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THE LEARNING YEARS: A REVIEW OF *THE CHANGING LEGAL WORLD OF ADOLESCENCE*

By Bruce C. Hafen*

THE CHANGING LEGAL WORLD OF ADOLESCENCE. By *Franklin E. Zimring*. New York: The Free Press. 1982. Pp. xvi, 208. \$14.95.

Contemporary egalitarianism seeks identical legal treatment for all persons. Thus it rejects not only distinctions based on race or gender, but also those based on age, competence, or marital status. The traditional concept of minority status challenges this logic by assuming that discriminatory classifications (in this case, classifications based on age) *can* provide the subjects of wise discrimination with needed protection and, over time, more meaningful individual liberty.

During the years of infancy and early childhood, the absence of even minimal capacity for self-governance makes obvious the need for special legal treatment. Adolescence, however, is another matter. Most adolescents appear physically able to act autonomously and to live with the consequences of their actions, even when their choices are unwise and the consequences disastrous, for others as well as for themselves. What right, then, allows parents or society to restrict the autonomy of adolescents? In his new book, Professor Frank Zimring argues for legal "semi-autonomy" for adolescents on the grounds that theirs is a "learner's permit" stage of life, requiring more freedom than young children enjoy, but more restrictions than are placed on adults. This combination is said to be necessary to optimize the likelihood of mature individual development. Zimring's argument rejects the logic of extreme egalitarianism by favoring the preservation of discriminations based on age, or, more precisely, on the developmental processes related to age.

Zimring's contribution is timely, because it adds a voice of clarity, common sense, and reason to a climate of increasing confusion about the legal and political status as well as the psychological needs and social identity of adolescents. The existing legal uncertainties have been profoundly affected by large scale forces both within and beyond the disciplines of the law over several decades: the automobile, massive public education, urbanization, increased economic dependency, television, and peer pressure. Any one of these or several other factors deserves far more attention than Zimring's short volume can give if the contemporary context of the children's rights movement is to be understood. Neil Postman believes, for instance, that television alone is causing "the disappearance of childhood,"¹ because TV

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1. N. POSTMAN, *THE DISAPPEARANCE OF CHILDHOOD* (1982).

requires no instruction for viewers to grasp its form and because it makes no attempt to age-segregate its audience — as have other forms of mass communication. As society has mirrored the overwhelming influence of television, the behavior patterns, attitudes, expectations, and even physical appearance of adults and children have become increasingly similar. Also on a broad scale, Barbara Tuchman has observed a pervasive loss of confidence in human judgment in Western society through the wrenching experiences of this century, one result of which is “a widespread and eroding reluctance to take any stand on any values, moral, behavioral, or aesthetic.”² For the young, this means a frustrating absence of both structure and purpose in the intellectual and social environment.

More within the domain of the law, some have seen the children's rights movement as a logical corollary of the civil rights movement and the women's movement: “[T]he arguments for and against perpetuation of [minority] status have a familiar ring. In good measure they are the same arguments that were advanced over the issues of slavery and the emancipation of married women.”³ Some of the constitutional doctrines that emerged in the judicial response to these movements have been applied in the children's rights cases. These applications also reflect a more general tendency toward the constitutionalization of family law. When one's favorite tool becomes a hammer, every problem looks like a nail. Actually, the American legal system has long since enforced the legal “right” of children (albeit, not always a “constitutional” right) to be protected against abuse, neglect, and abandonment. In addition, such affirmative children's rights as educational opportunity and parental care have been forcefully recognized and impressively funded over many years. The introduction of constitutional analysis to problems involving children has therefore added little to the substantive legal foundation and may, in fact, have caused enough confusion about the entire notion of minority status to have more than offset any accompanying gains.⁴ The contemporary mood nevertheless remains skeptical about both the purpose and the validity of legal classifications or apparent restrictions on liberty that are based on some group's alleged need for benign government protection. We are increasingly unwilling to believe that anyone's best interest could truly be advanced by limiting his freedom.

It is especially interesting to welcome to this scene the perspective of a University of Chicago law professor whose primary work has been in empirically oriented criminal law studies. In that field, Professor Zimring has seen the effect of egalitarian thinking on the treatment of juvenile offenders and has been disturbed by it. Despite his concurrence with much of the recent criticism of the juvenile court system (some evidence for which is in the present volume), Zimring has felt that proposals to treat older juvenile

2. Tuchman, *The Missing Element: Moral Courage*, in *IN SEARCH OF LEADERS* 3 (1967).

3. Foster & Freed, *A Bill of Rights for Children*, 6 *FAM. L.Q.* 343 (1972). *Accord* Wald, *Making Sense Out of the Rights of Youth*, 4 *HUM. RTS.* 13, 15 (1974) (“The child's subjugated status was rooted in the same benevolent despotism that kings, husbands, and slave masters claimed as their moral right.”).

4. *See generally* Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their “Rights,”* 1976 *B.Y.U. L. REV.* 605 (examines risks involved in uncritical application of egalitarian concepts to unique context of children).

offenders as adults for penal law purposes may produce "harsh and arbitrary" policies.⁵ He has believed that separate treatment for adolescent offenders is justified by their diminished responsibility for their actions and by the need to provide them an "opportunity . . . to outgrow a developmental stage that is peculiarly vulnerable to pressures toward criminality."⁶ Here is the germ of the "learner's permit" concept, which is applied in this book to a range of adolescent law problems much broader than criminal law.

I. APPROACH AND STYLE

The Changing Legal World of Adolescence is based on the Thomas Cooley lectures delivered at the University of Michigan Law School in the Fall of 1980. The content had been developed while Zimring was a fellow the previous year at the Center for Advanced Studies in the Behavioral Sciences at Palo Alto, California. Because of the lecture format and Zimring's chatty style, the book is neither technically difficult nor heavily documented. Zimring is certainly capable of a more academic approach, but chose to reject an "elephantine volume" (p. 161) in favor of accessibility by a wider audience. This makes for refreshing reading since, in the words of Francis Allen, (who, by the way, inspired Zimring to undertake this project), "[n]ever has . . . reasonable brevity and the informal style been more needed" in writing by legal academics than "at this hour."⁷ Predictably, of course, this approach requires the serious reader to look to other sources for a more comprehensive and fully documented treatment of the law of adolescence.⁸

There is some risk that this book may be something of a stylistic adolescent itself — it asks a little too much of the lay reader while being insufficiently developed to *persuade* the legal scholar (though surely it will *stimulate* the scholar). For example, the entire text of one recent, long Supreme Court opinion is included as an appendix, "[f]or those who will use this volume as an introduction to legal studies" (p. 161). But one case can only be illustrative, and little direction is given on how to relate this case to the line of cases of which it is a part. The case seems to be something of an afterthought, leaving me unsure just how a high school or college instructor might be expected to use the book as a text. It could provide material for some provocative and worthwhile classroom work, but probably requires a teacher having additional background and source material.

At the opposite extreme, Professor Zimring suggests at several points that the book is "jurisprudence": "[t]his book attempts to apply a realist jurisprudential method to the problems of law and the young" (p. xiii). One of the book's major sections is entitled "The Jurisprudence of Semi-Autonomy," and elsewhere he refers to a "jurisprudence of adolescence" (p. 126). Near the conclusion, Zimring writes that the "rigorous brand of mud-

5. Zimring, *Pursuing Juvenile Justice: Comments on Some Recent Reform Proposals*, 55 U. DET. J. URB. L. 631, 645 (1978).

6. *Id.* at 642.

7. Allen, *In Praise of Book Reviews*, 79 MICH. L. REV. 557, 559 (1981).

8. See, e.g., R. MNOOKIN, CHILD, FAMILY, AND STATE (1978).

dling through" he has just described in one extended illustration "is not merely the stuff of the legal world of adolescence; it should be the essence of twentieth century legal method" (p. 159). The book does proceed from the assumption that workable policy analysis must consider empirically demonstrable costs and benefits; it also conveys a healthy skepticism about the value of abstract formalism, whether as constitutional rules or otherwise. Thus it has the flavor of a typical contemporary law school classroom, where legal realism in the broad sense is so pervasive that we seldom call it jurisprudence. But the book's limited scope allows for little explication of the premises of legal realism as jurisprudence. My point is simply that it may be unrealistic to expect a book of this size and style to appeal equally across a spectrum of readers stretching from high school students to scholars of jurisprudence. Even as I say that, however, I must observe that Zimring's insight, straightforward style, and (usually) uncomplicated language make his work valuable at several levels of sophistication. If the book is a stylistic adolescent, it is a precocious one.

II. LEGAL LITERATURE CONTEXT

A. *Categories of Children's "Rights"*

There are several ways to categorize the contemporary issues and literature on children's rights, each of which helps give perspective to this book's place in the literature. Michael Wald has suggested four categories to describe the range of issues involved: (1) rights "against the world" to adequate health and physical care; (2) rights to protection from harm or inadequate care from parents or others; (3) rights to state policies granting adult legal status; and (4) rights to act independently of parents prior to emancipation.⁹ Zimring deals mostly with the last two of these categories, and then only as they apply to adolescents. He is generally sympathetic to reducing state control over the "liberty" interests of adolescents, but would maintain their nonadult status in applying criminal laws or rights to parental financial support. He does not generally favor legal support for independent action as against parents.

I have attempted elsewhere¹⁰ to suggest a slightly different form of categorization by distinguishing between rights of "protection" and rights of "choice." Rights of protection include such legal claims as interests in property, rights to physical protection, and procedural due process rights. Most of the legal doctrines developed to date for the benefit of minors in both the constitutional and juvenile law context are of this type. Protection rights are available to children, as they are to legally incompetent adults, regardless of age or capacity for autonomous action. "Choice rights," on the other hand, presuppose a basic capacity for responsible action. Thus, age limitations on the right to vote, the right to marry without parental consent, or the right to make a binding contract prevent the exercise of a minor's choice right on the assumption that persons below the specified age lack the capacity for meaningful choice. In a sense, limitations on choice rights represent a form of protection for minors, because they protect mi-

9. Wald, *Children's Rights: A Framework for Analysis*, 12 U.C.D. L. REV. 255, 260 (1979).

10. See Hafen, *supra* note 4, at 644-50.

nors against their own immaturity and against their vulnerability to exploitation by others. In drawing this distinction, I was cautioning those who assume that legal (especially *constitutional*) recognition of protection rights logically implies the extension of choice rights.

Frank Zimring's exclusive focus on the adolescent minor directs his attention largely toward choice rights, since adolescents are the only minors who, as a practical matter, have arguable *de facto* choicemaking capacity. He also stresses the need to *protect* adolescents against the full consequences of their own improvident choices as well as from the abuses of excessive judicial or other official discretion. He shares my concern about the indiscriminate assumption that recognition of protection rights implies recognition of choice rights. Consider, for example, his view of *Carey v. Population Services International*,¹¹ in which the Supreme Court invalidated — in the name of the right of privacy — a state law preventing persons under age 16 from obtaining contraceptives:

The sexually active 15-year-old is given access to birth control not out of recognition of his or her mature judgment. Indeed, the *less* equipped a particular individual is for the burdens of parenthood, the stronger the argument against denying access to contraception when we cannot deny access to sex. But the "right" in this case is not a right to vaginal foam. The civil right being vindicated is the right not to be gratuitously harmed. [P. 63.]

Carey launches Zimring into discussing one of his major points — that state policies should "avoid harming kids in the name of helping them" (p. 62). As his view of *Carey* implies, to ensure this kind of "protection right" may erroneously *appear* to acknowledge a "choice right" which could establish precedents requiring the extension of further decisionmaking rights. Zimring clearly accepts the distinction between choice rights and protection rights, and warns against blurring the distinction:

[T]he language of unqualified rights invites a form of reasoning by analogy that is particularly confusing. Many are tempted to generalize the "right" to contraceptives, treatment for venereal disease, and treatment for alcohol and drug abuse to the "right of a minor to make independent choices about medical treatment." This is a regrettable and avoidable error.

"Privacy" legislation dealing with venereal disease and drug and alcohol abuse is really state guidance of adolescents rather than any recognition of autonomy. In public policy terms, there is only one right answer to the question of whether alcoholism, drug misuse, or venereal disease should be treated rather than ignored. [P. 64.]

B. "Who Gets To Decide" Categories

Robert Mnookin has advanced a broad perspective on the range of children's rights issues by suggesting that the real policy question underlying most of the problems is "who gets to decide" what should happen to a child's legally protectable interest.¹² The three possible candidates for that role are agents of the state, the child himself, or the parents.

11. 431 U.S. 678 (1977).

12. See Lecture at Family Law Symposium, Brigham Young University Law School (Jan. 30, 1981).

1. *Child Savers*

The "child saver" movement that so heavily influenced the development of the juvenile court and public education systems during the past century assigned a high priority to the role of state agents in directing the lives of children of all ages. Zimring concurs in what has become a widespread criticism of this movement. He is charitable enough to acknowledge that the leaders of the child saver movement "were not unmindful of the values of youth autonomy" (p. 37), even though the evidence now suggests that state power has often been used to pursue "punitive as well as protective agendas" (p. 36). Zimring's general observation, however, is that social developments affecting American adolescents simply outpaced the adaptability of youth welfare institutions: "While the legal theory of youthful dependency stood still, the essential elements of modern adolescence fell into place: prolonged economic dependence, age segregation, and tremendous physical mobility" (p. 45). Thus, both the recent criticisms of those institutions and the resulting changes in legal policy "were reactions to changes in social reality that had been in process for some time," as the law has "attempted to catch up with the world" (p. 45). Rather than saying the child saver theory was always wrong, he seems to be saying that the theory has been inadequate to deal with the broad scale social changes that have created today's "adolescent society."

In addition, Professor Zimring is skeptical about governmental intervention in the lives of children because of his preference for "parental authority and family privacy" (p. 53), a preference substantially affected by "how little government knows about what is correct for particular children" (p. 54). While Zimring's focus on older children steers him away from consideration of when state intervention is justified to prevent abuse or neglect, the reader can sense in the book's general tone that his skepticism about state influence does not reach the extreme anti-state position represented by the work of Goldstein, Freund, and Solnit on family intervention.¹³

2. *Children's Liberators*

The second candidate for the leading role in determining the child's legal interests is, of course, the child himself. Perhaps the most extreme reaction against the child savers' view that children are totally dependent has been the children's liberation movement. This school of thought is opposed not only to state control, but to parental control as well. It assumes that each child should direct the course of his own life and, toward that end, should be guaranteed the full range of adult legal rights, from the right to vote to the rights to contract and marry.¹⁴ The association of this move-

13. See Wald, *Thinking About Public Policy Toward Abuse and Neglect of Children* (Book Review), 78 MICH. L. REV. 645 (1980) (reviewing J. GOLDSTEIN, A. FREUND & A. SOLNIT, *BEFORE THE BEST INTEREST OF THE CHILD* (1979)).

14. Some of the relevant literature is summarized in Hafen, *supra* note 4, at 632 n.98. See also the proposal of James Manahan, chairman of the American Bar Association's Section of Individual Rights and Responsibilities: "I propose that we consider the logical and ultimate step that all legal distinctions between children and adults be abolished." Editorial, Section of Individual Rights and Responsibilities Newsletter, Spring 1976.

ment with other liberation movements¹⁵ has given it a decidedly philosophical rather than empirical thrust. Some of its ardent advocates make no claim that children's liberation demonstrably serves the "best interests" of children. On the contrary:

[A]sking what is good for children is beside the point. We will grant children rights . . . not because we are sure that children will then become better people, but . . . because we believe that expanding freedom as a way of life is worthwhile in itself.¹⁶

No court or legislature has taken this position seriously enough to adopt it as a general policy goal, presumably because of the obvious incapacity of infants and young children. Adolescents, of course, are something else, not only because they have some fully developed physical capacities, but also because they typically emit such strong personal signals that cry out for independence and autonomy. The U.S. Supreme Court has struggled to develop a coherent position on adolescent autonomy, primarily in the context of abortions for unmarried minor young women. The most lucid statement developed to date is the plurality opinion of Mr. Justice Powell in *Bellotti v. Baird II*.¹⁷ Powell reasoned that "[t]he 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" together justify "the conclusion that the constitutional rights of children cannot be equated with those of adults."¹⁸ Despite this general perspective, Powell and the Court declared unconstitutional state laws requiring "mature" minors to obtain parental consent for an abortion. Curiously, the Court fell back on child-saver assumptions by leaving the entirely subjective determination of "maturity" in the hands of judges and by directing that judges determine whether an abortion is in the best interest of a minor found to be immature. With minors' abortions, we have the proverbial bad lawmaking of hard cases at its worst.¹⁹ I have argued elsewhere²⁰ that the minors' abortion decisions are an exceptional class of cases and that the Supreme Court's children's rights cases in the aggregate do not add up to a children's liberation policy on choice rights. Nevertheless, some lower courts have interpreted the Supreme Court's position as establishing a constitutionally

15. See text accompanying note 3 *supra*.

16. R. FARSON, BIRTHRIGHTS 31 (1974).

17. 443 U.S. 622 (1979).

18. 443 U.S. at 634.

19. As Zimring observes:

If contraception is a hard case, teen-age abortion may be an impossible problem. . . . When teen-age pregnancy occurs, it is an emergency that is biologically unpostponable. Parental consultation may carry enormous cost and the question of whether an abortion is in an adolescent girl's best interests is more properly asked of a theologian than of a parent or a juvenile court judge. . . . Requiring parental consultation may in some cases result in the adolescent girl's learning that she has parental support for alternatives she might prefer to abortion *if* she knew her parents approved. In other cases, parental rage will be added to an already formidable list of impediments pregnant teenagers face. . . . [O]ne cannot decide what side to take in this debate by declaring a bias in favor of youth welfare.

Pp. 66-67 (emphasis in original).

20. Hafen, *The Constitutional Status of Marriage, Kinship, and Sexual Privacy — Balancing the Individual and Social Interests*, 81 MICH. L. REV. 463, 511-16 (1983).

protected presumption against any state enforced restrictions on minors' autonomy.²¹

In this context, Professor Zimring offers one of his major contributions. On the one hand, he persuasively argues that it is both unfair and unrealistic to bar adolescents' freedom to make important choices — in part because they really do have greater capacity than younger children, and in part because they genuinely need a meaningful chance to learn how to make decisions by *making* some. "Being mature takes practice. To know this is to suppose [one] justification for extending privileges in public law and family life to those who have not yet reached full maturity" (p. 89). On the other hand, Zimring is equally persuasive in arguing that today's adolescents are not really adults, and are entitled to be *protected* from the harmful consequences of premature total "liberation," again in the interest of their developing maturity. Zimring thus rejects the linkage between "kids' lib" and other current movements: "In caricature, this perspective is the bedtime story of the 1990's: first there was black liberation, then there was women's liberation, then there was children's liberation" (p. 23). He sees "equality in the eyes of the law" (p. 24) as the goal of both the Civil Rights and Women's Rights movements, and therefore finds that "the analogy between these movements and the changing legal world of adolescence is incomplete. The only way to construct a jurisprudence of equality in adolescence is to rob the adolescent years of any special legal meaning. . . . The costs and benefits of American adolescence deserve their own special consideration" (p. 25). There is, for the adolescent, "benefit in a special, legally protected growing period that is a transition to a fully realized adult status" (p. 26). He notes further that limitations on individual liberty during such a period "will be outgrown" — "[b]arring reincarnation" (p. 27), which also distinguishes adolescents' legal restrictions from restrictions based on race or gender.

By seeing adolescents as in a class by themselves, Zimring helps solve the problem legislators, judges, and scholars face in taking a position on children's liberty issues. If instead of *two* stages there are *three* recognized legal stages (child, adolescent, and adult), we are not forced to violate common sense in either direction — by lumping teenagers with infants *or* with adults. "[T]he theory that those who are not totally independent should be regarded as totally dependent is the most troublesome aspect of the legal theory of early adolescence associated with juvenile courts, public schools, and social services for most of this century" (pp. 27-28). Zimring also clarifies the debate with his insight that the *purpose* of extending "semi-autonomy" to adolescents is to give them carefully selected experience from which they can *learn* to assume adult responsibility with minimal risk of permanent damage. Such a guiding purpose for grants of legal autonomy is unique, but it is a sufficiently understandable purpose that it can give policy guidance that has too often been overlooked as we have taken sides either for or against unlimited children's liberation. Young people must learn from their own experience, including negative experience:

21. *E.g.*, *Aladdin's Castle, Inc. v. City of Mesquite*, 630 F.2d 1029 (5th Cir. 1980) ("significant state interest" must be demonstrated to warrant restriction on minors' liberty interests in free association).

We want adolescents to make mistakes, but we hope they make the right kinds of mistakes. . . . [Thus, youth policies should minimize] the harm young persons do themselves, and [keep] to a minimum the harm we inflict on them when they have abused opportunities in ways that harm the community. Above almost all else, we seek a legal policy that preserves the life chances for those who make serious mistakes, as well as preserving choices for their more fortunate (and more virtuous) contemporaries. [Pp. 91-92.]

3. *Parents*

Zimring is, then, neither a child saver, who would prefer the influence of state agents, nor is he a pure child liberationist, who would always opt for autonomous self-governance by the child. He would of course allow considerable individual liberty to adolescent minors when their legally protected choice rights meet the "educational" criteria just mentioned. However, his overall position more closely favors the third candidate for having general responsibility for adolescent choices — the parents. Toward that end, Zimring advocates a "rebuttable presumption of family liberty" (also called "the presumption of *parental* liberty" at p. 85) (emphasis added), which generally leaves to the parents of an adolescent the task of guiding "the transition from family authority to adult-style liberty" (p. 118). Were that presumption in place, courts or legislators would "ask, as a precondition to assuming power over parents or children, whether there is any good reason why such power should not reside in the private sector" (p. 52). He defends this policy premise by citing the value of "parental authority and family privacy," even while recognizing that "increasing family authority may reduce the freedom of choice of the individual adolescent" (p. 53). The presumption is justified in part because of his "skeptical view of the efficacy and legitimacy of public officials second-guessing parents on questions of child welfare" (p. 54). Further, he would not allow children to bring governmental power to bear in resolving differences with their parents, because such recourse would "intensify the regulatory relationship between government and family" (p. 53). Thus, he would "keep the government's nose out of parent-child disputes in almost all cases" (p. 57).

Some family law scholars are less willing than is Zimring to encourage the support of legal policy for parental authority. They recognize the need for family autonomy, but their commitment to the egalitarian tradition leaves them uncomfortable with the prospect of authoritarian interference with the lives of children — even from parents.²² Others join Zimring in more forthrightly recognizing parental authority, both because legally supported parental autonomy serves the developmental needs of children and because the parental interest in childrearing has its own independent constitutional protection.²³ An additional factor of some magnitude is that if the "ultimate authority" of parents is not recognized, "they will be less willing

22. See, e.g., Teitelbaum & Ellis, *The Liberty Interest of Children: Due Process Rights and Their Application*, 12 FAM. L.Q. 153, 166-74 (1978). Additional sources are discussed in Hafen, *supra* note 4, at 653-56.

23. See, e.g., Goldstein, *Medical Care for the Child at Risk: On State Supervention of Parental Authority*, 86 YALE L.J. 645, 648-49 (1977).

to assume responsibility for the child.”²⁴

III. SUMMARY OF THEMES

The foregoing attempt to locate Professor Zimring's position within the children's rights literature has served the additional purpose of introducing some of the major themes of *The Changing Legal World of Adolescence*. It is appropriate now to summarize the book's themes from its author's own perspective. The heading for Part I is, "What's going on here?" In these introductory chapters, Zimring illustrates the confusion that abounds in the regulation of adolescent behavior. For instance, some states have lowered the minimum drinking age to 18 to correspond with the reduced voting age, only to find themselves raising the drinking age after a few years of experience. In a similar search for consistency, California reduced the maximum age for allowable child support to 18, even though the vastly increased number of young men and women attending college has effectively prolonged their need for support. He also suggests the problems of an elusive consistency in constitutional case law by asking whether the right to obtain contraceptives²⁵ is really the same as the right to challenge a curfew ordinance.

Zimring rejects the notion of earlier maturing as well as the notion of children's liberation as explanations for the current situation: "American youth have not achieved an across-the-board precociousness that could explain an all-encompassing downward shift" for the age of adult status (p. 22). The real explanation for recent legal changes, with all the accompanying uncertainty, is that the law is finally catching up with the historical sweep of massive social change.²⁶

In Part II, "Deregulating Adolescence," Zimring suggests several possible explanations for the recent trend of reducing state control over adolescent behavior. I have some difficulty in these chapters (and subsequent ones) knowing just how much he intends to be descriptive and how much is prescriptive. He claims at several points to be describing recent changes in the law, but some of what he says rejects certain dominant legal approaches and much of what he says introduces insightful concepts not ordinarily recognized by judges, legislators, or others in policymaking roles. In this Part, for instance, he introduces his "rebuttable presumption of liberty," which I discussed earlier.²⁷ In applying this notion briefly to the public school context, he is less willing to extend a presumptive form of "in loco parentis" parental liberty to the authority of schools. This is partly because families are really not "free to choose among alternative schools" (p. 58), and partly because some rationale other than arbitrary authority should exist to justify school policies. Zimring makes no serious attempt to summarize or even to illustrate recent developments in public school law, but his instincts are roughly consistent with prevailing judicial assumptions that give school administrators considerable leeway so long as they act reasonably.

24. Wald, *supra* note 9, at 277; accord, Hafen, *supra* note 4, at 655-56.

25. See text accompanying note 11 *supra*.

26. See text accompanying note 1 *supra*.

27. See Section II.B.3 *supra*.

Zimring says his view that students should be free to choose about most relatively harmless school-related matters "should not be confused with treating children like adults. It is both more liberal and more accurate to suggest that it is treating children like people" (p. 59). From what he says elsewhere, I take this to be a statement of support for the view that adolescence should be treated as its own recognizable legal category without necessarily implicating either the concept of minority status or constitutional rights. Except for a brief chapter on procedural due process, the book never addresses in a comprehensive sense the large subject of constitutional rights for children — or adolescents. In the school context, Zimring does suggest that "[t]here is no reason why the Fourteenth Amendment, a notoriously blunt instrument, need be used as a basis for deciding issues relating to run-of-the-mill dress codes" (p. 57). His brief references to constitutional issues in the abortion and contraceptive cases hint that he is similarly unimpressed there with the use of constitutional doctrines in such cases, since the real issues are, if anything, obscured by heavy civil rights jargon. In one sense, I find this relative disinterest in "constitutional rights" very refreshing, because it permits him to move quickly into an empirical analysis of real costs and benefits in each circumstance while bypassing the ponderous and mystifyingly vague abstractions that often cloud the analytical picture of the case law. On the other hand, the reality is that constitutional lingo increasingly fills the literature and the cases. Zimring would render a needed service if he could offer some analytical tools that would help others to employ the methodology of his kind of legal realism while still dealing with — or satisfactorily explaining away — the constitutional artillery that is bogged down all over the current intellectual battlefield.

One example of Zimringesque analysis that is more fruitful than typical constitutional analysis is his treatment of the *Carey* case²⁸ in Chapter Five, Part Two. Here Zimring introduces his "least harm" test: regulatory policy is unacceptable if it does more harm than good. To *Carey*'s question of when contraceptives should be available to adolescents, Zimring's answer is simple:

Will limiting access to contraceptives successfully legislate universal teenage virginity? If not, the impact of limiting access to contraception in the name of youth welfare is fundamentally perverse. Rates of sexual activity may not be substantially affected, but the risk of unwanted pregnancy and the rate of venereal disease will increase. [Pp. 62-63.]

In other words, if the evidence shows that prohibiting access to contraceptives does more harm than good, access should not be prohibited. There is a big empirical variable in that proposition, of course, and I would expect Zimring's bias toward research data to make him eager to verify — whenever possible — such important factual issues as whether the availability of contraceptives is in fact unrelated to rates of sexual activity. Unfortunately, the Supreme Court did not have such a simple experience with *Carey*, in part because of the absence of empirical data and in part because of the ambiguous but emotional implications of basing the finding of unconstitutionality on the right of privacy. Zimring's least harm approach would reduce the confusion the Court experienced — it would also reduce the

28. See note 11 *supra* and accompanying text.

likelihood that lower courts would make a "choice right" precedent out of the case, when in fact it is a "protection right" case.²⁹

The least harm argument also clarifies the analysis of when parental consent should be required for medical care. Zimring summarizes a variety of state laws recently enacted for the purpose of encouraging urgently needed care for adolescents who might avoid seeking treatment if they were first required to disclose their problems to parents in obtaining consent. Typical cases involved venereal disease, drug abuse, or complications in pregnancy. In these cases, parental consent requirements may well do more harm than good. That is not the case with something like parental notification as a condition of dispensing contraceptives, observes Zimring, because no harm has in fact occurred. "[I]t is still a time of decision-making about the future when parent-child interaction might be helpful" (p. 65). Thus, the least harm approach would not warrant generalizing from special-case categories to a more general right of medical care without parental consent. Again one sees in this context that Zimring's premises are more interested in *helping* adolescents than in simply "liberating" them without regard to what helps them most.

Zimring also applies the least harm analysis to status offenders — adolescents made subject to juvenile court jurisdiction through acts that would not be legal violations if committed by adults. Typical examples are runaways and truants. Status offense jurisdiction has recently been the subject of lively debate, as illustrated by the American Bar Association's rejection by a close vote of the proposal from the Juvenile Justice Standards Project that status offense violations should not subject juveniles to incarceration or other coercive measures.³⁰ Some would eliminate coercive status offense sanctions on the theory that adolescents should simply be treated as adults — "liberated." Others would eliminate the sanctions because they mistrust state coercion generally. Zimring's is a more balanced view, focusing primarily on the serious harm that can be inflicted through the particular *enforcement methods* employed with status offenders. Thus his search is for "cures . . . that are not manifestly worse than the disease," but which also respond to "the dangers that the immature runaway or truant can inflict on him- or herself" (p. 72). Zimring separates the issue of enforcement from the issue of whether substantive regulation of any kind is warranted, not only with teenage sexual activity and status offenses, but in other contexts. His approach is constructive, not only because it allows for more careful analysis of regulatory costs and benefits, but also because it tends to smoke out critics of regulation who "find themselves reasoning that punitive measures they would object to in any event *won't* work because they *shouldn't* work" (p. 143) (emphasis in original).

Professor Zimring's overriding concern with helping — rather than either liberating or coercing — adolescents also shows up in his assessment of the Supreme Court's procedural due process cases. In general, he seems to welcome the use of due process concepts as a check on the excessive discretion allowed juvenile judges under the original concepts of the juve-

29. See text accompanying notes 10-11 *supra*.

30. [6 Current Developments] FAM. L. REP. (BNA) 2226-27 (1980) ("Noncriminal Misbehavior" standard).

nile court system. Once again, however, the issue is not simply whether adolescents should be categorized as adults or as children, but whether particular "adult" versions of due process serve the actual interest of young offenders. Commenting on *In re Winship*,³¹ in which the Court held that delinquency must be proven beyond a reasonable doubt, Zimring faults the Court for not considering "whether adult-style procedural entitlements could inhibit the youth welfare mission of the court for children" (p. 80). A higher burden of proof could result in acquittal of those who may seriously need court assistance: "Acquitting a large number of delinquents is not a high price to pay only if we live in a world where convicting them is not in their own best interest" (p. 80). Yet his concern for what procedure most benefits an adolescent makes him more skeptical about the likely wisdom of institutional confinement initiated by parents, whose constitutional interests in directing their children may be in direct conflict with the liberty interest of a minor in avoiding unfair confinement. In Zimring's view, while *Winship* too easily assumed the overtones of an adult role for adolescents in its factual context, *Parham v. J.R.*³² erred in the opposite direction by too easily assuming the dominance of the parental role.

In Chapter 8 at the end of Part II, Zimring coins one of his most original and valuable phrases: "Adolescence as a Learner's Permit" (p. 89). As noted earlier,³³ it is Zimring's conviction that adolescence is entitled to recognition as a special legal category for the express purpose (among others) of making the teens the learning years. That purpose requires both greater freedom than is appropriate for small children and less freedom than is appropriate for adults. Reasoning from these premises, he is quick to acknowledge that the liberty to learn does not necessarily imply autonomy and full responsibility for all purposes. In considering, say, drivers' licensing for teenagers, the first question is not "how old is old enough to . . . drive," but "how old is old enough to *learn* to drive; to start a process . . . that ends at competence if we're lucky; to invest, taking transitional risks, hoping that the result will be the right kind of adult" (p. 93) (emphasis added). This perspective actively seeks to increase through experiential learning the capacity of young men and women to exercise responsible autonomy. Yet it does so with eyes wide open to the reality that, because of the developmental nature of adolescence in contemporary society, "[p]eer orientation, foolhardy attitudes toward risk, and the powerful combination of social immaturity and physical mobility make middle adolescence into a mine field" (p. 92).

An important element of this perspective is Zimring's unwillingness to accept the superficial consistency of arguing that youth should have full adult responsibility for their lives at the same age when they may vote. Liberty for one purpose need not — indeed, should not — mean liberty for all purposes, since much of adolescent liberty should be designed to prepare

31. 397 U.S. 358 (1970).

32. 442 U.S. 584 (1979). In *Parham*, the Court upheld procedures allowing the parent-initiated commitment of children without an adversarial hearing so long as "informal, traditional medical investigative techniques" were followed as a check on parental discretion. 442 U.S. at 607.

33. See text following note 31 *supra*.

them gradually for more demanding (and more risky) forms of adult liberty. Reflecting his experience in criminal law and criminology, Zimring thus rejects the "*quid pro quo* argument" that since 18-year-olds "can vote they should pay the full price for committing transgressions" (p. 95). Implied in this assessment is the idea that the mistakes from which adolescents learn to become adults could easily be mistakes that break the law. Zimring reflects traditional juvenile court theory in seeing these mistakes as opportunities to hold youngsters accountable as part of a learning process, rather than as part of a punitive process.³⁴

Part III ("The Jurisprudence of Semi-Autonomy") and Part IV ("Notes Toward the Future") amount primarily to further development and illustration of themes earlier introduced. Zimring suggests, for instance, that policymakers must learn to use multiple variables in their evaluation of factual circumstances and their view of legal categories. This approach is modeled on the capacity of a calculator, as opposed to the "binary box" approach of typically rigid thinking about legal problems, which sees persons either as adults or children — with little in between. He talks also about "phasing," which restates his learner's permit notion about gradual learning processes: the right to learn to drink should come well after the right to learn to drive, since mixing the two as experiments is even more disastrous than other mixtures of those two phenomena.

With this as background, Zimring then phases the reader into one of his most concrete proposals: a two-tiered age of majority — 18 for some purposes, 21 for others. Zimring would make 18 a "presumptive" age of majority for the exercise of most adult forms of autonomy. However, he would delay for three years the imposition of financial independence and adult criminal responsibility. He would also extend until age 21 such "entitlements" as Job Corps or other "special opportunities the state might wish to provide only to those who have not yet reached adulthood" (p. 111). His reason for selecting age 18 is mostly historical reality. His reason for delaying the "responsibility" incident of adulthood is "because I simply do not believe that it is correct to speak of the average 19- or 20-year-old as fully adult in the modern world" (p. 113). Zimring is not at his empirical or analytical best with that rationale. Actually, the book generally makes little attempt to support these age choices (or many of his other insights) with data from studies of adolescent development. Zimring also comes close to overlooking (he does finally catch it, but in a relatively uncertain fashion) the important problem that parents may not be too enthusiastic about retaining economic responsibility for their children during the three years after those children have been given a general grant of autonomy.³⁵

34. As noted by Mr. Justice White:

Reprehensible acts by juveniles are not deemed the consequence of mature . . . choice but of environmental pressures (or lack of them) or of other forces beyond their control. Hence the state legislative judgment not to stigmatize the juvenile delinquent by branding him a criminal; his conduct is not deemed so blameworthy that punishment is required to deter him or others.

McKeiver v. Pennsylvania, 403 U.S. 528, 551-52 (1971) (White, J., concurring).

35. One cannot have the freedom to live how and as one chooses and still demand parental support; one may not deliberately enter into contracts and yet insist that they be voidable. . . . Policies that restrict parental prerogatives are likely to create noncommittal parental attitudes.

Nevertheless, the two-tiered majority is a provocative notion, not so much because he is persuasive about his choice of years (those choices will always be somewhat arbitrary), but because this suggestion vividly supports his basic "learner's permit" concept. I also find it interesting that Zimring would choose ages as old as these, especially in a world where some writers would liberate all children as soon as they can toddle fast enough to walk out the front door.

I am impressed that for all Zimring has said about legal realism and the use of multiple variables, he would still rely on age limits. He does not particularly defend the use of arbitrary age brackets as such, but his use of them puts him into a relatively traditional camp. The main alternatives seem to be either the elimination of age limits altogether or the use of subjective, individual determinations of capacity. The extreme liberationist's willingness to reject all attempts to segregate youth on the basis of age or capacity makes no practical sense, simply because biological development so slowly yet so surely moves infants from incapacity toward capacity. Below *some* fixed point, they are all obviously incapable of autonomous action. Thus there is little choice but to fix some age or developmental event that marks an identifiable transition from presumed incapacity to presumed capacity. At the other extreme lies the seductive but equally impractical notion of subjective determinations. I have discussed elsewhere³⁶ some of the difficulties with this elusive search for ultimate individual fairness. Yet the Supreme Court has adopted the notion of individual judicial hearings on the issue of "maturity" as a key element in its approach to whether unmarried minors may choose to have abortions without parental consent. That approach is based on a sandy foundation, both because the social sciences are so unable even to define "maturity" (let alone measure when it has been achieved), and because the process is so inherently subjective that it risks all the kinds of abuse of judicial discretion associated with the prevailing criticisms of the juvenile court system. There are good reasons, then, for substantial reliance on objective age limits.

Zimring goes beyond recommending age limits only, thereby taking maximum possible account of our ability to deal administratively with the problem of individual variation. Using driver's licensing as his example, he suggests a combination of age grading, competency testing, and administrative discretion. A minimum age limit is required as a threshold test; beyond that, limited discretion is allowed in measuring driving ability only — which is relatively easy to assess objectively. Further controllable discretion is introduced into the driving age situation by insurance rates, where incentives and liberty can be related to actual experience. In general, he would use competency testing either when a legal privilege creates a danger to the user and to others, or when the privilege is requested, such as with a professional license. The form of discretion he finds most valuable is parental discretion, which should increase flexibility to deal with individual variations. Parental consent alone is not a sufficient condition for allowing

Hafen, *Puberty, Privacy, and Protection: The Risks of Children's Rights*, 63 A.B.A. J. 1383, 1388 (1977).

36. See Hafen, *supra* note 20, at 484-90.

adolescent liberty, however, because "[t]he law must allow for stupid parents as well as wise ones" (p. 132). Age-grading becomes most significant when the capacity to test competence is weak and the consequences of mistakes threaten the individual or others in the community with substantial harm. In such cases, minimum ages may also be necessary to insure that kids grow up a bit before they risk making the *wrong* kinds of mistakes. [P. 132.]

Professor Zimring then introduces a detailed analysis of the problem of teenage smoking which he uses to illustrate the application of this method. I find this example a shrewd one to make many of his general points, partly because there is sufficient empirical data available to allow a relatively reliable cost-benefit analysis. In addition, teenage smoking may at first blush seem like one of the least important cases that warrant paternalistic restrictions. But Zimring points to data showing that smoking among teens is a major public health problem, especially since so many adults (who now wish they could quit smoking and cannot because of relative addiction) acquired the habit before they were old enough to assess its long-term consequences. To make an informed choice about deciding to smoke requires a "sense of the long-term future not characteristically found in early and middle adolescence" (p. 138). Thus, attempts to deter teenage smoking by showing its health dangers have been ineffective, while attempts to show that smoking is not "cool" have done much better (p. 139). The smoking problem also allows Zimring to show how the extent of peer pressure among adolescents makes such behavior as smoking socially contagious. For policymakers, it is not simply a matter of letting an adolescent make his own choice as an individual, victimless act: "To limit liberty as a defense against social contagion is to see the adolescent as part of a group having *collective* 'best interests' . . ." (p. 140) (emphasis in original). Zimring then launches into a very detailed analysis of costs, benefits, and enforcement alternatives that allows him to apply his earlier themes about liberty presumptions, least harm, and a focus on which regulatory practices really maximize the chance of helping adolescents *learn* to make wise choices in general. He ends up concluding that no constitutional issues are involved; that a smoking lounge in a high school is a close cost-benefit question, but on balance may be more harmful than beneficial; and that he would probably settle for prohibiting teenage smoking at schools (but not at detention centers, where kids have enough trouble), if the penalty could be a temporary loss of privileges rather than expulsion. He is realistic in assuming that all smoking could not be stopped by this practice, but thinks some enforcement effort would still reduce the ultimate extent of the problem.³⁷

In his concluding chapter, "In Praise of Muddling Through," Zimring defends the value of such "empirical guesses, talmudic distinctions, and analytic pretensions" (p. 155) as he used in the smoking example — especially as an alternative to deciding all questions by the extreme of arbitrary, au-

37. Zimring's judgment received some vindication recently at a Tennessee high school where skeptics were surprised at the effectiveness of what is acknowledged to be an unenforceable new state law against smoking by people under 18. "The students' smoking areas of yesteryear are gone, and although they may be lighting up as soon as they leave school property, they are not doing so in school. . . . The threat alone [of enforcement] seems to have had a 'chilling effect.'" EDUC. WEEK, June 16, 1982, at 3.

thoritarian impositions or by the extreme of deciding that "children" should be free to do nothing and "adults" should be free to do everything. Neither approach serves the long-range interests of adolescents in learning to function as responsible adults. "[B]eating [such issues] to death" also produces "insight about the real reasons we make the choices we do. We will be less likely to take a least harm result, such as smokers' privileges in a detention facility or vaginal foam for the sexually active young, and extrapolate it to general grants of autonomy" (p. 157). In all this, it is crucial that policy-makers "confront the real world," so that "[w]ith the best intentions," we do not "pass laws that miss the mark because they do not confront reality" (p. 158). It has been far too easy, as Zimring makes clear, for lawmakers of either permissive or coercive persuasions to create what is essentially a hypothetical world and then make laws inconsistent with the real world. When this is done, the "results are tidy, and the need for research minimal, but this process is either an amusement — a form of jurisprudential chess — or an exercise in self-deception. . . . To depart the planet we live on when making public policy endangers our children and ourselves" (pp. 159-60). And finally:

We cannot solve these problems by legislating adulthood at earlier ages or withdrawing public support for adolescent development. We must come to understand the central importance of a long maturing period for modern liberal democracy. Sustained efforts to improve the transition to adulthood will prove frustrating, expensive — and indispensable — to larger social progress. [P. 160.]

IV. CONCLUSION

My attempts to place Professor Zimring's writing into the context of contemporary work on children's rights and my attempt to summarize what he has to say have included what I hope is a clearly discernible appreciation for his book. Overall, I consider it a significant contribution to the literature. I think his point of view, his approach, and his insights can be truly helpful in creating a practical legal order for the benefit of adolescents. It is heartening to read the work of someone who combines common sense with analytical skill and — as a result — does not get all bogged down in the hangups of those who take such adamant and unworkable positions as the extreme child savers or the extreme children's liberationists. He is particularly helpful in explaining how *either* more firm regulation or more willing deregulation of adolescent liberty can — depending on the circumstances — serve the overriding purpose of preparing the young for responsible adulthood while minimizing serious damage to them. Thus, regulation can *protect* adolescents even as it restricts them as a way to help them *learn* by their own experience as their normal developmental processes unfold. The existing literature has focused far too little on adolescence as the learning years.³⁸ As today's scholarly writing in this field goes, he also takes an

38. My own view is that "[c]hildhood, as a time of life and as a frame of mind, is intimately related to educational development." Hafen, *supra* note 4, at 658. A notable instance of attention to the theme of educational development in considering children's rights is the work of John Garvey. Garvey has argued for instance, that first amendment rights as developed for children must be understood differently from first amendment rights for adults primarily be-

unusual but clear cut stand in favor of state support for parental authority — again because that support will serve the interests of the young in ultimately becoming responsible, liberated adults.

I do have some concerns about *The Changing Legal World of Adolescence*. I was surprised not to find much reliance on empirical data — particularly from fields in the social sciences dealing with the characteristics and needs of adolescent development. Zimring is no stranger to the use of such data — if anything, he has been criticized on other occasions for making too much of social science research in his work on criminal law.³⁹ Michael Wald has provided a summary of child development literature in the context of children's rights⁴⁰ suggesting strong justification for the conclusion that children under age 10-12 "do lack the cognitive abilities and judgmental skills necessary to make decisions about major events which could severely affect their lives."⁴¹ However, Wald also found that the research regarding older children is more limited and therefore less conclusive. As sensible as I find Zimring's assertion that adolescents through age 18 generally lack some fundamental forms of capacity, we need to know whether available research data support or undermine his point of view. His entire argument rests largely on factual premises regarding the developmental process. If the literature is simply inconclusive, as Wald intimates it might be, that problem should be faced. Such ambiguity could perhaps be addressed in terms of weighing the risks inherent in each alternative assumption or interpretation. On that basis, Zimring's point of view is still defensible, since the risk of a temporary restriction on liberty (based on the assumption that further development is needed) is of less gravity than the risk of incurring permanent, substantial harm by being forced to assume adult responsibilities and make irrevocable choices too early.

I also had difficulty throughout the book trying to keep straight how Zimring really feels about deferring to an adolescent's preferences for autonomous choice. In general, his "learner's permit" notion and his several clear rejections of general liberation for children (including adolescents) made me feel comfortable in interpreting him as I have. However, he is at times confusing in referring to such basic concepts as his "rebuttable presumption of liberty." That presumption is usually stated in terms of family autonomy or even as a parental choice. At other times, however, he seems to imply that direct state regulation of adolescents (when parents are not directly involved) is also presumptively invalid — and yet from the overall context of the book, I am not sure he really means that. My uncertainty may be resolved by noting that he does not intend his "presumption" to be stated in the form of a *constitutional* preference. In his smoking example,

cause the children's version "serves the function of advancing the child's growth into an adult capable of participating in self-government and in the quest for knowledge and truth." Garvey, *Children and the First Amendment*, 57 TEXAS L. REV. 321, 344-45 (1979). Garvey's work, like Zimring's, suggests that there is value in determining what policies are most likely to maximize sound educational development. Such determinations are a critical test for evaluating proposed rights and restrictions for adolescents in a variety of settings.

39. See, e.g., Lindgren, Book Review, 94 HARV. L. REV. 477 (1980) (reviewing F. ZIMRING & R. FRASE, *THE CRIMINAL JUSTICE SYSTEM* (1980)).

40. Wald, *supra* note 9, at 274-75.

41. *Id.* at 274.

for instance, he simply asks whether there "is any good reason not to delegate to 13-, 14-, and 15-year-olds the legal authority to decide whether, when, and how much to smoke" (p. 138). (I note, by the way, that the view of parents was not an issue in his discussion on smoking — which left me uncertain about the application of "parental liberty" in so many cases of direct state regulation.) Parents aside, he rather quickly identifies several reasons why smoking could be regulated. But it is hard to say whether these reasons would rise to the level of a "significant state interest," which was the test stated for justifying state intrusions on adolescent "privacy" in the Supreme Court's contraceptives case.⁴² That same test was later applied in a Fifth Circuit case dealing with an ordinance regulating access to coin-operated games when a parent or guardian was not present.⁴³

While I share Zimring's lack of interest in turning all adolescent regulation cases into constitutional debates,⁴⁴ his book would have been much more clear (and, therefore, more helpful) had it related his definition of "presumption" to the kind used in current constitutional analysis. Without his having done that, I foresee some risk that he could be cited as authority for the proposition that direct state regulation of adolescent choices is presumptively invalid in the constitutional sense. I doubt that Zimring would accept that assumption, in part because it severely shifts the burden of proof to those who would justify the regulation and also because it necessarily assumes that the children who are the subjects of regulation have presumptive capacity to act autonomously. Given the empirical doubts on that question, but the likelihood that most adolescents do *not* have sufficient capacity to benefit from general elimination of regulation, constitutional presumptions make it extremely difficult to engage in the balanced, careful kind of analysis Zimring advocates and illustrates. I suppose, then, that he would tell us to leave constitutional presumptions aside, but he does not tell us why and how to do that.

For example, he asks early in the book whether the *Carey* precedent should justify striking down such regulations as curfews. He later concludes that curfews are different from contraceptive regulation because they protect the community, the youth themselves, and they give parents needed reinforcement for their own authority (p. 68). He notes also that unless curfews are enforced in ways that do more harm than good, they are not covered by the *Carey* "least harm" concept. I agree with that interpretation, but only because Zimring and I see *Carey* as a least harm case. With the Court having seen it — at least rhetorically — as a "privacy" case, Zimring needs to help other courts see how to deal with that lofty term so they can examine actual costs and benefits through least harm analysis. I regard this as a serious problem primarily because constitutional language has become so prominent in children's rights litigation.⁴⁵

The book would also be stronger if the development of its main themes

42. See *Carey v. Population Servs. Int.*, 431 U.S. 678 (1977).

43. *Aladdin's Castle, Inc. v. City of Mesquite*, 630 F.2d 1029 (5th Cir. 1980).

44. This is especially the case with "the right of privacy," which I believe the Supreme Court has given a much narrower constitutional base — even in cases involving adults — than some commentators and lower courts have realized. See Hafen, *supra* note 20, at 511-26.

45. See text accompanying note 11 & Section II.B.3 *supra*.

were better organized. The themes are very strong ones, rich in insight and practical guidance. But one needs to read the entire book and piece things back together in order to bring a strong organizational framework into view. On my first reading, I began getting a little lost in the second half of the book, because the most interesting themes had already been introduced and given considerable comment. But the second half often trailed off into microscopic discussions and restatements of earlier ideas that gave the overall development less punch. The development also does not really respond to the main headings of the four parts. The detailed illustration on smoking, for instance, valuable as it is, does not rise to the general level of "speculat[ing] about the future course of adolescence in public law" (p. xiv), as is billed in the preface. I felt a similar difficulty, though it may have been as much a matter of style and approach as a matter of organization, trying to follow when he was being prescriptive and when descriptive of present law.⁴⁶ I finally gave up on that, and simply accepted the work as an interesting set of prescriptive suggestions that draw their strength from a good deal of currently successful practice — even though current practices may not use the same terms and not all current practice is adequately represented. One need not be comprehensive to make a good set of suggestions in which selective current practice is essentially illustrative.

Zimring's suggestion of a two-tiered age of majority came as a mild bolt from the blue during my first reading. But by then he was not defending his suggestions with quite as much development or documentation. Also, by then I had begun enjoying the book mostly as a "think piece" containing a number of stimulating ideas being thrown on the table of the faculty lounge, not as fully developed arguments but as points of departure. The lecture format makes such an approach almost necessary, and the approach has its strengths as well as its limitations.

Given those limitations, along with the brevity and the deliberately informal style, it is remarkable that Frank Zimring is able to toss out so many interesting and understandable ideas across the complete range of what has now become a complex and important set of legal and social problems. This is not a definitive scholarly work, but as good fodder for further thinking, based on a perspective that is sound and thoughtful; it is a worthwhile piece of work.

46. See text accompanying notes 26-27 *supra*.