

CHILDREN'S AUTONOMY RIGHTS ONLINE

*Clare Ryan**

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Introduction

The Forbes [Top Creators list](#) of 2023 purports to rank the highest earners on TikTok, Instagram, YouTube, and other popular social media platforms. Among its notables are young millionaires who amassed fortunes through their online presence, many before they reached adulthood, and some before they were even teenagers. And while only a few rare influencers will reach these levels of fame and commercial success, many millions of young people fuel the demand for their content. The time, attention, and money children spend online enrich advertisers and corporations like Meta and Google. The 2023 U.S. Surgeon General's [Advisory on Social Media and Youth Mental Health](#), along with [revelations from insiders](#) about the strategies deployed by social media companies to entice and retain youth engagement, have increased public concern about the role of social media in children's lives.

Children's lives are increasingly shaped by their online environment, quite apart from the physical geographies of home and school. How they make choices in that space, and how those choices are shaped by law and parental authority, warrants deeper discussion than the [Restatement of Children and the Law](#) was able to provide. Given the centrality of social media to young people's lives, Professor Anne Dailey and President Laura Rosenbury offer a fair [critique](#) of the Restatement's neglect of the topic in their piece for the University of Chicago's 2023 Law Review Symposium on Children and the Law. They observe that "[t]he surprising omission of social media . . . may be due to the challenge social media poses to the Restatement's three-part divide of school, home, and juvenile justice," emphasizing that "the virtual world blurs the traditional legal boundaries separating home and school and provides its own space—and world of ideas—between and beyond those locations."

It is understandable, however, that the Restatement would spend little time on a topic for which there is so little clear law, and which is so rapidly evolving. Furthermore, the building blocks for how we might approach children and social media *are* present in the

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Restatement, particularly in Part IV on Children in Society. The complex challenges of children’s engagement with social media, both as content creators and consumers, help illuminate some of the core tensions in this Part of the Restatement—namely, the tension between children’s autonomy, parental authority, and state regulation.

This Essay imagines future American Law Institute (ALI) reporters tasked with developing the Second Restatement on Children and the Law and offers them some guidance. Surely, the topic of children’s online lives will become more pressing in the years to come, and a body of law will develop to fill some gaps in our current doctrine. What questions should those seeking to understand children and social media be asking? Is there a foundational understanding of children’s autonomy rights that can help us find coherence in this emerging body of law? This Essay offers a series of framing questions designed to guide future efforts to develop, and eventually restate, the law of children and social media.

I. Children’s Autonomy Rights

While there are many legal questions relating to minors and the Internet, this Essay will focus on children’s autonomy rights. I use the term “autonomy rights” broadly here, not just to mean specific constitutional rights, but to cover any time that children can raise legal claims that they have the authority to make decisions over their own lives and bodies. The current Restatement raises, but does not fully answer, a number of questions about children’s rights: What autonomy rights do children hold? Under what circumstances can those rights be asserted? And, because autonomy rights for adults are almost always subject to some form of limitation or balancing of interests, when it comes to children’s rights, who decides what balance is correct? Embedded in these questions are tensions in the balance of power between courts and legislatures, between state actors and private parties, and between individuals.

The question of whether [children have rights](#) may seem odd to those outside the field. But the scope of children’s rights, and their ability to vindicate them as distinct from their parents’ rights, remains unsettled, especially in circumstances where children are engaged with the world outside of the home. Professor Elizabeth Scott’s [introduction to the Symposium](#) offers a helpful entry point for thinking about children’s autonomy rights. As she put it:

[J]udgments about the appropriateness of conferring or restricting rights are often based on assumptions about minors’ maturity; today these judgments are informed by

developmental science. Courts increasingly draw on a substantial body of research supporting that minors can competently exercise and benefit from some rights, and also clarifying that vulnerabilities associated with youthful immaturity sometimes justify restrictions and special protections.

While acknowledging that developmental maturity is not always the defining feature of children’s autonomy rights, Scott’s assessment reveals two important points about the modern doctrine on children’s rights: first, children are not born with a full array of rights but instead gain rights as they age; and second, this rationing of autonomy rights is justified by children’s unique mix of developmental maturity and vulnerability.

Consider how this framework plays out in the context of children online. One of the few instances in which the current Restatement does address children’s social media use falls under its description of the “infancy doctrine.”¹ This longstanding common law doctrine permits children to disaffirm contracts under certain circumstances. [Modern courts](#) have applied the infancy doctrine to minors who enter into contracts online—for instance, by making purchases within video games. The Restatement authors commend this application of old doctrine to new contexts because it is supported by research indicating that children are at risk of manipulation, peer pressure, and impulsive decision-making.² These problems are heightened on social media and other online platforms aimed at children, where there are myriad opportunities to make [mindless purchases](#) and [powerful pressures](#) to participate.

The infancy doctrine is protective of children, but it also limits their autonomy. Knowing that contracts with children may be disaffirmed, adults may be less willing to enter into them. In a world where children engage in a range of activities on social media, they encounter far more opportunities to contract than the child envisioned by the common law judges who first designed this doctrine. The disincentivizing effects of the infancy doctrine could hinder children from taking full advantage of opportunities available in the digital marketplace. Additionally, children are not just consumers online but also creators. Does the existing framework give adequate guidance for

¹ RESTATEMENT OF THE LAW, CHILDREN AND THE LAW § 20.20 (Am. L. Inst., Tentative Draft No. 5, Mar. 2023).

² See *id.* § 20.20 cmts. c, f & Reporters’ Notes.

courts confronting children who are both buyers and sellers of online content?

Another issue that the future law of children and social media must confront is the relationship between developmental maturity and the law. At times, the Restatement seems to suggest that the law is responding to predetermined developmental milestones rather than actively shaping how young people mature.³ This idea represents one vision of the law's role in developmental maturity: there is a proper age at which people are sufficiently mature to make certain choices, such as voting or engaging in sexual activity, and the law's job is to most accurately identify the correct age.

I argue, instead, that the relationship between law and developmental maturity is more complex. Law helps to shape developmental maturity in two ways. First, the law helps to set benchmarks of maturity that a person is expected to meet at different ages. Giving a young person certain responsibilities and autonomy can serve to draw out more adult-like features, while infantilizing them may stunt development. On the other hand, providing too much responsibility or autonomy to a young person before they are otherwise ready to handle it may produce the opposite result. Second, the law regulates the kinds of inputs a young person is exposed to that might shape their development. For instance, by regulating what kinds of media children consume, law can help to shape the ways that young people view the world and their role in it.

Children's autonomy rights can be based on individual or categorical judgments about maturity. The "mature minor doctrine" is a useful illustration of the interplay between these types of judgments. As Professor Michele Goodwin explains in [her Symposium piece](#) on the impact of *Dobbs v. Jackson Women's Health Organization* (2022), minors have a categorical right to access certain kinds of medical treatment, regardless of their specific maturity. The abortion cases, however, demonstrate that in some circumstances—such as a judicial bypass of parental consent—courts make an individualized determination regarding maturity.

There are many other areas in the law where courts make specific judgments about whether a child is old enough to make their own decisions and to suffer the consequences of those decisions. The law's assessment of a child's maturity may or may not be consistent with the child's view of their own maturity or their parents' views. [The criminal legal system](#) is rife with examples of both categorical

³ See, e.g., *id.* § 18.10 cmt. c (voting).

judgments about minors' adult-like behavior (such as mandatory transfer to adult court for certain offenses) and individual decisions (like discretionary transfer rules based on particular characteristics of the child). [Minor emancipation](#) laws also contain both categorical and individualized assessments of maturity.

The balance between categorical and individualized determinations of maturity is not fixed. It shifts over time as lawmakers make choices about how to allocate power. Legislatures, for example, can remove an individualized assessment from the domain of the courts by imposing a categorical age rule. The brightest of the bright-line age rules is, of course, the age of majority. I have [written elsewhere](#) about the limitations of that stark demarcation between childhood and adulthood. The illogic of these overbroad categories only becomes more apparent on social media, where a 17-year-old and a 19-year-old are often indistinguishable in their maturity and capacity to engage online yet may be subject to different rules based on their chronological age.

Still, drawing bright-line age rules to allocate autonomy rights remains a popular approach in the context of social media. Laws that are focused on protecting children from viewing obscene, dangerous, or harmful content are sometimes tailored to specific ages. Florida, for instance, recently [passed a law](#) prohibiting children under age 14 from having social media accounts. Similarly, laws may protect younger children from the risks of oversharing online. For example, the federal [Child Online Privacy Protection Act](#) (COPPA) requires that social media platforms obtain parental consent before collecting data on a child under 13 years old. A clear age cutoff assumes something about the maturity and vulnerability of the average 12-year-old, one that is not contingent on specific knowledge of any individual child. It also gives space for greater parental authority over younger children, presuming that younger children will require greater protection by their parents than teenagers will.

II. Children's Rights Online: Parents and the State

Children's social media use raises another question: whether the state or the child's parents have final authority over the child's online life. If the state says that a child should not have their own account until they are 14, can a parent override that law? If the state says that children have a right to free expression online, can a parent prohibit their child from accessing social media? The child's autonomy rights tend to disappear from the discussion, as Professor Dailey and

President Rosenbury emphasize in [their critique](#) of the parental rights model.

Balancing the state's interests in regulating children's lives with parental rights to raise their children, the Restatement takes a strong stance for parental authority. It concludes that parents have the right to make decisions regarding their child, without government interference, unless the state's interest in protecting the child from harm outweighs the parents' interest. As Professor Scott [explains](#), "[T]he Restatement implements the modern Child Wellbeing principle by restricting parental authority to make decisions regarding care, discipline, medical treatment, education, association with third parties, and other matters *only* in circumstances in which parents' decisions pose a risk of serious harm to the child" (emphasis in original). Another way to think about parental rights, however, is that parents have a duty to defend their children's interests until the child is old enough to defend their own rights. Under the second understanding, even the youngest children have rights, but parents have the primary (and often exclusive) authority to vindicate those rights.

Another possible way to structure children's relationship to both parents and the state is to say that children may lack autonomy rights, but they do have positive rights to protection. Although not a popular approach in [U.S. constitutional law](#), [this model](#) is one that is embraced by [many countries](#) in the world. Under this view, while children may not be capable of making decisions for themselves, they are owed—both from parents and from the state—a duty of care that includes protection from invasions of privacy, psychological harm, and exploitation online.

Some recent efforts in the United States suggest that this positive duty to protect children online may be gaining traction at both the state and federal level. In October 2023, the state attorneys general of thirty-three states filed a [lawsuit against Meta](#), which owns Instagram, Facebook, and offers multiple virtual reality products. The complaint alleges that the company engaged in a "scheme to exploit young users for profit" in violation of state and federal law. The complaint provides insight into the strategies that social media companies use to entice young people, as well as the role that states see themselves playing in the effort to regulate young people's time on social media. The [Kids Online Safety Act](#), if adopted, would provide federal safeguards for children's online activity and access to information.

It is worth asking what rule ought to govern the state's obligation to protect children from the harms of social media: Is the

role of states here to protect children, who are viewed as victims of avaricious social media companies? Or, as some [critics assert](#), do laws restricting minors' access to the Internet create greater harms to freedom of information and expression? Should states, instead, serve to facilitate children's freedom to engage in their own expression online?

The following four scenarios imagine that the existing Restatement framework is extended to children and social media:

In scenario one, the parent and child agree about what is best, but the state disagrees. An example of this dynamic might be a minor who wants to access content that is deemed harmful to children. In these situations, the state may bring to bear its most coercive powers—child removal and criminal prosecution—or it may yield to the parent. To the extent that rights provide the rule of decision in this scenario, those rights belong primarily, but not entirely, to the parent, rather than to the child, under existing doctrine. If the state is asked to make an individualized assessment about whether the parent's behavior is sufficiently harmful to the child to warrant state intervention, the child's maturity may come into play. The Restatement offers a framework for this type of individualized assessment of maturity in the context of a minor's right to refuse medical care.⁴ If the child and the parent agree that the child should not receive the care—for instance, on religious grounds—then the child's maturity may be considered when determining if the state should intervene and compel care.

In scenario two, the parent and child are not in agreement about what is best, and the state agrees with the parent. This is often an easy case. In this situation, the child has almost no chance of asserting their autonomy, other than through self-help (for instance, running away from home or seeking emancipation). If the parent and state agree that the child's wishes are not in their best interest, then the child's autonomy is extremely unlikely to outweigh these considerations, even if an adult could act in a self-harming way in the same situation. Is it possible in this scenario for the child to assert their independent rights? Which rights? Through what cause of action? By what authority? These questions prove difficult to answer.

In scenario three, the parent and child are not in agreement, and the state sides with the child. Here, the conflicts are at their peak. How much can the state empower the child to reject or disregard a parent's decision? At what point can the state intervene and displace parental decision-making? For example, what happens if a parent wants to homeschool their child and strictly control access to social

⁴ See RESTATEMENT OF THE LAW, CHILDREN AND THE LAW § 19.01 (Am. L. Inst., Tentative Draft No. 2, Mar. 2019).

media, but a child wishes to seek information or community online and invokes their right to freedom of expression? The state may have an interest in protecting the child's ability to engage with the outside world. But what rule of decision should govern this conflict? Should it matter how old the child is or whether their reason for wanting to go online is sufficiently mature?

In scenario four, none of the parties are in agreement. Here too, it is hard to see how a child is likely to prevail. In order to assert their autonomy claim, the child must succeed against two powerful forces—parents and the state—that are operating in tension. Parents can seek to limit or channel state authority through the political process or by asserting their fundamental parental rights, but children do not have that same power.

These scenarios offer broad categories, but they represent specific and highly plausible conflicts. Should a child be able to seek out information about disordered eating or self-harm? What if a parent has strong religious objections to content that involves sexuality or sexual expression? What if a parent wants to earn money by posting images and videos of their child on social media? What if the child wants to become a [“kidfluencer”](#) and earn sponsorships for their “unboxing” videos? To some, the answer seems obvious: these kinds of choices are best left to individual parents who know their children best and can make choices that further their child's wellbeing. As Professor Scott's [Symposium Comment](#) emphasizes, in the context of medical decision-making and social media access, in the majority of cases parents are better suited than the state to determine what is harmful or beneficial to their child. Where conflicts arise, though, there should be a clear rule about how these competing interests are to be weighed. And central to that process must be a clear conception of the relationship between law and developmental maturity.

Online activity also defies the boundaries of home and public spaces. The Restatement and the Symposium articles emphasize that the parent's authority is at its strongest within the home. That may be true when it comes to access to physical devices like phones and tablets, but if the parent lacks authority to control their child's social media use *outside* of the home, then their ability to control what their children see and do online is seriously weakened.

Professor Dailey and President Rosenbury [challenge](#) the strong parental authority model by raising children's interests in accessing social media. They fundamentally see social media as a space of ideas. Through that lens, they argue that children have a right to engage with ideas outside of those espoused by their parents. The state, therefore, must not empower parents to exclude their children from the

benefits of this marketplace of ideas. While they do not go so far as to say that parents can be sanctioned for preventing children from accessing social media, this seems like a logical extension of their views, if not their policy proposals.

That is, however, not the only way to think about what social media is and does to children. As the [Meta litigation](#) suggests, social media platforms may be designed to bypass conscious thought and affect deeper brain function in ways that may lead to addictive behaviors and self-harm. The states involved in the suit against Meta view it as their role to protect children by limiting these allegedly deceptive practices. Adults are by no means immune from the harms of social media, but the litigation focuses on children for two important reasons. First, the states' *parens patriae* role gives them broad authority to protect children from harm (though, arguably, the children do not have a right to demand this protection of the state). Second, the kinds of techniques deployed by social media platforms have particularly powerful [effects](#) on the developing minds of young people.

Participation in social media is not just about receiving information, either. It also entails giving information—sometimes intentionally, but often unwittingly through pervasive data gathering. Children may have an autonomy right to access information, but they also have privacy rights. Children's privacy rights are complicated, especially because parents have a role both in managing their children's access to social media and in controlling their children's data online. Should parents have unfettered discretion regarding the use of their children's likeness (apart from images of child sexual or physical abuse)? Should children be empowered to make their own decisions about their social media presence? What about if parents create content using their children's images? Should they be required to obtain consent, or should children have a right to force their parents to remove images from the internet? In France, [recent legislation](#) provides a legal obligation for parents to protect their children's privacy online. Would such an action be possible in the United States?

Social media is also a workplace for young people. For the relatively small, but increasing, number of children who are paid to produce content on social media, parents are still involved in the contract formation. What about the proceeds? Should children keep all the revenue they generate online? Children are both consumers and producers of content. Even when unpaid for this labor, children generate significant revenue for social media companies and advertisers through their online engagement. In many ways, this labor is unregulated, although there have been [some recent efforts by states](#)

to protect young content creators from labor exploitation. These reforms are modeled on the twentieth century laws, such as the famous “[Coogan Law](#),” designed to protect children in the entertainment industry. Social media child labor, however, does not involve traditional employment. Instead, parents often adopt a variety of roles—employer, agent, director, creator—in their children’s online lives. This changed set of roles for parents warrants reconsideration of the existing rules of child labor.

III. The Next Restatement on Children and the Law

In the next effort to restate Children in Society, whenever that day may arrive, the issue of children’s lives online will be unavoidable. To draft this part, reporters should consider two main questions: First, does the child *have* an autonomy right to engage online? Second, if so, does that child’s maturity govern whether their right to access the Internet will prevail over other interests? If we assume that children do have some kind of right to access social media—to express their views, engage with material that is at odds with their parents’ values, enter contracts, control their own likeness, or engage in revenue-generating content creation—what are the limits? If laws are designed to protect children online in ways that restrict their autonomy, then there must be a rule that justifies what restrictions are permitted. One possible metric for determining how much autonomy children have online could be developmental maturity, but that approach raises its own set of challenges. Should parents decide what is developmentally appropriate for their own child? Should there be categorical age thresholds? If so, should it be a single age of majority or a ladder of increasing autonomy at different ages? Should judges have more authority to make individual determinations about the maturity of a particular minor?

Future ALI reporters may struggle to find coherence among the patchwork of laws and policies that govern children’s online lives. Given the variety of interests at stake and the range of legal actors involved in regulating social media, it is probably inevitable that no single, clear framework will emerge. However, we can at least hope that those responsible for deciding the future of children online will take seriously the issues raised in this Essay, acknowledging the importance of children’s autonomy rights as this body of law develops.

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