

## Some Thoughts on a Developmental Approach to a Sound Basic Education

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Let me begin by saying, as a member of the ALI Council, how proud and excited I am to see the Restatement of Children and the Law<sup>1</sup> nearing completion.<sup>2</sup> This has been a remarkable journey of eight years, involving a highly dedicated group of reporters and a very knowledgeable set of advisers and other ALI members. The outcome is a comprehensive treatise that brings greater clarity, coherence, and contemporary sensibilities to a wide expanse of law affecting children. It is impressive for its breadth and insight, and it will be a tremendous resource for judges and policymakers for years to come. I want to recognize Professors Richard Bonnie, Emily Buss, Clare Huntington, Solangel Maldonado, and David Meyer for their hard work, and most especially Elizabeth Scott, who has tilled this field for more than four decades and provided the vision for this project as well as the skill and perseverance to get it done.

I will address my comments to one major theme of the Restatement, and that is the anchoring of law and policy in research on child and adolescent development.<sup>3</sup> This developmental approach, now informed by three decades of studies in psychology and neuroscience, gained prominence in a series of Supreme Court cases limiting punishment of juveniles who have committed serious crimes—beginning in 2005 with *Roper v. Simmons*,<sup>4</sup> which outlawed the death penalty for juvenile offenders, followed by *Graham v. Florida*,<sup>5</sup> which prohibited life without parole for

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<sup>1</sup> Note that this Essay cites prior drafts of the Restatement of Children and the Law. The section numbers of the Restatement have been updated since the time of publication.

<sup>2</sup> Justice Liu delivered these remarks on April 21, 2023, at the University of Chicago Law School, during the *Law Review* Symposium on Children and the Law.

<sup>3</sup> See Elizabeth S. Scott, *Restating the Law in a Child Wellbeing Framework*, 91 U. CHI. L. REV. 279, 281–82 (2024).

<sup>4</sup> 543 U.S. 551 (2005).

<sup>5</sup> 560 U.S. 48 (2010).

juvenile nonhomicide offenders, and then *Miller v. Alabama*<sup>6</sup> and *Montgomery v. Louisiana*,<sup>7</sup> which placed limits on sentencing juvenile homicide offenders to life without parole.

In contrast to the tough-on-crime mindset of earlier decades, these cases emphasized that the immaturity of juveniles distinguished them from adults with regard to culpability, and they cited a host of studies on brain development that illuminate several themes: (1) Children's "lack of maturity and an underdeveloped sense of responsibility"<sup>8</sup> can lead to recklessness, impulsivity, and heedless risk-taking. Adolescent brains are not fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance.<sup>9</sup> (2) Juveniles are especially vulnerable to negative influences and family or peer pressure. They have limited control over their home and neighborhood environments and lack the ability to extricate themselves from criminogenic settings.<sup>10</sup> And (3) a child's character is not as well formed than an adult's, and a child's actions are more likely to be evidence of transient immaturity than incorrigible depravity.<sup>11</sup>

As Justice Anthony Kennedy observed in *Roper*, these features of youth are what "any parent knows."<sup>12</sup> But the backing of science added an important dimension. The findings just mentioned dovetail with other evidence showing that most young people "age out of crime" (very few "develop entrenched patterns" of criminal behavior),<sup>13</sup> that juveniles "have limited understandings of the criminal justice system"<sup>14</sup> and are especially vulnerable in dealing with police and prosecutors, and that community-based programs for adolescents are less costly and more effective than incarceration when it comes to reducing recidivism.<sup>15</sup> As the Restatement makes clear, this body of research has informed the law not only on sentencing, but also on police searches and interrogation, transfer to

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<sup>6</sup> 567 U.S. 460 (2012).

<sup>7</sup> 577 U.S. 190 (2016).

<sup>8</sup> *Roper*, 543 U.S. at 569 (quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

<sup>9</sup> *See Miller*, 567 U.S. at 471–72.

<sup>10</sup> *See Roper*, 543 U.S. at 569–70.

<sup>11</sup> *See Miller*, 567 U.S. at 472 & n.5.

<sup>12</sup> *Roper*, 543 U.S. at 569.

<sup>13</sup> *Miller*, 567 U.S. at 471 (quotation marks omitted) (quoting *id.* at 570).

<sup>14</sup> *See Graham*, 560 U.S. at 78.

<sup>15</sup> *See Scott*, *supra* note 3, at 286 & n.31.

adult court, competence to participate in judicial proceedings, waiver of counsel, and treatment in correctional facilities.<sup>16</sup>

In California, where nearly one-eighth of the nation's children live,<sup>17</sup> we have seen the influence of the developmental model in a series of juvenile justice reforms over the past decade. In recent years, California has placed substantive and procedural limits on the transfer of juveniles to adult court, including a general prohibition on transfers below the age of 16.<sup>18</sup> Our legislature has created youth offender parole hearings for juveniles serving life sentences,<sup>19</sup> with an express directive that the parole board "shall give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner."<sup>20</sup> The legislature originally limited these parole hearings to persons sentenced for crimes committed before age 18,<sup>21</sup> but it then raised the age threshold to 23<sup>22</sup> and then 26.<sup>23</sup> The rationale, stated in legislative history, is that:

[R]esearch shows that cognitive brain development continues well beyond age 18 and into early adulthood. For boys and young men in particular, this process continues into the mid-20s. The parts of the brain that are still developing during this process affect judgment and decision-making, and are highly relevant to criminal behavior and culpability.<sup>24</sup>

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<sup>16</sup> See *id.* at 289 & n.46 (citing relevant provisions of the Restatement).

<sup>17</sup> Child Population Data, *Population List*, CHILDREN'S BUREAU (last updated 2021), <https://perma.cc/8TPQ-C6KL>.

<sup>18</sup> The Public Safety and Rehabilitation Act, 2016 Cal. Stat. A-40, § 4.2 (Proposition 57, repealing CAL WELF. & INST. CODE § 707(d) (West 2019)) (ending direct filing by prosecutors); CAL WELF. & INST. CODE § 707(a)(1)–(2) (2019) (barring trial of 14- and 15-year-olds in adult court, with an exception for persons who committed certain crimes at ages 14 or 15 but were not apprehended prior to the end of juvenile court jurisdiction).

<sup>19</sup> CAL. PEN. CODE § 3051(d)–(e), (g).

<sup>20</sup> CAL. PEN. CODE § 4801(c).

<sup>21</sup> S. 260, 2013 Leg., Reg. Sess. (Cal. 2013), Stats. 2013, ch. 312.

<sup>22</sup> S. 261, 2015 Leg., Reg. Sess. (Cal. 2015), Stats. 2015, ch. 417.

<sup>23</sup> ASSEMB. 1308, 2017 Leg., Reg. Sess. (Cal. 2017), Stats. 2017, ch. 675.

<sup>24</sup> *Senate Third Reading Analysis*, S. 261, 2015 Leg., Reg. Sess. 2 (Cal. 2015); see also *Senate Rules Committee Floor Analysis*, ASSEMB. 1308, 2017 Leg., Reg. Sess. 4-5 (Cal. 2017). In 2016, I authored an opinion in the California Supreme Court holding that juveniles who will be eligible for a youth offender parole hearing must have an opportunity to make a record of "youth-related" mitigating factors for future consideration in a parole hearing. See *People v. Franklin*, 370 P.3d 1053, 1066 (Cal. 2016). The *Franklin* hearing is an entailment of CAL. PEN. CODE § 4801. Prosecutors may also make a record of any circumstances bearing on the youth offender's culpability.

Perhaps most ambitious is California's current effort to close all state-level juvenile detention facilities and return youth offenders to their communities for age-appropriate interventions.<sup>25</sup> This effort is rooted in our legislature's express recognition that "[e]vidence has demonstrated that justice system-involved youth are more successful"—they "have lower recidivism rates and are more prepared for their transition back into the community"—"when they remain connected to their families and communities."<sup>26</sup> The authorizing legislation encourages "public health approaches to support positive youth development" and "reduce[d] . . . use of confinement . . . by utilizing community-based responses and interventions."<sup>27</sup>

Our justice system still has a long way to go in aligning law and public policy with research on child and adolescent development. But the trend line is clear, and the Restatement consolidates and elucidates the decisions of courts and legislatures that comprise the contemporary approach.

I would like to pivot from our justice system to ask what it would mean for our education system to align its practices with a developmental approach. This may seem an odd question in that we ordinarily think of education as the principal developmental pathway for our youth. But education is also an institution with vested interests, multiple stakeholders, and layers of complexity. It is a site of contestation over taxes, spending, governance, and social values. So it is not obvious that the shape of our education system is primarily informed by research and evidence on youth development. My comments here focus on law and policy at the state and local levels, traditionally the principal sites of school governance.

The first provision of Part 2 of the Restatement concerning "Children in Schools" addresses "The State's Duty to Provide Free Public Education for All Children."<sup>28</sup> This provision distills the education guarantees in all fifty state constitutions and the judicial decisions that have interpreted them, and says:

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<sup>25</sup> See, e.g., S. 823, 2020 Leg., Reg. Sess. (Cal. 2020), Stats. 2020, ch. 337 (transferring responsibility for youth offenders from the state to local jurisdictions); S. 92, 2021 Leg., Reg. Sess. (Cal. 2021), Stats. 2021, ch. 18 (requiring the closure of all Division of Juvenile Justice facilities by June 30, 2023).

<sup>26</sup> S. 823, 2020 Leg., Reg. Sess. § 1(a) (Cal. 2020), Stats. 2020, ch. 337.

<sup>27</sup> *Id.* at § 1(c), (e).

<sup>28</sup> RESTATEMENT OF CHILDREN AND THE LAW § 5.10 (AM. LAW INST., Revised Tentative Draft No. 4, 2022) (on file with author) [hereinafter RESTATEMENT Revised Draft No. 4].

The state has a duty to provide a sound basic education in primary and secondary school to all children living within its jurisdiction at no cost to children or their families. A sound basic education is one that enables children to acquire the knowledge and skills necessary to prepare them to participate effectively and responsibly as adults in the economy, in society, and in a democratic system of self-governance.<sup>29</sup>

In elaborating the details of a sound basic education, courts and legislatures have worked within the current contours of our public school system, which provides for kindergarten at age of five or six, followed by twelve years of schooling. Compulsory attendance laws apply up to age 16, 17, or 18,<sup>30</sup> and high school graduation has become a societal expectation. Today, 95% of adults 25 to 29 years old have completed at least four years of high school.<sup>31</sup>

But it is important to note that near-universal high school completion is a relatively recent phenomenon in American history. It is, as Professors Claudia Goldin and Lawrence Katz have detailed in their book *The Race Between Education and Technology*,<sup>32</sup> one of our nation's most significant and transformative accomplishments of the last century. The movement toward common schools in the nineteenth century created widespread opportunities for primary education, although the racial caste system severely limited its egalitarian ambitions. But even as the agrarian economy gave way to industrialization in the early twentieth century, secondary schooling was underdeveloped and optional for effective participation in economic and civic life. Even at midcentury, when *Brown v. Board of Education*<sup>33</sup> extolled "the importance of education to our democratic society,"<sup>34</sup> educational attainment

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<sup>29</sup> *Id.*

<sup>30</sup> *Compulsory School Attendance Laws, Minimum and Maximum Age Limits for Required Free Education*, by State tbl.5.1, NAT'L CTR. FOR EDUC. STAT. (2017), <https://perma.cc/322V-M8BN>.

<sup>31</sup> *Educational Attainment of Young Adults*, NAT'L CTR. FOR EDUC. STAT. (last updated 2023), <https://perma.cc/7HYC-MY44>.

<sup>32</sup> See generally CLAUDIA GOLDIN & LAWRENCE F. KATZ, *THE RACE BETWEEN EDUCATION AND TECHNOLOGY* (2008).

<sup>33</sup> 347 U.S. 483 (1954).

<sup>34</sup> Goodwin Liu, Brown, Bollinger, and Beyond, 47 HOW. L.J. 705, 710 (2004) (quoting *Brown*, 347 U.S. at 493).

was fairly limited by today's standards.<sup>35</sup> In 1957, only 41% of people 25 or older had completed four years of high school; even among 25- to 29-year-olds, the figure was just 60%.<sup>36</sup>

This historical context underscores that what might have constituted a “sound basic education” two or three generations ago does not constitute a “sound basic education” today. Indeed, when a New York appellate court ruled in 2002 that the constitutional guarantee of a sound basic education required nothing more than an eighth-grade education, the decision was promptly reversed by the state high court.<sup>37</sup> But these notions are contingent, not fixed. There was a time when an eighth-grade education was sufficient to access the middle class and the social bases of self-respect that secure one's standing as an equal citizen in society.<sup>38</sup> And there was a time when the most pernicious barrier to social equality was the color line, which *Brown* famously said “may affect th[e] hearts and minds [of Black children] in a way unlikely ever to be undone.”<sup>39</sup> The developmental needs of our young people vary with social conditions, and just as earlier norms have given way to new standards, we might ask what an empirically grounded developmental approach now portends for the content of a sound basic education.

One issue to consider is whether the starting point of free public education—namely, kindergarten at age 6—remains tenable in light of what we have learned from research on early childhood development. As numerous studies have shown, the brain develops more rapidly during early childhood than at any other time of life, and social and environmental conditions can affect the pace and path of development. Research has found large disparities between high-income and low-income families in children's exposure to language, on the order of millions of words,<sup>40</sup> and a wide achievement gap already exists by the time children

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<sup>35</sup> Goodwin Liu, *Brown, Bollinger, and Beyond*, 47 HOW. L.J. 705, 712 (2004).

<sup>36</sup> *CPS Historical Time Series Tables* tbls.A-1., A-2., U.S. CENSUS BUREAU (last updated Feb. 9, 2023), <https://perma.cc/2NY7-3ENG>.

<sup>37</sup> See *Campaign for Fiscal Equity, Inc. v. State*, 801 N.E.2d 326, 348–49 (N.Y. 2003).

<sup>38</sup> See JOHN RAWLS, *A THEORY OF JUSTICE* 440–42 (1971).

<sup>39</sup> *Brown*, 347 U.S. at 494.

<sup>40</sup> BETTY HART & TODD R. RISLEY, *MEANINGFUL DIFFERENCES IN THE EVERYDAY EXPERIENCES OF YOUNG AMERICAN CHILDREN* (1995), as reprinted in Betty Hart & Todd R. Risley, *The Early Catastrophe: The 30 Million Word Gap by Age 3*, AM. EDUCATOR, 2003, at 4, 8.

start kindergarten.<sup>41</sup> Further, the efficacy of early childhood interventions is supported by a good deal of evidence, including a longitudinal study of the Perry Preschool Project,<sup>42</sup> studies of high-quality birth-to-age-5 programs by Nobel Prize-winning economist James Heckman,<sup>43</sup> and evaluations of the Head Start program.<sup>44</sup> These studies show impressive outcomes for children in low-income families, including higher educational attainment, less involvement with the criminal justice system, better health, and higher rates of adult employment and income. And the costs of such programs, though high, are more than offset by the economic returns they generate.<sup>45</sup>

To be sure, this body of research does not translate neatly into legal or policy prescriptions. The efficacy of early childhood programs may depend on programmatic features that vary by context, and those features may be challenging to scale. In addition, there are ongoing debates over whether pre-K should be means-tested or freely available to all, like kindergarten. And it is not obvious that pre-K can be readily assimilated into the K–12 paradigm, in which there is not only a duty of the state to provide education, but also—as the Restatement makes clear—a duty of parents “to ensure that their children receive a sound, basic education.”<sup>46</sup> The allocation of state and parental authority in a

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<sup>41</sup> *Achievement Gaps Exist as Early as When Children Begin Kindergarten*, ECON. POLY INST. (June 17, 2015), <https://perma.cc/E53J-DVXB>; Miriam Wasserman, *Ready for Kindergarten? Gap Between Rich and Poor Narrows, Stanford Study Finds*, STANFORD NEWS SERV. (Aug. 26, 2016), <https://perma.cc/5JQ8-RQT4>.

<sup>42</sup> See Jorge Luis García, Frederik H. Bennhoff, Duncan Ermini Leaf & James J. Heckman, *The Dynastic Benefits of Early Childhood Education* 3–6, 34–35 (Becker Freidman Inst. for Econ. at the Univ. of Chi., Working Paper No. 2021-77, 2021).

<sup>43</sup> Jorge Luis García, James J. Heckman, Duncan Ermini Leaf & María José Prados, *Quantifying the Life-Cycle Benefits of a Prototypical Early Childhood Program* 37 (Nat'l Bureau of Econ. Rsch., Working Paper No. 23479, 2017).

<sup>44</sup> Some early studies found a “fade-out” effect. See, e.g., U.S. DEP’T OF HEALTH & HUM. SERVS., HEAD START IMPACT STUDY: FINAL REPORT, EXECUTIVE SUMMARY, at 1-5 to 1-8 (2010). However, more recent studies found design flaws in the Head Start Impact Study’s experimental method and argue that children from the Head Start program do retain positive long-term effects. See, e.g., Lauren Bauer, *Does Head Start Work? The Debate over the Head Start Impact Study, Explained*, BROOKINGS (June 14, 2019), <https://perma.cc/HM2P-64JQ>; CHLOE GIBBS, JENS LUDWIG, DOUGLAS L. MILLER & NA’AMA SHENHAV, UC DAVIS CTR. FOR POVERTY RSCH., SHORT-RUN FADE-OUT IN HEAD START AND IMPLICATIONS FOR LONG-RUN EFFECTIVENESS 1–2 (2016).

<sup>45</sup> See García et al., *supra* note 42, at 25.

<sup>46</sup> RESTATEMENT Revised Draft No. 4 § 1.20(a).

child's earliest years may present special sensitivities, and no court has yet declared preschool a universal constitutional right.<sup>47</sup>

But, as many policymakers recognize,<sup>48</sup> it is getting harder to talk about a sound basic education without incorporating what we know about early childhood development. In earlier times, working within the K–12 framework seemed viable as a means of expanding opportunity and promoting civic equality. The Black-white achievement gap closed by 25% to 45% between 1970 and 1990,<sup>49</sup> and among young adults, the educational gap between Blacks and whites as measured in years of school completed narrowed by more than half from mid-century to the year 2000.<sup>50</sup> But now, the achievement gap has stagnated for three decades as our society has become more unequal, and there is increasing evidence that concentrated poverty, not racial segregation per se, explains disparities in student performance.<sup>51</sup> Moreover, the pandemic brought into sharp relief the highly unequal home and neighborhood endowments that children bring to their education. We cannot give up on improving K–12 schooling, but it is worth asking whether a longer runway is required to achieve the aims of a sound basic education.

The same is true at the back end, beyond high school. There was a time when a high school diploma or less could secure a stable job (often a union job) with a decent wage sufficient to buy a home, raise a family, and retire comfortably. For much of the twentieth century, rising educational attainment kept pace with rising demand for skills in light of technological change.<sup>52</sup> But since the last quarter of the twentieth century, the college wage premium has increased. In 1975, a college graduate earned about 50% more on average than a person with only a high school diploma; since the year 2000, the college premium has exceeded

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<sup>47</sup> Cf. James E. Ryan, *A Constitutional Right to Preschool?*, 94 CALIF. L. REV. 49, 69–71, 78–79 (2006).

<sup>48</sup> See, e.g., LAURA HILL & EMMANUEL PRUNTY, PUB. POL'Y INST. OF CAL., *SETTING THE STAGE FOR UNIVERSAL PRESCHOOL* 15 (2022); *Mayor de Blasio Announces 3-K for All*, CITY OF N.Y. (Apr. 24, 2017), <https://perma.cc/F6QJ-NXAM>.

<sup>49</sup> See PAUL E. BARTON & RICHARD J. COLEY, EDUC. TESTING SERV., *THE BLACK-WHITE ACHIEVEMENT GAP: WHEN PROGRESS STOPPED* 5–6 (2010).

<sup>50</sup> *Id.* at 15–16.

<sup>51</sup> See Sean F. Reardon, Ericka S. Weathers, Erin M. Fahle, Heewon Jang & Demetra Kalogrides, *Is Separate Still Unequal? New Evidence on School Segregation* 10 (Stanford Ctr. for Educ. Pol'y Analysis, Working Paper No. 19-06, 2019).

<sup>52</sup> See GOLDIN & KATZ, *supra* note 32, at 6–7.

80%.<sup>53</sup> These trends reflect an educational slowdown, as higher education attainment has not kept pace with rising demand for more educated workers.<sup>54</sup> The upshot has been an increase in inequality between those with less education and those with more, with negative ramifications for social mobility, social cohesion, and the health of our democracy.

In 1954, the Supreme Court in *Brown* said: “In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”<sup>55</sup> Today, we might say “the opportunity of a *higher* education,” for a high school diploma is no longer enough to prepare most of our young people for secure and productive lives.

I would hasten to add that a four-year college degree is not a baseline requirement, at least not yet. Well into the 1960s, less than 10% of American adults had a college degree; that figure has grown over decades, but it is still less than 40% today.<sup>56</sup> Although “college for all” is a worthy aspiration, college completion is not a majority experience in our society, nor will it be for some time.

How might the notion of a sound basic education be expanded beyond high school, with alternatives to four-year college? Policy-makers have long struggled with this question in light of the patchwork of institutions available. These include community colleges, trade schools, industry apprenticeships, and the military. But, apart from four-year college, we have not evolved a coherent opportunity infrastructure that reflects state responsibility for ensuring access to postsecondary learning, even though it is evident that the educational needs of youth today do not end with high school. Elements of such an infrastructure might include a universal student identifier (for example, an individual education number for life, like a universal patient ID for health care),<sup>57</sup> portable subsidies that can be used for a variety of educational programs, deeper investments to make community college free,<sup>58</sup> and

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<sup>53</sup> See *CPS Historical Time Series Tables*, *supra* note 36, at tbl.A-3; JONATHAN JAMES, FED. RESRV. BANK OF CLEVELAND, *THE COLLEGE WAGE PREMIUM 1* (2012).

<sup>54</sup> See GOLDIN & KATZ, *supra* note 32, at 8.

<sup>55</sup> *Brown*, 347 U.S. at 493.

<sup>56</sup> *Digest of Education Statistics: 2021*, NAT'L CTR. FOR EDUC. STATS. (2021), <https://perma.cc/ZG8S-THA4>.

<sup>57</sup> See, e.g., *What is a Unique Student Identifier (USI)?*, AUSTRALIAN GOV'T: UNIQUE STUDENT IDENTIFIER (last updated July 13, 2023), <https://perma.cc/VQC4-ZX5T>.

<sup>58</sup> See, e.g., JUSTIN P. WILSON, KRISTINA PODESTA & LAUREN SPIRES, TENN. COMPTROLLER OF THE TREASURY: OFF. OF RSCH. & EDUC. ACCOUNTABILITY, *TENNESSEE PROMISE EVALUATION: EXECUTIVE SUMMARY 3* (2020); SHANDA HALUPO, AMY G. COX & DANIEL URBAN, OR. HIGHER EDUC. COORDINATING COMM'N, *FUTURE READY OREGON YEAR*

evidence-based certification or accreditation frameworks to ensure quality among postsecondary learning programs.<sup>59</sup>

Importantly, we should not focus only on workforce preparation. As the Restatement says, a sound basic education includes the knowledge and skills necessary for effective and responsible participation “in society” and “in a democratic system of self-governance.”<sup>60</sup> Although various initiatives have sought to strengthen civics curricula, the ability of public education to deliver on this dimension is hampered by an overarching reality—and that is the continuing segregation of our schools by race and income, which many studies find to be getting worse even as our student population becomes more diverse.<sup>61</sup> When this segregation is combined with the role of social media in worsening information silos and insulating people from opposing views,<sup>62</sup> it becomes evident what a tall order it is to prepare our children for responsible citizenship.

How do we teach our young people to engage in constructive dialogue and find common purpose across lines of race, class, religion, and politics? In this era of polarization, the ideal of the common school where children of all walks of life learn together can seem somewhat quaint and unattainable. Given the geographic and demographic limitations of our K–12 schools, I wonder if it is time to reconsider an idea often floated but never adopted: one year of mandatory community service after high school (sometimes called “national service,” but it need not be “national” in design or governance), designed to assemble young people across lines of difference to work together in food banks, afterschool programs, youth centers, veterans’ facilities, health

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ONE REPORT 124–27 (2022); *San Francisco Announces \$4 Million Investment in College and Career Readiness Programs*, CITY & CNTY. OF S.F. (June 30, 2022), <https://perma.cc/59FK-MQSU>.

<sup>59</sup> See, e.g., ROBERT KELCHEN, URB. INST., HIGHER EDUCATION ACCREDITATION AND THE FEDERAL GOVERNMENT 3–5 (2017); see also HIGHER LEARNING COMMISSION, PROVIDING EVIDENCE FOR THE CRITERIA FOR ACCREDITATION 3–9 (2020).

<sup>60</sup> RESTATEMENT Revised Draft No. 4 § 5.10.

<sup>61</sup> See, e.g., U.S. GOV’T ACCOUNTABILITY OFF., K-12: STUDENT POPULATION HAS SIGNIFICANTLY DIVERSIFIED, BUT MANY SCHOOLS REMAIN DIVIDED AMONG RACIAL, ETHNIC, AND ECONOMIC LINES 11–13 (2022); GARY ORFIELD & CHUNGMEI LEE, HARV. UNIV. CIV. RTS. PROJECT, WHY SEGREGATION MATTERS: POVERTY AND EDUCATIONAL INEQUALITY 9, 17–22 (2005). *But cf.* Brian Kisida, *Is School Segregation Really Getting Worse?*, EDUC. NEXT (May 22, 2019), <https://perma.cc/3TET-PB9S> (arguing that segregation levels have held steady or even declined in recent decades, depending on the measure used).

<sup>62</sup> See PAUL M. BARRETT, JUSTIN HENDRIX & J. GRANT SIMS, NYU STERN CTR. FOR BUS. & HUM. RTS., FUELING THE FIRE: HOW SOCIAL MEDIA INTENSIFIES U.S. POLITICAL POLARIZATION – AND WHAT CAN BE DONE ABOUT IT 6–14 (2021).

clinics, and other areas of community need.<sup>63</sup> Through a shared, hands-on experience of public service, our youth can learn to appreciate differences, build bridges, respect one another, and understand their role in strengthening our democracy.<sup>64</sup> Might this one day become part of a sound basic education, if we take seriously the preparation of our children for responsible and effective citizenship?

The Restatement, appropriately, does not venture beyond the K–12 framework in defining a sound basic education because courts and legislatures have not done so. But the Restatement, also appropriately, elucidates a deeper thread in our treatment of children—what Professor Scott calls the developmental approach—which straddles the duality, inherent in any Restatement, of what is and what ought to be. Our world is ever changing, and the developmental needs of our youth change too. Structures and standards that were once suitable may become inadequate over time. There may come a day when a sound basic education encompasses not only primary and secondary education in their current forms, but also a well-developed opportunity infrastructure during early childhood and beyond high school. That day may come sooner than we think, given the needs of our children and the society they will inherit. If so, this treatise will stand up well, for one hallmark of an insightful restatement is that it not only states the law as it is, but also, in its explication, marks the path of its own transcendence.

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<sup>63</sup> See, e.g., Jonathan Holloway, *To Unite a Divided America, Make People Work for It*, N.Y. TIMES (July 2, 2021), <https://perma.cc/7FBD-W46C>; William A. Galston, *Compulsory National Service Would Strengthen American Citizenship*, U.S. NEWS (Oct. 19, 2010), <https://perma.cc/E8QX-SD84>.

<sup>64</sup> Before attending law school, I saw the transformative power of such experiences while serving for two years on the senior staff of the Corporation for National Service, the federal agency in charge of the AmeriCorps national service program.