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A RIGHTS-BASED ASSESSMENT OF YOUTH PARTICIPATION IN THE UNITED STATES

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Civic engagement is central to democracy, yet historically and today, the United States has excluded certain groups and denied them their participation rights. Even where there has been progress toward inclusion, young people have been largely excluded from meaningful participation in their communities. While there are historical and developmental rationales for this view of childhood, such an approach is suboptimal and even harmful in some cases. Equally important, this construct of childhood fails to recognize the full personhood of young people and see them as rights holders in our communities. This Article calls for greater recognition of young people as rights holders and, correspondingly, more robust efforts to foster meaningful youth participation in their communities, from the local to the national level. Drawing on our own work with children and adolescents and other research that shows children of all ages can contribute in developmentally appropriate ways, this Article argues that acknowledging young people as rights holders and creating and sustaining opportunities for meaningful youth participation would result in better outcomes for children and adolescents, their communities, and the country as a whole.

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This Article employs a children's rights framework to analyze youth participation in the United States. A children's rights lens reveals several important points. First, it unpacks the cluster of rights that constitute meaningful youth participation, going beyond the narrow conception of participation as only the right to vote. Second, it reveals how far the U.S. legal and regulatory framework is from supporting children's right to be heard in matters that affect their lives. Third, and perhaps most significantly, it provides the state and other stakeholders with a model and examples of ensuring meaningful opportunities for youth participation.

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INTRODUCTION

Participation, or more specifically civic engagement,¹ is central to democracy, yet both historically and today the United States has excluded certain groups and denied them their participation rights.² Today, there are numerous battlegrounds on voting rights and other issues that affect individuals' participation and full membership in the nation. However, even where there has been progress toward inclusion, children and adolescents remain largely excluded from meaningful participation in their communities.³ Young people have little to no voice under the law in decisions that shape our country's present and future, even though about one out of every five individuals in the United States is under eighteen years old.⁴ While there are historical and developmental rationales for this view of childhood,⁵ this approach is suboptimal and even harmful in some cases.

1. UNICEF, ENGAGED AND HEARD! GUIDELINES ON ADOLESCENT PARTICIPATION AND CIVIC ENGAGEMENT 11 (2020) ("Civic engagement is a subset of engagement, which focuses on participation in public spheres to improve the well-being of communities or society.").

2. As Sherry R. Arnstein wrote more than fifty years ago:

Participation of the governed in their government is, in theory, the cornerstone of democracy—a revered idea that is vigorously applauded by virtually everyone. The applause is reduced to polite handclaps, however, when this principle is advocated by the have-not blacks, Mexican-Americans, Puerto Ricans, Indians, Eskimos, and whites. And when the have-nots define participation as redistribution of power, the American consensus on the fundamental principle explodes into many shades of outright racial, ethnic, ideological, and political opposition.

Sherry R. Arnstein, *A Ladder of Citizen Participation*, 35 J. AM. INST. PLANNERS 216, 216 (1969).

3. In this Article, we use the term "community" to represent the various communities of which young people are a part, from their neighborhood and local community, to the nation, to the global community. We recognize that engagement typically starts first and foremost with local communities, but we emphasize that young people should have a voice not only in the local, but also in national and global spaces. In addition, our focus is on individuals under eighteen years old, and we adopt the definition of a child in the U.N. Convention on the Rights of the Child. Convention on the Rights of the Child, art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]. However, in specific contexts, we have used other terms including "children," "adolescents," "youth," and "young people" to indicate the population being addressed.

4. Stella U. Ogunwole, Megan A. Rabe, Andrew W. Roberts & Zoe Caplan, *Population Under Age 18 Declined Last Decade*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/united-states-adult-population-grew-faster-than-nations-total-population-from-2010-to-2020.html#:~:text=By%20comparison%2C%20the%20younger%20population,from%2074.2%20million%20in%202010> [https://perma.cc/S34R-H6SL] (explaining that in 2020, approximately twenty-two percent of the U.S. population was under eighteen years of age).

5. Earlier constructs of childhood viewed children as subsumed within the family and as property of the father. See, e.g., Barbara Bennett Woodhouse, "Who Owns the Child?": Meyer and Pierce and the Child as Property, 33 WM. & MARY L. REV. 995, 1037 (1992) ("Law employed a property theory of paternal ownership and treated children as 'assets of estates in which fathers had a vested right.'" (quoting MICHAEL GROSSBERG, GOVERNING THE HEARTH: LAW AND THE FAMILY IN NINETEENTH-CENTURY AMERICA 235 (1985))). In addition, children have typically been viewed as not mature enough to vote. Jonathan Todres, *Maturity*, 48 HOUS. L. REV. 1107, 1111 (2012) ("[P]olicymakers are quick to deem young individuals mature for certain acts (e.g., criminal responsibility), even while assuming those same individuals are too immature to engage in other acts (e.g., voting)."); Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 TUL. L. REV. 55, 95 (2016) ("Casual observation can—and has—led to erroneous generalizations about [youth] behavior. These mistaken generalizations in turn have led to misguided policymaking. For example, adolescent impulsivity and susceptibility to peer pressure in certain situations have led to the conclusion that they lack the capacity to make reliably mature voting decisions in elections. . . .").

Equally important, it fails to recognize the full personhood of young people and see them as rights holders in our communities.

This Article calls for greater recognition of young people as rights holders and, correspondingly, more robust efforts to foster meaningful youth participation in their communities, from the local to the national level. Drawing on our own work with children and adolescents and other research that shows children of all ages can contribute in developmentally appropriate ways, we argue that acknowledging young people as rights holders and creating and sustaining opportunities for meaningful youth participation would result in better outcomes for children and adolescents, their communities, and the country as a whole.

By employing a children's rights framework to analyze youth participation in the United States,⁶ this Article reveals several important points. First, it unpacks the cluster of rights that constitute meaningful youth participation. Second, it reveals how far the U.S. legal and regulatory framework is from supporting children's right to be heard in matters that affect their lives. Third, and perhaps most significantly, it shows how a children's rights framework can provide the state and other key stakeholders with a model and examples for how to ensure meaningful opportunities for youth participation.

In using a children's rights framework, we recognize both that children are rights holders, similar to other human beings,⁷ and that the developmental nature of childhood makes children different from adults (although, as Michael Freeman asserts, not as different as some might argue).⁸ Therefore, a children's rights claim challenges state and non-state actors to go beyond traditional rights constructs and re-envision rights so that they are meaningful in the lives of all children.

The traditional liberal rights construct was built on the idea of the autonomous individual who should have a say in communal decisions.⁹ An autonomy-based construct of rights can be an awkward fit with children, especially young children.¹⁰ This construct

6. By "children's rights framework," we mean specifically the framework of international children's rights law, a cornerstone of which is the U.N. Convention on the Rights of the Child. CRC, *supra* note 3.

7. Jonathan Todres, Book Review, 35 ETHICS & INT'L AFFAIRS 581 (2021) (reviewing MICHAEL FREEMAN, *A MAGNA CARTA FOR CHILDREN? RETHINKING CHILDREN'S RIGHTS* (2020)) ("[I]f rights are inherent to all human beings, they exist from birth. Not accepting that children have rights equates to saying rights are not inherent but are granted by governments when individuals reach adulthood.").

8. See MICHAEL FREEMAN, *A MAGNA CARTA FOR CHILDREN? RETHINKING CHILDREN'S RIGHTS* (2020).

9. See Anne C. Dailey, *Developing Citizens*, 91 IOWA L. REV. 431, 432 (2006) ("The ideal of the autonomous individual capable of meaningful choice and informed decisionmaking is a core operative concept in modern constitutional law, central to contemporary accounts of individual liberty and democratic self-government.").

10. See Anne C. Dailey, *Children's Constitutional Rights*, 95 MINN. L. REV. 2099, 2100–01 (2011) ("This long history of denying children the full range of constitutional rights has roots in a choice theory of rights. Choice theory understands rights as deriving from the decisionmaking autonomy of the individual . . . [and] children do not enjoy most constitutional rights because they lack the capacity for autonomous choice."); Katherine Hunt Federle, *On the Road to Reconceiving Rights for Children: A Postfeminist Analysis of the Capacity Principle*, 42 DEPAUL L. REV. 983, 985 (1993) ("[W]hen discussing the concept of children's rights, the debate invariably returns to the capacity of children."); Bruce C. Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their "Rights,"* 1976 BYU L. REV. 605, 613 ("The presumption of minors' incapacity has been so strong that the growth of democratic ideals in American

did not extend participation rights to children historically.¹¹ Traditional notions of childhood viewed children as subsumed within the family, with minimal or no community participation rights—children were viewed as “becomings” rather than “beings.”¹² Parents were presumed to represent children’s interests in both the community and the nation, and indeed even present-day legal instruments place great power in the family as an institution.¹³ However, critiques of an autonomy-centric view of agency along with significant advances in our understanding of developmental science and children’s evolving capacities necessitate an evolution of rights constructs to account fully for children’s participation rights.¹⁴

Despite the lack of formal recognition of children’s participation rights under current U.S. law, at many junctures throughout history, and even now, powerful voices of youth have helped shape the nation’s direction.¹⁵ More commonly, any parent or teacher can tell you that children of all ages express their views daily. They ask to be heard and have their often coherent, developmentally appropriate, and insightful views given due consideration. These moments are part of growing up and practice for developing a more robust sense of a young person’s right to participate in their community and nation as they emerge into adulthood.¹⁶ But they are more than

society, rather than encouraging the ‘liberation’ of children from limitations upon their liberty, has encouraged even greater discrimination on the basis of age . . .”).

11. Dailey, *Children’s Constitutional Rights*, *supra* note 10.

12. Emma Uprichard, *Children as ‘Being and Becomings’: Children, Childhood and Temporality*, 22 CHILDREN & SOCIETY 303, 304 (2008).

13. The CRC, the foremost articulation of children’s rights, is no exception. It consistently emphasizes the importance of parents and family, mentioning family in nineteen of its substantive provisions. *See* CRC, *supra* note 3, arts. 2–3, 5, 7–11, 14, 16, 18, 20–24, 27, 37, & 40.

14. MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW 300–01 (1990) (“[The] notion of the autonomous rights-bearing individual presupposes a community—a community willing to recognize and enforce individual rights; hence, even this usual conception of rights, premised on autonomy, relies on a social and communal construction of boundaries between people. Autonomy, even as an aspiration, is the invention of a cultural and linguistic community. . . . Autonomy, if defined as the condition of an unencumbered and independent self, is not a precondition for any individual’s exercise of rights. The only precondition is that the community be willing for the individual to make claims and to participate in the defining and redefining of personal and social boundaries.”). On advances in the science of child development, see, for example, NAT’L ACADS. OF SCIS., ENG’G, & MED., PROMOTING POSITIVE ADOLESCENT HEALTH BEHAVIORS AND OUTCOMES: THRIVING IN THE 21ST CENTURY (Robert Graham & Nicole F. Kahn eds., 2020); NAT’L ACADS. OF SCIS., ENG’G, & MED., THE PROMISE OF ADOLESCENCE: REALIZING OPPORTUNITY FOR ALL YOUTH (Richard J. Bonnie & Emily P. Backers eds., 2019); NAT’L RSCH. COUNCIL & INST. OF MED., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT (Jack P. Shonkoff & Deborah A. Phillips eds., 2000).

15. *See, e.g.*, Allison Acosta, Allyson Criner Brown & Deborah Menkart, *And the Youth Shall Lead Us: Stories of Young People on the Frontlines of U.S. Social Movements*, C.R. TEACHING, <https://www.civilrightsteaching.org/framing-movement/and-the-youth-shall-lead-us/> [<https://perma.cc/Z4KP-VYMV>] (last visited Apr. 1, 2023); BARBARA BENNETT WOODHOUSE, HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN’S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE (2008).

16. *See, e.g.*, BRITTANY CHEN & LAURIE JO WALLACE, STRATEGIES FOR INCORPORATING YOUTH VOICE INTO PROGRAM DESIGN: THE IMPORTANCE OF YOUTH LEADERSHIP, RESPONSIBILITY, CHOICE, AND AUTONOMY (2016), <https://bostonbeyond.org/wp-content/uploads/2020/04/Youth-Leadership-Practice-Brief-v-final-1.pdf> [<https://perma.cc/U8QX-EDRY>].

developmental exercises and practice for the future; they are also meaningful for the present. Children are key stakeholders in their families and communities and have a right to be heard *now*.

Not only do children have a right to be heard, but their participation is important for both their own development and the well-being of their communities.¹⁷ Meaningful youth participation can improve health and education outcomes for children and adolescents.¹⁸ It also can ensure that a broader range of ideas are considered, that ineffective solutions are identified and abandoned before they are implemented, and that there is greater community buy-in with respect to those policies that are ultimately adopted.¹⁹ Civic engagement also helps prepare young people to become engaged members of their community.²⁰ In short, meaningful child participation benefits children, families, and the communities in which they live. Given the value of youth participation and children's right to be heard, this Article argues that it is necessary to forge greater recognition of children's rights in the United States in a way that provides genuine pathways for the civic engagement of all young people.

This Article begins, in Section I, by mapping children's participation rights under international human rights law and the components of children's right to be heard. As noted above, we use the framework of international children's rights law to reveal how young people are situated in the United States and the extent to which they are recognized as community members with the right to participate in shaping their community. Section II reviews the legal regulation of children's civic participation in the United States. Section II reveals how the United States' regulation of children leaves few formal avenues for young people to make their voices heard. Next, Section III explores relevant frameworks on, and modes of, youth participation that can help advance the implementation of children's rights. Section IV then details youth participation's value to young people, their families, and society. Finally, Section V calls on state and nonstate actors to support youth voice and ensure that young people in the United States can meaningfully participate in shaping their communities and nation—now and in the future. Section V addresses the primary modes of youth participation, the forums where youth participation can occur, and the measures needed to ensure effective processes for youth participation. It also discusses the role of law in advancing these efforts and the broader implications of children's participation rights for rights discourses in the United

17. See *infra* Section IV.

18. See JOINING FORCES, CHILDREN'S RIGHT TO BE HEARD: WE'RE TALKING; ARE YOU *Listening?*, CHILD FUND ALL., 2 (2021), https://childfundalliance.org/directory_documents/children-s-right-to-be-heard-we-re-talking-are-you-listening/ [<https://perma.cc/G8AG-TJNY>]; JENNIFER BLAKESLEE & JANET S. WALKER, ASSESSING THE MEANINGFUL INCLUSION OF YOUTH VOICE IN POLICY AND PRACTICE: STATE OF THE SCIENCE 1–2 (2018), https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1230&context=socwork_fac [<https://perma.cc/8P9N-X63T>]; JESSICA SHAKESPRERE, MICA O'BRIEN & EONA HARRISON, URB. INST., YOUTH ENGAGEMENT IN COLLECTIVE IMPACT INITIATIVES: LESSONS FROM PROMISE NEIGHBORHOODS 6–7 (2020).

19. See CHILD FUND ALL., *supra* note 18; BLAKESLEE & WALKER, *supra* note 18, at 1–2; SHAKESPRERE, ET AL., *supra* note 18; GUY BESSETTE, INVOLVING THE COMMUNITY: A GUIDE TO PARTICIPATORY DEVELOPMENT COMMUNICATION 141 (2004); Ray Jennings, U.S. AGENCY FOR INT'L DEV., PARTICIPATORY DEVELOPMENT AS NEW PARADIGM: THE TRANSITION OF DEVELOPMENT PROFESSIONALISM 1–2 (2000) https://pdf.usaid.gov/pdf_docs/PNACQ066.pdf [<https://perma.cc/39S5-6ZM4>].

20. CHEN & WALLACE, *supra* note 16.

States. In calling for more opportunities for meaningful youth participation, we are not advocating a particular political viewpoint or issue. Instead, we are focused on the structural changes needed to support meaningful youth participation in dialogues and spaces that affect young people's lives and the well-being of their communities.

I. THE MANDATE OF CHILDREN'S RIGHTS LAW

International children's rights law envisions a more robust set of rights for children—defined in international law as individuals under eighteen years of age²¹—to participate in the community than the U.S. legal framework currently recognizes. Under children's rights law, and human rights law more generally, the concept of participation encompasses a range of rights, including freedom of expression, freedom of assembly, freedom of association, and the right to vote, among others. A democratic ideal, participation is connected to the liberal tradition of rights.²²

Children's rights, however, challenge the belief that children are mere "becomings" and not "beings."²³ They demand that those who are concerned about children reimagine rights so that rights are meaningful for children of all ages. Although the Convention on the Rights of the Child (CRC)—the most comprehensive children's rights treaty—emphasizes the centrality of the family,²⁴ the CRC and children's rights more generally challenge the idea that children are solely appendages of the family.²⁵ The CRC insists on recognition of children as individuals in their own right²⁶ while acknowledging the critical role of parents and the family in children's development and recognizing the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children."²⁷ In short, from a children's rights perspective, the agency of young people and their need for protection are not mutually exclusive; rather they should—and do—coexist.²⁸

21. CRC, *supra* note 3, art. 1 ("[A] child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.").

22. See Gabriel Negretto, *Constitution-Making and Liberal Democracy: The Role of Citizens and Representative Elites*, 18 INT'L J. CONST. L. 206, 206–07 (2020); Jeremy Waldron, *Participation: The Rights of Rights*, 98 PROCEEDINGS OF THE ARISTOTELIAN SOC'Y 307, 307 (1998).

23. See Michael Freeman, *Taking Children's Human Rights Seriously*, in THE OXFORD HANDBOOK OF CHILDREN'S RIGHTS LAW 52, 57 (Jonathan Todres & Shani M. King eds., 2020); Dailey, *Children's Constitutional Rights*, *supra* note 10, at 2104.

24. CRC, *supra* note 3, at pmb1.

25. See Jonathan Todres & Shani M. King, *Children's Rights in the Twenty-First Century: Challenges and Opportunities*, in THE OXFORD HANDBOOK OF CHILDREN'S RIGHTS LAW 719, 721–722 (Jonathan Todres & Shani M. King eds., 2020).

26. See *id.*

27. CRC, *supra* note 3, at pmb1.

28. See Allison James, *To Be (Come) or Not to Be (Come): Understanding Children's Citizenship*, 633 ANNALS AM. ACAD. POL. & SOC. SCI. 167–79 (2011). Moreover, the need for protection and agency continue to operate simultaneously even in adulthood. See, e.g., Meredith Johnson Harbach, *Childcare, Vulnerability, and Resilience*, 37 YALE L. & POL'Y REV. 459, 485–86 (2019) ("Vulnerability is the 'universal, inevitable, enduring aspect of the human condition,' and it exists throughout our lifecourse, although certain developmental stages manifest more vulnerability than others." (quoting Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 8 (2008))).

The CRC reflects both ideas, emphasizing the essential role that parents and families play in the lives of children and establishing that children have a distinct right to be heard.²⁹ That right to be heard is articulated in Article 12 of the CRC, which provides that

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.³⁰

There are four key components of this right which, like other rights (both in international and U.S. federal law), establishes a floor for children's entitlements under the law. These fundamental components establish that the right to be heard (1) applies in all circumstances, (2) has no minimum age, (3) adapts and grows as children develop and mature, and (4) requires adults to listen and give genuine consideration to children's views.

First, a child's right to be heard applies to "all matters affecting the child."³¹ Although paragraph 2 of Article 12 establishes that a child "shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child,"³² the first requirement of Article 12 (quoted above) is not limited to judicial proceedings. That is, Article 12 is not simply a matter of providing children an opportunity to express their views in custody proceedings in family court or in health care decisions regarding the treatment of the child. Rather, it entails ensuring that children have meaningful opportunities to participate in *all* decisions that affect their lives—a standard that necessarily implicates a broad array of law and policy decisions that currently are thought by many to be beyond what children may have an opinion about.³³ In ascertaining whether a matter affects a child, children's own views should inform that determination. As Laura Lundy writes, "The obvious starting point would be to ask children themselves whether the matter affects them."³⁴

Second, the right to be heard belongs to every child "capable of forming [their] own views."³⁵ As the U.N. Committee on the Rights of the Child—the entity responsible for monitoring the implementation of the CRC—has stated, there is no minimum age for the right to express one's views, and the burden should not be on the child to prove they are

29. Nineteen provisions of the CRC acknowledge the importance of parents and families in the lives of children. See CRC, *supra* note 3, arts. 2–3, 5, 7–11, 14, 16, 18, 20–24, 27, 37, & 40.

30. CRC, *supra* note 3, art. 12(1).

31. *Id.*

32. *Id.* art. 12(2).

33. *Id.* art. 12. Of course, this does not mean that every child must speak on every issue, much in the same way that adults' participation rights do not mean we hold up progress on an issue until every adult has spoken. However, it does mean that the state must create avenues through which children's participation is possible and accessible.

34. Laura Lundy, 'Voice' Is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child, 33 BRITISH EDUC. RES. J. 927, 931 (2007).

35. CRC, *supra* note 3, art. 12(1).

capable of expressing a view.³⁶ The default position must be that children are capable of expressing their views. Further, as Lundy explains, “Children’s right to express their views is not dependent upon their capacity to express a mature view; it is dependent only on their ability to form a view, mature or not.”³⁷ This lack of a minimum age can present challenges for adults (from policymakers to parents) who must ensure not only that children have a forum for expressing their views but also must learn how to listen to all children who are capable of expressing a view, even very young children.³⁸ The key point is that, similar to rights held by adults, the existence of a child’s right to be heard is not dependent on maturity.³⁹ Children, like adults, have a right to express their views, regardless of how mature their views are. What changes with the child’s development and evolving maturity, according to children’s rights law, is how much weight decisionmakers are required to give to the child’s view.⁴⁰

Third, the right to participate accounts for the developmental nature of childhood. Children, especially young children, do not have the same capacity and autonomy as adults.⁴¹ Accounting for these limitations, the CRC provides that the weight afforded to the child’s views should be consistent with the “age and maturity” of the child.⁴² That means that in some instances—depending on the child, the issue being decided, and the context—the young person will be the appropriate decisionmaker. However, in other instances, adult guidance and decisionmaking are suitable. In other words, Article 12 establishes that children have the right to have their voices heard and be given due consideration, but it does not require that children be allowed to decide an issue. As

36. U.N. Comm. on the Rts. of the Child, *General Comment 12: The Right of the Child to Be Heard*, ¶¶ 20–21, U.N. Doc. CRC/C/GC/12 (July 1, 2009).

37. Lundy, *supra* note 34, at 935; *see also* David Archard & Marit Skivenes, *Balancing a Child’s Best Interests and a Child’s Views*, 17 INT’L J. CHILD.’S RTS. 1, 10 (2009) (“We endorse the following principle of equity: *a child should not be judged against a standard of competence by which even most adults would fail*. It is unfair to ask children to be more competent in their decision-making than those adults to whom we grant a general freedom to decide.”).

38. *See* Lundy, *supra* note 34, at 936. *See also* YALE UNIVERSITY INFANT COGNITION CENTER, <https://campuspress.yale.edu/infantlab/> [<https://perma.cc/PR8H-F5R8>] (studying expression of views and preferences by infants as young as three months old); J. Kiley Hamlin, Karen Wynn & Paul Bloom, *Social Evaluation by Preverbal Infants*, 450 NATURE 557, 557 (2007), <https://doi.org/10.1038/nature06288> [<https://perma.cc/2WN7-JEQY>] (discussing infants’ preferential treatment of individuals based on their social behavior).

39. Likewise, at the other end of the age spectrum, if certain older adults are cognitively impaired or otherwise have diminished capacity, the law does not strip them of their voting rights.

40. *See* CRC, *supra* note 3, art. 12; Lundy, *supra* note 34, at 937–38; *see also* ABA MODEL ACT Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings, § 7(c) comm. (2011) (“The lawyer-client relationship for the child’s lawyer is fundamentally indistinguishable from the lawyer-client relationship in any other situation and includes duties of client direction, confidentiality . . .”). “Age” and “maturity” are the two factors that Article 12 of the CRC expressly states must be considered. *See* CRC, *supra* note 3, art. 12. Determinations of what is an appropriate age threshold and/or whether a child expresses a “mature” view are inherently value-laden assessments, which ultimately are made by adults. Such standards inevitably are open to the possibility of being shaped by implicit, or even explicit, bias.

41. Todres, *Maturity*, *supra* note 5, at 1116.

42. CRC, *supra* note 3, art. 12.

parents and other caregivers know well, in many instances, ensuring the child's best interests means making informed decisions on the child's behalf.

Lothar Krappmann, a former member of the U.N. Committee on the Rights of the Child, explains that Article 12's due weight requirement "means that the [child's] views are seriously considered The final responsibility, however, remains with the adult."⁴³ Indeed, although children express that they want opportunities to provide input and be heard, they also indicate that they do not want the burden of having to make the final decision in some contexts.⁴⁴ This position, too, is consistent with the right to participate, as it also includes a right not to express one's view,⁴⁵ just as freedom of expression includes a right not to speak.⁴⁶ However, if a child chooses to participate, their views must be given appropriate and genuine consideration.

Fourth, youth participation must be meaningful. As the Committee on the Rights of the Child explains,

[A]ppearing to "listen" to children is relatively unchallenging; giving due weight to their views requires real change. Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights.⁴⁷

Just as the construction of a school or a hospital does not on its own fulfill a state's obligation to ensure education or health rights, merely inviting children to a meeting or permitting them to speak at the meeting is not necessarily sufficient.⁴⁸ Meaningful participation means ensuring young people are genuinely listened to and that, in appropriate instances, their ideas are incorporated into decisions.

Other rights of the child, also enshrined in the CRC, further support children's right to participate. The right to "freedom of thought, conscience and religion" safeguards

43. Lothar Krappmann, *The Weight of the Child's View (Article 12 of the Convention on the Rights of the Child)*, 18 INT'L J. CHILD. & RTS. 501, 507-08 (2010). *But see* FREEMAN, *supra* note 8, at 315 (viewing Article 12 of the CRC as a "reflection of a dominant adultism" and suggesting "[i]t is a long way from democracy").

44. Tamar Morag, Dori Rivkin & Yoa Sorek, *Child Participation in the Family Courts—Lessons from the Israeli Pilot Project*, 26 INT'L J. LAW, POL'Y & THE FAMILY 1, 4 (2012) ("[S]tudies indicate that children whose parents are going through a divorce are usually interested in expressing their positions and their feelings regarding decisions that affect their lives, although in most cases they do not wish to be the ones making the decision."); *see also* Maria Grahm-Farley, *The U.N. Convention on the Rights of the Child and the Forgotten History of the White House Children's Conferences, 1909-1971*, 20 TRANS'L L. & CONTEMP. PROBS. 307, 372 (2011) ("The right to participate does not give the child a right to make decisions. [It] means that the child should be heard in all matters that concern the child. . . . [It] also includes the right of the child to participate in a meaningful way").

45. U.N. Comm. on the Rts. of the Child, *supra* note 36, at ¶ 16.

46. *See* *Riley v. Nat'l Fed'n of the Blind of N.C.*, 487 U.S. 781, 797 (1988) ("[T]he First Amendment guarantees 'freedom of speech,' a term necessarily comprising the decision of both what to say and what not to say.>").

47. U.N. Comm. on the Rts. of the Child, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child arts. 4, 42 and 44*, ¶ 6, U.N. Doc. CRC/GC/2003/5 (2003).

48. CAROLYNE WILLOW, *SAVE THE CHILDREN, CHILDREN'S RIGHT TO BE HEARD AND EFFECTIVE CHILD PROTECTION: A GUIDE FOR GOVERNMENT AND CHILDREN'S RIGHTS ADVOCATES ON INVOLVING CHILDREN AND YOUNG PEOPLE IN ENDING ALL FORMS OF VIOLENCE*, 52-53 (2010); *see also infra* Section III.A for a discussion of the Lundy model.

children's right to think freely and hold their own beliefs.⁴⁹ Parents and other caregivers are natural partners and guides for children in this process, and the CRC requires that governments "respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right [to freedom of thought, conscience, and religion] in a manner consistent with the evolving capacities of the child."⁵⁰ In other words, children's rights law establishes that the government cannot mandate what a child must think or believe.⁵¹

Alongside the freedom to hold one's own views, children's rights law also ensures the child's freedom to determine whether and how they might express those views. Article 13 of the CRC establishes that "[t]he child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."⁵² Access to information that can inform the child's views is also reinforced by Article 17 of the CRC, which establishes that states "shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of their social, spiritual and moral wellbeing and physical and mental health."⁵³ Participation rights also include the rights to freedom of association and assembly.⁵⁴ Operating in conjunction with the rights to education and development,⁵⁵ these rights and freedoms support children's healthy growth and development and foster children's preparedness to participate meaningfully in decisions that affect their lives, both as children and later as adults.

Participation is central to democracy and human rights. Equally important, it is foundational to personhood. Recognizing an individual's right to participate in their community is tantamount to acknowledging that they count as a human being.⁵⁶ Facilitating the realization of child participation rights is a vital component of respecting and ensuring the human dignity of each child and adolescent.

49. CRC, *supra* note 3, art. 14.

50. *Id.*

51. While human rights law obligations have been extended to private actors, foremost it imposes obligations and restrictions on the state. *See, e.g.,* Louis Henkin, *That "S" Word: Sovereignty, and Globalization, and Human Rights, et Cetera*, 68 *FORDHAM L. REV.* 1, 8 (1999); *see also* SERAP v. Nigeria, Ruling N° ECW/CCJ/APP/07/10, Court of Justice of the Economic Community of West Africa, ¶ 65 (Dec. 10, 2010), http://www.worldcourts.com/ecowascj/eng/decisions/2010.12.10_SERAP_v_Nigeria.htm [<https://perma.cc/C5Y9-P9EC>] (noting "one of the most controversial issues in International Law which relates to the accountability of Companies, especially multinational corporations, for violation or complicity in violation of Human Rights especially in developing countries. In fact, one of the paradoxes that characterize International Law presently is the fact that States and individuals can be held accountable internationally, while companies cannot."); SERAP v. Nigeria, Judgment N° ECW/CCJ/JUD/18/12, Court of Justice of the Economic Community of West Africa, ¶¶ 3, 8 (Oct. 27, 2009), <https://hrda.uwazi.io/en/entity/pftlz3gneo0wxsgq0kdszto6r?page=1> [<https://perma.cc/ZQG5-J3Q9>].

52. CRC, *supra* note 3, art. 13.

53. *Id.* art. 17.

54. *Id.* art. 15.

55. *Id.* arts. 28 & 29.

56. *See* Todres, *Maturity*, *supra* note 5, at 1115.

II. LEGAL REGULATION OF YOUTH PARTICIPATION IN THE UNITED STATES

Civic engagement and participation have been cornerstone ideals of the United States since its founding.⁵⁷ In practice, however, the United States has always regulated and restricted who, and how individuals, can participate in our democracy.⁵⁸ In the U.S.'s initial conception, participation was largely reserved for white, landholding men. Since that time, civic engagement has been tried, tested, and expanded, in multiple ways, as marginalized groups in the United States have fought to ensure that their voices were not only heard but their collective power and humanity were recognized.⁵⁹ The same is true for children who, throughout the history of the United States, have experienced a world dominated by legal frameworks and discourses of paternalism and protection rather than empowerment and participation.⁶⁰

Throughout its history, the United States has regulated and largely restricted civic engagement by young people. For example, individuals under twenty-one years of age could not vote until 1971, when the federal government lowered the voting age to its current minimum of eighteen years of age.⁶¹ Voting rights are arguably the most prominent right for civic engagement,⁶² but as Section I detailed, there is much more to participation rights. Current U.S. laws and regulations related to children's participation rights can be grouped into four categories: (1) regulations that deny children specific rights; (2) regulations that restrict children's rights, thereby effectively giving children only a "junior," or lesser, version of the constitutional rights possessed by adults; (3) regulations that impose indirect barriers to youth civic engagement and voice in their community; and finally (4) a limited set of regulations that grant children rights coextensive with adults.

First, in many critical ways, U.S. law regulates young people and denies children their rights based solely on their status as children. Most significantly, the U.S. Constitution recognizes voting rights only for individuals eighteen years of age and older, thereby denying young people the right to vote.⁶³ It also imposes minimum ages to serve

57. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (Harvey C. Mansfield & Delba Winthrop, eds. & trans., University of Chicago Press 2000).

58. See Neil S. Siegel, *Why the Nineteenth Amendment Matters Today: A Guide for the Centennial*, 27 *DUKE J. GENDER L. & POL'Y* 235, 238 (2020); Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 *YALE L.J.* 1448, 1528 (2018) ("The Supreme Court has stated outright that children have no affirmative rights, including no right to physical safety in the home, but that analysis ignores children's special custodial status.").

59. ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 43–60 (2000).

60. Martha Minow, *What Ever Happened to Children's Rights?*, 80 *MINN. L. REV.* 267 (1995) (providing a historical analysis of five legal frameworks for thinking about children, illustrating legal perspectives on the entitlements of children dating back to the 1880s); see also Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 *DUKE L.J.* 75, 89 (2021) (explaining children were generally under the father's control beginning in seventeenth-century England and from the beginning of the United States).

61. U.S. CONST. amend. XXVI. Passed by Congress March 23, 1971, and ratified July 1, 1971, the Twenty-Sixth Amendment granted the right to vote to U.S. citizens aged eighteen or older.

62. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.").

63. U.S. CONST. amend. XXVI.

in key government positions.⁶⁴ Together, these two restrictions mean that young people have no right to choose who will represent them in government and no right to participate directly in government.

Second, a host of laws and regulations impose restrictions on rights that children possess. Effectively children are granted “junior,” or lesser, versions of constitutional rights—that is, their rights come with limitations that are not typically imposed on adults. For example, children have been recognized as having First Amendment rights, including freedom of expression.⁶⁵ However, their right to express their views is subject to limitations, including that it can be restricted if perceived as disruptive to the school environment.⁶⁶ Similarly, curfews and other regulations limit children’s freedom of association and freedom of assembly rights.⁶⁷ Such status offender laws are often transparent about their intention to restrict children.⁶⁸ For example, Alabama’s juvenile code defines status offender as “an individual who has been charged with or adjudicated for conduct that would not, pursuant to the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.”⁶⁹ Such regulations limit young people’s opportunities for civic engagement. These laws restrict the rights of children due solely to their age and, like the first category of laws that deny children rights

64. In terms of elected positions, at the federal level, individuals must be at least twenty-five years of age to serve in the House of Representatives, U.S. CONST. art. I, § 2, cl. 2, thirty to serve in the Senate, *id.* art. I, § 3, cl. 3, and thirty-five to be President, *id.* art. II, § 1, cl. 5. Age minimums vary across states, though none allow individuals under eighteen years old to serve in the legislature. *Who Can Become a Candidate for State Legislator*, NAT’L CONF. OF STATE LEGISLATORS (Apr. 22, 2015), <https://www.ncsl.org/research/elections-and-campaigns/who-can-become-a-candidate-for-state-legislator.aspx> [<https://perma.cc/R5BD-266J>]. It also bears noting that most federal government positions—within agencies, etc.—have a minimum age requirement of eighteen years old. *Federal Hiring*, U.S. OFF. OF PERS. MGMT., <https://www.opm.gov/frequently-asked-questions/employment-faq/federal-hiring/is-there-an-age-limit-for-federal-employment/> [<https://perma.cc/AD6G-RMFV>] (last visited Apr. 1, 2022).

65. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”). *But see Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 141 S. Ct. 2038, 2045 (2021) (affirming that schools can restrict students’ speech but finding that the school in this case violated a child’s First Amendment rights by punishing the student for off-campus speech).

66. *Morse v. Frederick*, 551 U.S. 393, 394 (2007).

67. See *Top Five Reasons to Abolish Curfews*, NAT’L YOUTH RIGHTS ASS’N, <https://www.youthrights.org/issues/curfew/reasons-to-abolish/> [<https://perma.cc/VJH9-ZGLR>] (last visited Apr. 1, 2022) (“Federal courts have also recognized that curfew-imposed restrictions are a violation of First Amendment rights such as free speech and assembly. . . .”); *Civil Rights: Freedom of Association and Children’s Rights*, CHILD RTS. INT’L NETWORK (Feb. 9, 2011), <https://archive.crin.org/en/library/publications/civil-rights-freedom-association-and-childrens-rights.html> [<https://perma.cc/K747-CPFA>] (“[I]n other countries, where adults’ freedom of association is well established, young people are barred or inhibited from using public spaces or from forming their own organisations simply because of their age. The most obvious example is the imposition of curfew laws.”).

68. See Jonathan Todres, *Independent Children and the Legal Construction of Childhood*, 23 S. CAL. INTERDISC. L.J. 261, 285 (2014).

69. ALA. CODE § 12-15-201(4) (2022); see also Todres, *Independent Children*, *supra* note 68, at 285.

altogether, reflect a view that young people are “becomings” rather than “beings” and are not deserving of the same level of recognition as rights holders as adults are.⁷⁰

Third, various laws and regulations pose indirect barriers to youth participation in their communities—both local and national. For example, beyond voting rights and freedom of expression, economic power can also be a vehicle for participation in the public square. In the aftermath of *Citizens United v. Federal Elections Commission*,⁷¹ money has come to dominate politics in ways that both raise fundamental questions about our democracy and emphasize the importance of economic power as a means to civic engagement.⁷² The legacy of *Citizens United* is that all individuals of limited means have a reduced say in our government.⁷³ However, legal regulations impose additional protective measures for children that indirectly limit their capacity to influence elections. Children are restricted from working below specified ages, and while older youth may work, their hours may be limited, primarily to ensure that work does not interfere with schooling.⁷⁴ Of course, child labor laws have utility in that they serve to protect many young people from harm and exploitation.⁷⁵ However, limitations on earning power mean that children present to policymakers as a population with neither voting power nor economic clout.⁷⁶ Similarly, age minimums for driver’s licenses may make sense from a public safety standpoint, but they limit young people’s ability to travel to and participate in civic activities.⁷⁷

Finally, there are limited instances in which legal and regulatory structures allow children to enjoy rights coextensive with adults. For example, the U.S. Constitution mandates that all people—children and adults—living in the United States be counted in

70. See FREEMAN, *supra* note 8, at 361 (“[N]o one saw children as anything more than ‘becomings’ before Janusz Korczak 100 years ago. [But a]s human beings, children will have human rights.”); Dailey & Rosenbury, *supra* note 58, at 1468 (calling attention to “the fact that children enjoy active lives in the here and now”).

71. 558 U.S. 310 (2010).

72. See, e.g., Tim Lau, *Citizens United Explained*, BRENNAN CTR. FOR JUST. (Dec. 12, 2019), <https://www.brennancenter.org/our-work/research-reports/citizens-united-explained> [https://perma.cc/W9FU-PH7R] (stating that the *Citizens United* decision by the Supreme Court “has ushered in massive increases in political spending from outside groups, dramatically expanding the already outsized political influence of wealthy donors, corporations, and special interest groups.”).

73. In the last election, watchdog organizations reported record spending of nearly \$14 billion dollars, and only 22.4% of donations came from small individual donations (defined as those under \$200). *2020 Election to Cost \$14 Billion, Blowing Away Spending Records*, OPEN SECRETS (Oct. 28, 2020), <https://www.opensecrets.org/news/2020/10/cost-of-2020-election-14billion-update/> [https://perma.cc/Y9XC-FWJG] (noting that in the 2016 election, only 15.2 percent of campaign funding came from small donations).

74. See, e.g., RICK J. NORMAN, *Federal Child Labor Standards* § 17:1, in LA. PRAC. EMP. L. (updated Nov. 2022); see also CRC, *supra* note 3, art. 32.

75. See CRC, *supra* note 3, art. 32.

76. Corporate donations also outstrip the political power of many adults, particularly wide swaths of Americans without spending power. Similarly, it is easier for politicians to dismiss children because it is widely recognized that few children have independent economic power.

77. In noting these restrictions, we do not suggest that young children should work or drive. Rather, we aim to highlight that these protective measures—however valuable—have consequences for children’s participation rights.

a census once every ten years. Although participation in the U.S. Census may be considered more of a civic duty than a right, the process does mean that children count in reapportioning how many representatives any district has in the House of Representatives. The U.S. Census also determines the apportionment of about \$675 billion dollars in federal funding to individual districts, counties, and states.⁷⁸ In the 2020 Census, political operatives in Texas, Georgia, and Missouri made a concerted effort to argue that children should also be excluded from the constitutional mandate⁷⁹—a step which would have rendered all 74 million U.S. children invisible and unrepresented.⁸⁰ Such action shows that even these modest rights which children possess and which enable them to count in certain respects for civic participation purposes are precariously held. In addition to counting for census purposes, children, like adults, can also engage in some civic engagement activities such as writing to elected officials to express their views, requesting meetings with their representatives, and joining public protests (provided curfews and other restrictions do not impede participation).

In sum, the legal and regulatory frameworks governing children's civic engagement leave young people with no direct means of participation and only limited circumstances in which they can voice concerns, protest policies or decisions, or influence outcomes.⁸¹ The ultimate consequence is that children are often voiceless and powerless in the political process—at both the national and local level—and, as in many other contexts, have to rely on adults to represent and look after their concerns. This exclusion of young people frequently results in children's interests flying under the radar in the context of political and legislative debates. Although adults are supposed to “protect” children, politically that obligation is often neglected or ignored. Arguably even worse, sometimes children's issues are only brought to the forefront when they serve some other political purpose beyond children's well-being, thereby treating children only as objects to further political agendas of the very people who should be protecting and empowering them.

78. MARISA HOTCHKISS & JESSICA PHELAN, *USES OF CENSUS BUREAU DATA IN FEDERAL FUNDS DISTRIBUTION: A NEW DESIGN FOR THE 21ST CENTURY*, U.S. CENSUS BUREAU, 3–8 (Sept. 2017), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/working-papers/Uses-of-Census-Bureau-Data-in-Federal-Funds-Distribution.pdf> [<https://perma.cc/VN6N-R8F7>].

79. YURIJ RUDENSKY, ETHAN HERENSTEIN, PETER MILLER, GABRIELLA LIMÓN & ANNIE LO, BRENNAN CTR. FOR JUST., *REPRESENTATION FOR SOME: THE DISCRIMINATORY NATURE OF LIMITING REPRESENTATION TO ADULT CITIZENS* (2021), <https://www.brennancenter.org/our-work/research-reports/representation-some> [<https://perma.cc/26S3-FYRZ>].

80. Emily Badger, *People Who Can't Vote Still Count Politically in America. What if That Changes?*, N.Y. TIMES (June 22, 2019), <https://www.nytimes.com/2019/06/22/upshot/america-who-deserves-representation.html> [<https://perma.cc/EAM2-ETV9>] (explaining that such a change also would have advantaged Republicans and non-Hispanic Whites and disadvantaged representation for many communities of color, immigrants, and other marginalized communities).

81. Some argue that parents will represent children's interests in their own voting, and often they may, but such an approach does not account for the fact that (a) parents might not always vote in children's interests; (b) children have no independent voice, meaning they do not count as separate human beings; and (c) one could argue that counting a parent and child's vote as one vote (by the parent) effectively dilutes the value of both.

III. A FRAMEWORK FOR ASSESSING IMPLEMENTATION OF YOUTH PARTICIPATION RIGHTS

As Section II details, the United States has relatively little in the way of legal and regulatory support for meaningful youth participation. Sociopolitical debates around participation tend to focus on voting rights, thereby relegating children's interests to the margins.⁸² However, both the robustness of children's rights law, described in Section I, and the U.S. legal framework, outlined in Section II, reinforce the idea that civic engagement is a much broader concept than just voting rights. Therefore, irrespective of the current absence of voting rights for children, there are an array of opportunities for young people to participate meaningfully in their communities. However, while children's rights law—specifically CRC Article 12 and attendant participation rights—provides a legal mandate, a framework is necessary to guide and evaluate the implementation of children's participation rights.

Children's rights scholars have developed frameworks to expand and deepen our understanding of youth participation and categorize the different ways young people can, and do, participate in their communities. For example, Hart's ladder of participation, mapping eight levels of youth engagement in decisionmaking, was foundational to advancing understanding among community organizers and other professionals who work with youth of how young people could participate in community decisions.⁸³ Hart describes the three lowest rungs of the ladder—manipulation, decoration, and tokenism—as “non-participation.”⁸⁴ The subsequent five rungs of the ladder—“assign[ing] and inform[ing] children,” “consult[ing] and inform[ing] children,” “adult initiated, shared decisions,” “child-initiated and directed,” and finally “child-initiated, shared decisions”—represent the varying and increasing levels of children's participation in decisionmaking.⁸⁵ By articulating what forms of participation are “manipulative” and which forms of participation are rights-respecting, Hart's ladder helped child advocates to understand and dispel their own internal biases as they engaged in campaigns and organizing efforts that invited youth participation.

After Hart's model, Shier offered an alternative framework for children's participation.⁸⁶ Similar to Hart's ladder, Shier presents a hierarchical model, with five levels, beginning with “[c]hildren are listened to,” progressing through “[c]hildren are supported in expressing their views,” “[c]hildren's views are taken into account,” and “[c]hildren are involved in decision-making processes,” and culminating with “[c]hildren share power and responsibility for decision-making.”⁸⁷ Shier's model helpfully provides

82. See, e.g., Badger, *supra* note 80.

83. See ROGER A. HART, UNICEF, CHILDREN'S PARTICIPATION: FROM TOKENISM TO CITIZENSHIP 8 (1992), https://www.unicef-irc.org/publications/pdf/childrens_participation.pdf [<https://perma.cc/VAJ4-HAQL>].

84. *Id.* at 9–10.

85. *Id.* at 11–14.

86. Henry Shier, *Pathways to Participation: Openings, Opportunities and Obligations*, 15 CHILDREN & SOCIETY 107–117 (2001).

87. *Id.* at 110.

a set of questions at each of the five stages for individuals and organizations to self-assess their preparedness for supporting and facilitating youth participation at each level.⁸⁸

Although these two models, and other work done by scholars on children's participation, offer important insights, in this Article, we use the model developed by Laura Lundy (the "Lundy model") as a framework.⁸⁹ The Lundy model is a rights-based model that has been widely adopted and provides guidance to state actors, as well as civil society, on the components of meaningful child participation and how adults can help implement it.⁹⁰ This Section begins by explaining the Lundy model, which can serve as a framework for evaluating whether law, policy, and programs aimed at engaging young people secure meaningful youth participation. Then, guided by the Lundy model, this Section assesses three illustrative examples of existing opportunities for youth engagement to show how different approaches may realize or fall short of securing meaningful opportunities for young people to realize their right to be heard.

A. The Lundy Model as a Framework for Translating Rights into Practice

Researchers, lawyers, social workers, and policymakers alike have cited and employed the Lundy model to guide decisionmakers on how to conceptualize and implement the child's right to participate derived from Article 12 of the CRC.⁹¹

The Lundy model of children's right to be heard has four elements: space, voice, audience, and influence. The right to express a view requires the first two elements—space and voice. Lundy defines space as requiring that children "must be given the opportunity to express a view."⁹² For example, children may have space to be heard when they are invited to participate in school, community, or city councils. Next, voice means that the expression of children's views must be facilitated in a medium of their choice.⁹³ Having mentors in various spaces who encourage and support young people's expression can facilitate voice. The right to have these views given due weight requires the latter two elements—audience and influence. Audience reflects the need that children's "view[s] must be listened to"⁹⁴ and can be secured, for example, through children's commissioners and other government officials tasked with listening to youth

88. *Id.* at 111.

89. Lundy, *supra* note 34.

90. *Id.* (outlining what has come to be known as the Lundy Model).

91. *See id.* at 932; *e.g.*, GOV'T OF IR., DEP'T OF CHILD., EQUAL., DISABILITY, INTEGRATION AND YOUTH, PARTICIPATION FRAMEWORK: NATIONAL FRAMEWORK FOR CHILDREN AND YOUNG PEOPLE'S PARTICIPATION IN DECISION-MAKING 15 (2021), https://hubnanog.ie/wp-content/uploads/2021/04/5587-Child-Participation-Framework_report_LR_FINAL_Rev.pdf [<https://perma.cc/K6H4-KYML>]; *see also* Laura Lundy, *Enabling the Meaningful Participation of Children and Young People Globally: The Lundy Model*, QUEEN'S UNIV. BELFAST, https://www.qub.ac.uk/Research/case-studies/childrens-participation-lundy-model.html?utm_source=timeshighereducation.com&utm_medium=content_hub&utm_campaign=smc_international_mixed_world_class_21_22 [<https://perma.cc/L6XF-YKWS>] (last visited Apr. 1, 2023) ("[The Lundy model's] promotion, adoption and implementation have contributed directly to ensuring that the United Nations, governments and national and international organisations involve children, right across the world, meaningfully in the decisions that affect their lives.").

92. Lundy, *supra* note 34, at 933.

93. *Id.*

94. *Id.*

and incorporating their views. Finally, the fourth component, influence, requires that these “view[s] must be acted upon as appropriate.”⁹⁵ Appropriating funds for programs and projects developed in partnership with youth can help ensure that young people’s ideas are translated into action and that youth participation is not just tokenistic. These four elements serve as the foundation for meaningful child participation and for ensuring children’s right to participate in decisions on issues that affect their lives.

Although each of the components of the Lundy model is important, their combination moves an initiative from tokenism to impact.⁹⁶ Space and voice are important elements of assembly and expression, but securing audience and influence necessitates going beyond more basic forms of participation. For example, writing a letter to an elected official may facilitate voice, but it does not ensure the other components and, thus, alone may fall short of offering young people genuine opportunities for participation. Likewise, the inclusion of youth in meetings can appear to be meaningful participation, but assessing it through the Lundy model can help identify any shortcomings. Ultimately, assembly and expression must be connected to audience and influence to ensure that young people are recognized as genuine members of their communities, as “beings” not merely “becomings.”⁹⁷

The Lundy model can be utilized by both governmental and nongovernmental actors to guide the development of policies and initiatives that expand opportunities for youth participation and ensure that the mandate of children’s rights law is fulfilled. It also can be used to assess existing and future initiatives to determine whether these constitute *meaningful* participation opportunities.

B. Evaluating Youth Participation Opportunities

Here we use the Lundy model as a lens to evaluate young people’s opportunities for meaningful participation in their communities. We focus on three current examples of the regulation and operationalization of youth participation to show how a rights-based assessment using the Lundy model can elucidate the effectiveness, or lack thereof, of these forms of participation. The examples include situations in which young people can express their voice through government-supported structures (i.e., youth councils or commissions), must organize outside of government structures (i.e., youth advocacy and protest), and are denied fundamental participation rights (i.e., no voting rights).

95. *Id.*

96. *But see* Laura Lundy, *In Defense of Tokenism? Implementing Children’s Right to Participate in Collective Decision-Making*, 25 *CHILDHOOD* 340, 341 (2018) (explaining that there may be instances in which tokenism has some value).

97. Although the developmental nature of childhood makes children’s rights different from adults’ rights (e.g., the liberal rights tradition built on autonomy is an awkward fit for children, especially young children), the gradient of participation and civic engagement is not unique to the youth alone. The civil rights and women’s rights movements demonstrated a potential hierarchy of participation and civic engagement focused on rights to facilitate first speaking, next gathering, then voting, and lastly electing leaders from their groups to positions in which they are then able to shape and implement law and policy. *See, e.g.*, Arnstein *supra* note 2, at 217 (mapping a ladder of participation from nonparticipation, to degrees of tokenism, to degrees of citizen power); *see also* Richard P. Adler & Judy Goggin, *What Do We Mean By “Civic Engagement,”* 3 *J. TRANSFORMATIVE EDUC.* 236 (2005).

1. Youth Councils or Commissions

Many local jurisdictions have created youth councils or commissions.⁹⁸ These entities offer an example of how the state can create formal channels for young people to participate in decisions that affect their lives. City youth councils can provide space, voice, audience, and influence for youth. When done well, youth councils can enable young people to share their ideas, insights, and lived experience with civic leaders and key decisionmakers. These councils can also amplify the voices of other youth in their communities.

In addition, some youth councils are provided small amounts of funding to carry out small-scale projects that young people care about; this gives them some fiscal influence.⁹⁹ Their influence is also not unidirectional; youth councils can inform and influence adult policymakers and spur young people's peers to be aware of and engaged in local issues.¹⁰⁰ In short, youth councils can grow into much broader youth-centric, place-based initiatives.

Growing Up Boulder, a youth participation and civic engagement program in Boulder, Colorado, offers an example of a program that has created an entire civic infrastructure to engage youth in community change.¹⁰¹ The framework created by Growing Up Boulder has enabled research and strategic planning alongside city officials.¹⁰² For example, in recent years, young people in Boulder, alongside city officials, have undertaken studies on how families commute to and from school to better design the local transportation system to meet their needs.¹⁰³ Additionally, youth worked alongside the Boulder Police Department to reimagine policing as part of the Boulder Police Department's Master Plan Report.¹⁰⁴

Although some youth councils have fallen short of fulfilling all four components of the Lundy model—often due to a lack of genuine commitment on the part of adults to support the development and sustainability of these initiatives—they remain a key

98. See, e.g., *Youth Commission*, CITY & CNTY. OF S.F., <https://sfgov.org/youthcommission/> [<https://perma.cc/8BEM-JSC4>] (last visited Apr. 1, 2023); *Youth Commission*, CITY OF BALT., <https://youth.baltimorecity.gov/about-0> [<https://perma.cc/SUN6-BT8B>] (last visited Apr. 1, 2023); *Thirty-Third Guam Youth Congress*, GUAM YOUTH CONGRESS, <https://guamyouthcongress.wixsite.com/33rdgyc> [<https://perma.cc/3N5Q-J9BH>] (last visited Apr. 1, 2023).

99. See SHANETTA MARTIN, KAREN PITTMAN, THADDEUS FERBER & ADA MCMAHON, BUILDING EFFECTIVE YOUTH COUNCILS 22 (July 2007).

100. See *id.* at 9–10.

101. See GROWING UP BOULDER, <https://www.growingupboulder.org/> [<https://perma.cc/MQ5P-HKAT>] (last visited Apr. 1, 2023).

102. *Project List*, GROWING UP BOULDER, <https://www.growingupboulder.org/project-list-and-reports.html> [<https://perma.cc/S7XQ-VT6Y>] (last visited Apr. 1, 2023).

103. See *Boulder County School Travel Study*, GROWING UP BOULDER (Nov. 2021), <https://www.growingupboulder.org/boulder-county-school-travel-study.html> [<https://perma.cc/7ME3-NWGC>]; Aileen Carrigan & Morgan Huber, *Growing Up Boulder's Middle School Youth Transit Study Report: Summary of Findings from Winter 2018 Report*, GROWING UP BOULDER (2018), <https://www.growingupboulder.org/youth-barriers-to-transportation-with-centennial-middle-school.html> [<https://perma.cc/5ELL-QDHG>].

104. See *Reimagining Policing Boulder Police Department Master Plan*, GROWING UP BOULDER, (Oct. 29, 2021), <https://www.growingupboulder.org/reimagine-policing.html> [<https://perma.cc/NYB7-Z6QC>].

opportunity for nurturing and maintaining higher levels of youth participation and civic engagement.¹⁰⁵

2. Youth Advocacy and Protest

Because the U.S. regulatory framework governing children's lives typically offers limited opportunities for civic engagement, young people are frequently left to pursue other informal means of making their voices heard.¹⁰⁶ Youth protests and demonstrations have become increasingly common in the last few years.¹⁰⁷ Protests and demonstrations provide space and voice directly. However, the degree to which they provide audience and influence is debatable.¹⁰⁸ Although some protests, such as *March for Our Lives*¹⁰⁹ or *Fridays for Future*,¹¹⁰ have garnered global audiences, that attention and support has not necessarily translated into significant policy reforms around gun safety or climate change.¹¹¹

Moreover, protests and demonstrations have become an increasingly complicated and risky avenue for youth participation, as various laws and regulations—such as curfews, truancy, or loitering laws—have been employed to suppress youth participation.¹¹² Enforcement of these laws and regulations have had particularly harsh consequences for youth of color, who are disproportionately arrested, processed, and rearrested as compared to white youth.¹¹³ Beyond public demonstrations, youth face

105. See, e.g., Barry Checkoway, Tanene Allison, & Colleen Montoya, *Youth Participation in Public Policy at the Municipal Level*, 27 CHILD. & YOUTH SERVS. REV., 1149–62 (2005).

106. See *supra* Section II.

107. See, e.g., Beata Mostafavi, *National Poll: More Teens Participating in Protests Against Racism*, MICH. MED. (Oct. 26, 2020, 5:00 AM), <https://www.michiganmedicine.org/health-lab/national-poll-more-teens-participating-protests-against-racism> [<https://perma.cc/HU78-UHLT>] (reporting that “a new national poll confirms that a growing number of demonstrators taking to the streets to stand up against police brutality and racism are teenagers”).

108. In highlighting that some protests and demonstrations do not garner audience and influence, we are not suggesting they are without value. To the contrary, we believe protest and demonstration play a critical role in the advancement of human rights. In this context, we are simply observing that when youth are left only to protest and demonstrate, there may be limitations to those means of advocating for their rights.

109. See Barbara Plett Usher, *March for Our Lives: Tens of Thousands Rally for Stricter US Gun Laws*, BBC NEWS (Jun. 11, 2022), <https://www.bbc.com/news/world-us-canada-61772039> [<https://perma.cc/A4NG-UMSK>].

110. See Megan Specia & Stephen Castle, *Young Activists Want Action as Protestors Rally at COP26*, N.Y. TIMES (Nov. 5, 2021), <https://www.nytimes.com/2021/11/05/world/europe/cop-protests.html> [<https://perma.cc/T252-JA5A>].

111. Although some companies responded to and addressed children's demands by changing their corporate policies related to guns, conservative policymakers largely resisted, and in some cases even belittled, youth advocacy efforts around gun violence.

112. On the harms of curfews, see, for example, *Top Five Reasons to Abolish Curfews: They Don't Reduce Crime or Keep Us Safe*, NAT'L YOUTH RIGHTS ASS'N, <https://www.youthrights.org/issues/curfew/reasons-to-abolish/> [<https://perma.cc/HU5D-QJE6>] (last visited Apr. 1, 2023); Tom Dart, *Austin Votes to End Its Youth Curfew Amid Racial Bias Concerns*, THE GUARDIAN (Sept. 29, 2017), <https://www.theguardian.com/us-news/2017/sep/29/austin-end-youth-curfew-racial-bias> [<https://perma.cc/85J9-F9H4>].

113. See Namita Tanya Padgaonkar, Amanda E. Baker, Mirella Dapretto, Adriana Galván, Paul J. Frick, Laurence Steinberg & Elizabeth Cauffman, *Exploring Disproportionate Minority Contact in the Juvenile Justice System Over the Year Following First Arrest*, 31 J. RES. ADOL. 317, 324 (“Black youth in our sample were

other potential constraints, as schools can limit young people's expression if it is "disruptive" to the functioning of schools or otherwise violates school policies.¹¹⁴ When analyzed through the Lundy model, we see that these mobilization efforts provide some aspects, such as voice and audience, but often lack aspects of influence and space, partly because they often exist outside of the system and are scrutinized and policed as disobedience rather than engagement.

3. No Voting Rights

Children's lack of voting rights remains a clear, bright line when it comes to youth participation and civic engagement (although other countries and some local U.S. jurisdictions have piloted voting rights in selected elections for sixteen- and seventeen-year-old youth).¹¹⁵ With respect to electing representatives, young people are relegated to the margins, left only to lobby adults to consider their interests¹¹⁶ and to encourage others to vote for candidates who hopefully will prioritize young people's interests.¹¹⁷ In short, when it comes to electing representatives, children are denied all aspects of the Lundy model. Moreover, the lack of voting rights affects youth

arrested after committing significantly fewer crimes compared to White youth, even after controlling for the effects of parental education, neighborhood quality, and age at arrest. Similarly, both Black and Latino youth were more likely to be processed formally (rather than informally) as compared to White youth, regardless of the severity of the offense (i.e., whether or not the offense for which they were arrested was violent) or amount of self-reported offending prior to first arrest. Finally, Black youth were significantly more likely to be rearrested compared to White and Latino youth, despite no differences in self-reported offenses, both violent and nonviolent, across racial groups."); see also Anne McGlynn-Wright, Robert D. Crutchfield, Martie L. Skinner & Kevin P. Haggerty, *The Usual, Racialized, Suspects: The Consequence of Police Contacts with Black and White Youth on Adult Arrest*, *SOCIAL PROBLEMS* (2020), <https://doi.org/10.1093/socpro/spaa042> [<https://perma.cc/8DR5-GGLP>] (reporting that "Black Americans experience a greater frequency of police contacts, discretionary stops, and police harassment when stops occur"). In contrast, as the Kyle Rittenhouse case starkly highlighted, white youth are not subjected to near the same level of policing. See *id.*

114. See *supra* notes 65–66 and accompanying text.

115. See Joshua A. Douglas, *The Right to Vote Under Local Law*, 85 *GEO. WASH. L. REV.* 1039, 1062 (2017).

116. However, during the COVID-19 pandemic, we have repeatedly witnessed jurisdictions prioritize a "return to normal" for restaurants, bars, and even tattoo shops, over children's schools.

117. In the 2020 election, many young people actively participated in and organized voter registration campaigns and "get out the vote" efforts on voting days. See ALL. FOR YOUTH ACTION, *Joy, Resiliency, Innovation: Our 2020 Annual Report* (2021), <https://allianceforyouthaction.org/2020-annual-report/> [<https://perma.cc/B2VX-RPVC>] ("In 2020, Millennials and Gen Z accounted for 31% of voters, up from 14% in 2008 according to data from Catalist. So, all eyes were on the youth vote and young people delivered. By organizing their peers in person and online to meet the challenges of this uncertain time, the youth organizers in the Alliance network changed the narrative about the power of the youth vote. . . . How did this happen? Year-round, youth-led organizing."); Ryan Bort & Kimberly Aleah, *Year in Review: How Black Lives Matter Inspired a New Generation of Youth Activists*, *ROLLING STONE* (Dec. 14, 2020), <https://www.rollingstone.com/politics/politics-features/black-lives-matter-protests-new-generation-youth-activists-1099895/> [<https://perma.cc/T9AH-Y9UR>]; see also *Half of Youth Voted in 2020, an 11-Point Increase from 2016*, *CTR. FOR INFO. & RSCH. ON CIVIC LEARNING AND ENGAGEMENT* (Apr. 29, 2021), <https://circle.tufts.edu/latest-research/half-youth-voted-2020-11-point-increase-2016> [<https://perma.cc/7W7E-TT8C>] ("Half of eligible young voters cast a ballot in 2020. However, as is the case in every election cycle, youth voter turnout rates varied widely across the country. . . .").

participation through other avenues. While youth are able, in some instances, to secure space, voice, and audience, without voting rights, influence often remains elusive.

Questions about whether the voting age should be lowered and, if so, to what age are beyond the scope of this Article.¹¹⁸ We aim to highlight two key points: first, young people have no formal legal avenue for choosing who will represent them in government, and second, the lack of formal processes for participation leaves young people primarily with options outside of the system—namely, protest and demonstration. So, today, when policymakers are unresponsive to youth concerns about the impact of climate change or their desire to be able to attend school without the threat of gun violence, formal legal constraints on young people’s participation rights push them to the margins. If, instead of marginalizing and ignoring youth, the United States looked for ways to ensure space, voice, audience, and influence, young people would have more opportunities to contribute in meaningful ways to, and help strengthen, their communities.

The examples above, viewed through the lens of the Lundy model, shed light on the range of ways youth participation is regulated and the extent to which different avenues for civic engagement constitute meaningful youth participation. They also highlight how law and policy can support young people contributing in public spaces to their communities or can further marginalize and devalue youth voices, leaving them with limited options to be heard.

IV. THE VALUE OF MEANINGFUL YOUTH PARTICIPATION

Although children’s rights law clearly establishes that young people have a *right* to be heard on matters that affect their lives,¹¹⁹ it is also the case that meaningful youth participation benefits children and enhances the vibrancy of all communities by improving the well-being of young people and their families and enhancing the capacities

118. There are many organizations that are working to reduce or abolish the minimum voting age across the world. See CHILDREN’S VOTING COLLOQUIUM, <https://www.childrenvoting.org/resources> [<https://perma.cc/KR3E-PGZX>] (last visited Apr. 1, 2023); see also, Joshua A. Douglas, *The Loch Ness Monster, Haggis, and a Lower Voting Age: What America Can Learn from Scotland*, 69 AM. U. L. REV. 1433, 1436 (2020) (Scotland lowered their voting age to sixteen for a variety of theoretical justifications, including “establish[ing] a habit of electoral participation while these young people are in a more stable point in their lives.”). But see Tak Wing Chan & Matthew Clayton, *Should the Voting Age be Lowered to Sixteen? Normative and Empirical Considerations*, 54 POL. STUD. 533, 552 (2006) (Research suggests “sixteen and seventeen-year-olds are considerably less mature than older people.” The writers ultimately conclude that the voting age should not be lowered.).

119. CRC, *supra* note 3, art. 12(1).

of decisionmakers.¹²⁰ Despite these benefits, decisionmakers consistently underestimate what youth participation can contribute to their communities.¹²¹

As noted in the Introduction, supporting children's participation offers a range of benefits. Engaging children and adolescents in the development, implementation, and evaluation of policies and programs can lead to consideration of a broader range of ideas, help weed out ineffective proposals, and secure greater buy-in among youth with respect to those policies that are adopted.¹²² Moreover, by improving communities' capacity to identify and address issues confronting children, youth participation can help improve health and education outcomes for children and adolescents.¹²³

The value of youth participation is not limited to its impact on children and adolescents. Engaging with youth presents decisionmakers with regular opportunities to improve the collective well-being of their communities.¹²⁴ By making space for young people's voices and influence, leaders can make better-informed decisions because they can draw from the lived experiences of young people and families that reside within their jurisdictions.¹²⁵

120. CAROLE PATEMAN, *PARTICIPATION AND DEMOCRATIC THEORY* 27 (1970) ("Rousseau also suggests that participation has a third, integrative function; that it increases the feeling among individual citizens that they 'belong' in their community. In a sense integration derives from all the factors mentioned already. . . . More important is the experience of participation in decision making itself, and the complex totality of results to which it is seen to lead, both for the individual and for the whole political system; this experience attaches the individual to his society and is instrumental in developing it into a true community.").

121. See Dailey & Rosenbury, *supra* note 58, at 1499–1500 (noting there is a litany of cases where courts have censored children from expressing political views, suggesting that the value of their political self-expression is questioned by decisionmakers).

122. See CHILD FUND ALL., *supra* note 18; BLAKESLEE & WALKER, *supra* note 18, at 1–2; SHAKESPRERE, ET AL., *supra* note 18; see also Tom R. Tyler, *Restorative Justice and Procedural Justice: Dealing with Rule Breaking*, 62 J. SOCIAL ISSUES 307, 309 (2006) ("Research suggests that people will obey laws, without the threat of sanctions, when they experience the criminal justice system and its authorities as acting justly."). Related research on procedural justice shows that engaging young people and including them in decisionmaking processes can improve outcomes. See, e.g., Lyn Hinds, *Building Police-Youth Relationships: The Importance of Procedural Justice*, 7 YOUTH JUST. 195, 195 (2007) ("[Y]oung people's attitudes toward police legitimacy are positively linked to police use of procedural justice."); Adam D. Fine, Erika Fountain & Sarah Vidal, *Juveniles' Beliefs About and Perceptions of Probation Predict Technical Violations and Delinquency*, 25 PSYCHOL. PUB. POL'Y & L. 116, 118 (2019) ("Stemming from the procedural justice literature, it is widely recognized that perceptions of the justice system and its officials are critically important for youth behavior . . .").

123. See CHILD FUND ALL., *supra* note 18; BLAKESLEE & WALKER, *supra* note 18, at 1–2; SHAKESPRERE ET AL., *supra* note 18.

124. See Aoife Daly, *Demonstrating Positive Obligations: Children's Rights and Peaceful Protest in International Law*, 45 GEO. WASH. INT'L L. REV. 763 (2013). See also GROWING UP BOULDER, <https://www.growingupboulder.org/> [<https://perma.cc/F76X-42VF>] (last visited Apr. 1, 2023) (providing examples of how child-friendly policies improved the lives of other populations, including elderly residents and persons with disabilities).

125. This can improve the likelihood that good ideas are identified, ineffective proposals are avoided, and local community buy-in is achieved. See, e.g., SHAKESPRERE ET AL., *supra* note 18, at 1 ("Youth engagement can be a crucial strategy for increasing the success and sustainability of programs and initiatives aimed at improving the educational and developmental outcomes of children and families."); BLAKESLEE & WALKER, *supra* note 18, at 2 ("[W]hen adults perceive young people as valuable resources that can inform many of the decisions that impact them, they also see improvement in the quality of the decisions that are made.").

Listening to and partnering with young people in a meaningful way has both immediate and long-term benefits for child well-being. In the immediate term, such participation allows children to observe and engage in civic governance from a young age.¹²⁶ Civic engagement in a substantive way educates young people to participate in contemporary political society and builds self-identity, not only in childhood but also throughout their lives.¹²⁷ Self-identity as rights bearers grounds young people and all human beings with a sense of self-worth to be able to better their lives and the lives of others.¹²⁸

Such participation also fosters a sense of community and belonging.¹²⁹ Surveys of young people across Europe and in the United States have indicated that mental health is a primary concern for many young people today.¹³⁰ Studies have also shown that engaging in communities and being known as a person capable of contributing to and making communal decisions gives adolescents a sense of belonging that translates to improved mental health outcomes.¹³¹ If a young person can effect positive change in their communities or social structures, that positive change reflects not only in the system that was improved but also in the individual who advocated for that change.¹³² This participation makes young people more aware of the influence they have in the world and better able to articulate their duties to care for those around them.

Meaningful youth participation can also support equality for all children and help advance efforts to achieve racial justice. Given the limited channels young people currently have for participation in government, the courts have often been relied upon to pursue progress in this regard. The courts have moved children's spaces—and, at times, society more broadly—toward equality, most famously with the seminal case of *Brown*

126. See CHEN & WALLACE, *supra* note 16.

127. UNICEF, ASEAN-UNICEF CONFERENCE ON 21ST CENTURY SKILLS AND YOUTH PARTICIPATION (Nov. 9, 2018), <https://www.unicef.org/eap/media/3496/file/ASEAN-UNICEF%20Conference%20on%2021st%20Century%20Skills%20and%20Youth%20Participation.pdf> [<https://perma.cc/7WPM-4JBN>].

128. See Dailey & Rosenbury, *supra* note 58, at 1497 (“Children also experience a range of emotions as they explore how they belong, or might belong, to various groups around them. This exploration affects children’s daily lives as much as it affects their futures, if not more.”).

129. Caterina Arcidiacono, Fortuna Procentese & Immacolata Di Napoli, *Youth, Community Belonging, Planning and Power*, 17 J. CMTY. & APPLIED SOC. PSYCH. 280 (2007).

130. Daniel Eisenberg, Justin Hunt, Nicole Speer & Kara Zivin, *Mental Health Service Utilization Among College Students in the United States*, 199 J. NERVOUS & MENTAL DISEASE 301, 301 (2011); EUROCHILD, SAVE THE CHILD., UNICEF, CHILD FUND ALL. & WORLD VISION, OUR EUROPE, OUR RIGHTS, OUR FUTURE: CHILDREN AND YOUNG PEOPLE’S CONTRIBUTION TO THE NEW EU STRATEGY ON THE RIGHTS OF THE CHILD AND THE CHILD GUARANTEE 10 (2020), <https://www.unicef.org/eu/media/1276/file/Report%20%22Our%20Europe,%20Our%20Rights,%20Our%20Future%22.pdf> [<https://perma.cc/RKV5-ZTQD>].

131. Kylie G. Oliver, Philippa Collin, Jane Burns & Jonathan Nicholas, *Building Resilience in Young People Through Meaningful Participation*, 5 AUSTL. E-J. FOR THE ADVANCEMENT OF MENTAL HEALTH 34, 36–37 (2006).

132. See Judith Sixsmith & Margaret Boncham, *Health, Well-Being and Social Capital*, in WELL-BEING: INDIVIDUAL, COMMUNITY AND SOCIAL PERSPECTIVES 75, 81 (John Haworth & Graham Hart eds., 2007); Ayano Yamaguchi, *Influences of Social Capital on Health and Well-Being from Qualitative Approach*, 5 GLOB. J. HEALTH SCI. 153, 154, 159–60 (2013); see generally Astier M. Almedom, *Social Capital and Mental Health: An Interdisciplinary Review of Primary Evidence*, 61 SOC. SCI. & MED. 943, 949–55 (2005) (discussing how effective policies and programmatic support of mental health can build or strengthen social capital).

v. Board of Education of Topeka.¹³³ Although the United States is far from achieving high quality, accessible, and equitable education for all children, since *Brown*, there has been progress—though slow, insufficient, and often inconsistent—towards racial equity in U.S. public schools.¹³⁴ What is critical to recognize is that, under children’s rights law, children’s participation rights are inextricably linked to the principle of nondiscrimination or equality.¹³⁵ Similarly, in the U.S. legal system, issues of student free speech (*Tinker v. Des Moines Independent Community School District*¹³⁶ and its progeny) and racial equity in schools should be understood as interconnected so that we may advance a more equitable school environment for all children, and ultimately extend that to all environments that children inhabit.¹³⁷ Even though progress can occur through the courts, we cannot lose sight of the value of implementing children’s right to be heard more broadly.

Although youth have much to contribute to their communities, city and state elected leaders typically forge ahead without them, implementing ad hoc child policy changes into a fractured and poorly integrated network of private and public systems that “prioritize[s] . . . the systems’ survival rather than child and family needs.”¹³⁸ These systems are the places, spaces, and services where children live, the parks they play in, and the schools, agencies, and businesses where they and their families obtain basic supports such as education, healthcare, housing, and nutritious food.¹³⁹ These ecosystems, which are intended to benefit young people, are almost always designed exclusively by adults.¹⁴⁰ Yet when decisionmakers listen to the opinions and experiences of children in reforming these places, they can make these environments more child-friendly, safe, suitable for adolescent use, and responsive to children’s needs.¹⁴¹

Beyond youth organizing activities for improved local parks and schools, meaningful participation can reach into spaces such as the digital environment for a

133. 347 U.S. 483 (1954).

134. See *Plyler v. Doe*, 457 U.S. 202 (1982).

135. CRC, *supra* note 3, art. 2 (nondiscrimination applies to all rights in the convention, including the panoply of participation rights).

136. See 393 U.S. 503, 506 (1969) (“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”).

137. See Dailey & Rosenbury, *supra* note 58, at 1535–36; Barbara Bennett Woodhouse, *A Public Role in the Private Family: The Parental Rights and Responsibilities Act and the Politics of Child Protection and Education*, 57 OHIO ST. L. J. 393, 418 (1996) (“Children’s claims of rights to educational equality were crucial to the success of their parents’ crusades to obtain schooling for immigrant children and children with special physical or educational needs, not to mention equality of education for children of all races.”).

138. Elizabeth Barnert, Joseph Wright, Charlene Choi, Jonathan Todres & Neal Halfon, *Reimagining Children’s Rights in the US*, 176 JAMA PEDIATRICS 1242, 1242 (2022); see also Gøsta Esping-Andersen, *A Child-Centred Social Investment Strategy*, in WHY WE NEED A NEW WELFARE STATE 26, 51–53 (Gøsta Esping-Andersen, ed., 2002).

139. Barnert et al., *supra* note 138; Esping-Andersen, *supra* note 138.

140. Barnert et al., *supra* note 138; Esping-Andersen, *supra* note 138.

141. Pia Björklid & Maria Nordström, *Child-Friendly Cities – Sustainable Cities*, EARLY CHILDHOOD MATTERS, June 2012, at 44, https://bernardvanleer.org/app/uploads/2017/10/ECM118_10_Child-friendly-cities-sustainable-cities_Pia-Bjorklid.pdf [<https://perma.cc/2ASZ-XQTB>]; see also Urie Bronfenbrenner, *Ecological Models of Human Development*, in INT’L ENCYCLOPEDIA OF EDUC. 1643 (2d ed. 1994).

children's rights-by-design approach to how technology companies use child data.¹⁴² As new technologies continue to proliferate and an increasing amount of young people's (and adults') lives are spent online, technologies and the digital world require greater monitoring and evaluation to ensure thoughtful policies and practices enter into the marketplace from design to deployment.¹⁴³ This includes not only confronting the adverse effects of machine learning and other technologies on the social care of children and child development but also exploring and ultimately reaping the benefits that technologies can offer in terms of advancing equitable and inclusive education for all children.¹⁴⁴

From traditional spaces such as classrooms and parks to newly emerging digital worlds, when young people can influence the decision-making process on how these spaces serve them on a day-to-day basis, systems can be designed to reduce or even eliminate barriers to children's healthy development. In short, youth participation offers critical value and can help forge societal improvements from the local to the global.

V. ADVANCING YOUTH PARTICIPATION RIGHTS

Realizing children's right to be heard through meaningful youth participation can improve outcomes for young people and their communities. Yet the current U.S. legal and political system provides few avenues for consistent, meaningful youth input on issues that affect their lives. Overcoming these structural constraints and fulfilling the potential of children's participation rights requires a response that addresses laws and policies, day-to-day practices, and the underlying attitudes and beliefs toward children and adolescents that permeate our social and political systems.¹⁴⁵ Recognizing and elevating young people's voices means acknowledging children and adolescents as rights

142. See PEDRO HARTUNG, UNICEF, THE CHILDREN'S RIGHTS-BY-DESIGN STANDARD FOR DATA USE BY TECH COMPANIES 1 (2020), <https://www.unicef.org/globalinsight/media/1286/file/%20UNICEF-Global-Insight-DataGov-data-use-brief-2020.pdf> [<https://perma.cc/54WM-75B5>]; see also Jonathan Todres & Joseph Wright, *A Healthy Digital Environment for Children Means More than Protection*, FIRST FOCUS ON CHILD (Aug. 4, 2021), <https://firstfocus.org/blog/a-healthy-digital-environment-for-children-means-more-than-protection> [<https://perma.cc/E7BG-7JSF>].

143. See DAVID LESLIE, LISA HOLMES, CHRISTINA HITROVA & ELLIE OTT, ETHICS REVIEW OF MACHINE LEARNING IN CHILDREN'S SOCIAL CARE, WHAT WORKS FOR CHILDREN'S SOCIAL CARE 8–11 (Jan. 2020), https://whatworks-csc.org.uk/wp-content/uploads/WWCSC_Ethics_of_Machine_Learning_in_CSC_Jan2020.pdf [<https://perma.cc/Z9KC-RJ45>].

144. See Henriikka Vartiainen, Matti Tedre & Teemu Valtonen, *Learning Machine Learning with Very Young Children: Who Is Teaching Whom?*, 25 INT'L J. CHILD-COMPUTER INTERACTION, Sept. 2020, at 1, 3–4.

145. Systems change frameworks have facilitated the realization of positive youth development and youth organizing movements. These existing efforts can build seamlessly into a rights-fulfilling approach to youth participation and can be the entry point for the realization of the whole suite of children's rights at large. See Joseph A. Durlak, Rebecca D. Taylor, Kei Kawashima, Molly K. Pachan, Emily P. DuPre, Christine I. Celio, Sasha R. Berger, Allison B. Dymnicki & Roger P. Weissberg, *Effects of Positive Youth Development Programs on School, Family, and Community Systems*, 39 AM. J. CMTY. PSYCH. 269, 269 (2007) (reviewing systems change efforts in positive youth development programs across “526 universal competence-promotion outcome studies,” which found that “attempts to change social systems affecting children and adolescents can be successful”); see also DONELLA H. MEADOWS, THINKING IN SYSTEMS: A PRIMER 145–65 (2008); John Kania, Mark Kramer & Peter Senge, *The Water of Systems Change*, FSG (2018), https://www.fsg.org/resource/water_of_systems_change/ [<https://perma.cc/ZM9X-WEVA>]; DAVID PETER STROH, SYSTEMS THINKING FOR SOCIAL CHANGE 207–14 (2015).

holders. Achieving such recognition necessitates both targeted interventions aimed at young people to empower them to become active participants in their communities and initiatives by agencies, institutions, and organizations whose actions shape the lives of children and adolescents in the United States.

This Section discusses the modes of youth participation, the forums where it needs to be implemented, and the processes that need to be inculcated in any movement aimed at fulfilling the participation rights of young people in the United States. The Section first reviews the three primary modes of child participation. An understanding of each of these modes—consultative, collaborative, and youth-led advocacy—helps policymakers and practitioners recognize the types of opportunities available for implementing youth participation rights and be cognizant of the limitations of each approach. Next, this Section discusses the spaces and locales where youth should have a greater voice, including both the public and private sectors. Then, this Section turns to the procedural aspects of implementing children’s participation rights to highlight several key considerations. That is followed by a brief discussion of the role of the law in advancing youth participation. Although this Article has intentionally focused on a narrow set of children’s rights—specifically participation rights in the civic engagement context—analysis of children’s rights more broadly, and efforts to advance them in the United States, prompts larger questions about the U.S. approach to rights. We conclude this Section by briefly discussing these broader implications for the United States.

A. The Primary Modes of Participation

To help young people realize their right to be heard and to ensure the four components of the Lundy model are present, policymakers and organizations can engage children and youth through three primary modes of participation: consultative, collaborative, and youth-led.¹⁴⁶ Specific issues or activities might lend themselves more readily to particular modes of participation. This Part briefly describes each mode of participation, its benefits and drawbacks, and a current example of its use in the United States.

1. Consultative

The first mode of participation, consultative participation, recognizes “the added value that adolescents’ perspective, knowledge and experience can contribute.”¹⁴⁷ However, the process is “adult initiated[,] adult-led, and [adult] managed.”¹⁴⁸ Young people do not control the outcomes of the process.¹⁴⁹ Consultation can be useful in contexts where policymakers would benefit from asking young people about their lived experience on a specific issue.

U.S. presidential administrations have been mindful for generations about including young people in selected policy issues. While imperfect as most early innovation projects

146. UNICEF, *supra* note 1, at 11.

147. *Id.*

148. *Id.*

149. *Id.*

are, federal youth programs date back to Eleanor and Franklin D. Roosevelt's installations of the National Youth Administration and are inextricably linked with the earliest enforcement of "equitable representation and participation" of Black people.¹⁵⁰ More recently, in 2021, the Biden Administration offered an example of consultative youth participation when it engaged in months of youth roundtables and open forums¹⁵¹ to discuss the Administration's "Build Back Better" Plan (BBB) in partnership with numerous youth-serving organizations and the Center for Law and Social Policy.¹⁵² As a result, BBB incorporated feedback from youth across four federal spending areas: education and workforce opportunities, help for young adults who care for their families, housing affordability and access, and the climate crisis.¹⁵³ Many youth-led organizations encouraged passage of BBB while also emphasizing that BBB did not go far enough on issues such as immigration, student debt, and climate change.¹⁵⁴

150. B. Joyce Ross, *Mary McLeod Bethune and the National Youth Administration: A Case Study of Power Relationships in the Black Cabinet of Franklin D. Roosevelt*, 60 J. NEGRO HIST. 1, 1 (1975).

151. Rachel Janfaza, *'This Is Way Beyond Collaborative': Young Leaders See Their Feedback Reflected in Biden's Plans*, CNN (July 22, 2021, 8:58 AM), <https://www.cnn.com/2021/07/22/politics/build-back-better-young-americans/index.html> [<https://perma.cc/HY8C-CVL2>].

152. Olivia Golden, *House Passage of Build Back Better Marks Historic Win*, CTR. FOR L. & SOC. POL'Y (Nov. 19, 2021), <https://www.clasp.org/press-room/press-releases/house-passage-build-back-better-marks-historic-win> [<https://perma.cc/N5RB-NTSM>].

153. Briefing Room Statements and Releases, White House, *How the Build Back Better Plan Will Create a Better Future for Young Americans* (July 22, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/22/fact-sheet-how-the-build-back-better-plan-will-create-a-better-future-for-young-americans/> [<https://perma.cc/34ZW-9SQZ>].

154. Nikayla Jefferson, *What's Happening with BBB?*, SUNRISE MOVEMENT (Nov. 9, 2021), <https://www.sunrisemovement.org/movement-updates/whats-happening-with-bbb/> [<https://perma.cc/F2YK-D5GW>] ("Again: The original \$3.5T Build Back Better Agenda IS NOT enough. It's a bare minimum bandaid on our deep social, ecological, and economic wounds. Not enough—but an alright start that'll make a daily difference in people's lives, and that lays a foundation for us to make bigger demands of the Biden administration over the next four years."); Press Release, United We Dream Action, *Our People Powered Movement Ensured a Monumental Build Back Better Package Passed in the House but Our Vision Remains Clear: Senate Democrats Must Deliver Citizenship!* (Nov. 19, 2021), <https://unitedwedreamaction.org/2021/11/our-people-powered-movement-ensured-a-monumental-build-back-better-package-passed-in-the-house-but-our-vision-remains-clear-senate-democrats-must-deliver-citizenship/> [<https://perma.cc/C9AL-JLY6>] ("[T]his bill falls short by failing to deliver permanent protections in the form of a pathway to citizenship for undocumented people like me and the members of United We Dream Action. The urgency of this moment cannot be overstated. Over 1.2 million people have been expelled and deported under the Biden administration, while tens of thousands of immigrant youth remain barred from applying for DACA, a program that remains at risk in the courts."); Press Release, Rise, *Build Back Better Framework is a Major Disappointment for College Students & Youth* (Oct. 28, 2021), <https://risefree.org/news/build-back-better-framework-is-a-major-disappointment-for-college-students-youth/> [<https://perma.cc/B9D4-BZJ8>] ("This framework does next to nothing to end the cycle of state divestment from public higher education, tuition hikes and skyrocketing student loan debt. The increase to the Pell grant amounts to an additional \$1.50 per day for low-income students which is not enough for millions of food insecure college students to buy a healthy meal—let alone address the enrollment crisis facing community colleges."); Rachel Frazin, *Climate Advocates Skeptical of Bipartisan Infrastructure Bill Amid Biden Victory Lap*, THE HILL (Nov. 9, 2021, 6:00 AM), <https://thehill.com/policy/energy-environment/580630-climate-advocates-skeptical-of-bipartisan-infrastructure-bill-amid> [<https://perma.cc/YBP4-AU65>] ("To tout this bill as a climate victory is . . . just a lie," said John Paul Mejia, a spokesperson for the Sunrise Movement, referring to the bipartisan bill. "Not only does this bill include in it some harmful provisions, it also doesn't meet the full scope and scale of the climate crisis as much as the reconciliation bill would.") (omission in original)).

2. Collaborative

The second mode of participation, collaborative participation, is defined by UNICEF as an “adult initiat[ive] involving partnership with adolescents [that] enabl[es] adolescents to influence or challenge both process and outcome [and] allow[s] for increasing levels of self-directed action by adolescents over a period of time.”¹⁵⁵ Collaborative participation aims “to strengthen processes of democracy, create opportunities for children to understand and apply democratic principles or involve children in the development of services and policies that impact on them.”¹⁵⁶ Although collaborative processes can provide youth with greater opportunities for input and influence on decisionmaking, if not truly collaborative, they can result in adults manipulating children’s participation to serve their own interests.

Programs may choose to collaborate with young people in the design of research projects and policy outcomes. MyVoice is a national organization that utilizes polling to engage young people and elevate youth.¹⁵⁷ With MyVoice, young people can co-design research questions, implement surveys, and express their views on an interactive SMS platform.¹⁵⁸ These surveys gather real-time opinions and experiences of young people to promote meaningful youth participation in policy, budgeting, and programmatic decisionmaking.¹⁵⁹ MyVoice also works in partnership with the Adolescent Health Initiative to create and sustain six youth-led youth advisory councils (YACs) “within school-based and school-linked health centers” across the state of Michigan.¹⁶⁰

3. Youth-led

The third mode, youth-led participation, involves initiatives where “the issues of concern [are] identified by adolescents themselves[,] adults serv[e] as facilitators rather than leaders[,] [and] adolescents control[] the process and the outcomes.”¹⁶¹ This mode of participation aims to “promot[e] self advocacy” and “empower children to identify and fulfil their own goals and initiatives.”¹⁶² Youth-led entities and projects can offer young people significant opportunities to shape the focus of a project, to decide on priorities, and to lead the implementation of projects. Such initiatives have significant potential to empower young people. However, adolescent-led organizations also face

155. UNICEF, *supra* note 1, at 11.

156. GERISON LANSDOWN, UNICEF INNOCENTI RSCH. CTR., PROMOTING CHILDREN’S PARTICIPATION IN DEMOCRATIC DECISION-MAKING 16 (2001).

157. Melissa DeJonckheere, Lauren P Nichols, Michelle H Moniz, Kendrin R Sonnevill, VG Vinod Vydiswaran, Xinyan Zhao, Timothy C Guetterman & Tammy Chang, *My Voice National Text Message Survey of Youth Aged 14 to 24 Years: Study Protocol*, JMIR RSCH. PROTOCOLS, Dec. 2017, at 126, 127–28.

158. *Id.*

159. *See id.*

160. ADOLESCENT HEALTH INITIATIVE, CREATING & SUSTAINING A THRIVING YOUTH ADVISORY COUNCIL 3 (2019), https://umhs-adolescenthealth.org/wp-content/uploads/2019/03/yac_manual-2019_10.pdf [<https://perma.cc/4ER8-XJPP>].

161. UNICEF, *supra* note 1, at 11.

162. LANSDOWN, *supra* note 156, at 16.

challenges, including, in some cases, rapid turnover among the leadership as youth age out and a reluctance among adults to fund and support youth-led organizations.¹⁶³

The United States has a legacy of youth-led movements on social justice issues, including the 1963–1964 Children’s Crusade for civil rights in Alabama,¹⁶⁴ the 1968 East Los Angeles high school walkouts for access to education during the Chicano Movement,¹⁶⁵ and the UC Berkeley anti-war free speech students’ movement.¹⁶⁶ More recent youth movements have drawn lessons from these historic organizing efforts to mobilize on issues such as climate change, social justice, immigration, and gun violence.¹⁶⁷ Future Coalition,¹⁶⁸ Sunrise Movement,¹⁶⁹ and Fridays for Future¹⁷⁰ are just three of hundreds of youth-led climate activist organizations. Young people have also organized to end gun violence across the country in numerous youth-led organizations such as March For Our Lives.¹⁷¹ Young people are also organizing to transform the welfare system,¹⁷² to reimagine the juvenile justice system,¹⁷³ and to achieve immigration reform.¹⁷⁴ This groundswell of youth organizing indicates that current

163. *Id.* at 17.

164. *Youth in the Civil Rights Movement*, LIBR. OF CONG., <https://www.loc.gov/collections/civil-rights-history-project/articles-and-essays/youth-in-the-civil-rights-movement/> [<https://perma.cc/9838-X5HQ>] (last visited Apr. 1, 2023).

165. *A Latinx Resource Guide: Civil Rights Cases and Events in the United States, 1968: East Los Angeles Walkouts*, LIBR. OF CONG., <https://guides.loc.gov/latinx-civil-rights/east-la-walkouts> [<https://perma.cc/UCD9-V8E2>] (last visited Apr. 1, 2023).

166. *Visual History: Free Speech Movement, 1964*, U.C. BERKELEY, <https://fsm.berkeley.edu/free-speech-movement-timeline/> [<https://perma.cc/R5PX-G3RZ>] (last visited Apr. 1, 2023).

167. See, e.g., SUNRISE MOVEMENT, <https://www.sunrisemovement.org/> [<https://perma.cc/DL7P-37P9>] (last visited Apr. 1, 2023); See FUTURE COAL., <https://futurecoalition.org/> [<https://perma.cc/UA24-AQX8>] (last visited Apr. 1, 2023); FRIDAYS FOR FUTURE, <https://fridaysforfuture.org/> [<https://perma.cc/3WHZ-YGQC>] (last visited Apr. 1, 2023).

168. Future Coalition is a national network of youth-led organizations and youth leaders that advocates for the youth vote and youth climate justice. The organization incubates starter nonprofits to support them with professional tools and skills, coordinates youth-led and intergenerational local election coalitions, and fights to end the era of fossil fuels through youth climate financing. See FUTURE COAL., *supra* note 167.

169. See SUNRISE MOVEMENT, *supra* note 167.

170. See FRIDAYS FOR FUTURE, *supra* note 167.

171. See SUNRISE MOVEMENT, *supra* note 167.

172. See THINK OF US, <https://www.thinkof-us.org/> [<https://perma.cc/M4VP-M3S9>] (last visited Apr. 1, 2023); see also SARAH FATHALLAH & SARAH SULLIVAN, THINK OF US, AWAY FROM HOME: YOUTH EXPERIENCES OF INSTITUTIONAL PLACEMENTS IN FOSTER CARE 21 (2021), https://assets.website-files.com/60a6942819ce8053cefd0947/60f6b1eba474362514093f96_Away%20From%20Home%20-%20Report.pdf [<https://perma.cc/Q52F-EXGV>].

173. See YOUTH JUST. COAL., <https://youthjusticela.org/> [<https://perma.cc/U5G5-46EL>] (last visited Apr. 1, 2023); see also YOUNG WOMEN’S FREEDOM CTR., <https://youngwomenfree.org/freedom-2030-charter/> [<https://perma.cc/J44V-JN7J>] (last visited Apr. 1, 2023); Performing Statistics, *The Future is Free*, MEDIUM (Dec. 12, 2020), <https://performingstatistics.medium.com/the-future-is-free-8476ae9b5ef7> [<https://perma.cc/H6P7-QDF8>] (detailing a youth-led art installation in Richmond, Virginia, across from a police station that envisions a world without prisons).

174. See UNITED WE DREAM, <https://unitedwedream.org/> [<https://perma.cc/3SKZ-X7SU>] (last visited Apr. 1, 2023).

decision-makers are not adequately addressing the issues that matter to young people.¹⁷⁵ It also suggests that the current legal and regulatory framework does not provide meaningful, accessible channels for young people to be heard—leaving them to forge new paths. In short, the United States does not lag in youth-led participation. Its deficiencies lie in the lack of established mechanisms through which youth can meaningfully participate in their communities, the limited receptivity to youth voice among policymakers and other adult stakeholders, and adults’ unwillingness to reshape law, policy, and processes to enable meaningful youth participation which can contribute to positive change in our society.

Ultimately, each of these three modes of youth participation presents challenges and opportunities. Choosing which mode to pursue depends on a variety of factors, including, but not limited to, the individuals involved, the issue being addressed, and the resources available. However, the critical step is to ensure that whatever mode is utilized, the participation of young people is meaningful and their rights are upheld.

B. Forums for Youth Participation

The current U.S. framework pushes most youth civic engagement to the margins, outside formal systems.¹⁷⁶ The result is missed opportunities in both the public and private sectors for young people to contribute to their community and realize their participation rights.

1. Government Spaces

Government entities at all levels (federal, state, local) and across all sectors can involve young people in their decisionmaking processes. Indeed, a step as simple as holding listening sessions or town halls with young people can enable leaders to identify obstacles, address policy and systems priorities that may be visible only to youth, and find more creative and innovative solutions to current issues.¹⁷⁷ Although town halls and similar events demonstrate how readily available young people are to participate in civic

175. In our own work, we have found many instances in which there appears to be an inverse correlation between youth leadership and power within organizations and government involvement in, and support for, such organizations.

176. We recognize that some young people may also prefer to engage outside of formal government systems. See *infra* notes 182–189 for further discussion.

177. See, e.g., Casey Trupin, *20 Years of Lawyers Advocating for and with Youth Experiencing Homelessness*, ABA (July 9, 2018), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2018/summer2018-20-years-lawyers-advocating-youth-homelessness/> [<https://perma.cc/JJZ6-7XKD>] (explaining that the ABA, working with Baker McKenzie and international partners, conducted listening sessions with youth prior to “the United Nations . . . General Comment 21 on Children in Street Situations, the first international legal framework to protect the rights of street children”); see also NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, *PROMOTING POSITIVE ADOLESCENT HEALTH BEHAVIORS AND OUTCOMES: THRIVING IN THE 21ST CENTURY* 152–53 (Robert Graham & Nicole F. Kahn eds., 2020); ARAN WATSON, KANWARPAL DHALIWAL & KIMBERLY ACEVES, *THE RYSE CENTER’S LISTENING CAMPAIGN: COMMUNITY-ENGAGED INQUIRY OF YOUNG PEOPLE’S EXPERIENCES AND ARTICULATIONS OF TRAUMA, VIOLENCE, COPING, AND HEALING* 1–6 (2016), <https://static1.squarespace.com/static/58ece61644024383be911a95/t/593e57012e69cf4a3e12ec6d/1497257742081/RYSE+Listening+Report+2016.pdf> [<https://perma.cc/9MQS-Y22A>].

discourse, governments must institutionalize channels through which young people from all backgrounds can express their views and contribute to the public decisionmaking process on issues that affect them so that children have not only space and voice but also audience and influence. In other words, children's rights must be mainstreamed and implemented throughout all sectors.¹⁷⁸

Mainstreaming youth voice and children's participation rights means viewing rights as much more than just a vehicle for pursuing remedies through the courts. It means creating entities, positions, and pathways for young people to be heard on issues that affect their lives and for adult allies to help ensure that children's issues are properly accounted for in all sectors of society. The creation of a high-level federal authority focused on children's issues would be an important step toward this goal. Such an entity could take the form of a White House Office on Children, a Cabinet-level position focused on children's issues, or an independent children's commissioner.¹⁷⁹ Mainstreaming also means including an obligation to embed child-focused and youth-focused professionals in all agencies—not just the traditional child-focused entities such as departments of education or the child welfare system, but also other sectors that also have an impact on children's lives, such as transportation and urban planning agencies.¹⁸⁰ State and local governments should take similar steps to create child-centered agencies or offices¹⁸¹ and to ensure that mainstreaming of children's voices and rights occurs across all sectors, including health, education, transportation, urban planning, and other sectors. In short, every level and sector of government can embed child participation pathways, professionals, and offices, to ensure that youth participation becomes an integral part of the process of designing, implementing, monitoring, and evaluating laws, policies and programs that affect children and adolescents.¹⁸²

178. See CHILD RIGHTS CONNECT, MAINSTREAMING CHILD RIGHTS: A CALL FOR A UN-WIDE STRATEGY ON CHILD RIGHTS IN RESPONSE TO *OUR COMMON AGENDA* (Sept. 2021), https://www.childrightsconnect.org/wp-content/uploads/2021/09/positionpaperourcommonagenda_crcnct_final.pdf [<https://perma.cc/NJ3Y-HQGK>]; Jonathan Todres, *Mainstreaming Children's Rights in Post-Disaster Settings*, 25 EMORY INT'L L. REV. 1233, 1233–35 (2011).

179. See Miriam Abaya, Nandita Bajaj, Warren Binford, Michelle Blake, Carter Dillard, James Dold, Hope Ferdowsian, Wendy Lazarus, Reid Maki, Shantel Meek, Jerry Milner, Jennifer Nagda, Vidya Kumar Ramanathan, Nevena Vuckovic Sahovic & Jonathan Todres, *US High-Level Office for Children Is Critical for Children's Rights*, HEALTH & HUM. RTS. J. (Mar. 10, 2022), <https://www.hhrjournal.org/2022/03/us-high-level-office-for-children-is-critical-for-childrens-rights/> [<https://perma.cc/X4LE-QFNK>].

180. See *id.*

181. A number of states have “child advocate” positions that help prioritize children's issues, though they are often limited in scope to child welfare and related issues and may not adopt a children's rights framework. *Oversight of State Children and Family Services*, NAT'L CONF. OF STATE LEGISLATURES, <https://legislature.vermont.gov/Documents/2022/WorkGroups/Senate%20Health%20and%20Welfare/Bills/H.265/Public%20Comment/H.265~Jill%20Yordy~National%20Conference%20of%20State%20Legislatures%20Written%20Comments~4-12-2022.pdf> [<https://perma.cc/V7XS-JNNU>] (last visited Apr. 1, 2023) (“As of 2021, 28 states had an Ombudsman office tasked with oversight of state departments and agencies that handle children and family services by investigating complaints.”).

182. Todres, *Mainstreaming*, *supra* note 178, at 1255. UNICEF-USA is laying some of this groundwork. See *Child Friendly Cities Initiative (CFCI)*, UNICEF, <https://www.unicefusa.org/mission/usa/childfriendlycities> [<https://perma.cc/J92S-EH5H>] (last visited Apr. 1, 2023) (explaining CFCI as a global initiative that has been

2. Beyond the Government

Although youth participation in government decisionmaking is critical, efforts to invigorate youth voice should not be limited to the public sector. Changes are also needed in both the nonprofit and for-profit private sectors.

For many nongovernmental organizations (NGOs) that serve or work on behalf of children, this will mean shifting away from traditional constructs of childhood and moving from seeing children as charitable cases to viewing them as rights holders and genuine partners.¹⁸³ Indeed, many organizations that serve children do not engage young people in their decisionmaking processes.¹⁸⁴ This must change to genuinely support the rights and healthy development of children. To realize this change, however, organizations need not reinvent the wheel. There are many examples of place-based initiatives¹⁸⁵ that support nonprofit organizations in promoting youth participation.¹⁸⁶

For the private sector, mainstreaming requires that businesses go beyond viewing children merely as a market to be exploited.¹⁸⁷ It means viewing young people as partners in a collaborative effort to support and enhance communities, rather than only extracting profit from them. Several efforts in the private sector offer models of how other entities can support youth participation by funding youth-led and youth-serving organizations.¹⁸⁸

The starting point for any of these steps, whether in the public or private sector, is recognizing that children have a right to be heard in decisions that affect their lives. This

launched in multiple U.S. cities to utilize the children's rights framework and child participation in achieving policy and systems goals).

183. A number of NGOs already have embraced these ideas. *See, e.g.*, SUNRISE MOVEMENT, *supra* note 167 (youth-led advocates for political action on climate change); YOUTH JUST. COAL. L.A., <https://youthjusticela.org/> (last visited Apr. 1, 2023) (abolitionist, youth-led movement to end police terror, mass incarceration, and the criminalization of youth of color); GENERATION RATIFY, <https://www.generationratify.org/> (youth-led movement to ratify the Equal Rights Amendment (ERA) and advance gender justice).

184. *Cf. Involving Youth in Positive Youth Development*, YOUTH.GOV <https://youth.gov/youth-topics/involving-youth-positive-youth-development> [<https://perma.cc/U5G5-46EL>] (last visited Apr. 1, 2023) (“Meaningful youth engagement views youth as equal partners with adults in the decision-making process. Programs and activities are developed *with* youth, rather than *for* youth.”).

185. SALLY ROOD & SHARON MCGRODER, NAT'L GOVERNORS ASS'N, PROMOTING PLACE-BASED STRATEGIES TO ADDRESS POVERTY: EXPLORING THE GOVERNOR'S ROLE 1 (2017), <https://www.ddef.org/globalassets/17-0118-nga-place-based-strategies-to-address-poverty-issue-brief.pdf> [<https://perma.cc/7L9C-FDTL>] (“Place-based strategies seek to strengthen the physical, social, structural and economic conditions of a community that affect the well-being of the children, families and individuals who live there.”).

186. *See, e.g.*, ALL CHILDREN THRIVE – CAL., <https://act-ca.org/> [<https://perma.cc/G345-5Y8V>] (last visited Apr. 1, 2023) (supporting nonprofit youth-serving coalitions with grant funding to develop youth-adult partnerships and to create campaigns for community-driven policy and systems change to prevent child violence and trauma).

187. Child participation in the business sector has been largely underexplored. *See, e.g.*, Christina McMellon & E. Kay M. Tisdall, *Children and Young People's Participation Rights: Looking Backwards and Moving Forwards*, 28 INT'L J. CHILD.'S RTS. 157, 167 (2020).

188. *See, e.g.*, FUNDERS' COLLABORATIVE ON YOUTH ORG., <https://feyo.org/> [<https://perma.cc/NV9V-J8BW>] (last visited Apr. 1, 2023) (a national effort that pools private philanthropic funds together to support youth participation).

right imposes a corresponding duty on adults and institutions to create the conditions and relationships that support young people and enable them to realize their right to participate.¹⁸⁹ The right also includes having a say in how they want to participate—that is, any youth engagement initiative undertaken by a public or private entity should begin by asking young people how they want to engage.

C. Processes Vital to Rights-based Participation

Process matters.¹⁹⁰ To ensure that a focus on youth participation rights will result in meaningful participation requires that we account for a number of key issues, including (1) the need for broad-based participation, (2) the need to meet children where they are, (3) the need to confront and overcome barriers to participation, (4) the need to invest in and build children’s capacities to participate effectively in their community, and (5) the need to help prepare adults to support children’s active participation.

1. Broad-based Participation

Forging more meaningful youth participation will require organized community-level power shifts to recognize the value of the lived experience and views of all youth. Recognizing the value of all children and adolescents will demand that outreach to and engagement with young people reach all communities and reflect the diversity of young people in the United States. Too often, efforts to involve youth rely disproportionately on well-connected, privileged youth or a relatively narrow group of repeat players.¹⁹¹ We must ensure broad diversity in children’s participation. That means taking proactive steps to facilitate the participation of youth of color, LGBTQIA+ youth, immigrant children, religious minorities, children with disabilities, and other young people who are often relegated to the margins. It also means recognizing that older youth (e.g., sixteen- and seventeen-year-olds) cannot necessarily represent the views of children of all ages. Instead, special efforts are needed to reach younger children in developmentally appropriate ways. It also means confronting structural and systemic barriers to meaningful youth participation; as other scholars have highlighted, we must dismantle “anti-democratic” systems that serve to “subordinate black people politically” as well as other historically marginalized groups.¹⁹² Ultimately, meaningful youth participation means elevating the voices of *all* youth. Ensuring processes that embrace diversity and representation of all communities is also consistent with the mandate of a rights-based approach.¹⁹³

189. Carine Le Borgne & E. Kay M. Tisdall, *Children’s Participation: Questioning Competence and Competencies?*, 5 SOC. INCLUSION 122, 127 (2017) (“The research evidence underlines that children’s competence and competency are not intrinsic and individual characteristics but situated and relational.”).

190. See *supra* notes 122–124 discussing procedural justice.

191. Lansdown, *supra* note 156, at 17 (“There is a danger that some children become almost ‘professionalised’ as speakers and representatives for their organization with the result that they spend their lives in public arenas and away from the roots that provide the source and legitimacy for their contribution.”).

192. Dorothy E. Roberts, *Democratizing Criminal Law as an Abolitionist Project*, 111 NW. U. L. REV. 1597, 1598 (2017) (“[A]chieving racial justice in the criminal justice system is essential to making the United States a truly democratic society.”).

193. See CRC, *supra* note 3, art. 2 (nondiscrimination principle).

2. Meeting Young People Where They Are

As adults consider how they and the entities they operate must adapt to foster meaningful youth participation, they must be cognizant of the diverse experiences young people have had with authority figures and with the state. Although some young people's experience of the United States is one of growing active participation in and support from the state, for others interacting with the state—whether it be schools, child welfare, law enforcement, courts, or other entities that intersect with children's lives—has been a traumatic experience.¹⁹⁴ Many youth mistrust the state and view it as a site of harm or, at best, useless. Some youth might have a great deal to contribute to their communities, yet they may not view state apparatuses as the best path for doing so. Echoing abolitionists' calls in other sectors, from child welfare to juvenile justice,¹⁹⁵ we recognize that more far-reaching changes or strategies may be necessary to foster meaningful participation by all youth. Critical to uplifting all young people's voices will be to meet children where they are.¹⁹⁶ Rather than expecting youth to adapt and conform continuously to adult-centric institutions, we need to engage young people where they want to meet, to address the issues they care about in settings and ways in which they are comfortable participating. It also means recognizing the diverse strengths and assets of children and adolescents¹⁹⁷ and supporting projects that “allow adult allies to learn from young people as well as build a base of youth leaders excited about the power of research and data to shift conditions of inequity and harm.”¹⁹⁸ Ultimately, young people are rights

194. See Sarah Katz, *Trauma-Informed Practice: The Future of Child Welfare?*, 28 WIDENER COMMW. L. REV. 51, 51, 62 (2019) (discussing how, due to the serious lifecourse health development ramifications of ignoring individual and community level trauma, health and public health professionals within these systems are employing trauma-informed approaches in order to prevent, mitigate, and treat complex trauma in children and youth created by interactions with state entities); KRISTIN HENNING, *THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH* 14–16 (2021); see also Susan J. Ko, Julian D. Ford, Nancy Kassam-Adams, Steven J. Berkowitz, Charles Wilson, Marleen Wong, Melissa J. Brymer & Christopher M. Layne, *Creating Trauma-Informed Systems: Child Welfare, Education, First Responders, Health Care, Juvenile Justice*, 39 PRO. PSYCH.: RSCH. & PRAC. 396, 401 (2008) (explaining how each of the systems named in the title of this article “serve trauma-exposed and bereaved children and adolescents” that require a raised “standard of care and improving access to services for traumatized children and adolescents nationwide”).

195. See Durell M. Washington, Toyon Harper, Alizé B. Hill & Lester J. Kern, *Achieving Juvenile Justice Through Abolition: A Critical Review of Social Work's Role in Shaping the Juvenile Legal System and Steps Toward Achieving an Antiracist Future*, 10 SOC. SCIS. 211 (2021) (calling on social workers and other key stakeholders “to build support networks to help push transformational reforms that will ultimately lead to the eradication of the juvenile legal system”); Janell Ross, *One in Ten Black Children in America Are Separated from Their Parents by the Child-Welfare System. A New Book Argues That's No Accident*, TIME (Apr. 20, 2022, 9:30 AM), <https://time.com/6168354/child-welfare-system-dorothy-roberts/> [<https://perma.cc/UL7Q-KDQH>] (quoting Dorothy Roberts: “Fundamentally, we need a completely different approach to child welfare and child protection that doesn't rely on accusations and investigation and punishing families. You need an approach that is truly caring for children and families, that provides the material resources that children need to be healthy and safe and thriving.”).

196. Jonathan Todres, *Making Children's Rights Widely Known*, 29 MINN. J. INT'L L. 109, 142 (2020).

197. See Daniel TL Shek, Diya Dou, Xiaoqin Zhu & Wenyu Chai, *Positive Youth Development: Current Perspectives*, 10 ADOLESCENT HEALTH MED. & THERAPEUTICS 131, 132–33 (2019).

198. Brian Villa, Dashia Wright, Paul Ruiz, Lily Boonnam, Leili Lyman, Katherine Escobar & Lana Tilley, *RYSE Youth Center: Youth Participatory Action Research*, 33 J. FAM. VIOLENCE 597, 604 (2018); see

holders and must be treated with respect for the human dignity inherent in every one of them. Meeting them where they are, recognizing their strengths, and ensuring their voices are heard can help to fulfill this core idea of children's rights.

3. Confronting Barriers to Youth Participation

Both public and private sector actors need to pay special attention to barriers to participation for youth generally and for specific populations of young people. Barriers that impede meaningful youth participation can be financial, geographic, and informational, among other things. From ensuring free transportation for civic engagement activities to providing information to youth in formats and mediums where they seek information about their world, to reducing scheduling conflicts (e.g., not scheduling key community meetings during school hours), numerous low-cost interventions can facilitate youth civic engagement and remove barriers to meaningful participation.

In addition, there is a more subtle but pernicious obstacle that frequently serves as a barrier to youth participation: too often, children are held to higher standards than adults.¹⁹⁹ That is, adults may dismiss young people outright if any of their ideas seem too impractical. Ironically, children are often deemed naïve or impractical for envisioning a better world and for acting to end violence and discrimination. Like adults, young people will disagree with one another and, at times, propose infeasible ideas. However, we do not strip adults of voting or other participation rights because of this, whether adults' actions reflect genuine differences of opinion or immaturity. Young people should be entitled to the same respect and treatment, and adults must not use perceptions of "competence" as a means to exclude children from meaningful opportunities to participate in decisionmaking processes.²⁰⁰

4. Building Children's Participation Skills

Beyond addressing the process by which young people are engaged, there is also a significant need to build the foundation of meaningful youth participation by supporting the development of young people's civic engagement capabilities. To achieve this, we need to educate children about their rights and their duties to respect and uphold the rights of others and provide them opportunities to engage in deliberative democratic processes. Successfully educating young people about human rights and civic engagement will necessitate reinvigorating education. As Wendy Brown cautions:

also Emily J. Ozer, *Youth-led Participatory Action Research: Overview and Potential for Enhancing Adolescent Development*, 11 CHILD DEV. PERSP. 173, 174 (2017).

199. Rebecca Eanes, *Great Expectations: Holding Children to Higher Standards than Adults*, BOSTON PARENT, <http://bostonparentpaper.com/great-expectations-holding-children-to-higher-standards-than-adults/> [https://perma.cc/Y7HQ-UZ7J] (last visited Apr. 1, 2023); HENNING, *supra* note 194, at 228 ("Black youth who act out as a symptom of their mental health challenges are often punished, excluded from school, or arrested.").

200. Le Borgne & Tisdall, *supra* note 189, at 123; Rachel Hinton, *Children's Participation and Good Governance: Limitations of the Theoretical Literature*, 16 INT'L J. CHILD.'S RTS. 285, 293 (2008) (discussing "competence bias" among adults that leads to undervaluing children's insights and contributions).

Once education is no longer about creating an educated democracy but instead about an individual investment in an income and a future, you start to lose the capacity to educate citizens for citizenship. Instead, you produce the capacity of power—economic power, political power, technological power, financial power—to manipulate, manage, and organize those who are seen as not having the capacity to be citizens. We act as if the vote—enfranchisement and legality—is what constitutes citizenship. What makes citizenship meaningful in a democratic order is being thoughtful, deliberative, and educated enough to be able to decide with others who we ought to be together and what we ought to do.²⁰¹

Reorienting education to nurture young people’s full potential and their capacity to engage in and advance democracy is imperative to the well-being and healthy social development of children and their communities. Human rights education can play a key role in achieving these aims. As Howe and Covell explain:

The evidence shows overwhelmingly that children who learn about and experience their rights are children who demonstrate the fundamentals of good citizenship. They gain knowledge not only of their basic rights but also their corresponding social responsibilities. They develop the attitudes and values that are necessary for the promotion and protection of the rights of others, and they acquire the behavioural skills necessary for effective participation in a democratic society.²⁰²

Not only does human rights education develop good citizenship skills, but it also benefits the school environment by reducing bullying and peer aggression as students stand up for themselves and each other.²⁰³ Moreover, schools and communities can implement human rights education both across the curriculum and in community-based spaces, and not just in civics or social studies classes.²⁰⁴

201. Rafael Khachaturian, *Rights Without Bounds: An Interview with Wendy Brown*, *DISSENT* (Mar. 23, 2022), [<https://perma.cc/6D4D-42TF>]; see also MICHAEL A. REBELL, *FLUNKING DEMOCRACY: SCHOOLS, COURTS, AND CIVIC PARTICIPATION* 3 (2018) (“Over the past half century, however, most American schools have substantially neglected their responsibility to prepare students for civic participation.”); Melissa Murray, *Sex and the Schoolhouse*, 132 *HARV. L. REV.* 1445, 1446 (2019) (book review) (“[S]chools are sites of values inculcation—places where the state may instruct a common core of citizenship values.”).

202. R. BRIAN HOWE & KATHERINE COVELL, *EMPOWERING CHILDREN: CHILDREN’S RIGHTS EDUCATION AS A PATHWAY TO CITIZENSHIP* 7 (2005). In contrast, “[c]hildren who have not been taught their rights, in a rights-respecting environment, tend to personalize the concept of rights and have difficulty appreciating the rights of others. . . . [C]hildren who have not received children’s rights education tend to believe that having rights means being able to do what you want.” *Id.* at 15.

203. *Id.* at 148; see also Felisa Tibbitts & Peter G. Kirchsclaeger, *Perspectives of Research on Human Rights Education*, 1 *ZFMRB* 8, 11–12 (2010), [https://blogs.cuit.columbia.edu/peace/files/2013/05/tibbitts_kirchsclaeger_research_hre_jhre_1_2010.pdf] [<https://perma.cc/XM6N-KDPP>]; see also Monisha Bajaj, *Human Rights Education: Ideology, Location, and Approaches*, 33 *HUM. RTS. Q.* 481, 502–04 (2011). In addition, other strategies—including trauma-informed practices—can help create positive relationships and learning environments for all students. See EDUC. L. CLINIC OF HARV. L. SCH. & TRAUMA AND LEARNING POL’Y INITIATIVE OF MASS. ADVOCS. FOR CHILD. AND HARV. L. SCH., *STUDENTS’ VOICES: THEIR PERSPECTIVES ON HOW SCHOOLS ARE AND SHOULD BE* 4–7 (2019).

204. Jonathan Todres, *The Trump Effect, Children, and the Value of Human Rights Education*, 56 *FAM. CT. REV.* 331, 336–37 (2018); Jonathan Todres & Ursula Kilkelly, *Advancing Children’s Rights Through the Arts*, 44 *HUM. RTS. Q.* 38, 40, 48 (2022).

Together, these steps can help build a child-centered, rights-based approach to civic engagement. A process that is inclusive of all youth, respectful of their diverse lived experiences, agile enough to meet young people where they are, and cognizant of potential barriers can significantly advance youth participation. Further, widespread implementation of human rights education can ensure we are developing the next generation to play meaningful roles in their communities today and in the future.

5. Preparing Adults to Support Youth Participation

Finally, adults—as institutional actors and as community members—need to be effectively engaged so that they support children’s development and civic engagement. The Convention on the Rights of the Child recognized the important role that adults play in advancing children’s rights when it mandated that governments make children’s rights “widely known” not only among children but also among adults.²⁰⁵ The treaty’s drafters recognized the essential role of adults in the effort to achieve full realization of children’s rights.²⁰⁶ So the realization of children’s rights, and specifically children’s participation rights, will necessitate that child advocates and other stakeholders identify what specifically is needed to prepare adults to support children’s meaningful participation because “[a]dults—whether as parents, professionals or policy decision-makers—retain considerable control over what ‘counts’ as children’s participation: about which children should be heard, when, on what topic, and to what effect.”²⁰⁷ Too often, “[a]dults perceive children as having limited or lesser competence than adults, with the concentration on children’s lack of competence to participate rather than adults’ lack of competence in enabling children to participate.”²⁰⁸ Even among those who support youth, some continue to be unsure of how to effectively listen to and learn from children and partner with youth in ways that empower them, rather than co-opt their agenda.²⁰⁹ Yet there are proven successful models of youth-adult partnerships.²¹⁰ In addition, research has shown what youth want from adults. As Al Liou and Ioana Literat explain:

205. CRC, *supra* note 3, art. 42 (requiring that children’s rights be made “widely known, by appropriate and active means, to adults and children alike”).

206. *See id.*

207. Le Borgne & Tisdall, *supra* note 189, at 122. Le Borgne and Tisdall note that in their research, “[a]dults’ perceptions of children’s competence and competencies made a considerable difference to the extent that children’s participation activities influenced decisions in their communities.” *Id.* at 125.

208. *Id.* at 123.

209. There are proven models, the first step of which is for adults to check their adulthood. *See* Youth Speak Out Coal. & Kristen Zimmerman, *Making Space, Making Change: Models for Youth-Led Social Change Organizations*, 17 CHILD., YOUTH & ENV’TS 298, 300–01 (2007).

210. Shepherd Zeldin, Brian D. Christens & Jane L. Powers, *The Psychology and Practice of Youth-Adult Partnership: Bridging Generations for Youth Development and Community Change*, 51 AM. J. CMTY. PSYCH. 385, 388 (2013) (“Over the past 40 years the practice of Y-AP [Youth-Adult Partnership] has emerged as a foundational practice for positive youth and civic development.”). When recognizing participation rights in young people, adult allies have a myriad of models to draw from to help cultivate positive youth development. In this model, a Y-AP depends on adults creating space and stepping back when appropriate. Zeldin et al. explain further that “youth voice is not only about expression, but more centrally, it is about recognition by powerful others and by inclusion in consequential deliberations. This implies that youth should actively participate at the center of collective decision making” *Id.* at 390.

In describing their visions for intergenerational allyship, youth activists stressed the momentousness of relational and emotional solidarity, as compared with material and transactional forms of support. Youths' ideal partnerships with adults are rooted in mutuality, trust, and care. Although dominant culture places value on material goods and transactional practices or relationships, the highest value "resource" for youth activist praxis was having allies who listen to and affirm youth, who consistently show up for youth, and who believe in youth power. Importantly, in the eyes of youth activists, relational forms of solidarity necessitate continuous action and long-term inquiry on the part of adults, as well as the willingness to step back and decenter themselves with respect to youth activist movements.²¹¹

Many child-centered and youth-focused models reflect this understanding of young people and genuinely support youth participation.²¹² Building and scaling these models will help develop the skills adults need to support meaningful youth participation in all communities and sectors.

The process of scaling up youth participation schemes will require that we confront challenges on the part of adults that have led to the systematic exclusion of young people from decisionmaking processes. Although some adults genuinely incorporate and empower youth voices in initiatives they oversee, many others do not. Some adults seem willing to listen and be empathetic but cannot overcome bureaucratic challenges to meaningful youth participation or are unwilling to expend the political capital needed to do so. Finally, many adults appear dismissive of or unwilling to listen to and take seriously young people's views.²¹³ More concerning, in the current climate of highly-charged, aggressive expression and divisive rhetoric, some adults have gone beyond merely being dismissive of children to an aggressive anti-youth stance that risks further suppressing young people, in particular youth of color and LGBTQIA+ youth.²¹⁴ Tragically, these various forms of resistance to meaningful youth participation ignore the

211. Al Liou & Ioana Literat, "We Need You to Listen to Us": Youth Activist Perspectives on Intergenerational Dynamics and Adult Solidarity in Youth Movements, 14 INT'L J. COMMUN 4662, 4678 (2020).

212. Early childhood education is one space in which there has been innovation to center children's voices and participation. See, e.g., Reggio Emilia Approach, *Values: Principles of the Educational Project*, <https://www.reggiochildren.it/en/reggio-emilia-approach/valori-en/> [<https://perma.cc/G3YN-A93F>] (last visited Apr. 1, 2023) (emphasizing the importance of "participation" and recognizing that every child "is the subject of rights" and "individually and in their relations with the group, is a constructor of experiences to which they are capable of attributing sense and meaning."); Brianna Flavin, *What Is Reggio Emilia? Your Guide to This Child-Driven Approach*, RASMUSSEN UNIV. (Feb. 24, 2020), <https://www.rasmussen.edu/degrees/education/blog/what-is-reggio-emilia/> [<https://perma.cc/HP68-GF29>] (explaining that the Reggio Emilia approach emphasizes "creating a co-learning environment where teachers learn with the children and work in a lateral relationship as opposed to a hierarchical one").

213. See Michael Freeman, *Introduction*, in CHILDREN'S RIGHTS: PROGRESS AND PERSPECTIVES 1, 8 (Michael Freeman ed., 2011) ("It has always been to the advantage of the powerful to keep others out. It is not, therefore, surprising that adults should want to do this to children, and that they should wish to keep them in an often imposed and prolonged dependence, which history and culture shows to be neither inevitable nor essential. Think of the other side of inclusion—of exclusion, and what this generates both on the part of the excluded and their victims, the socially excluded. And observe how the powerful regulate space—social, political, geographical—define participation, marginalise significance, and frustrate development." (citations omitted)).

214. See Sacha M. Coupet, *Valuing All Identities Beyond the Schoolhouse Gate: The Case for Inclusivity as a Civic Virtue in K-12*, 27 MICH. J. GENDER & L. 1, 9 (2020).

reality that listening to, involving, and empowering young people will result in the healthier development of young people and the strengthening of schools, neighborhoods, communities, and more.²¹⁵

D. The Role of Law in Advancing Youth Participation

Although the steps outlined above are, in some respects, advocacy strategies, they are also a call for reconsideration of the current U.S. legal framework and a call for legal reform.²¹⁶ As described in Section II, the law largely presents a barrier to youth participation, rather than creating the supports necessary to facilitate youth civic engagement.²¹⁷

With respect to initiatives aimed at institutions, law is needed to create a federal authority to coordinate government programs for children (and parallel authorities at the state level where they do not already exist), establish youth councils and commissions at all levels of government, and ensure funding for these and other pathways for youth participation and representation. Legislation can also provide incentives for nongovernmental organizations and private sector entities to be more child-centered and inclusive of youth. For example, legislators can create child- and youth-program funds by drafting proposals for public tax vehicles that generate revenues for these funds.²¹⁸

215. See Emily J. Ozer, *Youth-Led Participatory Action Research: Developmental and Equity Perspectives*, in 50 *ADVANCES IN CHILD DEVELOPMENT AND BEHAVIOR* 189, 196–97 (Stacey S. Horn, Martin D. Ruck & Lynn S. Liben, eds., 2016).

216. See Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 *CLINICAL L. REV.* 147, 155 (2016) (“The work of lawyers in our sector can be dynamic, creative, and inspiring, yet if the goal is to address large systems of oppression, it is largely futile if done in a silo, disconnected from other like-minded individuals and organizations. The only viable path to substantially raising the efficacy of our legal work in this context is to create greater linkages between it and broader, more comprehensive strategies, such as those involving organizing, strategic communications, and grassroots-led policy advocacy at the local, regional, and national levels.”); see also Betsy Fordyce, *The Collective Power of Youth*, ABA (Jan. 15, 2019), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2019/winter2019-the-collective-power-of-youth/> [https://perma.cc/NZE3-DEEA] (“Lawyers who act as adult allies for youth organizing groups are serving as movement lawyers, empowering youth with the skills, opportunities, and resources to change . . . system[s] for the better.”).

217. We recognize that the current legal framework, which offers few avenues for meaningful youth participation, may well be intended to do just that. That is why any efforts to reform and advance youth participation in the United States will need to confront the underlying resistance to youth voice among many adults and public and private institutions.

218. See SAMANTHA HARVELL, CHLOE WARNBERG, LEAH SAKALA & CONSTANCE HULL, *URB. INST., PROMOTING A NEW DIRECTION FOR YOUTH JUSTICE: STRATEGIES TO FUND A COMMUNITY-BASED CONTINUUM OF CARE AND OPPORTUNITY*, 30–31 (2019) (“One strategy for generating new revenue to support youth is to create a state or local tax specifically for that purpose.”); see also Arlene Martinez, *Santa Paula Youths Suggest Best Ways to Spend Measure T Sales Tax Money*, VC STAR (Apr. 13, 2018, 6:46 PM), <https://www.vcstar.com/story/news/local/communities/santa-paula/2018/04/13/santa-paula-youths-suggest-best-ways-spend-measure-t-sales-tax-money/515263002/> [https://perma.cc/H3EP-KT4T] (noting that the City of Santa Paula approved a one-cent tax increase for youth programs; revenue generated from this local policy measure goes into a youth development fund); *Youth Community Access Grant Program*, CAL. GRANTS PORTAL (Oct. 18, 2022, 7:39 AM), <https://www.grants.ca.gov/grants/youth-community-access-grant-program/> [https://perma.cc/494E-DNXW] (under the Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64), earmarking “60 percent (60%) of the tax revenues from marijuana sales for youth programs designed to educate about and prevent

Law can also provide incentives and funding to support the development of human rights education and civic education in public schools. Such initiatives are inextricably linked to broader education funding questions. Although the Supreme Court held, in *San Antonio Independent School District v. Rodriguez*,²¹⁹ that the appellees did not sufficiently prove that education is a fundamental constitutional right, the decision has spurred a long line of public school financing litigation across state courts. State courts and legislatures have opined on constitutional theories of educational adequacy²²⁰ and equity, especially the ways wealth discrimination affects access and quality in marginalized school districts.²²¹ In *Campaign for Fiscal Equity, Inc. v. State*,²²² the New York Court of Appeals required the state to ensure an adequate education defined as the opportunity for all children to obtain “the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury.”²²³ The Texas Supreme Court similarly mandated equitable school financing across school districts in *Edgewood Independent School District v. Kirby*.²²⁴ In a series of cases (*Abbott I-XXI*) spanning over forty years, the New Jersey Supreme Court compelled financial reform of the state school financing system in twenty-eight districts in order to secure adequate and equal education for low-income students.²²⁵ As lawyers continue to litigate tirelessly across state courts, the U.S. Supreme Court’s decisions continue to cast a shadow of inequitable access to opportunities for children to learn the fundamentals of civic participation.²²⁶ Indeed, Justice Brennan forewarned his colleagues as he dissented in the landmark decision in *San Antonio Independent School District v. Rodriguez*: “Here, there can be no doubt that

substance use disorders and to prevent harm from substance use”); *Colorado Marijuana TABOR Refund Measure, Proposition BB (2015)*, BALLOTPEdia, https://ballotpedia.org/Colorado_Marijuana_TABOR_Refund_Measure_Proposition_BB [<https://perma.cc/2VW2-CFJS>] (last visited Apr. 1, 2023) (mandating spending on school construction and youth programs).

219. 411 U.S. 1, 35–39 (1973).

220. Goodwin Liu, *Education, Equality, and National Citizenship*, 116 YALE L.J. 330, 330 (2006).

221. NAT’L ACADS. OF SCIS., ENG’G, AND MED., EQUITY AND ADEQUACY IN EDUCATION FINANCE: ISSUES AND PERSPECTIVES (Helen F. Ladd, Rosemary Chalk & Janet S. Hansen, eds., 1999).

222. 655 N.E.2d 661 (N.Y. 1995).

223. *Id.* at 666; see also *Campaign for Fiscal Equity v. State of New York (Challenging State’s Failure to Provide NYC Children “Sound Basic Education”)*, NYCLU, <https://www.nyclu.org/en/cases/campaign-fiscal-equity-v-state-new-york-challenging-states-failure-provide-nyc-children-sound> [<https://perma.cc/W2RD-ZRAQ>] (last visited Apr. 1, 2023) (NYCLU continues pursuing ongoing litigation “to support legislation that would attempt to implement the CFE principles statewide.”).

224. 777 S.W.2d 391, 396–99 (Tex. 1989).

225. See, e.g., *Abbott v. Burke (Abbott XXI)*, 20 A.3d 1018, 1023–24 (N.J. 2011).

226. See Andrea Sachs, *The Worst Supreme Court Decisions Since 1960*, TIME (Oct. 6, 2015, 11:36 AM), <https://time.com/4056051/worst-supreme-court-decisions/> [<https://perma.cc/8J6U-ULSU>] (quoting Erwin Chemerinsky who named *San Antonio Independent School District v. Rodriguez* as a decision that “played a major role in creating the separate and unequal schools that exist today” and Steven Shiffrin, who also named the decision as having “permitted millions of children to be imprisoned in a system of educational inequality”).

education is inextricably linked to the right to participate in the electoral process and to the rights of free speech and association guaranteed by the First Amendment.”²²⁷

Beyond the role of the law in supporting the development and implementation of youth participation rights in the United States, further consideration should be given to additional, existing barriers in U.S. law and policy. As noted in Section II, in many settings, children are granted a lesser version of adult constitutional rights (e.g., through the imposition of curfews and status offender laws). As these restrictions implicate foundational human rights that children possess—at least under the global consensus of international children’s rights law—the federal government and state legislatures should revisit the necessity of such restrictions on children’s rights, in light of the developmental needs and capabilities of young people. Similarly, they should revisit the indirect barriers imposed on youth civic engagement and voice in their community described in Section II. That does not mean minimum ages for work should be struck, but rather we should retain needed protections for young children and look for other pathways to reduce the inequalities imposed on children (e.g., genuine campaign finance reform would reduce the economic influence brought to bear on elections, thus minimizing the impact of children’s limited economic power).²²⁸ Finally, larger questions about minimum ages to vote and hold office should be reflected upon. The science of child development has evolved dramatically in the last twenty years. As a result, we have a much better idea of children’s capacities and whether, for example, they have the capacity to vote before they are eighteen years old.²²⁹

In short, the law is critical to considering youth participation rights in the United States, both because it can be a valuable tool to help advance youth rights and because it currently operates as a barrier to civic engagement in ways that must be reconsidered.

E. A Brief Note on Broader Implications for the U.S. Approach to Rights

The United States has long lauded the idea that rights are inherent. The foundational document of the United States, the Declaration of Independence, famously states, “[w]e hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”²³⁰ Of course, the drafters of the Declaration of Independence did not actually envision “all” as including every individual, but rather only a very limited subset.²³¹ Despite this, the Declaration has been held up as an articulation of the

227. 411 U.S. 1, 63 (1973) (Brennan, J., dissenting); *see also* *New Jersey v. T.L.O.*, 469 U.S. 325, 373 (1985) (Stevens, J., concurring in part, dissenting in part) (“Schools are places where we inculcate the values essential to the meaningful exercise of rights and responsibilities by a self-governing citizenry.”).

228. Such actions taken in the name of children’s rights would have benefits for much broader segments of the population, as many adults who are currently economically marginalized by the large-scale spending in political campaigns would reap benefits of these changes too.

229. Furthermore, there are important questions to ask regarding whether capacity should change what rights an individual has, as we do not categorically deny voting rights to adults with limited capacity.

230. THE DECLARATION OF INDEPENDENCE, para. 2 (U.S. 1776).

231. *See Creating the United States: Creating the Declaration of Independence*, LIBR. OF CONG., <https://www.loc.gov/exhibits/creating-the-united-states/interactives/declaration-of-independence/equal/index.html> [https://perma.cc/T3LS-M5GD] (last visited Apr. 1, 2023).

inherent equality of all individuals from birth.²³² Yet, in practice, the United States has not embraced the idea that rights are inherent. Children's rights bring this issue to the forefront and challenge the United States to reflect on its construct of rights. To accept that rights are inherent would mean recognizing children as rights holders, which the United States has done only piecemeal and reluctantly.²³³ Indeed, the U.S. approach has hardly embraced children's rights; the United States is the only country in the world not to have ratified the U.N. Convention on the Rights of the Child.²³⁴ More broadly, it has consistently resisted the domestic application of international human rights.²³⁵

This constructed, limited-scope approach to children's rights has important implications that are beyond the scope of this Article on children's participation rights but merit further consideration. In short, resisting recognition of children's rights is antithetical to the idea that rights are inherent in all human beings.²³⁶ If one does not accept children as rights holders, then rights are constructed, not inherent. They are granted by governments rather than imbued in all individuals regardless of status. Yet a core tenet of human rights law, from its beginnings, is that rights are not dependent on government largesse.²³⁷ So the failure to genuinely embrace the idea that rights are inherent means that the rights of all individuals—children and adults—are on shaky footing in the United States. They can be granted or expanded by Congress or the courts or constrained or denied by the same government institutions.

In our view, embracing children's rights can advance a rights construct in the United States that is much closer to what the Universal Declaration of Human Rights asserted in 1948, that “[a]ll human beings are born free and equal in dignity and rights.”²³⁸ At a minimum, however, consideration of children's rights should spur deeper reflection on the nature of human rights as constructed historically and today in the United States.

232. See, e.g., David Armitage, *The Declaration of Independence: The Words Heard Around the World*, WALL ST. J. (July 3, 2014, 3:18 PM), <https://www.wsj.com/articles/the-declaration-of-independence-the-words-heard-around-the-world-1404415089> [<https://perma.cc/T48A-PT9K>] (“No American document has had a greater impact on the wider world. As the first successful declaration of independence in history, it helped to inspire countless movements for independence, self-determination and revolution after 1776 and to this very day.”).

233. See, e.g., *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (recognizing free speech rights with limitations); *In re Gault*, 387 U.S. 1 (1967) (recognizing due process rights). But see *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35–39 (1973) (not recognizing a right to education).

234. *Convention on the Rights of the Child—Status of Ratifications*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en [<https://perma.cc/MM4D-4FJH>] (last visited Apr. 1, 2023) (196 countries are party to the CRC; only the United States is not).

235. Louis Henkin, *Rights: American and Human*, 79 COLUM. L. REV. 405, 421 (1979) (“The United States has been active in promoting human rights in the United Nations, in the Organization of American States, and in other international institutions. But the United States has not been a pillar of human rights, only a ‘flying buttress’—supporting them from the outside. . . . [W]e have not accepted international human rights for ourselves.”).

236. See Todres, Book Review, *supra* note 7, at 582–83.

237. *Id.*

238. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 1 (Dec. 10, 1948).

CONCLUSION

Although significant changes are needed to make children's participation rights meaningful in the United States, the foundations upon which to forge these changes already exist, including the years of experience of, and models developed by, youth-led and youth-serving organizations. As discussed earlier, many organizations practice youth-adult partnership strategies, and many youth programs practice all modes of participation.²³⁹ Scaling youth participation rights may require collaborating with existing youth organizations and sharing existing organizing strategies, survey tools, promising practices, models, and methods for implementation, as well as adopting tactics for overcoming challenges such as adultism in decisionmaking and attrition/turnover in youth groups.²⁴⁰ Youth participatory action research and other models, such as youth policy advocacy and youth organizing, have created a sea change on numerous social justice platforms, from the passage of equitable economic inclusion policies²⁴¹ to Black Lives Matter protests for racial justice in the aftermath of the police murder of George Floyd.²⁴²

Beyond the youth participatory action tools and models mentioned above, there are a breadth of current examples of young people and adult allies forging intergenerational movements that demand young people be heard and, in turn, that leaders at all levels of government support young people's advocacy and influence on the institutions and policies that affect their lives. These approaches enhance family well-being and the space for adults and children to "build on each other's successes."²⁴³ There are also models for institutional structures that can support young people and ensure they have a voice in decisionmaking processes. The global movement spurred by Greta Thunberg and her colleagues to demand immediate action on climate change is but one example.²⁴⁴ Her efforts, and many others, build upon youth-adult partnerships of the past and generate the groundswell of momentum necessary for truly transformative change.²⁴⁵ The storied

239. Heather L. Ramey, Heather L. Lawford & Wolfgang Vachon, *Youth-Adult Partnerships in Work with Youth: An Overview*, 12 J. YOUTH DEV., no. 4, 2017, at 38, 41.

240. *Id.* at 51–52; *see also supra* notes 209–211 and accompanying text.

241. Organizations such as Funding the Next Generation and Children's Funding Project have advocated for children and youth funds across the country. Resources such as *Map My Community* on youth.gov as well as toolkits on youth organizing for youth funds have been shared across youth serving organizations and youth-adult partnerships nationwide. *Map My Community*, YOUTH.GOV, <https://youth.gov/map-my-community> [<https://perma.cc/XS2P-AY5U>] (last visited Apr. 1, 2023). Others, such as Campus Compact, build civic and community engagement capacity among youth to empower them to enrich their lives and serve communities. *Mission and Vision*, CAMPUS COMPACT, <https://compact.org/who-we-are/mission-and-vision/> [<https://perma.cc/PH8B-82EQ>] (last visited Apr. 1, 2023).

242. *See* Bort & Aleah, *supra* note 117.

243. LINDSEY REICHLIN CRUSE, TESSA HOLZMAN & BARBARA GAULT, INST. FOR WOMEN'S POL'Y RSCH, DAVID CROOM & PORTIA POLK, ASPEN INST., PARENTS IN COLLEGE: BY THE NUMBERS 1 (2019).

244. She led four million people on a strike on September 20, 2019, in the "largest climate demonstration in human history." Charlotte Alter, Suyin Haynes & Justin Worland, *Person of the Year: Greta Thunberg*, TIME (2019), <https://time.com/person-of-the-year-2019-greta-thunberg/> [<https://perma.cc/Q4M9-4CER>].

245. *See* Zeldin et al., *supra* note 210, at 387 ("[T]he 1970s were the zenith of [Youth-Adult Partnerships] as a cornerstone of youth policy."). In the 1970s, communities engaged in youth civic learning and schools offered civic curricula across the country. The 1980s brought on an era of federal policy setbacks for youth civic

history of youth organizing and youth-adult partnerships have endured iterative progress, where developmental science has revealed itself to encourage certain best practices, where research has evolved to include youth participation in the design, implementation, and evaluation of policies and programs, and where intergenerational movement building has flexed and developed.

The United States now finds itself at a critical juncture. Alarmed at policymakers' indifference toward their current and future well-being, young people are refusing to sit quietly and allow their futures to be harmed or extinguished. At the same time, they are seizing opportunities available through new technologies to mobilize on behalf of their generation and their communities. In contrast, the law and, by extension, federal and state governments remain largely inflexible and unwelcoming of young people. Young people are denied the right to vote. Their rights to express themselves, protest, and demonstrate are subject to greater state restrictions than adults face. Protective legal frameworks deny them opportunities to have any economic influence in public spaces. And procedural mechanisms in agencies—such as built-in youth consultations—that would give young people opportunities to have a voice in the development, implementation, and evaluation of law and policy remain the exception rather than the rule. In short, pushed to the margins, youth today are left with few official channels to participate in the decisions that affect their lives. It is an untenable situation. For the sake of both children and our country, adults—from policymakers to parents—need a more rights-fulfilling approach to engaging and supporting children and adolescents. The state plays a critical role in establishing and sustaining formal channels for youth participation. When the state fails to fulfill its duties, it leaves children with fewer opportunities and pushes them to pursue means outside the system to ensure their voices are heard and the issues they care about are addressed. We should not marginalize more than twenty percent of our nation merely because of their age. Indeed, just as “[a]bolitionists believe [they] can imagine and build a more humane and democratic society that no longer relies on caging people to meet human needs and solve social problems,”²⁴⁶ we also believe it is possible to imagine and build a society in which children and adolescents are not silenced and marginalized. Instead, young people can be uplifted and valued for their insights, lived experience, and inherent value as fellow human beings. There are numerous paths to that more inclusive vision and robust engagement with young people that simultaneously nurture their healthy development and ensure positive outcomes for communities and the nation. It starts with recognizing children and adolescents as rights-bearing partners in our communities.

engagement, but in the 1990s private philanthropy began funding national youth initiatives. In the 2000s, there was a boom of mandates for youth civic participation in youth councils, commissions, and summits; in city-level policymaking and fund allocation; in adopting bills of rights for children and youth; and in developing voting engagement initiatives. *See id.*

246. DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* 18 (2022).