of Adolescence* initiated a period of serious

58. See *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 314 (1976) (holding that age classifications are subject to rational basis review under the Equal Protection Clause).

59. See, e.g., 29 U.S.C. § 621 (2018) (regulating age discrimination in employment).

60. G. STANLEY HALL, *ADOLESCENCE* (1904).

61. See Jeffrey Jensen Arnett, *G. Stanley Hall’s Adolescence: Brilliance and Nonsense*, 9 HIST. PSYCHOL. 186 (2006) (situating Hall’s work in the history of psychology).

62. See, e.g., Rhonda Gay Hartman, *Adolescent Autonomy: Clarifying an Ageless Conundrum*, 51 HASTINGS L.J. 1265, 1271–72 (2000) (recounting the history of adolescence in law in the twentieth century).

63. For a cultural history of age laws in the United States, see *AGE IN AMERICA: THE COLONIAL ERA TO THE PRESENT*, *supra* note 27.

64. During the scope of this period, the common law age of majority remained at twenty-one, but the relevance of that age for most young people was minimal, as it applied primarily to the capacity to transfer property, a concern only for the elites. Functional adulthood in terms of labor, criminal culpability, and other features relevant to everyday life arose much earlier; at some points in time children as young as seven were effectively treated as adults under the common law. See HOLLY BREWER, *BY BIRTH OR CONSENT: CHILDREN, LAW, AND THE ANGLO-AMERICAN REVOLUTION IN AUTHORITY* 131–33 (2005) (discussing the historical contours of minimum ages in various legal domains).

65. Some of Hall’s research and conclusions seem woefully outdated to a modern audience and have been discredited by more recent psychologists, but his theories have nevertheless had a powerful influence on law and culture. See Arnett, *supra* note 61, at 187.

consideration of how younger and older children differ.⁶⁶ In 1982, Zimring observed that:

Adolescence . . . is both a period in itself and a transition. It is a term of years when those not yet adult are engaged in the process of becoming adult, a rich but often stressful period of trial and error. As a period of semi-autonomy, it places special burdens on legal reasoning and public choice. As a transition to adulthood, it demands a future orientation in public policy: How we grow up is an important determinant of what kinds of adults we grow up to be.⁶⁷

The notion that adolescents are different both from younger children and from adults has shaped the contours of legal regulation. Law gives special attention to teenagers with respect to First Amendment rights,⁶⁸ criminal law,⁶⁹ sexual and reproductive rights,⁷⁰ and the balance of power between parents and the state.⁷¹

In some cases, throughout adolescence, categorical bans on specific activities transform into contingent rights, which in turn become autonomous rights of the individual. Marriage is a telling example.⁷² In many states, minors are permitted to marry before the age of majority.⁷³ In

66. FRANKLIN E. ZIMRING, *THE CHANGING LEGAL WORLD OF ADOLESCENCE* (1982). Other scholars writing during this period and beyond have also been instrumental, including Barry Feld who began writing on juvenile justice at around the time of Zimring's work. *See, e.g.*, Barry C. Feld, *Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the "Rehabilitative Ideal,"* 65 MINN. L. REV. 167 (1981).

67. ZIMRING, *supra* note 66, at x–xi.

68. *See Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786 (2011) (finding unconstitutional limits on the sale of "violent" video games to minors); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (allowing exemptions from public school attendance on religious grounds for older children); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (granting school-aged children limited free speech rights).

69. *See Miller v. Alabama*, 567 U.S. 460, 489 (2012) (prohibiting mandatory life without the possibility of parole for minors); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011) (explaining that age is relevant for *Miranda* analysis); *Roper v. Simmons*, 543 U.S. 551, 578–79 (2005) (prohibiting the death penalty for minors); *In re Gault*, 387 U.S. 1 (1967) (granting juveniles due process protections), *abrogated in part by Allen v. Illinois*, 478 U.S. 364, 372 (1986).

70. *See Hodgson v. Minnesota*, 497 U.S. 417 (1990) (declaring two-parent notification statute for minors seeking abortion unconstitutional); *Bellotti v. Baird*, 443 U.S. 622 (1979) (extending abortion rights to minors regarding override of parental notification and consent); *Carey v. Population Servs. Int'l*, 431 U.S. 678 (1977) (extending, in some cases, the right to procreative privacy to minors).

71. *See Parham v. J.R.*, 442 U.S. 584 (1979) (granting limited due process protections to minors whose parents sought to have them committed to hospitals).

72. For recent controversy over this practice, see Nicholas Kristof, *An American 13-Year-Old, Pregnant and Married to Her Rapist*, N.Y. TIMES (June 1, 2018), <https://www.nytimes.com/2018/06/01/opinion/sunday/child-marriage-delaware.html> [<https://perma.cc/AQX2-CRLH>] (describing how states permit parental consent for minors to marry as part of an effort to reduce the number of children born out of wedlock).

73. *See* 52 AM. JUR. 2D *Marriage* § 19, Westlaw (database updated Nov. 2019) (compiling rules on marriage by minors).

some states, there is no minimum age,⁷⁴ but in most, there is a minimum threshold, which can be as young as thirteen or fourteen. States also include provisions conditioning marriage on parental consent; however, these laws do not always coincide with the age of majority. Therefore, in some jurisdictions, minors can marry without parental consent.⁷⁵ For adolescents, marital capacity is staged: at some ages, marriage is categorically prohibited; at others, it is possible with consent of a parent; and at still others, one can enter marriage freely.

Law is full of judgments about adolescents' developmental capacities and their changing relationships vis-à-vis the family, community, and state. Nevertheless, the default rule for adolescents remains the care and control model of the parent-child relationship.⁷⁶ Their rights and responsibilities are viewed through the lens of minority, where the default presumption is incapacity and dependency. This Article addresses the reverse problem: emerging adults are legal adults, but may not have the same capacities and behaviors as older adults. The default legal regime is flipped, and thus the challenges and their related reforms take on a different character than those proposed for adolescents. This Article asks: what would it mean to treat adulthood as equally divisible?

The previous section showed how psychological, social, and economic forces have shifted the way that people experience their late teens and early twenties. These differences have implications for how law ought to govern this group's interactions with the world. Emerging adults are no longer under the control of their parents, but many remain reliant on parental support. Economic and social forces that make emerging adults uniquely vulnerable, combined with their developing capacities for decision-making and impulse control, suggest that the state might play a different role for emerging adults than would be necessary for older adults. Although the *parens patriae* rules no longer apply to the emerging adult's relationship to the state, the unique vulnerabilities of this age call for additional state support. Likewise, the emerging adult's role in relation to the market is neither that of the fully dependent child nor the autonomous economic actor that characterizes legal adulthood. As the emerging adult enters the market as an autonomous actor, there too, certain protections might be warranted.

74. In practice, however, it is unlikely that the state would countenance a pre-adolescent marriage regardless of parental consent.

75. Vivian E. Hamilton, *The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage*, 92 B.U. L. REV. 1817, 1832 (2012) (reviewing marital age laws); Survey, *Marriage Age Requirements*, 80 SURVS. 22 (2016) (compiling state law on marriage age, and noting that some states have begun to require counseling for minors before obtaining a marriage license).

76. Emancipation provides a striking exception. See Carol Sanger & Eleanor Willemssen, *Minor Changes: Emancipating Children in Modern Times*, 25 U. MICH. J.L. REFORM 239, 240 (1992) (discussing the legal effects of statutory emancipation on minors and the parent-child relationship).

The descriptive account of emerging adulthood, and of the laws that structure childhood and adulthood, reveals the ways in which granting “full” adulthood at eighteen does not match social reality. Adolescence already complicated the picture of the adult-child binary. It could be that emerging adulthood is just a longer adolescence, and not its own life stage at all. Perhaps what is needed is simply to extend the rules of adolescence to later ages. But as Arnett and others point out, there are certain features of emerging adulthood that differentiate it from adolescence in ways that are relevant to law. The end of high school marks a significant transition point, as does moving out of the parental home. Eighteen marks a moment at which choices expand significantly, with consequences for the rest of one’s life.

II. THE EMERGING LAW OF EMERGING ADULTS

This Part shows how a law of emerging adults is already developing. Cognizant of at least some of the ways in which emerging adulthood is incompatible with the child/adult binary in law, lawmakers have begun to innovate with upward departures from the standard age of majority. Legislatures, executive officials, and judges at both the state and federal level are engaged in building a new law of emerging adults. These efforts, however, are far from systematic, nor do they reveal a shared consensus on how law ought to treat emerging adults. To draw out some of the through-lines and contradictions in the current law, this Part examines three areas in which emerging adults are treated differently. These areas—parental obligations, federal intervention, and punishment—illustrate how states and the federal government, legislatures, and courts govern the relationships of emerging adults to the family, market, and state.

A. Parental Obligations

The change in parental support from obligation to discretion marks a fundamental shift from childhood to adulthood. The default presumption is that parents no longer have legally enforceable financial obligations toward their major children.⁷⁷ In practice, however, many parents do continue to provide financial help.⁷⁸ Indeed, the American system of higher education

77. See Survey, *Termination of Child Support and Support Beyond Age of Majority*, 80 SURVS. 7 (2018).

78. According to a study by Merrill Lynch in 2018, more than 70 percent of parents provided some financial support to adult children. See *The Financial Journey of Modern Parenting*, MERRILL LYNCH, <https://www.ml.com/the-financial-journey-of-modern-parenting.html> [https://perma.cc/JH22-CZH5].

assumes and relies upon this fact.⁷⁹ The extent to which emerging adults have access to financial assistance from their parents shapes many of their life choices during the period after their legal claims to support have ended, but before they have the means to be self-sufficient. And not every state cuts off parental support to young people upon their eighteenth birthdays. Exceptions to the default rule highlight which young people states view as deserving of continued support and for what purposes.

Parental support comes in two basic forms: custodial and non-custodial.⁸⁰ Parents who exercise custodial rights over minor children have a concurrent obligation to ensure that the child's needs are met. For non-custodial parents, support obligations tend to arise through child support orders or support agreements effectuated during divorce. Child support disputes usually arise in the context of divorced or unmarried parents, where the non-custodial parent has a financial obligation toward the child.⁸¹ This means that, often, adult child support cases involve a non-custodial parent disputing any further responsibility for a child who has turned eighteen.⁸²

Traditionally, almost all parental support obligations ended at the age of majority, or in some states, when a child finished high school (whichever came later). Some groups of adult children have long held legal claims on parental support.⁸³ The most common instance of adult child support laws is for individuals who are unable to care for themselves due to mental or physical disability. In many states, parents retain lifelong obligations toward children who fall within the statutory definition of a dependent adult child. Notably these laws often limit parental support obligations to adult children whose disability manifested during their minority.⁸⁴ In other words, in these jurisdictions, parents are not responsible for misfortunes that befall their

79. Students applying for federal student loans, for example, use the Free Application for Federal Student Aid (FAFSA), which requires detailed information about parental assets and income as part of the eligibility calculation. See *Wondering How the Amount of Your Federal Student Aid Is Determined?*, FED. STUDENT AID: OFF. U.S. DEP'T OF EDUC., <https://studentaid.gov/complete-aid-process/how-calculated#efc> [<https://perma.cc/LM5Z-8LKK>] (explaining the "expected family contribution"). Other private financial aid may or may not be contingent on parental income or parental contribution expectations.

80. For the general principles guiding child support rules, see, for example, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION § 3.04 (AM. LAW INST. 2002).

81. See Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 345 (2005).

82. See Sophia Arzoumanidis, *Why Requiring Parents to Pay for Postsecondary Education Is Unconstitutional and Bad Policy*, 54 FAM. CT. REV. 314, 321 (2016) (contrasting Pennsylvania's treatment of higher education obligations for divorced and married parents).

83. See Erica Fumagalli, Comment, *A Survey of Post-Majority Child Support for Adults with Impairments*, 29 J. AM. ACAD. MATRIM. LAW. 433, 436 (2017) (charting the range of approaches that states take to child support for adults).

84. An example of such a statute is: "1. A parent shall support beyond the age of majority his or her child with a handicap until the child is no longer handicapped or until the child becomes self-supporting. The handicap of the child must have occurred before the age of majority for this duty to apply." NEV. REV. STAT. § 125B.110 (2018).

children during adulthood. The rule provides some security for parents, but it also means that many people with similar needs will not have the same legal entitlements. These support obligations recognize that some individuals will not make the typical progression through life stages, but will remain, for at least some relevant purposes, tethered to the parent-child relationship formed during minority.⁸⁵

A less common, but growing, area of parental support obligations for adult children focuses more squarely on the distinct needs of emerging adults. These laws include the extension of child support to age twenty-one or for the purpose of funding higher education. Three main models appear in state law: (1) extending support obligations past the age of majority is not envisioned in the law; (2) extending support obligations past the age of majority is possible, subject to judicial approval; or (3) extending support obligations past the age of the majority is the default rule for certain categories (namely, higher education).⁸⁶

According to a 2018 survey, about half of states' child support laws do not contain provisions permitting the extension of child support past the age of majority except in narrow cases of disability.⁸⁷ The rest include provisions pertaining to the extension of child support. Some recognize that divorcing parents can agree to extend parental support beyond the age of majority for education (typically up to a maximum age in the early twenties).⁸⁸ A small group of states, however, provide for extensions of child support even where the parents have not expressly agreed. For example, the Missouri law states that:

If when a child reaches age eighteen, the child is enrolled in and attending a secondary school program of instruction, the parental support obligation shall continue, if the child continues to attend and progresses toward completion of said program, until the child completes such program or reaches age twenty-one, whichever first occurs.⁸⁹

Massachusetts law goes even further, stating that:

85. See Buhai, *supra* note 56, at 716–17.

86. Compare, e.g., *Gravin v. Gravin*, 450 So. 2d 853, 854 (Fla. 1984) (“[A]ny duty to [provide higher education for a child] is a moral rather than legal one.”), with CAL. FAM. CODE § 3587 (West 2019) (“Notwithstanding any other provision of law, the court has the authority to approve a stipulated agreement by the parents to pay for the support of an adult child or for the continuation of child support after a child attains the age of 18 years and to make a support order to effectuate the agreement.”).

87. Survey, *supra* note 77.

88. See, e.g., N.M. STAT. ANN. § 40-4-7(C) (2019) (“The court may order and enforce the payment of support for the maintenance and education after high school of emancipated children of the marriage pursuant to a written agreement between the parties.”).

89. MO. REV. STAT. § 452.340(5) (2016).

The probate court may make appropriate orders of maintenance, support and education of any child who has attained age eighteen but who has not attained age twenty-one and who is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance. The court may make appropriate orders of maintenance, support and education for any child who has attained age twenty-one but who has not attained age twenty-three if such child is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance due to the enrollment of such child in an educational program, excluding educational costs beyond an undergraduate degree.⁹⁰

Extending child support laws provides formal obligations and consequences for parents who fail to conform to middle class social norms around contributing to a child's higher education. As Sally Goldfarb observed, "[t]here is no social consensus in favor of parental support for adult children, with the exception of support for students in college."⁹¹ Because, Goldfarb notes, non-custodial divorced parents are less likely than married parents (of similar incomes) to voluntarily pay for their child's college education, "a court award of post-majority college support does not create an inequity, but rather prevents an inequity by ensuring that children of divorced parents enjoy the same educational opportunities as children of married parents."⁹²

The Pennsylvania Supreme Court took the opposite view in its 1995 decision, holding that extending parental support obligations for education past the age of majority violated the Equal Protection Clause of the Fourteenth Amendment on the grounds that:

In the absence of an entitlement on the part of any individual to post-secondary education, or a generally applicable requirement that parents assist their adult children in obtaining such an education, we perceive no rational basis for the state government to provide only certain adult citizens with legal means to overcome the difficulties they encounter in pursuing that end.⁹³

Whether or not extending child support past the age of majority reflects a desirable recognition of the realities of emerging adulthood presents a difficult question. On the one hand, these laws provide an enforceable claim for financial assistance at a time when such help is often much needed. On

90. MASS. GEN. LAWS ch. 209, § 37 (2019).

91. Sally F. Goldfarb, *Who Pays for the "Boomerang Generation"?: A Legal Perspective on Financial Support for Young Adults*, 37 HARV. J.L. & GENDER 45, 66 (2014).

92. *Id.* at 75.

93. *Curtis v. Kline*, 666 A.2d 265, 269–70 (Pa. 1995) (footnote omitted).

the other hand, extending parental support exacerbates inequalities between families and risks extending parental control over their adult children's lives.

An initial consideration of lawmakers is scope. As explained above, in most cases emerging adults whose parents are not under a child support order or agreement would fall outside the scope of the newly extended parental obligations. A more expansive approach would extend formal support obligations to *all* parents of emerging adults. Such a rule would be transformative in several ways. Emerging adults would have a more predictable and enforceable source of support, but there are risks to such a policy change.

Given the importance of higher education and its costs, I argue that provisions extending parental obligations are worthwhile, with the following caveats. First, such laws should focus on activities rather than ages. States that provide a set of options for families, for instance laws that enumerate the types of expenses that might qualify for extended support, rather than setting a specific age, are especially well suited to the emerging adult experience. This is because the key expenses of emerging adulthood, those that often require additional support, will not arise on the same schedule for every emerging adult. Rather than waking up on a specified birthday with no further support, the emerging adult can call upon parental obligations for specific kinds of support.⁹⁴

Second, continued parental support must address the severability of different aspects of majority. Parental rights (including visitation), custody, and child support obligations are legally distinct inquiries and may not be linked (i.e., an obligation to pay child support may not entail visitation rights).⁹⁵ Nevertheless, the connection between parental rights and obligations toward a child do appear to be linked in both law and cultural understanding to some degree.⁹⁶ Put differently, because support and

94. This can also be done through incentives, such as tax preferences for accounts designated for higher education. For more on this type of college savings account, see *An Introduction to 529 Plans*, U.S. SEC. & EXCHANGE COMMISSION (May 29, 2018), <https://www.sec.gov/reportspubs/investor-publications/investorpubsintro529htm.html> [<https://perma.cc/ZWN8-JXBL>].

95. Laurie S. Kohn, *Money Can't Buy You Love*, 81 BROOK. L. REV. 53, 74 (2015) (distinguishing support orders and visitation or parenting time).

96. I do not seek to make a definitive claim that parental support and authority are indivisible, only to suggest that de facto extended parental control could be a consequence of legal expectations to keep paying for adult children. See Deborah Dinner, *The Divorce Bargain: The Fathers' Rights Movement and Family Inequalities*, 102 VA. L. REV. 79, 137 (2016) ("[F]athers' rights activists argued that the Enforcement Amendments should link fathers' child support obligations to reciprocal visitation and custody rights."). For anecdotal evidence of this see, for example, Daniel Mallory Ortberg, *Help! My Parents Check My Grades and Read My Email Even Though I'm in College. Is That Normal?*, SLATE: DEAR PRUDENCE (Feb. 27, 2018, 8:26 AM), <https://slate.com/human-interest/2018/02/dear-prudence-my-parents-check-my-grades-and-email-even-though-im-in-college.html> [<https://perma.cc/R>].

control are both elements of the parent-child relationship, even when they are legally distinct, lawmakers ought to be alert to the possibility that parents will expect financial obligations to come with a corollary right over the child. Law should make clear what, if any, authority parents retain during a period of extended support to emerging adult children.

Even if altering parental obligations would have no negative consequences for the parent-child relationship within families, changing the law could exacerbate inequalities between families. Privatizing dependency for higher education only works for families with the means to pay. Young people whose families cannot afford to continue supporting adult children, as well as those who cannot rely on parental support for many other reasons,⁹⁷ are without recourse. Without greater investment from the state to make education affordable, extending child support requirements will only help a small subset of emerging adults.

An additional consideration that lawmakers ought to take into account is whether extending the right to child support past the age of majority changes the scope of judicial discretion to order and enforce support orders. A categorical increase in the child support age would provide more clarity ex ante for both parents and children. It might also remove discretion from judges to determine which young people are deserving of continued support. Whether the desirable attributes of an across-the-board and legally enforceable expectation that parents will provide some form of support for emerging adults outweigh the risks within and between families is a calculation that state legislatures ought to seriously consider.

B. Federal Interventions

The construction of legal adulthood is a shared project of the federal government and the states. This section will address two notable instances where federal legislation protects emerging adults, both of which occurred in the wake of the 2008 financial crisis when young people just starting in the workforce were particularly vulnerable.⁹⁸

GU2-4MB3] (describing a college student whose parents insist on having access to her university email account).

97. For instance, young people who are in foster care or are estranged from their parents.

98. Another issue that has come to prominence during the last several election cycles, and which is poised to be a key issue among Democratic candidates in the 2020 Presidential election, is that of student debt. See Madeleine Jung, *Here's How 2020 Democrats' Student Loan Debt Proposals Compare*, TIME (June 24, 2019), <https://time.com/5613425/student-loan-forgiveness-bernie-sanders/> [https://perma.cc/8M57-4W6J].

Educational debt, as it is currently regulated, complicates the picture of special solicitude toward young people's vulnerabilities. Under current bankruptcy rules, educational debt is only dischargeable if "undue hardship" is demonstrated, a higher standard than is required for other forms of debt. 11 U.S.C. § 523(a)(8) (2018). For a recent analysis of this exception to general bankruptcy rules, see John Patrick Hunt, *Help or Hardship?: Income-Driven Repayment in Student-Loan Bankruptcies*, 106 GEO. L.J.

The first example of federal intervention is the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (“CARD Act”).⁹⁹ In the wake of the 2008 recession, Congress passed sweeping legislation reigning in lending practices, which had contributed to the unsustainable debt load carried by many Americans. Among these reforms was Title III of the CARD Act. This provision contained two features that reflected the lawmakers’ views on young people, particularly college students. The Act provides an especially illustrative case because it combines a variety of tools to regulate emerging adults’ interactions with the market.

The CARD Act aims to protect young people from risky financial choices in response to credit card companies’ advertising on college campuses. It also allocates financial responsibility by restricting when individuals under twenty-one can obtain a credit card without a co-signor. In so doing, the law implicitly, although not explicitly, regulates the parent-child relationship.

The Act requires an older adult co-signor or proof of independent income for individuals under age twenty-one.¹⁰⁰ In addition to a protective rationale—that a young person should not be saddled with debt she cannot repay—is a cost-allocation rationale; *someone* will be obliged to pay.¹⁰¹ The protective rationale might seem somewhat thin: when compared to the average student loan burden, the risk of credit card debt pales.¹⁰² The co-signor rule does not specify who is eligible to co-sign, other than that they must be over twenty-one. Some commentators at the time thought that young people might ask slightly older peers to act as co-signors, much as they ask older classmates to buy beer.¹⁰³ Although there appears to be little empirical data on the effects of the 2009 law, one study of college students suggests, unsurprisingly, that most of the students who applied for credit cards with a co-signor chose a parent.¹⁰⁴

1287, 1311 (2018) (reviewing the legislative history of bankruptcy laws concerning student debt, and concluding that Congress was not making a judgment about the nature of students as debtors, but rather trying to increase recovery of debt backed by the federal government).

99. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1734.

100. *Id.* § 301(A)–(B).

101. See Jim Hawkins, *The CARD Act on Campus*, 69 WASH. & LEE L. REV. 1471, 1473 (2012) (discussing the rationale for Title III of the CARD Act).

102. For recent data on student loan debt in the United States, see Anthony Cilluffo, *Five Facts About Student Loans*, PEW RES. CTR. (Aug. 24, 2017), <http://www.pewresearch.org/fact-tank/2017/08/24/5-facts-about-student-loans/> (including that 37 percent of adults age eighteen to twenty-nine have outstanding student loan debt, and that Americans owe more than \$1.3 trillion in student loans); see also Eboni S. Nelson, *From the Schoolhouse to the Poorhouse: The Credit Card Act's Failure to Adequately Protect Young Consumers*, 56 VILL. L. REV. 1, 16 (2011) (discussing student debt).

103. Hawkins, *supra* note 101, at 1515–16.

104. *Id.*

Credit card companies are also prohibited from offering tangible rewards for signing up for a credit card on or near a college campus.¹⁰⁵ One plausible explanation for this provision is that the drafters viewed college students as easily seduced into risky debt behavior by the instant gratification of free gifts. Another is that, unlike other segments of the adult population, colleges are still very age segregated so they are convenient locations to target young people who are eager to use their new contractual freedom and become active and independent consumers.

The Act also regulates agreements between universities and credit card companies.¹⁰⁶ This provision reflects the uneasy role of the university and its responsibility to its students. Universities are not custodians or guardians of their students, and many institutions make significant money through students outside of tuition (collegiate athletics being a striking example where the interests of the institution and the student may not always align).¹⁰⁷ Requiring, at a minimum, transparency regarding the university's contract with a credit card company expresses, in part, the legislature's view that institutions of higher education have a special relationship to their students that requires special rules, ranging from a special duty of care to increased transparency.¹⁰⁸

Under the CARD Act, age serves to delineate a staged process by which an individual's freedom to contract with the credit card company becomes gradually less restricted. Young people under eighteen are protected and incapacitated by the laws of minority from entering into contracts with credit card companies.¹⁰⁹ After twenty-one, an individual may open a credit card without age-based restrictions. From eighteen to twenty-one, individuals are in an intermediate space in which the default rule is that they are unable to sign credit card contracts, but this rule can be overridden with a co-signor or with proof of independent means.¹¹⁰ This example shows that even regarding relationships to third parties, there can be tailored rules for emerging adults that are more nuanced than a threshold age. It illustrates the idea that emerging adults might need help engaging in the market, but should not be wholly excluded from it.

105. CARD Act § 304 (A)–(B).

106. CARD Act § 305.

107. The role of universities in emerging adults' lives is a capacious and controversial question. This Article does not provide an overarching answer to the question of what duties colleges owe their students (especially residential students). It does, however, suggest that understanding this relationship requires consideration of how the university serves as a conduit for developmentally specific rules for emerging adults.

108. CARD Act § 305.

109. Although, interestingly, some states do allow minors to sign contracts for educational loans.

110. CARD Act § 301 (A)–(B).

The second example of a federal legislative response to emerging adulthood is that of the Affordable Care Act's (ACA) provision extending parental health insurance coverage to adult children up to age twenty-six.¹¹¹ This provision was enacted in response to evidence that emerging adults were far more likely than other adults to be uninsured.¹¹² The choice of twenty-six as the threshold age represents a rare deviation from either eighteen or twenty-one as the cut-off point for dependency. It acknowledges that for many young people it takes time to develop financial independence and the decision-making skills required to seek out and obtain one's own health insurance.¹¹³

The ACA provides protection for financially vulnerable young people. It also facilitates better decision-making by setting out an easier path to healthcare than was previously available. Emerging adults, who might otherwise be insensitive to the long-term risks of living without health coverage, now have a clear option. Because it is linked to a parent's health insurance, this Act also facilitates a sort of continued parental care for their emerging adult children.

In addition to the evident inequalities faced by young people whose parents are unable to extend quality health coverage to their children are risks to emerging adults who do avail themselves of the ACA's provision. Tethering emerging adults' health insurance to a parent risks extending the parental control paradigm of childhood. One collateral consequence specific to this domain is that it might put an emerging adult's medical privacy at risk. Some scholars suggest that insurance information sent to the primary policyholder (the parent) can reveal personal information about the care their adult child is seeking.¹¹⁴ Although not a necessary component of extending insurance coverage, the fact that parents retain this link to their children's medical care does show that the link between support and control can persist well into legal adulthood.

111. 42 U.S.C.A. § 300gg-14(a) (2018) ("A group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child until the child turns 26 years of age. Nothing in this section shall require a health plan or a health insurance issuer described in the preceding sentence to make coverage available for a child of a child receiving dependent coverage.").

112. See Sara Rosenbaum et al., *Implementing Health Reform in an Era of Semi-Cooperative Federalism: Lessons from the Age 26 Expansion*, 10 J. HEALTH & BIOMEDICAL L. 327, 333 (2015).

113. See Abrams & Barber, *supra* note 22, at 416. ("The lawmakers noted the trend of emerging adulthood, focusing in particular on the fact that young adults frequently change jobs, work in part-time or temporary positions that do not provide healthcare, or lack the funds to pay for their own healthcare. These issues meant that prior to passage of the Affordable Care Act, when young adults were cut off from their parents' healthcare at twenty-one, young people over the age of twenty-one had the highest uninsured rate among all U.S. age groups." (footnote omitted)).

114. Valarie K. Blake & Jessica A. Haught, *Health Care at a Price: The Impact on Young Adults' Medical Privacy and Autonomy of Being Covered on Their Parents' Health Insurance Until Age Twenty-Six*, 51 FAM. L.Q. 303, 304 (2017).

These recent examples demonstrate some of the comparative benefits of allocating authority over emerging adulthood to the states and the federal government. Federal legislation has the advantage of regulating nationwide industries and providing uniform market protections for emerging adults across the country. States, by contrast, may be better suited to regulating obligations and disputes within families—a competence that has long been within the jurisdiction of local courts.

C. Punishment

The U.S. Supreme Court, insofar as it has addressed the age of majority as a relevant constitutional principle, has gravitated toward bright-line rules. In recent years, the Court has precluded states from applying the harshest penalties to individuals who commit crimes under the age of eighteen.¹¹⁵ These rules provide minimal protections for minors, but show no special consideration for emerging adults. Commenting on the criminal justice binary between childhood and adulthood, Kevin Lapp recently observed that:

The blunt instrument of age divides the two systems [of criminal justice] While the border between the two worlds has been porous, it has been so only in one direction. Juveniles have always been subject to being charged and punished as adults for their wrongs. Adults, by contrast, have traditionally not had access to a rehabilitative criminal justice institution¹¹⁶

Some states have gone beyond what is required under federal constitutional law and have experimented with programs for emerging adults who are already incarcerated. These reforms acknowledge the distinct needs of emerging adults in prison and provide a sort of buffer from the most punitive aspects of prison life, for instance by providing additional mentoring or other services.¹¹⁷ Advocates for these reforms point to high recidivism rates for emerging adults as evidence that punitive prison

115. *Miller v. Alabama*, 567 U.S. 460, 489 (2012) (prohibiting mandatory life without the possibility of parole for minors); *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (prohibiting the death penalty for minors). In *Montgomery v. Louisiana*, the Supreme Court, holding that *Miller* applied retroactively, addressed when states must permit for “youth and attendant characteristics” to be considered in sentencing, but the opinion refers specifically to individuals who committed crimes as minors, even if they were tried as adults. *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016), *as revised* (Jan. 27, 2016).

116. Lapp, *supra* note 14, at 358.

117. A notable example of the advocacy and scholarship efforts to shed light on the distinct features of emerging adults in the criminal justice system is the Columbia University Justice Lab Emerging Adult Project. More information about this project can be found at *Emerging Adult Justice*, COLUM. U. JUST. LAB, <https://justicelab.columbia.edu/EAJ> [<https://perma.cc/N28F-5JFP>].

conditions—rather than systems aimed to help them through the developmental process of reaching adulthood—cause greater harm to the individual and to society than do punitive measures for older adults.¹¹⁸

Under this view, the fact that emerging adults are still in the process of psychological and neurological development warrants reconsideration of the state’s responsibility toward them. In Connecticut, for example, the state prison system instituted programs particularly designed for emerging adults. By aiming to reduce the severity of sentencing, and to improve the conditions of confinement for emerging adult offenders, these reforms acknowledge that the emerging adult’s relationship to the state might be different from that of an older adult.¹¹⁹

Other prisons have followed Connecticut’s example and begun to implement similar programs. Although they vary in many details, these programs share a set of important features: mentorship, structure, education, and opportunities to learn from past mistakes.¹²⁰ Since many of these programs are quite recent, there remains much to learn about their effectiveness at reducing recidivism.¹²¹ The focus on mentorship and learning, however, suggests that some innovative lawmakers and prison officials are taking seriously what makes emerging adults different and what they need to be successful, even under extreme conditions like incarceration.

118. See SELEN SIRINGIL PERKER & LAEL CHESTER, MALCOLM WEINER CTR. FOR SOC. POL’Y, EMERGING ADULT JUSTICE IN MASSACHUSETTS 2 (2017) (“Emerging adults are not only more likely to be incarcerated, but also more likely to recidivate when they leave a correctional facility.”).

119. In Connecticut, Governor Malloy instituted a new Department of Corrections Unit in 2017 called the T.R.U.E. (Truthfulness, Respect, Understand, and Elevating) program designed to work with emerging adult inmates to reduce recidivism and support mentorship. Press Release, Office of Governor Dannel P. Malloy, Gov. Malloy Announces Opening of State’s New Corrections Unit Exclusively for Young Adult Offenders (Mar. 13, 2017), <https://portal.ct.gov/Malloy-Archive/Press-Room/Press-Releases/2017/03-2017/Gov-Malloy-Announces-Opening-of-States-New-Corrections-Unit-Exclusively-for-Young-Adult-Offenders> [<https://perma.cc/XZ58-BUWU>].

120. Some examples include the PEACE unit for inmates under age twenty-five at the South Bay House of Corrections in Boston, which includes officers trained in restorative justice; the Young Men Emerging Unit in Washington, D.C. for eighteen-to-twenty-five-year-olds who are incarcerated; and the South Carolina program, which is expressly modeled on Connecticut’s TRUE Unit, which includes daily mentorship by older inmates. See Simón Rios, *Suffolk Sheriff Sets Up Family-Oriented Cell Block to Keep Young Inmates Out of Jail*, WBUR (Nov. 30, 2018), <https://www.wbur.org/news/2018/11/30/peace-unit-south-bay-jail-boston> [<https://perma.cc/5BU9-8MTV>]; Marc Schindler, *Youth Rehabilitation in D.C.: From Controversy to Progress*, WASH. POST (Jan. 11, 2019, 2:35 PM), https://www.washingtonpost.com/opinions/youth-rehabilitation-in-dc-from-controversy-to-progress/2019/01/11/d2ea0be6-056a-11e9-b5df-5d3874f1ac36_story.html?noredirect=on [<https://perma.cc/W874-98W4>]; Annie Mapp, *SC Prison Program Aims to Decrease Violence, Help Young Inmates Succeed*, WBTW (May 7, 2019, 10:57 PM), <https://www.wbtw.com/news/state-regional-news/sc-prison-program-aims-to-decrease-violence-help-young-inmates-succeed/> [<https://perma.cc/C7QH-K5UU>].

121. For ongoing research on prison programs for emerging adults, see the Emerging Adult Justice Project, a part of the Columbia University Justice Lab, available at: *Recent Reforms*, EMERGING ADULT JUST. PROJECT, <https://www.eajustice.org/recent-reforms> [<https://perma.cc/WNP7-6SVW>].

These efforts demonstrate that laws pertaining to emerging adults need not be prohibitive thresholds—as under the CARD Act—or default presumptions for private interactions—as with parental support obligations—but can include affirmative duties on the part of states to treat emerging adults differently. The state’s duty to take the unique developmental features of emerging adulthood into account is especially important for emerging adults in state custody. This group of young people is prevented from participating in most of the developmental processes that their peers are going through in the outside world, so the state’s decisions about what opportunities to provide become essential.

III. BUILDING A NEW LAW OF EMERGING ADULTS

The examples presented in the previous Part raise many questions about the role of the law in shaping the emerging adult experience: How much authority should be given to parents? What is the state’s duty to protect emerging adults from particular age-related vulnerabilities? What values or choices should the law seek to promote? And what form ought such laws to take? This next Part provides a guide to lawmakers and advocates seeking to expand upon recent efforts to treat emerging adults differently in the law.

To that end, I propose three guiding principles that coalesce around the elements of emerging adulthood that make this life stage distinct. These principles serve as a metric against which to judge legal reform. The objective is to capture two sides of the same coin: what makes emerging adults uniquely vulnerable and also what makes them uniquely open to learning and growth.

These principles reflect the lived experience of emerging adults as described in Part I. They are also grounded in an underlying normative position: the state has an obligation to protect vulnerable individuals and to reduce or ameliorate inequality. Much has been written about these normative commitments, which extends far beyond the scope of this Article.¹²² The goal here is to present a roadmap for the law of emerging adulthood that is consistent with normative traditions which demand more of the state than merely non-interference in private ordering.

An approach that typifies this position is Martha Fineman’s vulnerability theory.¹²³ In her words, “A vulnerability approach argues that the state must

122. A prominent instance of scholars applying this normative commitment to the transition from childhood to adulthood is BRUCE ACKERMAN & ANNE ALSTOTT, *THE STAKEHOLDER SOCIETY* (1999), in which the authors propose that when each American reaches the age of majority, they receive a financial investment from the state.

123. See Martha Albertson Fineman, *Vulnerability and Social Justice*, 53 VAL. U. L. REV. 341, 355–56 (2019) (“[The] liberal legal subject is a fully functioning adult—in charge and capable of making choices. . . . The attainment of liberal economic roles—such as job creator, entrepreneur, taxpayer, and,

be responsive to the realities of human vulnerability and its corollary, social dependency, as well as to situations reflecting inherent or necessary inequality, when it initially establishes or sets up mechanisms to monitor these relationships and institutions.”¹²⁴ This Article is consistent with Fineman’s view that dependency is a public and social concern, not one that should be relegated exclusively to the private sphere.¹²⁵

Recognizing that the formal autonomy ascribed to emerging adults under the current law is often illusory because of the structural, economic, and psychological reasons described in this paper, I argue in favor of reforms that enhance autonomy, rather than emphasize dependency. This position reflects a more nuanced notion of autonomy for emerging adults than just whether there are formal legal impediments to their liberty. Emerging adulthood is a particularly complex age because the very thing that makes emerging adults vulnerable—uncertainty, lack of experience, need for guidance, and education—is also what makes emerging adulthood such a transformative and generative life stage.

A. Guiding Principles

With that in mind, a new law of emerging adults should seek to maximize the benefits and minimize the harm of the following three features of emerging adulthood:

First, laws should protect emerging adults from economic vulnerability related to their age. Because of their age, emerging adults are just entering the workforce and so have not had time to build savings or access higher paying opportunities reserved for more experienced workers. Many pursue higher education, which is both costly and delays full-time employment. For the first time in most of their lives, no one is legally obligated to pay for their food, clothing, housing, and other basic needs. Although many emerging adults can and do support themselves, this can come at a cost to long-term investments, such as education or savings. Emerging adults are also at a disadvantage insofar as they have less experience as autonomous

of course, consumer—define the aspirations and determine the values for this legal subject. . . . Vulnerability theory challenges this limited and inaccurate vision of legal subjectivity. It suggests that a legal subject that is primarily defined by vulnerability and need, rather than exclusively by rationality and liberty, more fully reflects the human condition. As such, it has the power to disrupt the logic of personal responsibility and individual liberty built on the liberal stereotype of an independent and autonomous individual. Recognition of human vulnerability mandates that the neoliberal legal subject be replaced with the vulnerable legal subject, even as a responsive state is substituted for the restrained state of liberal imagination.” (footnote omitted).

124. Martha Albertson Fineman, *Vulnerability and Inevitable Inequality*, 4 OSLO L. REV. 133, 134 (2017). Fineman has written about vulnerability in a wide range of books and articles, but this recent account of her own body of work provides a useful summary of the key contours of her theory.

125. *Id.* at 139.

actors in the marketplace and are still developing the decision-making capacities of older adults.

Laws regulating emerging adults' relationship to the market, therefore, ought to be more protective of young people than the current system provides. As the parental support obligations and credit card examples show, some efforts in that direction exist.¹²⁶ But these examples also illustrate the risk that parent-focused protective measures (such as requiring parental support or co-signing) will interfere with another key element of emerging adulthood, reflected in the second principle.

The second principle is that law should support emerging adults' developing independence, especially as it relates to the parental home. This principle highlights the risk of relying on continued parental support as the answer to the vulnerabilities of emerging adulthood. For many young people, such support will simply not exist, no matter what law requires. Even for those who can continue to rely on parents, reifying the legal dependence of childhood is not the answer. This is not to say that parental support for emerging adults should be prohibited, but rather that it can be, at best, a part of the answer.

Emerging adulthood is not merely an extension of childhood. However, lawmakers can and should account for the fact that becoming an adult is a transition, not a binary. To that end, legal reforms ought to foster and support the unique role of emerging adults in relation to others. Most notably, the law of emerging adults should focus on the development of relationships outside of the parent-child dynamic of minority.

Borrowing an idea from developmental psychology—"autonomy with connection"—helps to elaborate what it would mean for law to support emerging adult relationships.¹²⁷ Connected autonomy has two components. The first is a sense of self and control over one's life and choices.¹²⁸ The

126. See *supra* Part II.A–B.

127. See, e.g., Patricia K. Kerig, Julie A. Swanson & Rose Marie Ward, *Autonomy with Connection: Influences of Parental Psychological Control on Mutuality in Emerging Adults' Close Relationships*, in *ADOLESCENCE AND BEYOND: FAMILY PROCESSES AND DEVELOPMENT* 134, 134 (Patricia K. Kerig, Marc S. Schulz & Stuart T. Hauser eds., 2012) (noting that connected autonomy entails "a sense of belonging and a sense of being separate" and that one of the primary goals of emerging adulthood is developing "healthy intimate relationships outside the family" (quoting SALVADOR MINUCHIN, *FAMILIES AND FAMILY THERAPY* 47 (1974))); Susie D. Lamborn & Kelly Groh, *A Four-Part Model of Autonomy During Emerging Adulthood: Associations with Adjustment*, 33 *INT'L J. BEHAV. DEV.* 393 (2009) (tracing connectedness, separation, detachment, and agency in emerging adult relationships with their parents).

128. See Daena Goldsmith, *A Dialectic Perspective on the Expression of Autonomy and Connection in Romantic Relationships*, 54 *WESTERN J. SPEECH COMM.* 537, 538 (1990) ("Autonomy is the desire and ability to be self-sufficient, self-contained, self-defined and accountable only to one's self. Connection is the desire and ability to be reliant on others, to be relied on, to be connected with others, and to be defined in relation to others. Achieving either one in the purest form requires the negation of the other. However, autonomy and connection are also interrelated. Relationships connect autonomous selves and we come to know ourselves through our relationships with others.").

second is a sense of how one's own needs and goals are interconnected with the needs of others.¹²⁹ Emerging adulthood ought to be a time in which a person learns to care for herself, to make decisions (large and small) that are consistent with her values and aims, and to make choices that are supportive of the needs and values of those around her. The capacity for connected autonomy takes time and is not a solo journey. It requires iterative interactions with other people in contexts that permit freedom of choice, but also guidance.

The power of connected autonomy as a governing legal norm for emerging adulthood becomes clear when the rules of adulthood are imagined in terms of relationships. The objective, during this transitional period, is to preserve and create ties to others, while at the same time to encourage autonomous decision-making. The key is that there be a balance between the self and others. Extending the dependency rules of childhood would be the most protective approach to emerging adulthood, and entrenching the full panoply of adult rights and responsibilities would be the most autonomy respecting, but neither extreme is desirable. If kept under the regime of childhood, the emerging adult is restricted in her capacity to form relationships outside of the family and in her ability to act autonomously. But, if pushed into independence without support, she will lose the chance to build her network of connections from a place of some stability and security.

The third guiding principle is that laws governing emerging adults should emphasize learning and growth. As the developmental psychology and neuroscience research shows, emerging adults are prone to risky decisions, experimentation, and mistakes that are less likely to occur with older adults.¹³⁰ Laws that expose emerging adults to the full consequences of their decisions fail to recognize that making mistakes, and learning from them, is a desirable feature of emerging adulthood. At the same time, a part of learning from mistakes is being accountable for them. The law of emerging adults should not shield young adults from the consequences of their choices to the same extent as is done for younger children. However, the emerging adult's potential for growth counsels in favor of more rehabilitative and less punitive responses.

Criminal justice and prison reform is the clearest context in which this principle can be (and is) put into practice, but it is not the only arena.¹³¹ Debt forgiveness would be another sphere where a more emerging adult-sensitive legal system could soften the blow of choices made during the early years of newfound autonomy. In addition to protecting emerging adults from the

129. *Id.*

130. *See supra* Part I.A.

131. *See supra* note 14 (citing to criminal justice literature on emerging adulthood).

harshest ramifications of bad choices, law could also support intervention before risky decisions are made, with increased emphasis on consultation and mentorship. The overarching point is that law can, and should, be more flexible when it comes to emerging adults' bad decisions without absolving young people of personal responsibility for the consequences.

These three principles counsel in favor of certain substantive priorities for law. With the tension between dependency and autonomy at its core, the law of emerging adults should include elements like access to educational opportunities, building mentorship and relationships outside the parental home, sentencing and prison reform, and so on. Treating emerging adulthood as a transformative and experimental life stage also guides what form the law of emerging adults should take. The next section sets out some options including a single bright-line age of majority and a series of threshold ages, ultimately proposing a more flexible toolkit that can respond to the uniquely transitional nature of emerging adulthood.

B. Bright Lines and Thresholds

In his famous 1976 article, *Form and Substance in Private Law Adjudication*, Duncan Kennedy used age as the classic example of a rule, rather than a standard. He observed that:

The choice of rules as the mode of intervention involves the sacrifice of precision in the achievement of the objectives lying behind the rules. Suppose that the reason for creating a class of persons who lack capacity is the belief that immature people lack the faculty of free will. Setting the age of majority at 21 years will incapacitate many but not all of those who lack this faculty. And it will incapacitate some who actually possess it. From the point of view of the purpose of the rules, this combined over- and underinclusiveness amounts not just to licensing but to requiring official arbitrariness. If we adopt the rule, it is because of a judgment that this kind of arbitrariness is less serious than the arbitrariness and uncertainty that would result from empowering the official to apply the standard of "free will" directly to the facts of each case.¹³²

Kennedy's articulation of the arbitrariness of rules compared to the arbitrariness of individual judgment applies far beyond the specific example he provides. It is telling, however, that he chose age to serve as the example. It would be easy to view age laws as the paradigmatic bright line; it is a chronological fact, independent of any individualized assessment of

132. Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1689 (1976) (emphasis omitted).

whatever qualities for which age serves as a proxy. With this vision of age as the paradigmatic rule in mind, scholars and lawmakers attempt to identify the right rule for emerging adults: one which is neither too over- nor too under-inclusive.

On one end of the spectrum is the view that a single, bright line is best. So long as you can prove your age, you know where you stand—you can claim rights and entitlements, and you can expect responsibilities commensurate with your age. As Elizabeth Scott articulated:

A bright line age of majority is a clear signal; all who deal with the young person understand that he does—or does not—have legal capacity. A more tailored approach that attempts to confer adult status in different domains on the basis of a more targeted assessment of maturity is likely to generate uncertainty and error. . . . A strategy of customized age grading introduces complexity and cost to legal policy, as it involves multiple judgments about the appropriate maturity threshold for a broad range of tasks and functions. Most cumbersome of all would be an approach that confers adult legal rights or responsibilities on the basis of individualized assessments of maturity.¹³³

The single bright line of age of majority allows all the functional connections between the elements of adulthood to operate together. If one attains all features of adulthood at the same time, then we need not worry about interconnected rights and responsibilities being separated. In his recent book, *The Age of Culpability*, Gideon Yaffe presents several interrelated connections between aspects of childhood and adulthood, which converge at age eighteen. He argues that what justifies treating minors differently from adults in the criminal context—or “giving them a break”—is that minors cannot vote and, therefore, have less of a say in how the laws are constructed.¹³⁴ Yaffe then ties the threshold voting age to the age at which parental custody ends. He concludes that “children are given a vote once they come of age . . . so as to give parents a means to exert influence over future law by exerting the influence which they are entitled to exert over their children’s values.”¹³⁵ By tying all of these rights and responsibilities together at a single threshold age, Yaffe presents a coherent justification for why children and adults are treated differently.

133. Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 561 (2000).

134. GIDEON YAFFE, *THE AGE OF CULPABILITY: CHILDREN AND THE NATURE OF CRIMINAL RESPONSIBILITY* 1 (2018) (“[K]ids should be given a break because they are disenfranchised, denied as much say over the law as adults, and so denied an equal role in authoring the law’s demands.”).

135. *Id.* at 178.

The bright line model is appealing in its clarity, but it has a significant drawback. Setting a single line after which individuals are treated as full adults does not track lived reality. This poses at least two problems. One is that people will be unable to exercise the rights and responsibilities of adulthood because they lack the psychological or economic capacity to do so. The second problem is that lawmakers, observing specific examples of the mismatch between law and reality, have already begun to adjust the laws to deviate from eighteen as the age of majority. The challenge, then, is that the default assumption of adulthood is not universal, but contains a set of ad hoc exceptions.

Today, much of the scholarly debate over age laws focuses on an alternative approach: identifying correct threshold ages for each aspect of adulthood. Viewing age law through the lens of psychological development or social conceptions of maturity, it is easy to see why this approach would be appealing. If lawmakers can identify the right markers of maturity, they can calibrate the law to ensure that emerging adults (as a whole) attain developmentally appropriate rights and responsibilities. A threshold-based approach works a little like grade school. Everyone of the same age reaches a new level of adulthood in a manner designed to target the average person's capacities.

The threshold model suggests that young people attain the capacity to engage in certain types of behavior, make certain choices, or be subject to certain forms of responsibility at predictable ages. The current law, to some extent, reflects this view—individuals can drive, marry, vote, and drink at different ages. Critics of the current system, however, argue that the specific ages that lawmakers have chosen are misguided because they fail to reflect young people's true needs and capacities.¹³⁶

Proponents of the threshold approach tend to identify areas of law that seem especially incongruous with scientific or cultural understandings of maturity. If the problem is framed in terms of which legal rule does not correspond to the age at which that right or responsibility can be meaningfully exercised, then a logical solution is to change the legal age. Both responses to Parkland take this tactic: some aspects of young people suggest they are mature enough to vote earlier than the law currently allows, other aspects suggest they are not equipped to make decisions about safe gun use until later. The result is two new proposed threshold ages: sixteen for voting and twenty-one for gun ownership.¹³⁷

Vivian Hamilton's work has been instrumental in bringing the threshold approach to discussions of emerging adulthood. She has advocated for better

136. For a comprehensive critique of age laws that illustrates this approach, see Todres, *supra* note 16.

137. See *supra* notes 3–6.

threshold ages for driving, marriage, and voting.¹³⁸ In her recent article, *Adulthood in Law and Culture*, she fully embraces the possibility of tailored thresholds, as she seeks the abolition of the presumptive age of majority.¹³⁹ In its place, Hamilton argues for “legal rules that account for the context-specific acquisition of capabilities. . . . [using] relevant and readily available research across the social and developmental sciences, in addition to more traditional policy considerations.”¹⁴⁰ Hamilton concludes that laws should grant rights and responsibilities at a series of ages, which are context specific and based on facts external to the law:

It is possible to characterize age-related capacity as a function of: (1) patterns of cognitive and socio-emotional development; (2) the nature of the capacity being exercised (e.g., characteristics of the task to be performed or the decision to be made); (3) the context in which the capacity will be exercised; and (4) the broader social, cultural, and economic milieu.¹⁴¹

Hamilton’s view suggests that all aspects of adulthood are severable and subject to review for consistency with understandings of psychological development or social expectations of maturity.

There are, however, risks to treating the law of emerging adulthood as a set of stairs to full maturity. One problem is that in focusing on a single element of adulthood, it is easy to miss how different aspects are interconnected. A recent proposal to raise the age of contract capacity illustrates this problem.¹⁴² Under this view, the infancy doctrine, which makes some types of contracts entered into by minors voidable, should be extended to twenty-one.¹⁴³

This proposal, however, does not confront the question of whether parental support obligations would also extend to twenty-one. The justification for the infancy doctrine is that a minor’s parents are responsible for paying for the child’s lodging, education, and other expenses, so that a child rarely needs to enter into a contract. Given a child’s lack of experience and vulnerability to pressure, the thinking goes, she should not be held responsible for a contract she does enter into. Making contracts voidable

138. Vivian E. Hamilton, *Liberty Without Capacity: Why States Should Ban Adolescent Driving*, 48 GA. L. REV. 1019, 1067 (2014); Vivian E. Hamilton, *The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage*, 92 B.U. L. REV. 1817, 1855 (2012); Vivian E. Hamilton, *Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority*, 77 BROOK. L. REV. 1447 (2012).

139. Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 TUL. L. REV. 55, 59 (2016).

140. *Id.* at 61.

141. *Id.* at 94.

142. Wayne R. Barnes, *Arrested Development: Rethinking the Contract Age of Majority for the Twenty-First Century Adolescent*, 76 MD. L. REV. 405 (2017).

143. *Id.* at 405–06.

clearly discourages potential contract parties from entering into an agreement. This is made evident by the “necessity” exception to the doctrine, which made contracts with minors for necessities like food enforceable so that parties would not refuse to sell minors life-sustaining goods.¹⁴⁴ Extending the infancy doctrine to twenty-one raises the question: would that also extend parental support obligations to twenty-one? If not, would eighteen-to-twenty-one-year-olds be able to reliably purchase cars, rent apartments, or engage in any of the larger commercial transactions that are necessary for an individual who is no longer under the care and control of another?¹⁴⁵

Adulthood is not a single, indivisible concept, but neither is it a set bundle of rights and responsibilities that can be separated into their component parts without consequences. Groups of rights operate in relation to one another. Change the rules regarding economic freedom, and this will echo into the law of parental custody and control. Understanding both how severable, but also how interdependent, the myriad facets of adulthood are can be vital to assessing deviations from the bright-line division between childhood and adulthood.

The form and structure of emerging adult laws, whether there are steps to adulthood, a bright line, or something else, can be judged against the three guiding principles presented above. Law should be flexible to accommodate the transitional nature of emerging adulthood. To that end, raising the age of majority across the board would not ultimately serve this age group. However, lawmakers should also be cognizant of tension between autonomy and dependency that runs through many areas of law, so by moving one threshold age there can be ripple effects across other areas of law. With that in mind, I propose a set of options that focus on transitioning, learning, and developing relationships across different legal arenas.

C. Expanding the Toolkit

Rather than adopt either a bright-line rule or a set of thresholds, I propose an alternative approach. Returning to the principles of economic dependence, connected autonomy, and learning from mistakes helps sort out what types of laws would be most responsive to the emerging adult experience. With that in mind, the following array of options for legal

144. 5 WILLISTON ON CONTRACTS § 9:18 (4th ed. 2019).

145. Barnes suggests that this would not be a problem, given that “minor status does not seem to hinder companies from engaging in commercial activity with minors,” but this confidence neglects the background condition that parents have financial obligations toward minors. Barnes, *supra* note 142, at 445.

design emphasizes flexibility, mentorship or opportunities for learning, and softening the sharp lines between dependency and autonomy.

These options are not meant to replace threshold rules in all cases; there are some instances where the interest in having a clear, universal rule outweighs all other considerations. The equality and democracy interests in having a uniform voting age, especially given the United States' appalling history of using "literacy" tests as a way to disenfranchise African American voters, likely outweigh the benefits of a more nuanced system for allocating voting rights.¹⁴⁶ Rather, these proposals encourage creativity and innovation in the development of new laws that are more compatible with the experience of emerging adulthood than the traditional legal categories provide.

There are many variations on this theme. One option is for the law to condition certain rights and responsibilities on completion of a training course or after passing an exam. Driver's licenses provide a template from the law of adolescence for how there might be tiers (learner's permit, driving test, young driver license, regular adult license) that are associated with age, but are not automatically attained at a certain age. This approach could be deployed to help emerging adults develop supportive relationships by requiring that the emerging adult seek advice or counseling from another adult. For instance, laws could predicate access to other rights and responsibilities on completion of a training or mentorship program—for instance as a necessary precondition to obtaining a gun license or a drinking license.

If the liberties of adulthood are conditioned on completing some form of training, then the state must be sure that all young people have equal access to the training and tools they need to meet the requirements of obtaining the license or permit. It would run counter to the goals of this project if such programs further exacerbated inequality by rewarding young people who could pay for private lessons or programs to attain benefits earlier than those who do not have access.

Law could also provide incentives for emerging adults to engage in certain desirable processes. For example, Texas offers a program where the waiting period for a marriage license and the fee are reduced if the couple participates in a premarital counseling program.¹⁴⁷ Such a program might work for emerging adults as a condition on opening a credit card or

146. For a discussion of how literacy tests were justified and deployed to exclude African American voters, see Eric Schnapper, *Perpetuation of Past Discrimination*, 96 HARV. L. REV. 828, 844 (1983).

147. Information on this creative program is available at *Together in Texas*, TEX. DEP'T HEALTH & HUM. SERVS., <https://yourtexasbenefits.hhsc.texas.gov/programs/other/twogether-in-texas> [<https://perma.cc/6RU5-5WY9>].

exceeding a certain debt level. Incentive-based programs could also give state funded financial support for higher education that requires regular check-ins with a counselor rather than outcome-based criteria, such as GPA.

Law can support emerging adults by offering alternatives to the parent-child model and its binary of either care and control or formal autonomy. Existing proposals directed toward young people who cannot rely on the parent-child model provide a guide to broader reforms. Bruce Boyer's proposal, for example, which would allow youth aging out of foster care to experiment with "trial independence," is a notion that might apply in broader contexts.¹⁴⁸ Jordan Blair Woods's critique of child welfare systems that attempt to recreate the parent-child model for older unaccompanied youth suggests instead a system of support, skills, and resources that promote self-reliance that could be expanded outward.¹⁴⁹

Another area of law that could provide inspiration for emerging adult support systems beyond the parent-child model is mental health law. In the mental health field, the default for many years was a guardianship/dependency model in which individuals with certain impairments lost their decisional autonomy and were placed under the care of a designated adult (this remains true in many places and contexts).¹⁵⁰

The field of mental health law has recently begun to recognize the value of a support system that is not defined by a guardian-dependent dyad, but by a more open network.¹⁵¹ Advocates and scholars have proposed reforms that permit individuals under this legal regime to make their own life choices. A central element of this reform is to introduce "supported decision making" (SDM) into law as an alternative to full guardianship.

The concept of SDM rests on the idea that people do not make large life decisions alone. Proponents of the model contend that even those with serious mental health barriers can have some agency over their own lives, if given the proper support from others.¹⁵² The supported decision-making

148. Bruce A. Boyer, *Foster Care Reentry Laws: Mending the Safety Net for Emerging Adults in the Transition to Independence*, 88 TEMP. L. REV. 837, 839 (2016) (discussing the idea of "trial independence" where an emerging adult aging out of foster care can exit and reenter the foster care system on a trial basis).

149. Jordan Blair Woods, *Unaccompanied Youth and Private-Public Order Failures*, 103 IOWA L. REV. 1639, 1677, 1704 (2018).

150. See Leslie Salzman, *Rethinking Guardianship (Again): Substituted Decision Making as a Violation of the Integration Mandate of Title II of the Americans with Disabilities Act*, 81 U. COLO. L. REV. 157, 161-62 (2010) (contrasting the traditional guardianship model with supported decision making).

151. Nina A. Kohn et al., *Supported Decision-Making: A Viable Alternative to Guardianship?*, 117 PENN ST. L. REV. 1111, 1113 (2013); see also the work of the Saks Institute: *Saks Institute for Mental Health Law, Policy, and Ethics*, USC GOULD SCH. L., <http://gould.usc.edu/faculty/centers/saks/> [<https://perma.cc/8NT6-9GN9>].

152. See Dilip V. Jeste, Graham M. L. Eglit, Barton W. Palmer, Jonathan G. Martinis, Peter Blanck & Elyn R. Saks, *Supported Decision Making in Serious Mental Illness*, 81 PSYCHIATRY 28, 29

model incorporates many of the same aims that are relevant to developing a connected autonomy model for emerging adults. Namely, that even when there are developmental or cognitive capacity obstacles to making healthy decisions that further one's long-term wellbeing, a person can have some control over their lives when given the appropriate level of guidance and help. This kind of guidance can be incorporated into law in situations in which a person's capacity to make decisions for themselves is called into question.

Community and social institutions can also serve as powerful conduits for implementing and enforcing the laws of emerging adulthood. Today, many civic and public institutions no longer serve the same functions for the same populations that they once did.¹⁵³ College is still a robust institution, although many young people are excluded, and the model for higher education is moving away from the all-encompassing institution embodied in the small liberal arts college. A crucial focus of the new law of emerging adults should be on bolstering new and existing institutions that serve as bridges to adulthood. Rather than relying on the vastly unequal distribution of institutional support provided to emerging adults under a private model, community institutions could find new centrality in young people's lives. In addition to being sites to implement consultation or training-based programs, community colleges and other community support centers could filter emerging adults' access to third parties and provide collective advocacy.¹⁵⁴

IV. LOOKING TO THE FUTURE

A. Conditions for Change

What would it take to transform emerging adulthood in law? In order to understand what might happen with age laws in the future, it is helpful to look to the past. Historical experience illustrates what can happen when age laws become too divergent from each other, or from lived experience. Although each era has its own set of political and social forces that shape the direction of law, the rapid and far-reaching shift in the age of majority that took place over the second half of the twentieth century can provide

(2018) ("In SDM, typically individuals with cognitive disabilities receive assistance from family, friends, or other trusted persons to enhance their decision-making capacity and skill so that they may retain autonomy during the decision-making process.").

153. For an analysis of the role of civil institutions in the lives of emerging adults across generations, see ROBERT D. PUTNAM, *BOWLING ALONE* 248–50 (2000) (charting civic participation by age and by generation).

154. Social institutions, including employers, might also be the point of implementation for policies aimed at emerging adults, for instance the National Basketball Association's (NBA) requirement that rookies participate in life-skills courses. See Todres, *supra* note 16, at 1162.

insight into the relevant actors and conditions that shape emerging adult law in the twenty-first century.

In response to the need for soldiers in the Second World War, Congress amended the Selective Service Act, lowering the age at which young men needed to sign up for military service to eighteen.¹⁵⁵ Prior to that point, the age for military duty tended to correspond to the age of majority, which was usually twenty-one.¹⁵⁶ Many people at the time assumed that the age to fight and vote should be the same, given the longstanding link between “the citizen and the soldier.”¹⁵⁷ Nevertheless, despite opposition, throughout the mid-twentieth century, “old enough to fight” was not “old enough to vote.”¹⁵⁸

It was not until the Vietnam War that protestors mobilized against the mismatch between the draft age and the age of majority. Youth empowerment advocates pointed out the evident unfairness of being called up to fight and die before you could vote. The “Vote 18” movement gained considerable momentum after 1968 and, like enfranchisement movements before it, culminated in a constitutional amendment. Historian Rebecca de Schweinitz describes it in optimistic terms:

Vote 18 reflected the rising significance of eighteen as a turning point in young people’s lives, the successful expansion of universal secondary education, increasingly positive perceptions of young people and their role in the modern world, and the meaningful activism of youth on the nation’s most pressing issues.¹⁵⁹

An alternative reading of this period suggests, however, that the effort to placate youth anger by lowering the voting age was a political calculation designed to diffuse tension and avoid a potentially much more radical set of demands.¹⁶⁰

The Twenty-Sixth Amendment was ratified on July 5, 1971¹⁶¹ and declared that: “The right of citizens of the United States, who are eighteen

155. Selective Training and Service (Burke-Wadsworth) Act of 1940, Pub. L. No. 76-783, 54 Stat. 885 (amended CT Dec. 13, 1941, CH. 571, 55 Stat. 799).

156. However, many minors had participated in combat in earlier wars.

157. Rebecca de Schweinitz, *The Proper Age for Suffrage*, in *AGE IN AMERICA: THE COLONIAL ERA TO THE PRESENT*, *supra* note 27, at 209, 210.

158. See Joseph P. Williams, ‘Old Enough to Fight, Old Enough to Vote’: *The 26th Amendment’s Mixed Legacy*, U.S. NEWS (July 1, 2016), <https://www.usnews.com/news/articles/2016-07-01/old-enough-to-fight-old-enough-to-vote-the-26th-amendments-mixed-legacy> [<https://perma.cc/S6LW-286E>] (recounting the history of the movement and slogan).

159. Schweinitz, *supra* note 157, at 210.

160. See Jenny Diamond Cheng, *How Eighteen-Year-Olds Got the Vote* (Aug. 4, 2016) (unpublished manuscript), <https://ssrn.com/abstract=2818730>.

161. This amendment was proposed by the Ninety-second Congress by Senate Joint Resolution No. 7, which was approved by the Senate on Mar. 10, 1971, and by the House of Representatives on

years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”¹⁶²

The next chapter in the story, then, is somewhat puzzling. Without much fanfare, states altered the age of majority from twenty-one to eighteen (or nineteen in some states).¹⁶³ The Twenty-Sixth Amendment did not require such a change, but the rapid and sweeping transformation in state law suggests that lawmakers drew a direct line between the federal voting age and the age of majority. In response to the historical events of the mid-twentieth century, in most states today, there is a strong default position of eighteen as the age of majority. Connecticut’s law is illustrative:

Except as otherwise provided by statute, on and after October 1, 1972, the terms “minor”, “infant” and “infancy” shall be deemed to refer to a person under the age of eighteen years and any person eighteen years of age or over shall be an adult for all purposes whatsoever and have the same legal capacity, rights, powers, privileges, duties, liabilities and responsibilities as persons heretofore had at twenty-one years of age, and “age of majority” shall be deemed to be eighteen years.¹⁶⁴

This quick shift, however, raised some difficult questions about who counted as an adult and what “adulthood” entailed within the law. Had twenty-year-olds in 1969 been less “adult” than their younger siblings who turned twenty in 1973? Under the law, yes—even if social understanding of age did not transform so quickly. To simplify a complex history, what did the fact that President Roosevelt needed young bodies to fight Nazis in 1942 have to do with the capacity of a college student to sign a car loan in 1972?

The next national development in age law highlighted the tension between the new age of majority and society’s understandings about youth. As states began to lower the age of majority, many also lowered the legal drinking age from twenty-one to eighteen or nineteen. The staggered nature of these changes lead to a phenomenon, which became known as “blood borders”: young people would drive from a state with a higher drinking age across the border to a lower age state, drink, drive home and get into fatal accidents.¹⁶⁵ In response, Congress passed the Federal Minimum Drinking

Mar. 23, 1971. The Amendment was declared by the Administrator of General Services on July 5, 1971, to have been ratified by the legislatures of thirty-nine of the fifty States.

162. U.S. CONST. amend. XXVI.

163. See WILLISTON ON CONTRACTS, *supra* note 144.

164. CONN. GEN. STAT. ANN. § 1-1d (West 2019).

165. See *National Minimum Drinking Age: Hearing Before the Subcomm. on Alcoholism and Drug Abuse of the S. Comm. on Labor and Human Res.*, 98th Cong. (1984) (referring repeatedly to “blood borders”). In many ways, the problem was not the lower drinking age, but inconsistent ages across states.

Age as part of its 1984 amendments to the Surface Transportation Assistance Act.¹⁶⁶ The Act conditioned federal highway funds on states changing their drinking age (in many cases, back) to twenty-one. The debates over setting the drinking age focused both on the need for consistency and on why twenty-one was a better age. Advocates cited to statistics about driving fatalities caused by young drivers, as well as the fact that the victims tended to be of a similar age.¹⁶⁷ Those in favor of the minimum drinking age frequently referred to eighteen-to-twenty-one-year-olds as “children.”¹⁶⁸

The result was a general agglomeration of rights and responsibilities of adulthood at eighteen, but with express exceptions. Some states entrenched this combination of thresholds in the state constitution, as was done in Montana:

A person 18 years of age or older is an adult for all purposes, except that the legislature or the people by initiative may establish the legal age for purchasing, consuming, or possessing alcoholic beverages.¹⁶⁹

What lessons can advocates for emerging adults learn from history? First, that a sustained effort by youth-driven social movements can significantly shift the legal baseline. Today social movements focused on gun control, student debt, police violence, and climate change all have strong youth leadership.¹⁷⁰ Whether these groups will coalesce around a shared set of goals, and how much influence they will have on state or federal (or international) politics remains to be seen. However, the attention these movements have received in the media and popular culture suggest that they might be a significant force for change moving forward.

Another lesson from past experience is that law can be vulnerable to change when it diverges too far from social expectations. In the 1960s and 70s, the incongruity between sending young men to fight in Vietnam before they could legally vote was met with resistance. Today, the exorbitant cost

166. Act of July 17, 1984, Pub. L. No. 98-363, 98 Stat 435.

167. For a history of the debates over the drinking age, see Timothy Cole, “*Old Enough to Live*,” in *AGE IN AMERICA: THE COLONIAL ERA TO THE PRESENT*, *supra* note 27, at 237.

168. Ronald Reagan, President, Remarks on Signing a National Minimum Drinking Age Bill (July 17, 1984), <https://www.reaganlibrary.gov/sspeeches/71784d> [<https://perma.cc/8HE3-WGJK>]. In his signing statement on July 17, 1984, President Reagan noted “I’m convinced that it will help persuade State legislators to act in the national interest to save our children’s lives, by raising the drinking age to 21 across the country.” *Id.*

169. MONT. CONST. art. II, § 14.

170. For a review of youth leadership in social movements, see, for example, Emily Witt, *From Parkland to Sunrise: A Year of Extraordinary Youth Activism*, *NEW YORKER* (Feb. 13, 2019), <https://www.newyorker.com/news/news-desk/from-parkland-to-sunrise-a-year-of-extraordinary-youth-activism> [<https://perma.cc/N4QF-X43L>].

of education or the punitive nature of criminal justice might lead to similar resistance.

The story of the Twenty-Sixth Amendment, however, is also a cautionary tale. By the time this period of legal transformation had ended, age laws were not much more coherent than they had been before. Instead, changing the voting age to eighteen set off a cascade of changes, which were untethered from the original rationale for shifting the threshold age. Social movements and legal reformers today would do well to keep in mind the interconnected elements of age law and be aware of how shifting the law in one area might have unintended consequences elsewhere.

B. Obstacles

Even if the conditions are right for widespread reform to the law of emerging adults, there are a number of obstacles that could impede or foreclose change. In some cases, existing law may not permit singling out emerging adults for different treatment. In South Carolina, for instance, the consequences of a constitutional age of majority arose in a controversy over age restrictions for gun sales. The South Carolina Constitution provides that:

Every citizen who is eighteen years of age or older, not laboring under disabilities prescribed in this Constitution or otherwise established by law, shall be deemed *sui juris* and endowed with full legal rights and responsibilities, *provided*, that the General Assembly may restrict the sale of alcoholic beverages to persons until age twenty-one.¹⁷¹

In 2008, the South Carolina Supreme Court ruled that a law restricting gun sales for individuals under twenty-one violated the state constitution.¹⁷² The court concluded that alcohol sales was the only exception permitted, and any additions would infringe on the “full legal rights and responsibilities” of adulthood.¹⁷³

Although cases like that of the South Carolina Constitution arise only rarely, it is not out of the question that opponents to emerging adult laws

171. S.C. CONST. art. XVII, § 14 (emphasis added).

172. *State v. Bolin*, 662 S.E.2d 38, 39–40 (S.C. 2008). In this case, the South Carolina Supreme Court held, in a brief judgment, without much further explanation, that:

[b]y expressly allowing the regulation of the sale of alcoholic beverages to the 18- to 20-year-old age group and not stating any other situation in which the General Assembly may restrict the rights of this age group, the state constitution precludes the General Assembly from prohibiting this age group’s possession of handguns.

Id. at 40.

173. *Id.* at 39.

could raise Equal Protection or other substantive objections. In the drinking age context, claims that the law unconstitutionally discriminates based on age have not been successful.¹⁷⁴ Although generally courts have avoided striking down age-based classifications, when fundamental rights are at play—for instance the Second Amendment or the Substantive Due Process rights relating to family—there could be colorable claims that drawing lines above the age of majority is arbitrary.¹⁷⁵

The absence of constitutional guidance on age laws, however, does not erase normative liberty and equality concerns. Alexander Boni-Saenz's work on age discrimination presents a range of normative objections to using age as a legal category.¹⁷⁶ Included among these is a liberty-based argument against using age law to dictate or channel a person's life course. He notes that the libertarian model counsels that "the pathways that one might take in pursuit of one's life goals should not be dictated by age, and certain opportunities should not be foreclosed solely because of age."¹⁷⁷ However, he also notes that some age laws might be permissible—namely those related to developing maturity that are designed to protect the individual's future liberty by protecting them from the full consequences of immature choices.¹⁷⁸ The liberty-based model provides an important limiting principle in response to the critique that a new law of emerging adults could be unjustifiably paternalistic. In crafting a new law of emerging adults, lawmakers should ask whether the laws are supporting the future adult's life choices or are instead dictating a particular life course regardless of the individual's goals and interests.

Historically, the American experience with protective legislation for specific groups—namely women—gives rise to additional concerns about a protective approach to emerging adulthood. During the so-called "Lochner" era, courts were more amenable to upholding protective legislation regulating women's work.¹⁷⁹ Women, under this view, were more vulnerable than men (both physically and mentally) and should not be

174. See *Gabree v. King*, 614 F.2d 1, 2 (1st Cir. 1980) (applying rational basis scrutiny to uphold a Massachusetts law that set the drinking age above the age of majority).

175. See Nina A. Kohn, *Rethinking the Constitutionality of Age Discrimination: A Challenge to a Decades-Old Consensus*, 44 U.C. DAVIS L. REV. 213, 215 (2010) ("For decades, both the legal academy and the courts have assumed that—unlike classifications based on race or gender—classifications based on age do not offend constitutional equal protection guarantees. Consistent with this assumption, chronological age is seen as an expedient and acceptable proxy for a variety of underlying human characteristics that policymakers wish to target for public policy interventions, and age-based criteria continue to be entrenched in U.S. public policy.").

176. Alexander A. Boni-Saenz, *Age, Time, and Discrimination*, 53 GA. L. REV. 845 (2019).

177. *Id.* at 894.

178. *Id.* at 899.

179. See Julie Novkov, *Liberty, Protection, and Women's Work: Investigating the Boundaries Between Public and Private*, 21 LAW & SOC. INQUIRY 857, 860–61 (1996) (compiling case law from the Progressive era).

subjected to working conditions that prevented them from engaging in their higher social purpose, namely motherhood.¹⁸⁰

Some women's groups at the time, as well as later feminists, challenged the paternalist justifications for the women's labor laws.¹⁸¹ Rather than give women more power in the labor market, they argued, these laws would instead exclude women by making it far more likely for employers to favor men, whose labor they could exploit without fear of state interference. Other groups viewed the protective legislation as a necessary reflection on the social reality of poor and working-class women's position.

In many ways, the proposals in this Article that treat emerging adults differently mirror the Progressive's arguments in favor of protective legislation for women. They rest on claims that emerging adults are developmentally and mentally different from older adults in ways that make them vulnerable to risky choices and exploitation. Emerging adults have less bargaining power in the market since they lack work experience, training, and often remain dependent on financial support from others. Emerging adults have a vital role for the broader society—they are learning how to be citizens, workers, and responsible, independent members of the community—a transformation that does not occur overnight. Some of the same concerns feminists have raised for over a century about women's protective legislation apply here, too. Would restricting market autonomy exclude emerging adults from opportunities that are currently available to them?

Emerging adults as a group, however, differ from women as a group in important ways that have implications for any critique of singling them out for special protections. Emerging adulthood is a temporary state, through which anyone who lives to adulthood must pass. In that way, unlike gender, age is both universal and transitory. Every adult was once nineteen, but no one stays nineteen forever. Second, the evidence of difference between emerging adults and older adults is far more robust and less embedded in

180. See Claudio J. Katz, *Protective Labor Legislation in the Courts: Substantive Due Process and Fairness in the Progressive Era*, 31 *LAW & HIST. REV.* 275, 308 (2013) (describing how the courts in the 1910s moved away from the prevailing view that “women could legitimately be singled out only because they were the weaker sex, physically incapable of holding their own in competition with men, and because the state had a public interest in protecting their maternal role”); David E. Bernstein, *Lochner's Feminist Legacy*, 101 *MICH. L. REV.* 1960, 1963 (2003) (describing the attitude of courts toward protective legislation for women in the late 1800s).

181. See Melissa Murray, Symposium Foreword, *The Equal Rights Amendment: A Century in the Making*, 43 *HARBINGER* 91, 93 (2019) (“Working-class women favored protective labor laws . . . such legislation was a practical—and necessary—response to the very real dangers of economic (and other forms of) exploitation that women faced when they left their homes to participate in the workplace. . . . For [] economically privileged women, protective legislation, and the Court's defense of such laws, was rooted in gendered stereotypes that harmed women, even as they purported to help them.”); Bernstein, *supra* note 180, at 1965 (“[C]ontrasting views regarding women's rights and abilities were already playing a large role in the debate over the constitutionality of protective legislation.”).

deeply rooted stereotypes than was the support for protecting women workers in the nineteenth century.¹⁸² Unlike protective legislation that barred women from certain forms of work, the objective of protective rules for emerging adults should be to preserve the individual's capacity to engage in public life in the future, not to permanently exclude them from it.

Nevertheless, historical experience provides a helpful caution against relying too heavily on generalizations about a particular group's needs or experiences. Creating fair and effective laws for emerging adults must also address the diverse nature of the population being regulated. Some individuals spend their emerging adult years in prison, some are parenting young children or caring for elderly family members, others are in residential treatment centers for substance abuse, attaining a slew of elite degrees, working in construction, or traveling the world searching for purpose. In many ways, the range of choices that a person has on their eighteenth birthday for how to spend the next year or decade of her life has already been set by the conditions of her childhood and factors determined far before she could make any autonomous choices about her life course.¹⁸³

Even using the term "emerging adulthood" assumes that the individual has not become "fully" adult, but that she might someday become one. This is surely not the case for every person, even if they pass through this chronological age. It would be a reasonable worry to think that focusing on emerging adulthood might exclude those who do not fit the paradigm of a "normal" or "typical" emerging adult, further burdening people who are likely to already be members of marginalized groups. It would be easy to perpetuate in law the problem that some scholars have raised about the psychology of emerging adulthood—that the paradigmatic example of an emerging adult is a white, middle class, able bodied, college-bound, young person who has not experienced any substantial trauma nor has he many responsibilities aside from pursuing his own interests and ambitions.

Some of the seemingly desirable outcomes of interventions into emerging adulthood, such as giving people the space to explore identity, engage in higher education, and prepare for leadership in the knowledge economy, could easily be seen as preparing young people for a life many of them will never have. Deep contemplation about one's values, and about one's relationship to others and to the world, is a luxury. Perhaps, for some, being treated as fully adult as early as possible is the most realistic approach given that their range of life options have been effectively narrowed during childhood. For some, the notion of emerging adulthood as described by

182. *See supra* note 180.

183. For more on how the legal regulation of family structures permits or impedes resiliency, see CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS* (2014).

Arnett and others might be infantilizing, culturally insulting, or excessively focused on the individual, rather than on the community or family unit.

Lawmakers who are committed to crafting a new law of emerging adults must be sensitive to the context in which they work. Any attempt to classify individuals is bound to be over- and/or under-inclusive, but there are ways that could help minimize the likelihood that intervention into this area will only serve to exacerbate existing inequalities. One is to emphasize, as I do in this Article, that reformers should focus on flexible, community-based approaches that are oriented toward serving a range of needs. While one young person might require support in navigating the financial and social implications of leaving college, another might need support planning for entering the workforce once her child is enrolled in daycare. Whatever the individual case, young people can take advantage of community support to help with the transition from legal dependency into formal autonomy. The proposed law of emerging adults, therefore, should focus on processes for helping to connect young people to financial support, adult mentorship, and opportunities for reflective decision-making. The aim, at its core, should be to ensure that emerging adults are able to enjoy the benefits of this transitional period of life and are supported during the substantial social, psychological, and economic challenges that arise during these years.

CONCLUSION

A law of emerging adults is emerging. How this new set of laws will regulate the transitional years between adolescence and adulthood remains to be seen. Just as the concept of adolescence transformed legal expectations in the twentieth century, emerging adulthood is poised to do so in the twenty-first century. Widespread legal change requires a clear understanding of emerging adults' lived experience. It also requires a set of guiding normative principles to shape the content and structure of the law. This Article offers a path forward: one which acknowledges the tension between the dependency and autonomy, responsibility and inexperience, which characterizes this life stage.