

AMERICAN YOUTH IN THE WORKPLACE: LEGAL ABERRATION, FAILED SOCIAL POLICY

*Sy Moskowitz**

I. INTRODUCTION

“Young people who spend more time flipping burgers and stacking boxes than preparing for a meaningful career may be hindering their own futures—and the future of this country.”

—Mario Cuomo¹

Today, the workplace is as much a part of American teen life as the Friday night football game and the high school prom. Students in the 1990s were twice as likely to be working than students in 1950.² In 2001, an estimated 3.7 million adolescents between the ages of fifteen and seventeen were employed.³ Likewise, large numbers of children under fifteen were working during the same time period.⁴ The United States has the highest percentage of working children of any developed nation: many work long hours even during the school week.⁵ These statistics have remained stable

* Professor of Law, Valparaiso University School of Law. B.A., Columbia University; J.D., Harvard Law School. I thank my colleague, Melissa Mundt, whose hard work, skill, and patience made this Article possible. I also extend my thanks to Professors Ivan Bodensteiner and Clare Nuechterlein for providing valuable comments and insights. Any errors, of course, are my own.

¹ *Bill Signed Limiting After-School Work*, N.Y. TIMES, Aug. 22, 1991, at B7 (quoting Mario Cuomo, former Governor of New York).

² Kusum Singh, *Part-Time Employment in High School and Its Effect on Academic Achievement*, 91 J. EDUC. RES. 131, 131 (1998).

³ United States General Accounting Office, *Child Labor: Labor Can Strengthen Its Efforts to Protect Children Who Work*, 10 (Sept. 2002), at <http://www.goa.gov/> [hereinafter 2002 GAO REPORT].

⁴ See COMMITTEE ON THE HEALTH AND SAFETY IMPLICATIONS OF CHILD LABOR, BOARD ON CHILDREN, YOUTH, AND FAMILIES, COMMISSION ON BEHAVIORAL AND SOCIAL SCIENCES AND EDUCATION, NATIONAL RESEARCH COUNCIL, & INSTITUTE OF MEDICINE, *PROTECTING YOUTH AT WORK: HEALTH, SAFETY, AND DEVELOPMENT OF WORKING CHILDREN AND ADOLESCENTS IN THE UNITED STATES 2* (1998) [hereinafter *PROTECTING YOUTH AT WORK*] (reporting that 40% of seventh and eighth grade students worked during the regular school year).

⁵ See generally Larry A. Layne et. al., *Adolescent Occupational Injuries Requiring Hospital Emergency Department Treatment: A Nationally Representative Sample*, 84 AM. J. PUB.

for at least a decade.

Employment does present potential benefits for the adolescent. Working can provide valuable lessons about responsibility, punctuality, interacting with the public, and finances. However, work in the United States poses substantial immediate and long-term safety and health risks for youth workers. The National Institute for Occupational Safety and Health (“NIOSH”) reports an average of sixty-seven minors die each year from work-related injuries.⁶ Additionally, 77,000 are treated in hospital emergency facilities for injuries.⁷ Annually, over 200,000 minors are injured on the job.⁸

Other indicators of a minor’s well being, such as academic performance, are also negatively affected by employment, particularly by working excessive hours.⁹ Most scholars consider twenty or more hours per week—termed “high intensity work”—to be the threshold for negative outcomes.¹⁰ High school students who work twenty hours or more have lower grade point averages than students who do not work, or who work fewer hours.¹¹ They are more likely to be suspended from school,¹² to use cigarettes or other harmful substances,¹³ to have more traffic accidents,¹⁴ and to

HEALTH 657, 657, 660 (1994) (discussing the corresponding increase in occupational injuries and advocating age-specific “intervention strategies” to be included in on-the-job training programs).

⁶ NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (NIOSH), RECOMMENDATIONS TO THE U.S. DEPARTMENT OF LABOR FOR CHANGES TO HAZARDOUS ORDERS, xi (May 3, 2002), at <http://www.stopchildlabor.org/USchildlabor/nioshho/summary.htm> [hereinafter NIOSH RECOMMENDATIONS]. The total number of occupational fatalities from 1992–1998 for youths under eighteen was 468. U.S. DEPARTMENT OF LABOR, *Report on the Youth Labor Force* 60 (June, 2000), available at <http://www.bls.gov/opub/rylf/pdf/chapter6.pdf> [hereinafter *Youth Labor Force*].

⁷ NIOSH RECOMMENDATIONS, *supra* note 6, at xi.

⁸ 2002 GAO REPORT, *supra* note 3, at 1. Previous studies have found only about one-third of all work-related injuries are treated in emergency departments, indicating that this estimate is far more conservative than the actual number of injuries. Layne et al., *supra* note 5, at 659–60.

⁹ Donna S. Rothstein, *Youth Employment During School: Results from Two Longitudinal Surveys*, 124 MONTHLY LAB. REV. 25, 25–26 (Aug. 2001), available at <http://www.bls.gov/opub/mlr/2001/08/contents.htm>; see also *Youth Labor Force*, *supra* note 6, at 68, 71 (indicating that high school students who worked less than twenty hours per week were substantially more likely to attend college by age thirty than those who had worked more than twenty hours per week).

¹⁰ PROTECTING YOUTH AT WORK, *supra* note 4, at 3.

¹¹ See, e.g., Herbert W. Marsh, *Employment During High School: Character Building or a Subversion of Academic Goals?*, 64 SOC. OF EDUC. 172, 174 (1991); Sharon Wofford Mihalic & Delbert Elliott, *Short- and Long-Term Consequences of Adolescent Work*, 28 YOUTH & SOC’Y 464, 466–67 (1997).

¹² Rothstein, *supra* note 9, at 28.

¹³ Rothstein, *supra* note 9, at 28–29.

¹⁴ See, e.g., Andrew W. Gefell, *Dying to Sleep: Using Federal Legislation and Tort Law to*

experience a wide variety of other negative outcomes. Subgroups of child workers—particularly those in agriculture—are at even greater health and educational risks.¹⁵

Like most social science propositions and data, great controversy surrounds the appropriate variables to be considered and the conclusions to be drawn from those variables.¹⁶ Drawing causal links is difficult: correlation should not be equated with causation. The association between work intensity and academic outcomes may, for example, be attributable to pre-existing differences: youths who were previously performing poorly in lower grades may be working more intensely in high school. Nevertheless, the prestigious Institute of Medicine, the research arm of the National Academy of Sciences, concluded after a thorough review of the literature that “high-intensity work . . . is associated with unhealthy and problem behaviors.”¹⁷

Cure the Effects of Fatigue in Medical Residency Programs, 11 J.L. & POL’Y 645, 663 (2003) (describing a traffic accident in which a high school student was killed after having worked multiple shifts during a twenty-four hour period at a McDonald’s restaurant).

¹⁵ Janice Windau et. al., *Profile of Work Injuries Incurred by Young Workers*, 122 MONTHLY LAB. REV. 3, 5–6 (June 1999) (illustrating that agriculture jobs were only slightly less hazardous to young workers than jobs in mining). During 1992–1997, approximately 40% of fatal injuries for youth workers occurred while performing agricultural work. *Id.* at 5. Many of these deaths are transportation-related, such as from tractor accidents. *Id.*

¹⁶ Despite general overall agreement that those minors who work more than twenty hours per week are more likely to engage in delinquency, substance abuse, and sexual activity, a lively debate has long been underway about the long-term consequences of such early behaviors. For example, some researchers suggest that for many adolescents, early problem behaviors are limited to that developmental stage and are unlikely to continue long-term. See Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 593–95 (2000). Alcohol use, delinquency, and other negative activities associated with intensive work hours for those in high school become more common in the post-high school years for youths who work less intensively during adolescence. Barbara J. McMorris & Christopher Uggen, *Alcohol and Employment in the Transition to Adulthood*, 41 J. HEALTH & SOC. BEHAV. 276, 288 (2000) (noting that for college students, living arrangements and college attendance are more indicative of alcohol use than the intensity of work in the adolescent years). Those young people who did not experiment with alcohol and other negative behaviors often catch up with their more precocious peers by postponing drug and alcohol use until their college years. See, e.g., JERALD G. BACHMAN ET AL., *THE DECLINE OF SUBSTANCE USE IN YOUNG ADULTHOOD: CHANGES IN SOCIAL ACTIVITIES, ROLES, AND BELIEFS 1–2* (2002) (positing the theory that increased substance use is directly related to the changing roles and responsibilities experienced after completing high school). Furthermore, these youths also tend to participate in binge drinking during young adulthood. JERALD G. BACHMAN ET AL., *SMOKING, DRINKING, AND DRUG USE IN YOUNG ADULTHOOD: THE IMPACTS OF NEW FREEDOMS AND NEW RESPONSIBILITIES 7* (1997) (noting that drinking rates are highest amongst college students in their early twenties). Finally, some research has also shown that those young adults who engage in such problem behaviors later in life—in college, for example—also tend to relinquish such activities as they take on adult work and family roles. See *id.* (stating that drinking rates begin to regress during the mid-twenties due to the onset of additional responsibilities, such as marriage).

¹⁷ PROTECTING YOUTH AT WORK, *supra* note 4, at 3–4.

Teens are working *after* choices are made about priorities in allocating time. Parent, child, and state form a triangle in decision-making regarding the lives of children. In Roman law and English common law, children were totally subject to the wishes of their parents—particularly the father.¹⁸ Although the father owed duties of support and protection, Blackstone reported that children lived in the “empire of the father.”¹⁹ Today, doctrinal changes in constitutional law and statutes have equalized the legal position of the father and the mother.²⁰ In broad strokes, however, contemporary American law reflects the following dominant paradigm: minors are incompetent to make major life decisions and parents are entrusted with the task of making these choices because they will normally act in the child’s best interest.

Many legal scholars have argued that the formal lines of physical age or emancipation should not be the sole determinants of when an adolescent may be legally authorized to make important life decisions.²¹ Moreover, in some instances, the usual presumption that parents act in the best interests of their children is questionable and thus, in particular circumstances, an alternate decision maker may be appropriate.²² Nonetheless, in most

¹⁸ See Janet L. Dolgin, *The Fate of Childhood: Legal Models of Children and the Parent-Child Relationship*, 61 ALB. L. REV. 345, 353–54 (1997) (citing SIR HENRY MAINE, ANCIENT LAW 67–100 (J.M. Dent & Sons, Ltd. 1917) (1861)). Maine observed that in ancient law and society, “family” represented the father’s unlimited power over his wife, children, and slaves. *Id.* at 355 n.47. “The eldest male parent . . . [was] absolutely supreme in his household. His dominion extend[ed] to life and death, and [was] as unqualified over his children and their houses as over his slaves.” *Id.* at 355 n.48. The Roman law of *pater familias* treated wives and children, along with slaves and other personal property, as the man’s chattel. See Wendy Anton Fitzgerald, *Maturity, Difference, and Mystery: Children’s Perspectives and the Law*, 36 ARIZ. L. REV. 11, 35 n.153 (1994) (citing Francis Bowes Sayre, *Inducing Breach of Contract*, 36 HARV. L. REV. 663, 664 (1923)). Although wives and children were expected to obey and serve their husbands and fathers, no reciprocal acts were required. *Id.*

¹⁹ See 2 WILLIAM BLACKSTONE, COMMENTARIES *453; see also JAMES KENT, COMMENTARIES ON AMERICAN LAW *224 (3d ed. 1836) (1832) (outlining early property law which placed lands bequeathed to a minor into the possession of the father, then to the mother if the father was not present). Blackstone noted that, “a mother, as such, [was] entitled to no power, but only to reverence and respect.” BLACKSTONE, *supra*, at *453.

²⁰ See, e.g., *Craig v. Boren*, 429 U.S. 190, 197 (1976) (holding that gender classification “must serve important governmental objectives and must be substantially related to achievement of those objectives”); *Orr v. Orr*, 440 U.S. 268, 283 (1979) (ruling that sex classification for alimony determinations violated the Equal Protection clause).

²¹ See generally Dolgin, *supra* note 18, at 349; Rhonda Gay Hartman, *Adolescent Autonomy: Clarifying an Ageless Conundrum*, 51 HASTINGS L.J. 1265, 1269 (2000); Jennifer L. Rosato, *Let’s Get Real: Quilting a Principled Approach to Adolescent Empowerment in Health Care Decision-Making*, 51 DEPAUL L. REV. 769, 769–70 (2002).

²² See, e.g., *Bellotti v. Baird*, 443 U.S. 622, 643–44 (1979) (articulating that, “the unique nature and consequences of the abortion decision make it inappropriate ‘to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient’s pregnancy, regardless of the reason for withholding the consent’”)

instances, legal adulthood begins at eighteen: the financial support obligation of parents generally ends at this age, as well as the parents' rights to custody and control over their children.²³ Until the age of majority, the parent is entitled to receive information from schools or other sources and to make important choices about the life of the parent's child.²⁴ This legal norm is reflected at all levels of American law.

While most major child-rearing decisions are reserved to parents, the law defines outer limits of that discretion. The state as *parens patriae* may limit "parental freedom and authority in things affecting the child's welfare."²⁵ Examples of these limits include child abuse and neglect statutes, compulsory school attendance laws, and required vaccinations.²⁶

Although the law's general view of the parent-child-state triangle has remained relatively stable over the past generation, families themselves have not. The National Commission on Children has observed that American families have undergone "social, demographic, and economic change."²⁷ Families have become smaller, children are commonly raised by one parent, mothers as well as fathers typically work, and divorce has become commonplace.²⁸ Still, the Commission found that "[p]arents bear primary responsibility for meeting their children's physical, emotional, and intellectual needs and for providing moral guidance and direction."²⁹

Although the United States Constitution never mentions family

(quoting *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976)).

²³ See *infra* notes 64–85 and accompanying text for a discussion of the age of majority.

²⁴ See, e.g., 20 U.S.C. § 1232h (2000) (mandating that parents be given access to instructional materials used "in connection with any survey, analysis, or evaluation").

²⁵ *Prince v. Massachusetts*, 321 U.S. 158, 167 (1944).

²⁶ For examples of child abuse and neglect statutes, see ALA. CODE § 26-14-1 (1992); IND. CODE ANN. § 31-9-2-14 (Michie 2003); MO. ANN. STAT. § 26.740 (West 2004); NEB. REV. STAT. § 28-728 (1995). For examples of compulsory school attendance statutes, see IND. CODE ANN. § 20-8.1-3-17 (Michie 1997); KAN. STAT. ANN. § 72-1111 (2002); MISS. CODE ANN. § 37-13-81 (1999); OHIO REV. CODE ANN. § 3321.03 (Anderson 2002). For a discussion on compulsory vaccinations, see generally Ross D. Silverman, *No More Kidding Around: Restructuring Non-Medical Childhood Immunization Exemptions to Ensure Public Health Protection*, 12 ANNALS HEALTH L. 277 (2003). For examples of mandatory vaccination statutes, see CAL. HEALTH & SAFETY CODE § 120325 (West 1996); CONN. GEN. STAT. ANN. § 10-204a (West 2002); FLA. STAT. ANN. § 1003.22 (West 2004); MINN. STAT. ANN. § 121A.15 (West 2000).

²⁷ NATIONAL COMMISSION ON CHILDREN, FINAL REPORT: BEYOND RHETORIC: A NEW AMERICAN AGENDA FOR CHILDREN AND FAMILIES (1991) [hereinafter BEYOND RHETORIC].

²⁸ See generally Constance Sorrentino, *The Changing Family in International Perspective*, 113 MONTHLY LAB. REV. 41, 41 (Mar. 1990), available at <http://www.bls.gov/opub/mlr/1990/03/art6full.pdf>

²⁹ BEYOND RHETORIC, *supra* note 27, at 16.

relationships,³⁰ the Supreme Court, in a series of decisions going back more than eighty years, has upheld the principle that parents have “fundamental liberty interests” in the “care, custody, and control” of their children.³¹ It is state law, however, that defines most of the rights, limits, and responsibilities of family members and these rules similarly endorse the legal prerogative of parents. Family autonomy, a venerable doctrine in American family law, rules out interference by state actors in most family decisions.³² Unemancipated children under the age of majority may not sue in their own name,³³ are not bound by their contracts,³⁴ and may not legally consent to sexual relations.³⁵ These are but a few illustrations of this legal paradigm.

In the labor market, however, the legal rules are starkly different. Extraordinarily important decisions are given to adolescents. As a matter of federal law, no parental consent, or even notice to the parent, is required before a child may work. No employment certificate or permit is issued by the Department of Labor.³⁶ Some minimal hour and type of work limits are set for youths under sixteen in non-agricultural labor by federal law.³⁷ Once a child reaches sixteen, only jobs or equipment designated “hazardous” by

³⁰ The only mention of youths is in the Twenty-Sixth Amendment to the Constitution: “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged. . . on account of age.” U.S. CONST. amend. XXVI, §1.

³¹ See *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (citing *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923) (confirming that “[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder”) (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)). See also *infra* notes 50–63 and accompanying text.

³² See, e.g., *McGuire v. McGuire*, 59 N.W.2d 336, 342 (Neb. 1953) (noting the living standards of a family are a matter of the family’s concern, not the court’s). Family autonomy was grounded on the understanding that the family was a substantive whole, different from the world of work. See DAVID M. SCHNEIDER, *AMERICAN KINSHIP: A CULTURAL ACCOUNT* 45–49 (1968) (contrasting features of home and work to define familial relations).

³³ See *infra* notes 71–85 and accompanying text for a discussion of the rights of emancipated children.

³⁴ See, e.g., *Sharon v. City of Newton*, 769 N.E.2d 738, 746 (Mass. 2002); *Zelnick v. Adams*, 561 S.E.2d 711, 715 (Va. 2002); RESTATEMENT (SECOND) OF CONTRACTS: INFANTS § 14 (1986) (discussing the longstanding and current common law stance on the voidability of contracts entered into by minors). See also *infra* note 79 and accompanying text.

³⁵ See, e.g., IND. CODE ANN. § 35-42-4-9 (Michie 1998); MISS. CODE ANN. § 97-3-95 (1999); OHIO REV. CODE ANN. § 2907.04 (Anderson 2002).

³⁶ The Department of Labor will, however, issue an age certificate if the state does not and an employer requests it.

³⁷ The Fair Labor Standards Act, (FLSA), the basic federal law on this subject, outlaws the use of “oppressive child labor”—work which interferes with “health or well-being” or schooling. 29 U.S.C. § 203(l)(1) (2000). The FLSA allows children under sixteen to work not more than three hours per day and eighteen hours per week during school time. 29 C.F.R. § 570.35 (2003). When school is not in session, the maximum hours increase to eight per day and forty per week. *Id.* §(2),(3),(4),(5).

the Department of Labor are off limits.³⁸ No other time or place restrictions are imposed on the work of sixteen and seventeen-year-olds from the federal government.³⁹

Child labor is also regulated by the states,⁴⁰ but this *laissez-faire* pattern dominates at that level as well. Astonishingly, only eighteen states limit children under the age of sixteen to three hours or less of work per day during the school year, or prohibit their employment altogether.⁴¹ Only eighteen states require parental consent for children under-sixteen to work.⁴² Thirty-six states allow sixteen and seventeen year olds to work forty hours or more while school is in session.⁴³ Only nine states mandate parental consent for sixteen and seventeen year old adolescents to work.⁴⁴ State child labor laws are also intimately connected to compulsory school attendance laws which set the minimum age for

³⁸ If the occupation has been declared “hazardous” by the Secretary of Labor, eighteen is the minimum age to work in that job. 29 U.S.C. § 203(l) (2000). Hazardous occupations are defined by the Secretary of Labor to include occupations involving explosives, mining, and logging. 29 C.F.R. 570.120 (2003).

³⁹ *Schmidt v. Reich*, 835 F. Supp. 435, 442–44 (N.D. Ill 1993) (applying general rules of statutory construction to conclude that, because the law was silent on the issue, the FLSA did not provide for the regulation of the hours worked by sixteen and seventeen-year-olds).

⁴⁰ The FLSA expressly allows for greater protection of child workers by state law. 29 U.S.C. § 218(a) (2000).

⁴¹ ALA. CODE § 25-8-36 (2000); ARIZ. REV. STAT. §23-232 (West 1995); CAL. LAB. CODE § 1391 (West 2003); FLA. STAT. ANN. § 450.081 (West Supp. 2004); IND. CODE ANN. 20-8.1-4-20 (Michie 1997); LA. REV. STAT. ANN. § 23-214 (West 1998); ME. REV. STAT. ANN. tit. 26, § 774 (West 1964); MO. ANN. STAT. § 294.030 (West Supp. 2004); N.H. REV. STAT. ANN. § 276-A:4 (1999); N.J. STAT. ANN. § 34:2-21.3 (West 2000); N.Y. LAB. LAWS § 142 (McKinney 2003); N.C. GEN. STAT. § 95-25.5(c) (2003); N.D. CENT. CODE § 34-07-15 (1987); OHIO REV. CODE ANN. § 4109.07 (Anderson 2001); OKLA. STAT. ANN. tit. 40, § 75 (West 1989); TENN. CODE ANN. § 50-5-104 (1999); VT. STAT. ANN. tit. 21, § 434 (Supp. 2003); W. VA. CODE ANN. § 21-6-7 (Michie 2002).

⁴² ALA. CODE § 25-8-47 (2000); ALASKA STAT. § 23.10.332(c) (Michie. 2002); ARK. CODE ANN. §11-6-109(b)(2) (Michie 2002); CAL. CODE §1290 (West 2003); IND. CODE ANN. § 20-8.1-4-15 (Michie 1997) (allowing an officer issuing permits to require the presence of the child’s parents); IOWA CODE ANN. § 92.11 (West 1996); LA. REV. STAT. ANN. § 23-184 (West 1998); MD. CODE ANN. LAB. & EMPL. § 3-206 (1999) (special permits only); N.H. REV. STAT. ANN. § 276-A:5(VIII) (1999); N.J. STAT. ANN. § 34:2-21.2 (West 2000); N.M. STAT. ANN. § 50-6-2 (Michie 2000) (only for extensions); N.Y. LAB. LAWS § 132 (McKinney 2002); N.C. GEN. STAT. § 95-25.5(a1) (2003) (exceptions only); N.D. CENT. CODE § 34-07-02 (1987); 43 PA. CODE § 51 (Supp. 2000); R.I. GEN. LAWS § 28-3-23 (2003); VA. CODE ANN. §40.1-92 (Michie 2002); WASH. REV. CODE ANN. § 49.12.121(a) (West 2002); W. VA. CODE ANN. §21-6-3 (Michie 2002).

⁴³ See *infra* notes 147–54 and accompanying text for a discussion of statutes relating to sixteen and seventeen-year-olds.

⁴⁴ ALASKA STAT. § 23.10.332 (Michie 2002) (only under 17); CAL. LAB. CODE § 1285 (West 2003); IND. CODE ANN. § 20-8.1-4-1 (Michie 1997); LA. REV. STAT. ANN. § 23-184 (West 1998); MD. CODE ANN., LAB. & EMPL. § 3-206 (Supp. 1999) (special permits only); N.H. REV. STAT. ANN. § 276-A:4 (1999); N.J. STAT. ANN. § 34:2-21.2 (West 2000); N.Y. LAB. LAWS § 132 (McKinney 2003); N.C. GEN. STAT. § 95-25.5 (2003) (exceptions only); 43 PA. CODE § 51 (Supp. 2000); WASH. REV. CODE ANN. § 49.12.121 (West 2002); W. VA. CODE ANN. §21-6-3 (Michie 2002).

leaving school. While more states give parents the right to notice and to consent in the decision to drop out of school, in many places even this decision is left to the child once the minimum age is attained.⁴⁵ Twenty-two states allow sixteen year olds to make decisions about school attendance and withdrawal.⁴⁶

The situation may be summarized as follows. Under American law, a teen may not legally buy a bottle of beer or give valid consent for a routine physical examination. These and a host of other decisions are made, at least as a matter of law, by parents or by the government acting as *parens patriae*. A minor, however, in many instances, may choose if, when, where, and how long to work, or whether to attend school or not. The law gives parents or other adults little formal leverage in the decision making in these realms.

To be sure, in the real world, parent and child often make joint decisions about work and school attendance after reasoned discussion.⁴⁷ But as any parent who has experienced adolescence with a child can attest, children often behave in ways contrary to the parent's guidance and, in many instances, the child's wishes are actually the decisive factor. Parents are often ignorant of large blocks of their adolescent's time and behavior. According to the most recent report by the National Campaign to Prevent Teen Pregnancy, two-thirds of the parents of sexually active fourteen-year-olds surveyed had no idea their children were sexually active.⁴⁸ This lack of knowledge is also present for many types of substance abuse.⁴⁹

This essay will discuss the issues embedded in the employment of adolescents in the American workplace. I shall argue that the current rules governing this topic are an exception to the norms

⁴⁵ For a discussion on school attendance laws see *infra* notes 151–54 and accompanying text.

⁴⁶ See *supra* note 41.

⁴⁷ The prophet Malachi, prophesizing about a time when mankind will enter the Messianic age declares, "And he shall turn the heart of the fathers to the children, and the heart of the children to their fathers."

Malachi III 24, THE PENTATEUCH, (Hertz trans., 2d ed., 1981).

⁴⁸ National Campaign to Prevent Teen Pregnancy, *14 and Younger: The Sexual Behavior of Young Adolescents: Summary*, 9, 16 (2003), <http://www.teenpregnancy.org/resources/reading/pdf/14summary.pdf>. (last visited Mar. 28, 2004).

⁴⁹ One study surveyed 1,219 parents across the country from December 2001 to January 2002. Partnership for a Drug-Free America, *2001-2002 Partnership Attitude Tracking Study: Key Findings*, at <http://www.drugfreeamerica.org/Templates/pats.asp?ws=PDF&vol=1&grp=NewsCenter&cat=National+Surveys&top=PATS+2001%2D2002&tit=2001%2D2002+Partnership+Attitude+Tracking+Study%3A+Key+Findings> (last visited Mar. 28, 2004). The survey reported that while "12 percent of [American] teens say they have tried Ecstasy just one percent of parents believe their child may have tried the drug." *Id.* (footnote omitted).

governing decision-making affecting minors, which are based on the principle that the “best interests of the child” must prevail. The results of this aberration produce very significant negative social effects; therefore public policy on this topic should be radically changed. After this Introduction, Part II discusses the general paradigm of adolescents and the law emerging from constitutional, common law, and statutory bases. Part III surveys child labor in the United States today and Part IV presents an overview of the negative consequences resulting from adolescent work. Finally, Part V analyzes the legal rules governing child labor and the interwoven compulsory attendance laws of the states.

II. ADOLESCENTS AND THE LAW

A. *Constitutional Considerations*

In a series of decisions going back more than eighty years, the Supreme Court has upheld the principle that parents have a “fundamental” right to direct the upbringing of their children. Beginning in *Meyer v. Nebraska*,⁵⁰ the Court has emphasized that the Fourteenth Amendment guarantees the right of an individual to “establish a home and bring up children.”⁵¹ Similar language has been repeated frequently in later decisions.⁵² The Court characterizes parents’ rights in “child rearing and education” as a liberty interest protected by the Fourteenth Amendment, requiring an application of the “compelling interest test.”⁵³

Children’s interests are almost always defined as being encompassed within the family unit.⁵⁴ In *Parham v. J.R.*,⁵⁵ for

⁵⁰ 262 U.S. 390 (1923).

⁵¹ *Id.* at 399.

⁵² See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (holding that the “primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition”); *H.L. v. Matheson*, 450 U.S. 398, 410 (1981) (stating that “[w]e have recognized that parents have an important ‘guiding role’ to play in the upbringing of their children, which presumptively includes counseling them on important decisions”) (citation omitted).

⁵³ See *Bellotti v. Baird*, 443 U.S. 622 (1982). But see *H.L.*, 450 U.S. at 413 (holding that state action with respect to childbirth in extreme circumstances is “rationally related to the legitimate governmental objective of protecting potential life”) (citations omitted).

⁵⁴ *Parham v. J.R.*, 442 U.S. 584, 600 (1979) (opining that the child’s “interest is inextricably linked with the parents’ interest”). On occasion, the Supreme Court has afforded children the same protections granted adults under the Constitution. See, e.g., *In re Gault*, 387 U.S. 1, 55 (1967) (extending the privilege against self-incrimination to minors); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (indicating that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate”).

example, a state statute allowed a parent to have a child institutionalized for a limited time for “observation and diagnosis,”⁵⁶ and later for an indefinite period.⁵⁷ The child would presumably have opted not to proceed with the treatment, but the Court noted:

Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children [American jurisprudence holds] that parents generally “have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations.” . . . The law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children.⁵⁸

Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments [W]e cannot assume that the result in *Meyer v. Nebraska*, . . . and *Pierce v. Society of Sisters*, . . . would have been different if the children there had announced a preference to learn only English or a preference to go to a public, rather than a church school.⁵⁹

Most recently the Court in *Troxel v. Granville*,⁶⁰ struck down a Washington law as an undue incursion on parents’ fundamental right “to make decisions concerning the care, custody, and control of their children.”⁶¹ The Court saw no need for participation by an adolescent—who may have formed a psychological or emotional attachment with a grandparent—in decisions regarding visitation rights with that grandparent.⁶² Although there are exceptions, most

⁵⁵ 442 U.S. 584 (1979).

⁵⁶ *Id.* at 591 (quoting GA. CODE ANN. § 88-503.1 (1975)).

⁵⁷ *Id.*

⁵⁸ *Id.* at 602 (citations omitted).

⁵⁹ *Id.* at 603–04 (citations omitted).

⁶⁰ 530 U.S. 57 (2000).

⁶¹ *Id.* at 66.

⁶² See generally *Troxel*, 530 U.S. 57 (discussing the tradition and development of parental authority over the lives of their children without referencing the situations in which a minor may be capable and willing to make his or her own decision regarding their welfare). In dissent, Justice Stevens advocated that minors should be treated in this situation as well as “constitutionally protected actors” whose interests should be “balanced in the equation.” *Id.*

notably in the abortion context,⁶³ the Supreme Court consistently protects parental rights, deems them fundamental, and protects these rights under the highest standard of constitutional review.

B. Common Law & Statutory Considerations

American common law gives parents the primary right to govern their children's activity,⁶⁴ but specific issues of statewide importance are resolved by statute. In many contexts chronological age determines the ability to make decisions. The distinction between child and adult has existed in the law since ancient times.⁶⁵ In the 1970's, largely in response to the adoption of the Twenty-Sixth Amendment,⁶⁶ this milestone was reduced from the traditional twenty-one to eighteen.⁶⁷ On the other hand, in some limited instances—chiefly criminal behavior,⁶⁸ abortion,⁶⁹ and sexually

at 88–89 (Stevens, J., dissenting).

⁶³ See *Planned Parenthood v. Danforth*, 428 U.S. 52, 72–75 (holding, among other things, that a state is prohibited from mandating parental consent as a prerequisite for a minor to obtain an abortion).

⁶⁴ Religion may be the ultimate source of this general rule. There are numerous biblical references to appropriate parent-child behavior. See, e.g., *Exodus* 20:12 (King James) (“Honour thy father and thy mother: that thy days may be long upon the land which the LORD thy God giveth thee.”); *Deuteronomy* 5:16 (King James) (“Honour thy father and thy mother”); *Leviticus* 19:3 (King James) (“Ye shall fear every man his mother, and his father”); *John* 19:26–27 (King James) (“When Jesus therefore saw his mother, and the disciple standing by, whom he loved, he saith unto his mother, Woman, behold thy son! Then saith he to the disciple, Behold thy mother! And from that hour that disciple took her unto his own home.”). Muslim precepts are similar: “May he be disgraced! May he be disgraced! May he be disgraced, whose parents, one or both, attain old age during his lifetime, and he does not enter Jannah (by rendering being dutiful to them.)” AlHaramain Foundation, *The Qur'aan and Sunnah on Parents: Kind Treatment Towards Parents and Establishment of the Ties of Blood Relationship*, (Apr. 3, 2002), at <http://www.alharamain.org/EN/Contents.aspx?AID=97>.

⁶⁵ See T.E. James, *The Age of Majority*, 4 AM. J. LEGAL HIST. 22, 30–31 (1960) (discussing the evolution of the age of majority at common law from fourteen or fifteen to twenty-one as related to the increasing weight of a knight's armor and the inability of a younger adolescent to bear it, and with additional time being needed before attainment of majority for an heir to enter onto his lands and evaluate the state of his property before taking action). 1 WILLIAM BLACKSTONE, COMMENTARIES **440–41 (noting that “[t]he antient [sic] Roman laws gave the father a power of life and death over his children; upon this principle, that he who gave had also the power of taking away . . . [The father] may indeed have the benefit of his children's labour while they live with him, and are maintained by him”).

⁶⁶ U.S. CONST. amend. XXVI, § 1. This amendment was ratified in 107 days. U.S. CONST. amend. XXVI, Historical Notes.

⁶⁷ See, e.g., VA. CODE ANN. § 1-13.42(b) (Michie 2001):

For the purposes of all laws of the Commonwealth [of Virginia] including common law, case law and statutory law, unless an exception is specifically provided in this Code, a person shall be an adult, shall be of full age and shall reach the age of majority when he becomes eighteen years of age.

CAL. FAM. CODE § 6501 (West 1994) (indicating that, “[a]n adult is an individual who is 18 years of age or older”).

⁶⁸ In the last twenty years, states have widely redefined children in criminal contexts to be

transmitted diseases⁷⁰—teens may be treated more like autonomous adults.

At common law, adolescents become legally independent by attaining the age of majority or via emancipation through marriage—which almost always requires parental consent—or by some other legally available alternative.⁷¹ Emancipation modifies or terminates the financial aspects of the parent-child relationship and ends parental rights to custody and control,⁷² thereby permitting an emancipated minor the right to live on his own and make independent decisions.⁷³

The rule that unemancipated minors are not deemed competent to make most life choices may be illustrated in many areas of law. Minimum age requirements govern the right to vote,⁷⁴ marry,⁷⁵ even

as legally accountable as adults. *See, e.g.*, ALA. CODE § 12-15-34 (1995) (determining that a child may be prosecuted in criminal court “if the child was 14 or more years of age at the time of the conduct charged and is alleged to have committed an act which would constitute a crime if committed by an adult”); IND. CODE ANN. § 31-30-1-4 (Michie 2003) (stating that juvenile court lacks jurisdiction over individuals at least sixteen years old that commit certain felonies, such as murder, kidnapping, rape, and certain types robbery); LA. REV. STAT. ANN. §§ 305(B)(1),(2) (West 1995) (providing that a child at least fifteen years old is subject to the jurisdiction of adult criminal court when an indictment is returned or probable cause is found that the child committed certain felonies, including attempted first degree murder, attempted second degree murder, rape, kidnapping, and armed robbery).

⁶⁹ *See supra* note 22 and accompanying text.

⁷⁰ *See, e.g.*, ME. REV. STAT. ANN. tit. 22, §§ 1502, 1823, 1908 (West 2004) (providing that a minor may consent to treatment for abuse of alcohol or drugs, emotional or psychological problems, venereal disease, sexual assault, and family planning).

⁷¹ *See* Lynn D. Wardle, *Rethinking Marital Age Restrictions*, 22 J. FAM. L. 1, 9–11 (1983–1984) (illustrating that the most common approach with respect to the marriage of older minors is to require parental consent, while requiring both parental and judicial consent for the marriage of younger minors).

⁷² *See, e.g.*, *West Shield Investigations and Sec. Consultants v. Superior Court*, 98 Cal. Rptr. 2d 612, 621–22 (Cal. Ct. App. 2000) (holding that once a minor becomes emancipated, he or she is no longer under a legal disability and therefore any tolling provisions for infancy do not apply). Beyond common law rules, some states have adopted statutes regulating emancipation and permitting it where common law doctrines would not have done so. The California Emancipation of Minors Act, CAL. FAM. CODE § 7050 (West 1994), for example, provides that an emancipated minor shall be considered as being over the age of majority for a variety of purposes, including consent to medical treatment without parental involvement, entrance into contracts, dealings with property, and suing and being sued. As noted, the age of majority traditionally meant parents were no longer obliged to support the child. Today, however, this rule is muddied by many states’ requirement that that parental support continues after eighteen if children are unable to support themselves. *See, e.g.*, ARIZ. REV. STAT. ANN. § 25-320(B) (West 2000) (permitting the court to consider extending support beyond the age of majority when the child is mentally or physically disabled).

⁷³ These “independent decisions” include sole responsibility for financial management and debts, and the ability to contract freely, to sue and be sued in the minor’s own name, and to make independent financial decisions for the minor and the minor’s children.

⁷⁴ Every state in the country requires a person to attain eighteen years before that person is permitted to vote. *See, e.g.*, ILL. CONST. art. III, § 1; IND. CONST. art. II, § 2; KY. CONST. § 145; CAL. ELEC. CODE § 2000(b) (West 2003); FLA. STAT. ANN. § 97.041(1)(a)(1) (West 2002);

admission to movies.⁷⁶ Statutory rape statutes conclusively presume that an underage victim is incapable of giving consent in most states.⁷⁷ Children under eighteen may not bring an action in their own name⁷⁸ and may disaffirm a contract based on their minority status alone.⁷⁹ Moreover, a parent or legal guardian normally must authorize medical procedures for a minor.⁸⁰

The legal authority of parents over their children is reflected in other contexts as well. When a child is injured or killed, loss of earnings and services are components of the damages owed to the parents in a civil suit against the wrongdoer.⁸¹ Many activities of

GA. CODE ANN. § 21-2-216(a)(3) (Michie 2003); IOWA CODE ANN. § 48A.5(2)(c) (West 1999).

⁷⁵ See, e.g., CAL. FAM. CODE § 301 (West 1998) (indicating that the age of consent for marriage is eighteen). See also *Moe v. Dinkins*, 533 F. Supp. 623, 630–31 (S.D.N.Y. 1981), *aff'd*, 669 F.2d 67 (2d Cir. 1982), *cert. denied*, 459 U.S. 827 (1982) (upholding New York's law requiring parental consent for marriages of persons between the ages of fourteen and eighteen).

⁷⁶ See Motion Picture Association of America, *Movie Ratings*, at <http://www.mpa.org/movieratings> (last visited Mar. 28, 2004).

⁷⁷ 3 WHARTON'S CRIMINAL LAW § 285 (15th ed. 1995).

⁷⁸ See Natalie Loder Clark, *Parents Patriae and a Modest Proposal for the Twenty-First Century: Legal Philosophy and a New Look at Children's Welfare*, 6 MICH. J. GENDER & L. 381, 445 (2000) (arguing that children should have an increased voice in the legal system).

⁷⁹ See Robert G. Edge, *Voidability of Minors' Contracts: A Feudal Doctrine in a Modern Economy*, 1 GA. L. REV. 205, 219 (1967). Upon reaching eighteen years, the minor may either disaffirm or ratify the contract. See JOHN E. MURRAY, JR., *MURRAY ON CONTRACTS*, § 23, 40 (3d ed.) (1990). The preferred approach is to disallow disaffirmance where the adult contracting party relied on the agreement to her detriment. *Id.*

⁸⁰ Compare CAL. FAM. CODE § 6920 (West 1998) with MASS. GEN. LAWS ch. 112, § 12F (Law. Co-op. 1991); R.I. GEN. LAWS § 23-4.6-1 (2001). See also Susan D. Hawkins, Note, *Protecting the Rights and Interests of Competent Minors in Litigated Medical Treatment Disputes*, 64 FORDHAM L. REV. 2075 (1996). It is unconstitutional, however, for a state to give parents "an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." *Planned Parenthood v. Danforth*, 428 U.S. 51, 74 (1976). The Supreme Court's response to state statutory allocation of authority for making this decision allows states to subject adolescents to procedural requirements regarding abortion that would not be allowed for adults. See, e.g., *Bellotti v. Baird*, 443 U.S. 622, 634 (1979) (recognizing that "the constitutional rights of children cannot be equated with those of adults [because of] the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing"). At the same time, the Court has made clear that abortion is different from other medical decisions and that pregnant teens cannot be simply classified as children subject to their parent's authority. *Id.* at 649–51 (holding that if parental consent is denied, the minor "must have recourse to a prompt judicial determination of her maturity"). A judicial bypass hearing provides an opportunity for a judge to evaluate the minor's maturity and to determine whether the pregnant adolescent is "mature and well enough informed to make intelligently the abortion decision on her own" without prior consultation of a parent. *Id.* at 647.

⁸¹ See, e.g., *Correia v. Sherry*, 760 A.2d 1156, 1157 (N.J. Super. Ct. Law Div. 2000) (determining through expert testimony that the economic loss attributable to the death of an 18-year-old child was \$312,423, which consisted of the parents' loss of his "care, assistance, guidance, advice, and companionship"); *Green v. Hale*, 590 S.W.2d 231, 236–37 (Tex. Civ. App. 1979) (awarding \$9,500, to the family of a thirteen-year-old who was killed, where the

particular significance to adolescent daily life are restricted by law or placed directly under parental control. For example every state provides for parental control over adolescent driving privileges and therefore minors may obtain driver's licenses only where a parent or custodian signs the license application as a sponsor.⁸² Today, the minimum drinking age is twenty-one in all states.⁸³ Tobacco use by children is likewise routinely regulated: all states now prohibit the sale of tobacco products to persons under eighteen⁸⁴ and, in some states, even older.⁸⁵

son had for the past two years contributed to the family income by picking watermelons and selling newspapers). See generally Francis M. Dougherty, *Excessiveness and Adequacy of Damages for Personal Injuries Resulting in Death of Minor*, 49 A.L.R.4TH 1076 (1986) (discussing the adequacy of damages awarded to parents in personal injury suits involving the death of a minor child).

⁸² See, for example, COLO. REV. STAT. § 42-2-108 (2003); MISS. CODE ANN. § 63-1-23 (1999); PA. STAT. ANN. tit. 75, §§ 1505(b),(c) (West Supp. 2003) (establishing the necessity of parental consent for minors to obtain learner's permits and/or licenses to operate motor vehicles); WIS. STAT. ANN. § 343.15(3) (West 1999) (allowing a parent to avoid liability by requesting the motor vehicle department to revoke his or her child's license). Many states have a graduated licensing system that allows minors to first obtain a learner's permit and upon the completion of a class and a requisite number of driving hours, a provisional license. U.S. Dep't of Transp., Nat'l Highway Traffic Safety Admin., State Legislative Fact Sheets, Graduated Driver Licensing System, at <http://www.nhtsa.dot.gov/people/outreach/safesobr/19qp/factsheets/graduated.html> (last visited Mar. 28, 2004). The provisional license allows a minor to drive, however, each state that follows a graduated system places restrictions upon the driver such as the hours that a minor can drive and requirements that a licensed adult be in the vehicle with the minor. *Id.* Upon a successful provisional period, meaning no violations or points on the driving record, the minor can obtain a full license. *Id.*

⁸³ See Ken Sternberg, *Alcohol Consumer Must Be 21 Years Old in All States; Concerns Remain About Drunk Driving*, 260 J. AM. MED. ASSN. 2479, 2479 (1988) (noting that all states have raised their minimum drinking age to 21); Alyson L. Redman, *Manuel v. Louisiana: The Louisiana Supreme Court Determines that Raising the Legal Drinking Age to Twenty-One is Not Age Discrimination under Louisiana's Equal Protection Clause*, 71 TUL. L. REV. 987, 987-88 (1997) (noting that Louisiana did not raise its minimum drinking age to twenty-one until 1986 which then enabled the state to receive federal funding under the National Minimum Drinking Age Act). In 1995, Congress enacted a nationwide "zero tolerance" statute. It encourages states to enact and enforce legislation that "considers an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State to be driving while intoxicated or driving under the influence of alcohol." 23 U.S.C. § 161(a)(3) (2000). States failing to comply with the Congressional mandate faced loss of a portion of their federal highway funds. *Id.* §§ 161(a)(1),(2).

⁸⁴ Centers for Disease Control, *State Laws on Tobacco Control—United States 1998*, 48 MORBIDITY & MORTALITY WEEKLY REP. 21, 26 (June 25, 1999) available at <http://www.cdc.gov/mmwr/pdf/ss/ss4803.pdf> (summarizing various state laws addressing the harmful effects of tobacco use); see Jamie Peal Kave, *The Limits of Police Power: State Action to Prevent Youth Cigarette Use After Lorillard v. Reilly*, 53 CASE W. RES. L. REV. 203, 203-04 (2002) (questioning the effectiveness of laws prohibiting the use of tobacco by minors considering the widespread problem of underage smoking). For examples of state statutes regulating tobacco use by minors, see FLA. STAT. ANN. § 569.11 (West 2003); IND. CODE ANN. § 35-46-1-10.5 (Michie 1998); TEX. HEALTH & SAFETY CODE ANN. § 161.252 (Vernon 2001).

⁸⁵ Alabama, Alaska, and Utah set the minimum age at nineteen. *State Laws on Tobacco Control*, *supra* note 84, at 26. More than half of the states license retailers that sell tobacco products and provide penalties for licensees that sell to children. *Id.* at 27. At least eleven of

III. *Child Labor in the Contemporary United States*

In the United States, almost forty percent of all sixteen and seventeen-year-olds—totaling 3.7 million adolescents—and many children even younger, were employed at some time during 2001.⁸⁶ Most juveniles work for a large employer.⁸⁷ Many work extremely long hours. One study found that employed twelfth graders averaged twenty hours of paid work per week.⁸⁸ Many scholars believe that the academic underperformance of American students results, at least partially, from this high intensity employment.⁸⁹

In 2001, about sixty percent of youths were employed in the retail industry, in venues such as department stores, groceries, restaurants, or retail outlets.⁹⁰ Of the remaining adolescent workers, twenty-six percent were employed in the service sector in fields such as education, recreation, health services, or private household.⁹¹ Four percent of all working minors, fifteen to seventeen years old, were employed in the agriculture industry.⁹² In most instances, these jobs provide few positive benefits for teens, who are typically performing boring, routine tasks,⁹³ that are unlikely to prepare them for future careers.

Family income and race are also related to children's employment, but often in counter-intuitive ways. Children raised in families with higher incomes are more likely to work than children raised in lower income families.⁹⁴ On the other hand, children from

the states provide for license suspension or revocation. *Id.* at 16.

⁸⁶ See 2002 GAO REPORT, *supra* note 3, at 1, 10.

⁸⁷ *Id.* at 10. In 2001, only two percent of adolescents were self-employed and less than 1% worked without pay in his or her family's business. *Id.*

⁸⁸ Christopher J. Ruhm, *The Extent and Consequences of High School Employment*, 16 J. LAB. RES. 293, 297 (1995).

⁸⁹ See generally, PROTECTING YOUTH AT WORK, *supra* note 4, at 115–19 (summarizing studies).

⁹⁰ 2002 GAO REPORT, *supra* note 3, at Fig. 2, p. 11. Cashier is the most common job (sixteen percent of fifteen to seventeen year olds) followed by cook, stock handler, bagger, and fast food server.

⁹¹ *Id.*

⁹² *Id.* at 12, 13.

⁹³ ELLEN GREENBERGER & LAURENCE STEINBERG, WHEN TEENAGERS WORK: THE PSYCHOLOGICAL AND SOCIAL COSTS OF ADOLESCENT EMPLOYMENT 8, 88–89 (1986) (positing that the typical teen job deprives the workers of contact with adults that could have a positive effect on the teens' future).

⁹⁴ 2002 GAO REPORT, *supra* note 3, at 14. The employment of children and family socioeconomic status appears to be directly related. For example, in 2001, about seventeen percent of children in families with annual incomes below \$25,000 a year worked in 2001, whereas twenty-nine percent of children in families with incomes above \$75,000 a year were employed. *Id.* This trend reaches across racial boundaries as well. For instance, about thirty percent of White children worked in 2001, as compared to fifteen percent of Black children

lower income families—although less likely to work—tend to work harder when employed.⁹⁵

IV. THE DANGERS OF ADOLESCENT WORK

A. *The Developmental Stage*

The freedom given to teenagers to make workplace decisions is startling, even dangerous, because of their developmental state. Adolescence has been much studied and researched by several different schools of psychology—cognitive, behavioral, and social.⁹⁶ All of these branches of psychology agree that adolescence is a distinct developmental period, reflecting identifiable patterns of thought, behavior, and social situations.⁹⁷ The most significant concepts, for our purposes, derive from cognitive psychology and behavioral psychology, although the two schools are often interconnected when discussing developmental processes.⁹⁸ Social psychology also lends many of its own distinct ideas and theories because of the behavior of adolescents.⁹⁹

and seventeen percent of Hispanic children. *Id.*

⁹⁵ *Id.* Children from families with annual incomes below \$25,000 worked an average of twenty-one hours per week in 2001, five more hours a week than children from higher income families. *Id.* See also JEYLAN T. MORTIMER, WORKING AND GROWING UP IN AMERICA 132–33 (2003) (asserting that teens from lower income families tend to take on “greater work demands” than teens from higher income families and feel that they obtain higher “status” with their peers by working).

⁹⁶ See generally MICHAEL RUTTER & HENRI GILLER, JUVENILE DELINQUENCY: TRENDS AND PERSPECTIVES 242–65 (1983) (describing multiple psychological theories that attempt to explain the cause of juvenile delinquency); Kim Taylor-Thompson, *States of Mind/States of Development*, 14 STAN. L. & POL’Y REV. 143, 150–51 (2003) (questioning—in light of policymakers’ decisions to treat yours as adults for certain criminal acts—whether the development of judgment and capacity in these individuals has been adequately assessed).

⁹⁷ See, e.g., David E. Arredondo, M.D., *Child Development, Children’s Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14 STAN. L. & POL’Y REV. 13, 14 (2003) (indicating that adolescence is a virtually unrivaled period of brisk mental and physical development); Jeffrey Fagan, *Context and Culpability in Adolescent Crime*, 6 VA. J. SOC. POL’Y & L. 507, 510 (1999) (describing adolescence as a time entrenched in a “unique developmental context” affected by “social and situational factors”); Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 155 (1997) (asserting that behavior originating in adolescence will likely cease upon the onset of the adult years).

⁹⁸ See, e.g., Taylor-Thompson, *supra* note 96, at 150–51; Marty Beyer, Ph.D., *Recognizing the Child in the Delinquent*, 7 KY. CHILD. RTS. J. 16, 17 (1999).

⁹⁹ Taylor-Thompson, *supra* note 96, at 151–52 (2003) (presenting the opinion of cognitive psychologists that other factors, such as “uncertainty” or “cultural experiences” can affect adolescent development); Fagan, *supra* note 97, at 516, 524 (intimating that adolescents tend to act in a way which will garner acceptance amongst their peers).

Adolescents exhibit very high levels of egocentrism.¹⁰⁰ when making decisions, they often focus on themselves as individuals and their own wants, needs, and desires. Little attention is paid to the surrounding world or the needs and/or desires of others.¹⁰¹ Teens are learning to make adult decisions, but it is imprudent to allow important choices to be made without adult supervision and guidance.¹⁰² Decisional capacity is often saddled with immaturity of thought and action. Self-gratification is exaggerated, even more so than in childhood.¹⁰³ This pursuit is eventually overcome as adulthood becomes reality and the maturity level increases.¹⁰⁴

Furthermore, because adulthood looms, adolescents are usually fighting an intense psycho-social battle between increasing individuation and the strong need to fit in with peers.¹⁰⁵ This struggle between the desire to be an individual and to pursue egocentric ideals, versus the need to be accepted by others, causes volatile thinking and behavior.¹⁰⁶

Behaviorally, adolescent conduct is a natural outgrowth of the above patterns. Authority figures are often seen as those attempting to quash individuation, egocentric wants, and the social needs that adolescents crave.¹⁰⁷ Parents or other adults who set limits on behavior are often perceived as trying to defeat the personal ideals and social needs of the teenager.¹⁰⁸ Because

¹⁰⁰ Taylor-Thompson, *supra* note 96, at 154 (articulating that adolescents lack the ability to adequately consider future consequences and thus make decisions based on how the immediate consequences will presently affect their lives).

¹⁰¹ See Beyer *supra* note 98, at 17 (stating that adolescents are “intensely self-absorbed” and subsequently make decisions that are contrary to facts they know to be true); see also Scott & Grisso, *supra* note 97, at 160–64 (noting that teenagers “discount the future” and instead focus on the short term consequences of their actions).

¹⁰² See Taylor-Thompson, *supra* note 96, at 153–55 (listing several differences between the adolescent and adult decision-making processes, such as the disparate ability to think independently and perceive risk, that warn of the improvidence of allowing teens to make decisions without guidance).

¹⁰³ See Scott & Grisso, *supra* note 97, at 160–64 (stating that such egocentric behavior on behalf of adolescents results from the inability to comprehend long-term consequences).

¹⁰⁴ *Id.* at 161.

¹⁰⁵ See Fagan, *supra* note 97, at 516–17; see also Scott & Grisso, *supra* note 97, at 156.

¹⁰⁶ As famed psychologist and theorist Erik Erikson once stated:

In their search for a new sense of continuity and sameness, adolescents have to re-fight many of the battles of earlier years, even though to do so they must artificially appoint perfectly well-meaning people to play the roles of adversaries; and they are ever ready to install lasting idols and ideals as guardians of a final identity.

ERIK H. ERIKSON, *CHILDHOOD AND SOCIETY* 261 (2d ed. 1963).

¹⁰⁷ See generally RUTTER AND GILLER, *supra* note 96, 250–53.

¹⁰⁸ See generally Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 801 (2003) [hereinafter *Blaming Youth*] (explaining the paradigm for adolescent development as involving two facets: first, adolescent incapacity for decision-making, and second, adolescent exploration and experimentation for the purpose of developing personal

defiance and self-gratification often motivate decisions, risk-taking behaviors result.¹⁰⁹ In sum, because of their psychological and social developmental stage, teens often make poor choices either to defy authority or to further egocentric ideals.¹¹⁰

B. Physical Hazards

Youths working in the United States require a higher standard of protection than is now provided. Adolescents face the same workplace hazards as adults in similar occupations but are far less prepared to confront these hazards. Evening and night hours—as well as the risk of occupational injury—are burdens increasingly borne by workers who are young, have limited education, and low earning potential.¹¹¹ Many of the industries that employ large numbers of youth workers—such as grocery stores, hospitals and nursing homes, and fast food establishments—have higher than average injury rates for workers of all ages.¹¹² The leading cause of fatal injury to minors employed in the retail industry is homicide, accounting for sixty-four percent of work-related deaths.¹¹³ Agricultural work is particularly dangerous for young workers as

identity).

¹⁰⁹ Approximately one-half of U.S. adolescents are within moderate or greater risk of: unsafe sexual behavior; teenage pregnancy and childbearing; abuse of drugs and/or alcohol; academic failure and removal from school; behaviors creating interaction with police and court systems. ROGER J. R. LEVESQUE, *ADOLESCENTS, SEX, AND THE LAW* 24 (2002). An astonishing ten percent in this age range engage in all these risky behaviors. *Id.* See also Helen E. Garnier & Judith A. Stein, *Values and the Family: Risk and Protective Factors for Adolescent Problem Behaviors*, 30 *YOUTH & SOC'Y*. 89, 108, 111–12 (1998) (presenting the notion that adolescent values and problem behaviors, coupled with a positive mother-child relationship will affect adolescent decision making); *Blaming Youth*, *supra* note 108, at 801–02 (correlating adolescent risk taking with the adolescents' search for personal identity); Cauffman & Steinberg, *supra* note 108, at 1763 (acknowledging that, through the existence of a distinct juvenile legal system, the law presumes adolescents cannot make decisions at the same level as adults); Lita Furby & Ruth Beyth-Marom, *Risk Taking in Adolescence: A Decision-Making Perspective*, 12 *DEV. REV.* 1, 1–2 (1992) (conceding that risk taking is inherent amongst adolescents, however this behavior should be a concern).

¹¹⁰ Beyer, *supra* note 98, at 17–18; Furby & Beyth-Marom, *supra* note 109, at 1–2.

¹¹¹ Daniel S. Hamermesh, *Changing Inequality in Work Injuries and Work Timing*, 122 *MONTHLY LAB. REV.* 22, 25, 29 (1999). Hamermesh asserts that studies focusing solely on earning inequality underestimate the growing inequality in the labor market because non-monetary benefits in employment, like safety and regular hours, have also become more unequal over the last two decades. *Id.* at 29.

¹¹² 2002 GAO REPORT, *supra* note 3, at 28; Janice Windau et al., *Profile of Work Injuries Incurred by Young Workers*, 122 *MONTHLY LAB. REV.* 3, 5 (June 1999), available at <http://www.bls.gov/opub/mlr/1999/06/contents.htm>.

¹¹³ Windau et al., *supra* note 112, at 6. For teens employed in the construction industry, falls (twenty-three percent) and electrocution (twenty-one percent) are the primary fatal risks. *Id.* at 7.

well as adults, yielding fatality rates second only to mining.¹¹⁴ Working teens are also at high risk for highway accidents, especially those who commute to work. Sixteen and seventeen-year-old drivers have accident rates seven times higher than adult drivers.¹¹⁵

C. Non-Physical Detriments

A variety of negative outcomes correlate with “high intensity work” by youths. Less work time, however, is associated with reduced high school drop out rates,¹¹⁶ increased involvement in school activities,¹¹⁷ and higher grade point averages.¹¹⁸ A recent study concluded that if the average number of hours adolescents worked per week during an academic year were reduced by ten hours, the average twelfth-grade math scores would likely experience an increase of about 2.0 points, or about 0.2 of a standard deviation.¹¹⁹ In the context of economics, a seventeen year-old student who decreased work by ten hours would potentially benefit from an increase in lifetime earnings presently equal to \$30,000.00.¹²⁰ Moreover, since higher academic achievement reduces a student’s likelihood of engaging in a variety of negative behaviors, mere earnings measurements grossly underestimate the benefits to the individual and society of reducing student employment during the school year. Adolescents in the United States, when compared to their European and East Asian counterparts, spend more time in paid jobs and leisure activities and much less time doing homework.¹²¹

¹¹⁴ Windau et al., *supra* note 112, at 5. During 1992–1997, approximately 40% of fatal injuries for youth workers occurred while performing agricultural work. *Id.* Most of these deaths are transportation related, i.e., tractor accidents. *Id.*

¹¹⁵ Child Labor Coalition, *For Teen Workers and Students: Facts About Teen Driving on the Job*, at <http://www.stopchildlabor.org/teensandstudents/drivefac.htm> (last visited Mar. 28, 2004). Transportation incidents are the cause of eighteen percent of young retail worker’s deaths. Windau et al., *supra* note 112, at 6. In service industries, forty-one percent of deaths of minor workers are due to transportation, while twenty-five percent are due to homicide. *Id.* at 7.

¹¹⁶ PROTECTING YOUTH AT WORK, *supra* note 4, at 116.

¹¹⁷ Sharon Wofford Mihalic & Delbert Elliott, *Short-and Long-Term Consequences of Adolescent Work*, 28 YOUTH & SOC’Y 464, 477 (1997).

¹¹⁸ Mark Schoenhals et al., *The Educational and Personal Consequences of Adolescent Employment*, 77 SOC. FORCES 723, 726 (1998) (asserting that “negative time- allocation” among working adolescents results in lower grade point averages).

¹¹⁹ John H. Tyler, *Using State Child Labor Laws to Identify the Effect of School-Year Work on High School Achievement*, 21 J. LAB. ECON. 381, 405 (2003) (detailing the effect of working during school on the level of math achievement attained by high school seniors).

¹²⁰ *Id.*

¹²¹ American youth spend approximately six and a half to eight hours per day in free time,

Additionally, high intensity youth employment correlates negatively to school attendance.¹²² Every school day, the number of students absent from school without an excuse numbers in the hundreds of thousands.¹²³ Increased rates of truancy as well as excessive rates of absenteeism have been reported by many large cities.¹²⁴ In 2000, fifteen percent of eighth- and tenth-graders missed five or more school days during a four-week period—a quarter of all school days.¹²⁵ Absence from school is more prevalent the higher the grade.¹²⁶ Observers also notice greater fatigue in students who work,¹²⁷ and a tendency to arrive late at school because of oversleeping.

Working adolescents are also at higher risk for a wide variety of nonacademic detriments. Teens employed more than twenty hours per week are more likely to be suspended from school, to smoke cigarettes and abuse drugs, and to engage in sexual activity.¹²⁸ This

engaged in activities such as watching television and participating in sports. Reed W. Larson and Suman Verma, *How Children and Adolescents Spend Time Across the World: Work, Play, and Developmental Opportunities*, 125 PSYCHOL. BULL., 701, 725 (Nov. 1999). See also PROTECTING YOUTH AT WORK, *supra* note 4, at 27 (stating that caution should be exercised when comparing statistics among countries).

¹²² Myriam L. Baker et al., *Truancy Reduction: Keeping Students in School*, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUV. JUST. BULL. 1, 2 (2001) available at <http://www.ncjrs.org/pdffiles1/jjdp/188947.pdf>; Sheila Heaviside et al., *Violence and Discipline Problems in U.S. Public Schools: 1996–97*, NAT'L CENTER FOR EDUC. STAT., U.S. DEPT OF EDUC. (1998).

¹²³ Baker et al., *supra* note 122, at 1–2.

¹²⁴ See Heaviside et al., *supra* note 122 (highlighting the statistical fact that in 1996–1997, forty-nine percent of public city school principals complained that tardiness was a serious or at least moderate problem at their school, while twenty-eight percent echoed that sentiment with respect to absenteeism).

¹²⁵ U.S. DEPT OF EDUC, *Press Releases: America's Annual Progress Report on Education Provides Mixed Results* (May 31, 2002) at <http://www.ed.gov/pressreleases/2002/05/05312002.html>.

¹²⁶ *Id.*

¹²⁷ PROTECTING YOUTH AT WORK, *supra* note 4, at 96–97; see also Madeleine Grey Bullard, *Child Labor Prohibitions are Universal, Binding, and Obligatory Law: The Evolving State of Customary International Law Concerning the Unempowered Child Laborer*, 24 HOUS. J. INT'L L. 139, 149 (stating that similar rates of absenteeism and increased drop out rates are equally present in the international community).

¹²⁸ Many reasons may exist for these results. Most adolescent jobs, especially in fast food restaurants and retail settings, lack opportunities for adult mentorship because peers supervise employed youths. Absence of adult guardians in the work place may foster deviance both within and outside the work place. Long work hours reduce teens' capacity to engage in "good" leisure (e.g., sports, extracurricular activities) and they may correspondingly be more attracted to less structured, unsupervised, and potentially deviant activities outside the workplace. For examples of theories of these adolescent problem behaviors, see generally Barbara J. McMorris & Christopher Uggen, *Alcohol and Employment in the Transition to Adulthood*, 41 J. HEALTH & SOC. BEHAV. 276, 288 (2000); Laurence Steinberg & Sanford M. Dornbusch, *Negative Correlates of Part-Time Employment During Adolescence: Replication and Elaboration*, 27 DEVELOPMENTAL PSYCHOL. 304, 308 (1991); Laurence Steinberg et al., *Negative Impact of Part-Time Work on Adolescent Adjustment: Evidence From a Longitudinal*

is particularly true for adolescents from lower socio-economic groups.¹²⁹ Moreover, paid jobs provide income autonomy which may weaken the informal social controls of family and school which restrain negative social behavior. Thus while steady employment is a negative predictor of crime in adulthood, especially for “at-risk” males,¹³⁰ paid jobs are unlikely to deter criminal activities among youth offenders.¹³¹

Sexual harassment in the work place is a problem for workers of all ages but is especially acute for minor females. Adolescent girls presently constitute a majority among the contemporary teen work force.¹³² Young female employees typically lack bargaining power to protect themselves from overreaching adults. Teens almost invariably work for low pay and occupy the lowest rung in the workplace hierarchy. The harasser’s position of authority encourages youth workers to believe supervisors have absolute authority over the operation and that objections would be ineffective. The vulnerability of adolescents and their “inability to make critical decisions in an informed, mature manner,”¹³³ often blocks effective responses to workplace harassment.

While they often appear to be adults physically, adolescents do not have the coping mechanisms that accompany developmental maturity, particularly when decisions must be made under stressful circumstances or when social norms promote undesirable behavior.¹³⁴ For example, a young employee may decide not to resist sexual advances or object to a pattern of sexually demeaning

Study, 29 DEVELOPMENTAL. PSYCHOL. 171, 171–80 (1993); Ellen Greenberger, *Working in Teenage America*, in WORK EXPERIENCE AND PSYCHOLOGICAL DEVELOPMENT THROUGH THE LIFE SPAN 21, 31 (Jeylan T. Mortimer & Kathryn M. Borman eds., 1988); Deborah J. Safran et al., *Part-Time Work and Hurried Adolescence: The Links Among Work Intensity, Social Activities, Health Behaviors, and Substance Use*, 42 J. HEALTH & SOC. BEHAV. 425, 439 (2001).

¹²⁹ John Paul Wright et al., *Working While in School and Delinquent Involvement: Implications for Social Policy*, 43 CRIME & DELINQ. 203, 216 (1997).

¹³⁰ *Id.*

¹³¹ Christopher Uggen, *Work As A Turning Point in the Life Course of Criminals: A Duration Model of Age, Employment, and Recidivism*, 67 AM. SOC. REV. 529, 542 (2000) (reporting that paid employment will dissuade older criminals from committing crimes, yet similar employment will have little effect on youthful offenders).

¹³² In 1996, 35.7% of sixteen and seventeen-year-old females were employed versus 33.3% of males of comparable age. PROTECTING YOUTH AT WORK, *supra* note 4, at 33 (citing U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings, January 1997).

¹³³ *Bellotti v. Baird*, 443 U.S. 622, 634 (1979).

¹³⁴ See, e.g., Elizabeth S. Scott, *Judgment and Reasoning in Adolescent Decisionmaking*, 37 VILL. L. REV. 1607, 1643 (1992); Maryse Richards & Anne C. Petersen, *Biological Theoretical Models of Adolescent Development*, in HANDBOOK OF ADOLESCENT PSYCHOLOGY 34, 37 (Vincent B. Van Hasselt & Michel Hersen, eds, 1987).

comments out of concern that objections may cause the harasser to make even greater demands or that more demeaning comments may follow. And the effect of harassment is likely to be more severe in the case of juveniles than adults: depression, academic deficiencies, and emotional and psychological problems often result.¹³⁵ Reported cases seeking damages for sexual harassment of young female workers are rare. Teens are far more apt to accede to the advances, quit their jobs, or seek help from peers than to bring legal action or invoke corporate remedies.

V. WEAKNESSES OF CONTEMPORARY CHILD LABOR LAW

Remarkably, in a society which claims to highly value children,¹³⁶ both federal and state labor laws regulating minors in the workplace are tragically weak. These deficiencies result both from the structure of the statutes as well as their administration. Parents and school authorities are given little formal leverage over decisions regarding employment of children. Moreover, many parents believe work, even for young children, provides discipline, a source of family income, and keeps youngsters off the streets. Nor is it realistic to think that school authorities, pediatricians, or others in contact with young persons have the time and resources to monitor work arrangements of students. Only different public policy, expressed through legislation or administrative regulation, can correct this situation.

The FLSA prohibits "hazardous" work for all persons under eighteen.¹³⁷ Currently, sixteen non-agricultural occupations are designated "hazardous."¹³⁸ No notice to, or consent from, parents is required by the FLSA for working children, although notice or

¹³⁵ See, e.g., *Mary M. v. N. Lawrence Comm. Sch. Corp.*, 131 F.3d 1220, 1226 (7th Cir. 1997) (stating in dictum that "harassment has a greater and longer lasting impact on its younger victims").

¹³⁶ See, e.g., No Child Left Behind Act of 2001, 20 U.S.C. § 6301 (2002) (providing that all children in the United States "have a fair, equal, and significant opportunity to obtain a high-quality education"); Charles Mahaleris, *Dean Slams Bush on 'No Child Left Behind'*, TALON NEWS (Manchester, New Hampshire), June 12, 2003, at http://www.gopusa.com/news/2003/june/0612_dean_education.shtml (last visited Mar. 28, 2004). President Bush was quoted as saying that the federal government is "investing more money in elementary and secondary education than at any other time in American history." *Id.* "The budget for next year boosts education funding to \$53.1 billion and an increase of nearly \$11 billion since I took office." *Id.* See also www.ed.gov/nclrb/overview/welcome/index.html, the No Child Left Behind website.

¹³⁷ See 29 U.S.C. §§ 203(l), 213(c) (2004) (defining as "oppressive child labor" any occupation designated "hazardous" by the Secretary of Labor and outlawing such labor).

¹³⁸ See *supra* note 38.

consent may be required by state law.¹³⁹ The U.S. Department of Labor has no statutory authority to regulate the number of hours or the time sixteen and seventeen-year-olds may work.¹⁴⁰ Youths under sixteen, not working for a parent, may work in “non-hazardous” tasks in retail, food and gasoline service, and other non-agricultural workplaces.¹⁴¹ Policing the act itself is left entirely to administrative means and the Department of Labor’s own statistics do not present a picture of aggressive enforcement.¹⁴²

There is special permissive treatment for farm labor.¹⁴³ Children working in agriculture are exempted from even the modest protections the FLSA provides youth in general,¹⁴⁴ and from minimum wage and maximum hour requirements.¹⁴⁵ No minimum age requirement exists to work under “hazardous” conditions, as long as the child works on a farm owned or operated by the parent, the most common scenario.¹⁴⁶

As noted earlier, the FLSA does not pre-empt the field of child labor legislation and expressly empowers states to provide greater protection.¹⁴⁷ Every state has enacted some child labor provisions, although these vary considerably. Similar to the FLSA, many state statutes set out minimum age requirements, limit working hours, and prohibit employment in “hazardous” occupations.¹⁴⁸ Again, reflecting federal law, sixteen and seventeen-year-olds in most states have the implied legal freedom to choose the number of hours they will work.¹⁴⁹ Enforcement of these laws is generally poor.¹⁵⁰

¹³⁹ See *supra* notes 36–46 and accompanying text.

¹⁴⁰ *Schmidt v. Reich*, 835 F. Supp. 435, 443 (N.D. Ill. 1993) (applying general rules of statutory construction to conclude that the omission of express language granting the Department of Labor authority to regulate sixteen and seventeen year-olds indicates a clear intention that such authority was not conferred upon the Department). The FLSA does set out controls on these matters for fourteen and fifteen-year-olds. See 29 U.S.C. § 203(l)(1).

¹⁴¹ 29 U.S.C. § 203 (l)(1).

¹⁴² Although there were 5,889 investigations that revealed child labor violations in 1990, in not one of the ten subsequent years did the Department reach sixty percent of that figure.

¹⁴³ For a detailed discussion of the exclusion of agricultural labors from the FLSA, see generally Patrick M. Anderson, *The Agricultural Employee Exemption from the Fair Labor Standards Act of 1938*, 12 *HAMLIN L. REV.* 649 (1989).

¹⁴⁴ See 29 U.S.C. § 213(c).

¹⁴⁵ *Id.*

¹⁴⁶ See 29 C.F.R. § 570.70(b).

¹⁴⁷ 29 U.S.C. § 218(a) (“No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter . . .”).

¹⁴⁸ For a summary of the major provisions of state child labor laws, see Andrea Giampetro-Meyer & Timothy S. Brown, S.J., *Protecting Society from Teenage Greed: A Proposal for Revising the Ages, Hours and Nature of Child Labor in America*, 25 *AKRON L. REV.* 547, 557–63 (1992).

¹⁴⁹ ALA. CODE § 25-8-33 (2000); ALASKA STAT. § 23.10.332 (Michie 2002); ARIZ. REV. STAT.

In most places, compulsory school attendance laws produce few practical restrictions upon the labor of American children. Only seventeen states require attendance until the age of eighteen.¹⁵¹ Seven of these states provide for an exception for students who obtain a parent's consent to withdraw from education.¹⁵² In twenty-seven states, students may leave school at sixteen:¹⁵³ in twenty-two

ANN. § 23-232 (West 1995); GA. CODE ANN. § 39-2-11 (1995); HAW. REV. STAT. § 390-2(b) (1993); IDAHO CODE §§ 44-1301, -1302 (Michie 2003); 820 ILL. COMP. STAT. ANN. § 205/9 (West 1998); IOWA CODE ANN. § 92.2 (West 1996); KAN. STAT. ANN. § 38-604 (2000); LA. REV. STAT. ANN. § 23:251 (West 1998); MINN. STAT. ANN. § 181A.05 (West 1993); MISS. CODE ANN. § 71-1-17 (1999); MO. ANN. STAT. § 294.024 (West 1993); MONT. CODE ANN. §§ 41-2-105,-106 (2003); NEB. REV. STAT. § 48-302 (1998); NEV. REV. STAT. ANN. § 609.240 (Michie 2000); N.M. STAT. ANN. § 50-6-2 (Michie 2003); N.C. GEN. STAT. § 95-25.5 (2003); OHIO REV. CODE ANN. § 4109.02 (Anderson 2001); OKLA. STAT. ANN. tit. 40, § 71 (West 1999); S.D. CODIFIED LAWS § 60-12-1 (Michie 1993); TENN. CODE ANN. § 50-5-102 (1999); TEX. LAB. CODE ANN. § 51.013 (Vernon 1996); UTAH CODE ANN. § 34-23-202 (2001); VT. STAT. ANN. tit. 21, § 431 (1987); VA. CODE ANN. § 40.1-78 (Michie 2002); W. VA. CODE ANN. § 21-6-3 (Michie 2002); WYO. STAT. ANN. § 27-6-107 (Michie 2003).

¹⁵⁰ A 2002 survey by the Child Labor Coalition found that in the thirty-nine states responding—Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, and Wisconsin—a total of only 528 inspectors—an average of fourteen per state—were responsible for enforcing all state labor laws, including child labor. Child Labor Coalition, *2002 Child Labor State Survey*, 1, 2 (October, 2002), at <http://www.stopchildlabor.org/images/2002survey.pdf>. In twenty-two states, there were ten or fewer compliance officers. *Id.* at 2.

¹⁵¹ CAL. EDUC. CODE § 48200 (West 1998); CONN. GEN. STAT. ANN. § 10-184 (West 2002); HAW. REV. STAT. ANN. § 298-9 (Michie 1993); 105 ILL. COMP. STAT. ANN. 5/13-3 (West 1998); IND. CODE ANN. § 20-8.1-3-17 (Michie 1997); KAN. STAT. ANN. § 72-1111 (Supp. 2001); LA. REV. STAT. ANN. § 17-221 (West Supp. 2004); N.M. STAT. ANN. § 22-12-2 (Michie 2003); OHIO REV. CODE ANN. § 3321.01 (Anderson 2002); OKLA. STAT. ANN. tit. 70, § 10-105 (West 1998); OR. REV. STAT. § 339.010 (2001); PA. STAT. ANN. tit. 24, § 13-1332 (West 2003); TEX. EDUC. CODE ANN. § 25.085 (Vernon 1996); UTAH CODE ANN. § 53A-11-101 (2000); VA. CODE ANN. § 22.1-254 (Michie 2003); WASH. REV. CODE ANN. § 28A.225.010 (West 1997); WIS. STAT. ANN. § 118.15 (West 1999).

¹⁵² CONN. GEN. STAT. ANN. § 10-184 (2003); IND. CODE ANN. § 20-81-3.17 (Michie 1997); LA. REV. STAT. ANN. § 17-221 (West Supp. 2004); N.M. STAT. ANN. § 22-12-2 (Michie 2003); OKLA. STAT. ANN. tit. 70, § 10-105 (West 1998); VA. CODE ANN. § 22.1-254 (Michie 2003); WASH. REV. CODE ANN. § 28A.225.010 (West 1997).

¹⁵³ ALA. CODE § 16-28-3 (2001); ALASKA STAT. § 14.30.010 (Michie 2002); ARIZ. REV. STAT. ANN. § 15-802 (West 1995); COLO. REV. STAT. § 22-33-104 (2003); DEL. CODE ANN. tit. 14, § 2702 (1999); FLA. STAT. ANN. § 1003.21 (West 1998); GA. CODE ANN. § 20-2-690.1 (2001); IDAHO CODE § 33-202 (Michie 2001); IOWA CODE ANN. § 299.1A (West 1996); KY. REV. STAT. ANN. § 159.010 (Michie 2001); MD. CODE ANN., EDUC. § 7-301 (2001); MASS. ANN. LAWS ch. 76, § 1 (Law. Co-op. 2003); MICH. COMP. LAWS § 380.1561 (2001); MINN. STAT. ANN. § 120A.22 (5) (West 2000); MO. ANN. STAT. § 167.031 (West 2000); MONT. CODE ANN. § 20-5-103 (2003); NEB. REV. STAT. § 79-201 (1996); N.H. REV. STAT. ANN. § 193.1 (1999); N.J. STAT. ANN. § 18A:38-25 (West 1999); N.Y. EDUC. LAW § 3205 (McKinney 2001); N.C. GEN. STAT. § 115C-378 (2003); N.D. CENT. CODE § 15.1-20-01 (2003); R.I. GEN. LAWS § 16-19-1 (2001); S.D. CODIFIED LAWS § 13-27-1 (Michie 2002); VT. STAT. ANN. tit. 16, § 1121 (1989); W. VA. CODE ANN. § 18-8-1 (Michie 2003); WYO. STAT. ANN. § 21-4-102 (Michie 2003).

of these, no parental consent is required.¹⁵⁴

VI. CONCLUSION

How can we explain the very aberrant legal decision-making process with respect to youth workers? I believe a number of factors produce this anomalous result. First, federal law has failed to keep pace with the enormous increase in the number of children working and the jobs they perform. The FLSA has been amended six times since its enactment in 1938, but its major provisions have remained substantially unchanged.¹⁵⁵ Many state laws reflect similar stasis. Second, in the modern U.S. economy, millions of working teens provide a large pool of cheap labor¹⁵⁶ and exert a strong downward pressure on unskilled wage rates generally. Third, American adolescents are an enormous market for goods and services and their wages are quickly captured. Contemporary teens are avid consumers,¹⁵⁷ spending \$170 billion in 2002,¹⁵⁸ a 15 billion dollar increase from 2000.¹⁵⁹ They purchase a wide variety of clothing, food, electronics, and other goods.¹⁶⁰ Nearly one-third carry cell

¹⁵⁴ ALA. CODE § 16-28-3 (2001); ALASKA STAT. § 14.30.010 (Michie 2002); COLO. REV. STAT. § 22-33-104 (2003); DEL. CODE ANN. tit. 14, § 2702 (1999); FLA. STAT. ANN. § 232.01 (West 1998); GA. CODE ANN. § 20-2-690.1 (2001); IDAHO CODE § 33-202 (Michie 2001); IOWA CODE ANN. § 299.1A (West 1996); MD. CODE ANN., EDUC. § 7-301 (2001); MASS. ANN. LAWS ch. 76, § 1 (Law. Co-op. 2003); MICH. COMP. LAWS § 380.1561 (2001); MO. ANN. STAT. § 167.031 (West 2000); MONT. CODE ANN. § 20-5-103 (2003); NEB. REV. STAT. § 79-201 (1996); N.J. STAT. ANN. § 18A: 38-25 (West 1999); N.Y. EDUC. LAW § 3205 (McKinney 2001); N.C. GEN. STAT. § 115C-378 (2003); N.D. CENT. CODE § 15.1-20-01 (2003); S.D. CODIFIED LAWS § 13-27-1 (Michie 2002); VT. STAT. ANN. tit. 16, § 1121 (1989); W. VA. CODE ANN. § 18-8-1 (Michie 2003); WYO. STAT. ANN. § 21-4-102 (Michie 2003).

¹⁵⁵ The amendments have raised the minimum wage rate and limited the power of the Act itself. See generally Willis J. Nordlund, *A Brief History of the Fair Labor Standards Act*, 39 LAB. L.J. 715, 725 (1988).

¹⁵⁶ Minors generally make somewhat more than the legally-established minimum wage, averaging hourly earnings of \$6.36 per hour in 2001. 2002 GAO REPORT *supra* note 3, at 13.

¹⁵⁷ Tony Rizzo, *What's Been Learned About How to Market to Teens—And Why*, 7 CREDIT UNION J. 4 (Aug. 11, 2003).

¹⁵⁸ Teenage Research Unlimited, *Teens Spend \$170 Billion in 2002* (Feb. 17, 2003), at http://www.teenresearch.com/Prview.cfm?edit_id=152. TRU surveys more than 2,000 demographically represented American Teens twice yearly on lifestyles, attitudes, trends, and consumer behaviors. *Id.* The spending totals combine “teens’ own discretionary spending and any spending they do on their parents’ behalf, whether for personal or household purchases.” *Id.*

¹⁵⁹ Rizzo, *supra* note 157. See also Teenage Research Unlimited, *Teens Spend \$155 Billion in 2000* (Jan. 25, 2001), at http://www.teenresearch.com/Prview.cfm?edit_id=75 (last visited Mar. 28, 2004).

¹⁶⁰ See, e.g., Maxwell Murphy, *Monday's Investors Get Their Shares Off the Rack Clothing: Apparel Retailers, Expected to Report Good Earnings, Seem to Be the Market's Flavor of the Day*, L.A. TIMES, Feb. 27, 2001, at C3, 2002 WL2465021 (presenting the fact that “[t]eenage boys spend about [fifty-two percent] of their money on clothes, teenage girls about [seventy-

phones; most eat out with friends at least once every week.¹⁶¹ In 2000, they spent \$483 million online.¹⁶²

Since the advent of industrialization, many businesses have preferred employing children in place of adults. Youth workers can be dismissed easily when demand wanes, work for less,¹⁶³ generally receive few benefits, and are unlikely to unionize.¹⁶⁴ The negative effects of adolescent intensive work do not activate powerful political or economic interests. The subject of child labor evokes instinctive images of a problem that had been long since solved in the United States, and confined to third and fourth world countries. Yet it is these instinctive images and the resulting lack of political will which blocks re-examination of our current public policies toward child labor.

My purpose in this essay has been to demonstrate that current legal rules governing workplace participation by children and teenagers are a legal aberration and generally benefit neither American youth nor society. What is needed is a thorough revision of federal and state laws after reexamining the policies governing youth in the workplace and in school. There are numerous promising programs and ideas available.¹⁶⁵ The answer is not necessarily to extend compulsory attendance laws. Formal schooling is not the only—or even the preferred—form of education for all children, but the current legal situation is not an appropriate response to these issues.

five percent].”); Cindy Rodriguez, *Deep Pockets are In: Teens Spend \$104 a Week on Food, Goods, Survey Says*, BOSTON GLOBE, Feb. 18, 2003, at B1, 2002 WL 4112a22.

¹⁶¹ See Rodriguez *supra*, note 160.

¹⁶² Beth Cox, *Teens' Money is Online Gold* (Sept. 7, 2001), at http://ecommerce.internet.com/news/news/article/0,3371,10375_880241,00.html.

¹⁶³ The current minimum wage is \$5.15 per hour for most youths. 29 U.S.C. § 206(a)(1) (2000).

¹⁶⁴ Joan M. Smith, *North American Free Trade and the Exploitation of Working Children*, 4 TEMP. POL. & CIV. RTS. L. REV. 57, 65–66 (1994) (citing Assefa Bequele & Jo Boyden, *Working Children: Current Trends and Policy Responses*, 127 INT'L LAB. REV. 153, 158 (1998)).

¹⁶⁵ The quality of youth jobs is critical. Some governmental initiatives reflect this concern. The School-to-Work Opportunities Act, 20 U.S.C. § 6101–6251 (2000), attempts to organize and structure positive interactions between formal education and employment. Cooperative education is a well-known example of education. See National Commission for Cooperative Education, at <http://www.co-op.edu>.