

Ophelia with Child: A Restorative Approach to Legal Decision-Making by Teen Mothers

Marie A. Failingert†

Given dire warnings in recent literature and the press about the effects of teenage motherhood on mothers and children,¹ we should probably first remember that children—as defined by modern legal standards—have always had children. In Rome and medieval Europe, for example, the law set the age of marriage at twelve for girls and fourteen for boys,² an age range that is currently utilized in other cultures around the world.³ What has changed over time is the social and economic context in which children have had children. The modern miniaturization of the Western family to its nucleus—mother, father, and their children⁴—and the rise of the individual as the fundamental Western social and legal unit⁵ have been accompanied by the legal

†. Associate Dean for Academic Affairs and Professor of Law, Hamline University School of Law. Thanks to the editors and staff of *Law and Inequality*, especially for their work on the references in this manuscript.

1. For brief annotations of these studies, see FLA. STATE UNIV. CTR. FOR PREVENTION & EARLY INTERVENTION POLICY, *THE CHILDREN OF TEEN PARENTS* (2005), http://www.cpeip.fsu.edu/resourceFiles/resourceFile_78.pdf (noting that children of adolescent mothers are more likely to suffer poor health and child abuse or neglect, to exhibit aggressive behavior, to drop out of high school, and to give birth before age eighteen).

2. NEW COMMENTARY ON THE CODE OF CANON LAW 1283 (John P. Beal et al. eds., 2000). Roman law and the Eastern churches set a clear rule for marriage age, while the Western churches made the presumption of capacity to marry rebuttable. *Id.* In later years, though, proof of sexual intercourse capability would substitute for proof of decision-making capacity as the dispositive issue. *Id.*

3. Innocenti Research Centre, United Nations Children's Fund, *Early Marriage: Child Spouses*, 7 INNOCENTI DIGEST 1, 4 (2001), available at <http://www.unicef-irc.org/publications/pdf/digest7e.pdf> (noting that early marriage is common around the world, with women typically getting married before fifteen years of age in India, between ten and fourteen years in Ethiopia, and at eleven years in Nigeria).

4. See Marleen O'Connor-Felman, *American Corporate Governance and Children: Investing in Our Future Human Capital During Turbulent Times*, 77 S. CAL. L. REV. 1255, 1278–82 (noting that the rise in the nuclear family model coincided with the industrialization of the United States and marked a shift away from the extended families of agricultural society).

5. See Daryl J. Levinson, *Collective Sanctions*, 56 STAN. L. REV. 345, 351–52 (2003) (explaining the traditional theory of the socio-legal shift from collective to

re-definition of relationships between family members.⁶ Instead of recognizing the family as the primary social entity with which the state must interact, in at least some areas of legal intervention, modern society has valorized the paradigm which largely “sees” only the individual who comes to the state and—at least legally speaking—erases most of the familial context from which he or she comes.⁷ The contemporary uncoupling of childbirth and marriage has created an extra measure of economic uncertainty for minor mothers and their children, necessitating that they seek the state’s help in enforcing child support and state economic assistance when that support is wanting.⁸

It is difficult to find much more ambivalence about which “family” the state should recognize than in situations where teen mothers raise their children within their families of origin. In the decades beginning with the 1960s, commentators decried the fact that the welfare system supported—or even financially encouraged—teen mothers to raise babies on their own.⁹ In recent decades, by contrast, lawmakers have acted to encourage minor parents who keep their children to continue living in their households of origin.¹⁰ Indeed, Minnesota’s Family Investment Program (MFIP), the key cash assistance program unwed mothers rely on, requires minor parents and their children to live with a

individual responsibility).

6. See Marie Failinger, *A Peace Proposal for the Same-Sex Marriage Wars: Restoring the Household to Its Proper Place*, 10 WM. & MARY J. WOMEN & L. 195, 231–32 (2004) (noting that legal responsibilities have changed with evolving family structures in the United States).

7. See, e.g., Levinson, *supra* note 5, at 351 (stating that societies have progressed “from the primitive stage, where the basic legal unit is the family, clan, or village, to the modern stage, where the basic legal unit is the individual”).

8. See, e.g., Melissa Froehle et al., *Answers to Pesky Family Law Questions Regarding Never Married Parents with Custody and Child Support Issues, and a Few Useful Charts!*, 18 FAM. L.F. 31, 31 (2009–10), available at http://www.mnbar.org/sections/family-law/FLF_Winter10_online.pdf (noting that two-thirds of Minnesota’s child support cases involve never-married parents).

9. See, e.g., Janine Jackson & Laura Flanders, *Public Enemy Number One?: Media’s Welfare Debate Is a War on Poor Women*, FAIR, May–June 1995, <http://www.fair.org/index.php?page=1303> (describing the demonization of teen mothers by the media and politicians).

10. GREGORY ACS & HEATHER KOBALL, THE URBAN INSTITUTE, TANF AND THE STATUS OF TEEN MOTHERS UNDER AGE 18 1–7 (2003), http://www.urban.org/UploadedPDF/310796_A-62.pdf. Advocates of the 1996 federal welfare reform provisions focused on teen parents argued that making it harder for teens to get welfare for their children would deter childbearing. *Id.* at 1. However, researchers have found that while teen parents are significantly less likely to get assistance since the 1996 statutory changes, there seems to be little difference in the number of teens bearing children, and little effect on where the teens live or whether they attend school more regularly. *Id.*

parent, guardian, adult relative, or in “an adult-supervised supportive living arrangement,” with some exceptions.¹¹

This attempt to re-construct the extended household to support minor parenting has given rise to a patchwork of laws utilizing the “autonomous decision-maker” paradigm for important decisions affecting the minor and her own child. When, for example, a minor mother tries to enforce her child’s right to paternity and child support in Minnesota, a guardian is appointed to look out for her rights, while she and the state are by implication presumed to be the appropriate parties to look out for her own child’s rights.¹² As another example, when a minor mother seeks various forms of assistance from the state, she is often deemed to be the “responsible person” to take care of herself and her child, even though she cannot consent to terminate her rights to that child without her parent’s or guardian’s permission.¹³ Section I of this Article sets out in more detail some of the inconsistencies in the minor mother’s legal rights.

In practice, skillful and dedicated caseworkers may be able to successfully triage the difficulties engendered by legal rules that assume teen mothers are “autonomous decision-makers” for themselves and their children. However, this paradigm may, at

11. MINN. STAT. § 256J.14(a)(2), (b) (2008). The statute excepts only minor parents who have no parents, adult relatives, or known legal guardians; minors who have lived apart from their parents or guardians for a year; minor parents whose health or safety is jeopardized by their adult caregivers; minor parents whose adult caregivers refuse to take in the minor; and minors who do not otherwise have an adult-supervised living arrangement available in the county. *Id.* § 256J.14(b).

12. See MINN. STAT. § 518A.47 subdiv. 1(c)–(d) (2008) (noting that data disclosed by a child support applicant to her representative is private and can be released to others only with consent of the applicant); MINN. R. CIV. P. 17.02 (requiring the court to appoint a guardian for an unrepresented minor to sue or defend on her behalf); see also Telephone Interview with Melissa Rossow, Assistant Dir., Ramsey County Child Support Div. (Feb. 24, 2010) (noting that in most situations, a teen parent who is experiencing conflict with her own parents will ask the county to appoint another adult in the family, such as an aunt, as her guardian).

13. Compare COMBINED MANUAL § 0029.15 (Minn. Dep’t of Human Servs. 2010), available at http://www.dhs.state.mn.us/main/groups/county_access/documents/pub/dhs16_149106.pdf (requiring county social services agencies to provide service to “[f]amilies with children under age 18 . . . and also pregnant minors, minor parents under the age of 18 and their children, and other minors”), and *id.* § 0014.06.03 (excepting the first child born to a minor caregiver from the family assistance cap), and *id.* § 0028.12 (“Caregivers under the age of 18 without a high school diploma or GED must attend school unless exempt.”), with MINN. STAT. § 259.24 subdiv. 2 (2008) (requiring that the parents of an unmarried parent under the age of eighteen must consent to the adoption of that minor parent’s child unless they are disqualified).

critical junctures, place them in a legal bind in responding to the dynamics and needs of the extended family as a whole.

The minor parent's paradoxical situation reflects the fact that the welfare state has not adjusted its understanding of either responsible human agency or the definition of the family to respond to changing social circumstances. In Section II, this Article suggests that legal structures of these programs rest on concepts of agency and family that do not adequately account for what we now know about adolescent development or family dynamics in extended family situations, such as the infant/teen-mother/grandparent triad. The regnant model, reflecting the liberal autonomy paradigm, gives the teen mother the right to make legal decisions on behalf of her child without interference from, or in some cases even the knowledge of, her parents unless she is placed under a guardianship. This paradigm does not account for the nature of the adolescent experience or differences between teen parents and adult parents. The second model, the traditional household model, presumes that the state should not intrude on the decisions of the head of the family unless they are illegal, clearly abusive, or neglectful to family members. However, it does not account for the teen's need to move toward responsible adulthood, or reflect less-than-abusive conflict or dysfunction that may occur in the teen mother's extended family.

In Section III, this Article argues that the state can construct a legal regime for interacting with the teen parent and her child that more successfully accounts for the teen parent's adolescence by re-tooling its public benefits structures around a contemporary family household model that consistently uses restorative justice principles to map out a future for the teen parent and her child.

I. Mapping the Paradox: Legal Rights and Constraints of a Minor Mother in Minnesota

The legal situation of a minor who is physically capable of giving birth in Minnesota is tinged with paradox. A pregnant teen may legally choose to keep her child over her own parent's opposition,¹⁴ even though she may not legally have an abortion without notification to one parent or a court order,¹⁵ may not terminate her parental rights to her child without parental

14. See MINN. STAT. § 259.24 subdiv. 1 (2008) (requiring that no child shall be adopted without the minor's parents' consent).

15. *Id.* § 144.343 subdivs. 2, 6 (requiring parental notification for minors' abortions).

approval,¹⁶ and may not give the child up for adoption without her guardian's consent.¹⁷

The state's legal attitude toward minors who choose to become caregivers for their children is perplexing, reflecting a mix of liberal mores about rights and traditional understandings of childhood. For example, Minnesota requires hospitals to notify the county social services agency within three days after a minor has given birth so the agency can contact the mother to determine whether she has a plan for herself and her child.¹⁸ The plan that the minor parent is expected to execute must consider the role of active adults and the baby's father in the mother's and child's lives,¹⁹ but the entire scheme rests the decision-making largely in the hands of the minor mother. Only if the minor mother refuses to plan for herself or fails to follow an agreed plan is the social service agency allowed to seek an order for protective supervision of the child.²⁰

If the minor has a plan that takes into account her and her child's economic needs, living arrangements, job support needs, health care, and other services, the law appears to grant the minor parent the right to follow through on her plan, however unwise it might be, unless her parenting skills are significantly brought into question.²¹ Similarly, if she has not developed a plan, the statute provides that the agency "shall work *with her*" to develop such a plan and provide appropriate services.²² While in reality both the minor mother's family of origin and the county agency may exercise social and economic pressure on the minor parent to make a family plan that accords with their own views, this law places the legal power to make these choices in the teen's hand and gives her family of origin no legal role.

16. *Id.* § 260C.307 subd. 4 (requiring parental consent for termination of minors' parental rights).

17. *Id.* § 259.24 subd. 2 (requiring the consent of a minor's parents or guardian for adoption unless the parents are disqualified by reason of abandonment, termination of parental rights or similar reasons). The adoption agency is also required to offer the minor parent the opportunity to consult with a lawyer, clergyperson, or physician before she consents to adoption, *id.*, a provision not required for either abortion or the decision to keep the child. *See id.* § 144.343.

18. *Id.* § 257.33 subd. 2(a). Indeed, the statute uses the word "contract," implying an autonomous bargained-for choice between the mother and the agency. *Id.* § 257.33 subd. 2(c).

19. *Id.* § 257.33 subd. 2(a)(2)–(3).

20. *Id.* § 257.33 subd. 2(c).

21. *Id.* § 257.33 subd. 2(a), (c) (requiring that certain elements be considered in a plan and only requiring that the minor "follow through on an agreed upon plan").

22. *Id.* § 257.33 subd. 2(b) (emphasis added).

A similar assumption of adult legal agency carries through to the teen mother's decisions on how to parent her child. Somewhat ironically, a fifteen-year-old mother may apply for and receive public assistance for her child without parental permission,²³ even though she may not make her own choice to drive a car without adult permission and supervision.²⁴ A fifteen-year-old mother may choose to parent her child even if she may not make other weighty decisions such as joining the military,²⁵ making a will,²⁶ skipping school,²⁷ signing a valid contract,²⁸ getting married,²⁹ or making an anatomical gift upon death.³⁰ Minnesota gives a child-bearing minor, apparently of any age, the right to consent to medical and health services for herself or her child, simply by virtue of her motherhood.³¹

The child support system's engagement with a teen parent also reflects this paradox. A teen mother, or her parent, has the right to file an action for paternity of the teen's child.³² If a

23. See COMBINED MANUAL § 0003.09 (Minn. Dep't of Human Servs. 2010), available at http://www.dhs.state.mn.us/main/groups/county_access/documents/pub/dhs16_149106.pdf (explaining that clients should be informed of their right "[t]o apply or re-apply for assistance programs at any time even if they seem to be ineligible"); see also *id.* § 0005.12.06 (requiring that minor caregivers and parents or stepparents living with the minor sign applications for MFIP and the Diversionary Work Program).

24. MINN. STAT. § 171.04 subd. 1 (2008). Under Minnesota law, a driver may not gain full privileges to drive unless he or she is eighteen years old, or has held a provisional license for one year with no convictions for crash-related moving violations (or no more than one non-crash-related violation) or for alcohol or substance-related violations. MINN. DEP'T OF PUB. SAFETY, OFFICE OF TRAFFIC SAFETY, UNDERSTANDING MINNESOTA TRAFFIC LAW FOR DRIVERS UNDER AGE 18 (2005), http://www.dps.state.mn.us/ots/topic_areas/teens/Understanding_MN_traffic_law_under18.pdf.

25. 10 U.S.C. § 505(a) (2006) (requiring parental consent for all persons under eighteen who wish to join the military).

26. MINN. STAT. § 524.2-501 (2008) (permitting persons eighteen or older to make a valid will).

27. See *id.* § 120.22 subd. 5 (requiring children between the ages of seven and sixteen to attend school).

28. *In re Welfare of C.P.K.*, 615 N.W.2d 832, 836 (Minn. Ct. App. 2000) ("[M]inors are subject to different rules with respect to contractual responsibilities, criminal law, voter rights, and driver's license requirements." (citing Backdahl v. Comm'r of Pub. Safety, 479 N.W.2d 89, 91 (Minn. Ct. App. 1992))).

29. MINN. STAT. § 517.02 (2008) (prohibiting persons under eighteen from marrying, but providing that a person sixteen years old may receive a license to marry with the consent of his or her parents and the approval of the local juvenile court).

30. *Id.* § 171.07 subd. 5; see also *id.* § 525A.04 (providing that an emancipated minor, a minor authorized to apply for a license at sixteen, or a parent of an unemancipated minor may make an anatomical gift).

31. *Id.* § 144.342.

32. *Id.* § 257.57 subd. 2 (providing that the infant child, his or her mother, the

Minnesota prosecutor files an action for child support on behalf of an infant, the minor's mother (or father) typically is appointed as her guardian and has the responsibility to look out for the interests of the minor mother, while the infant's interests are represented by the prosecutor and the minor mother as guardian.³³ If the teen mother is not getting along with her own parents, she may provide the prosecutor with the name of another adult, perhaps an aunt or friend, to serve as her guardian.³⁴ While the teen's ability to select a guardian usually means that the two will present an aligned position to the prosecutor, where a disagreement occurs between the guardian and the teen mother over what should happen in the support case, complications may arise.³⁵ For example, if the teen's mother wants to take a hard line for increased support against the baby's father, while the teen mother thinks it doubtful that her boyfriend can come up with that level of support, the prosecutor may need the grandmother and teen mother to work out a common position on their own before he or she proceeds,³⁶ given the lack of clarity about whose voice should be determinative. These laws imply that unless the grandmother is named the guardian, she has no legal role in determining the child support needs or welfare of the infant. Even if the grandmother is the guardian, she can be removed at the request of the teen mother upon the court's approval.

Minnesota's public assistance programs even more clearly vest the minor mother with legal decision-making power over public benefits decisions.³⁷ Even though the minor mother is required to live with a parent or supervising adult to be on MFIP,³⁸ she, and only she, may ask for an exemption from the requirement.³⁹ She is the one who makes a parenting plan for

mother's parent if she is a minor, or the alleged father may file a paternity action).

33. Telephone Interview with Melissa Rossow, *supra* note 12; *see also* MINN. R. CIV. P. 17.02 (requiring the appointment of a guardian ad litem for any "infant" who has no representative appointed under state law). Rossow notes that if a minor mother or father calls to say that there is a conflict with his or her parents or that he or she has moved out of the house, the prosecutor will contact the guardian to determine whether a new guardian should be appointed, or if the minor and parent can mend fences. Telephone Interview with Melissa Rossow, *supra* note 12.

34. Telephone Interview with Melissa Rossow, *supra* note 12.

35. *Id.*

36. *Id.* Rossow notes that in such cases, the prosecutor usually steps out of the room so that the guardian and teen can either come to agreement, or determine that the guardian can no longer represent the teen's interest and a new guardian needs to be appointed. *Id.*

37. *See* MINN. STAT. § 256J.14 (2008).

38. *Id.* § 256J.14(b).

39. *Id.* § 256J.14(c).

herself and her child with help from county workers,⁴⁰ and statutorily, the agency cannot require her to consider or abide by her parents' or guardian's wishes regarding her infant's welfare in determining for what state programs she should apply.⁴¹

In many of these programs, a minor mother, along with her child, applying for assistance is treated as a separate household.⁴² She retains a right to privacy and decision-making over her assistance application unless she gives approval for her parents to participate.⁴³ (Again, ironically, the minor's parents can review some health information in the case file of the minor herself by state law, but the minor may ask that her parents not see information she has shared with the state, and the agency can accede to her request if the state believes it is in her best interest).⁴⁴ Yet her parent is the one who generally receives the check as the protective payee on behalf of the teen and her child,⁴⁵ an apparent remnant of the traditional legal assumption that

40. *Id.* § 257.33 subdiv. 2(a). See *supra* notes 18–22 and accompanying text.

41. See COMBINED MANUAL § 0003.09 (Minn. Dep't of Human Servs. 2010), available at http://www.dhs.state.mn.us/main/groups/county_access/documents/pub/dhs16_149106.pdf (explaining the right to apply for assistance programs at any time).

42. See, e.g., MINN. STAT. § 119B.011 subdiv. 13 (2008) (“When a minor parent or parents and his, her, or their child or children are living with other relatives, and the minor parent or parents apply for a child care subsidy, ‘family’ means only the minor parent or parents and their child or children.”).

43. Telephone Interview with Shannon Friberg, Fin. Assistance Supervisor, Ramsey County (Feb. 11, 2010) (noting that grandparents are not entitled to information about their grandchild's case unless the minor mother gives oral permission for a one-time request for information, executes a release good for one year for the grandparents to request information, or makes the grandparents her representatives); Telephone Interview with Susan Mills, Dep't Head, Anoka County Human Servs. Dep't (Mar. 3, 2010). Friberg estimates that about eighty percent of the time, teen parents are willing to have their parents help them sort out their responsibilities in the application process and their parents are best able to help them understand what is happening. Telephone Interview with Shannon Friberg, *supra*. But in other cases, there may be a conflict-ridden or broken relationship with the grandparents because of the teen's boyfriend, because she has run away, etc. *Id.* Mills notes that a common reason for conflict is that the father of the infant is still in the picture, but is not willing to be involved, or is engaging in troublesome behavior such as using drugs or not paying support. Telephone Interview with Susan Mills, *supra*.

44. See MINN. DEPT OF HUM. SERVS., NOTICE OF PRIVACY PRACTICES (2009), available at <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-3979-ENG>. Health information will not be shared with a minor's parents unless their consent is required for treatment or the health provider has determined there is a risk to the minor from not sharing this information. *Id.*

45. See MINN. STAT. § 256J.14(f) (2008); COMBINED MANUAL § 0024.09 (Minn. Dep't of Human Servs. 2010), available at http://www.dhs.state.mn.us/main/groups/county_access/documents/pub/dhs16_149106.pdf (giving direction to issue MFIP payments to a protective payee for a minor parent when the minor applicant is living with her parents, guardians, or in a required assisted unit).

children are incapable of entering into economic contracts.⁴⁶ Paradoxically, then, the teen parent is deemed responsible enough to seek public assistance, but not to spend it wisely.

While caseworkers for teens do their best to explain the system to their clients, the consequences to the teen parent who tries to interpret and navigate the rules on her own potentially can be quite grave. If, because of a misunderstanding or poor judgment, a teen misstates her income or lies about her living situation, she may be subject to prosecution for welfare fraud or, at the least, recoupment of assistance overpayments she may have already spent.⁴⁷ If she is unclear about or misapprehends the importance of the education, training, or work requirements imposed on MFIP recipients, she can be subject to the loss of assistance,⁴⁸ absent a caring caseworker who insists on following

46. See, e.g., 42 AM. JUR. 2D *Infants* § 45 (2000) (discussing the incapacity of minors to enter into contracts).

47. See MINN. STAT. § 256J.30 (2008) (describing applicant information reporting requirements, requirements to assign support and maintenance rights, and requirements to provide Social Security numbers); *id.* § 256J.38 (describing the recoupment of overpayments from ineligible participants or those who receive more than they are entitled to because of, for example, failure to report changes in income or work status); MINN. R. 3400.0040 (2009) (describing participants' reporting responsibilities for child care assistance). Recipients convicted of fraud are excluded from the food assistance unit and are disqualified for twelve months for the first offense, twenty-four months for the second offense, and permanently for the third offense. COMBINED MANUAL §§ 0014.06, 0025.24.06 (Minn. Dep't of Human Servs. 2010), available at http://www.dhs.state.mn.us/main/groups/county_access/documents/pub/dhs16_149106.pdf. Overpayments are recouped for both fraudulent and non-fraudulent errors by the recipient. See *id.* § 0025.12.06 (noting that overpayments follow a minor caregiver to a new unit and minors remain responsible); *id.* § 0025.21.15; *id.* § 0025.21.15.3.

48. MFIP requires teen parents to attend school or work. MINN. STAT. § 256J.54 (2008). This statute requires that county agencies assess the educational needs of caregivers under age twenty if they do not have high school diplomas or GEDs, and set a goal of educational completion, an education plus employment plan, or an employment plan. *Id.* Teens for whom an appropriate educational completion plan cannot be created must have an employment plan. *Id.* Teen caregivers can be sanctioned if they fail to follow their plans. See COMBINED MANUAL § 0028.12 (Minn. Dep't of Human Servs. 2010), available at http://www.dhs.state.mn.us/main/groups/county_access/documents/pub/dhs16_149106.pdf. In MFIP, the requirement of universal participation requires that all caregivers who get assistance be involved in employment services, including minor parents, even if their children are less than twelve months old, which would normally trigger an exemption for an adult parent. *Id.* § 0028.06.02. Minor parents get only a six week exemption to care for new infants. *Id.* The rules provide that the agency may have the social worker who helped develop the minor caregiver's plan send her a notice of non-compliance and conduct her conciliation conference, as opposed to the employment services staff of the MFIP. *Id.* § 0028.30.12. The notice to the minor caregiver will tell her that she can be sanctioned, including case closure for continued failure to comply, unless she takes action within a certain time frame, and will tell her she can "request a conciliation conference and a fair hearing." *Id.*

up to make sure the appropriate paperwork is filed. If the teen mother who is receiving assistance refuses to cooperate in the establishment of paternity or child support, she can be sanctioned with loss of benefits or medical assistance.⁴⁹ If she receives benefits from MFIP and is not complying with her duties to attend school or work, the teen mother may use up her sixty-month eligibility period and thus not be eligible for those benefits when she later becomes independent and cannot find work to support herself and her child.⁵⁰ Conversely, she may choose not to apply for a program that would be beneficial to her or her child because she does not understand its importance to her family's future.

II. Interrogating the Paradigms: The Teen Mother as Autonomous Actor and as Dependent Child

A. Existing Legal Paradigms

The paradoxes in Minnesota's legal structuring of the life of a teen parent reflect its citizens' ambivalence, or perhaps uncertainty, about which of two legal paradigms best describes the appropriate decision-making authority of a teen parent. Both the liberal model and the traditional head of household model rely on the notion of a distinct decision-maker who communicates with one voice to the state about the needs of the relevant social unit.⁵¹ The chief difference is that the social unit at stake in the liberal model is the minor parent along with his or her indisputably young and incompetent children.⁵² In the traditional extended household model, by contrast, the social unit includes members of the family who reside in the same premises and participate in a single economic and social unit with a single head, usually the oldest male.⁵³ (The Food Stamp program, indeed, was built on this model: those extended family members who cook and eat together and share economic resources are considered one economic unit for

49. See MINN. STAT. § 256.741 subdvs. 5–8 (2008). Indeed, minor caregivers are required to cooperate in getting support from their own parents. COMBINED MANUAL § 0025.30.03 (Minn. Dep't of Human Servs. 2010), available at http://www.dhs.state.mn.us/main/groups/county_access/documents/pub/dhs16_1491_06.pdf.

50. MINN. STAT. § 256J.42 subd. 5(b) (2008).

51. See discussion *supra* p. 258.

52. See Failing, *supra* note 6, at 284–86.

53. See Markus Dirk Dubber, "The Power to Govern Men and Things": Patriarchal Origins of the Police Power in American Law, 52 BUFF. L. REV. 1277, 1281 n.21 (2004).

purposes of eligibility, regardless of their legal relationship to each other for other purposes.)⁵⁴

In the liberal paradigm, unless the teen mother clearly evidences her incompetence to make parental decisions, she must be vested with the same authority and rights that an adult parent would have: the right to receive and sort all relevant information about her situation and the state's ability to respond to it; the right to privacy about and non-interference in her requests to the state for assistance, which includes the right to choose with whom to consult about those decisions; the right to manage benefits provided by the state as she sees fit, within the parameters set by the program; and, perhaps most importantly, the right to make decisions for her own child's future in managing those benefits.⁵⁵

In the traditional extended household paradigm, reflective of ancient cultures, the head of the household (the *oconomus* or manager of the household or, in its most extreme version, the *paterfamilias*⁵⁶)—here, the grandparent—has the responsibility to receive information and make decisions for everyone in the household, including the teen mother and her child. In this paradigm, the state has no business interfering with those decisions, nor determining whether there is any dissent within the household about the decision-making process or outcome.⁵⁷ The only “remedy” for a dissenting family member whose voice is not considered by the head of household is to leave the household and set up his or her own household, thus becoming the head of a new family.

The value to the state of either the liberal or the traditional extended household model is clear: if there is only one relevant voice, the state spends much less time communicating its requirements and needs to the benefited unit, working with that unit to develop plans, and changing the existing situation.⁵⁸ Not

54. 7 U.S.C. § 2012(i)(1) (2006) (describing eligible households as persons who “live together and customarily purchase food and prepare meals together”).

55. Cf. Linda L. Lane, *The Parental Rights Movement*, 69 U. COLO. L. REV. 825, 837–41 (1998) (describing broad Supreme Court protections for parental rights).

56. Dubber, *supra* note 53, at 1281 n.22 (citing DAVID HERLIHY, *MEDIAVAL HOUSEHOLDS* 2 (1985)). Dubber notes that the *paterfamilias* was the household authority, which meant he had power over his children, grandchildren, slaves, wife, and sons' wives, as well as power over his possessions. *Id.* (quoting M.I. FINLEY, *THE ANCIENT ECONOMY* 19 (1973)). The *paterfamilias* was given power to manage both the people and property of the group as a whole. *Id.*

57. *Id.*

58. See, e.g., Elizabeth “Wendy” Trachte-Huber, *Mediating Multi-Party Disputes: Reflections on Leadership in Mediation*, 4 PEPP. DISP. RESOL. J. 195, 199 (2004) (noting that having one leader in a mediating position leads to a more

only are these models apparently efficient, but it is relatively clear to the state what needs to be done going forward. The introduction of additional voices to the decision-making process inevitably results in the potential for confusion in communicating the state's requirements, and confusion in obtaining information about the recipients' wishes. Consultation with more individuals may also uncover conflicts among members of the recipient household that need to be worked through and may jeopardize a clear and swift plan of attack for any problem.⁵⁹ If household member A can ask the state to do X one day, and member B can equally ask the state to do Y the next, nothing gets done. As encounters with the families of dying individuals who have left no wishes about resuscitation or extended care attest,⁶⁰ it is often extremely difficult to achieve consensus within a family about the best way forward when anything important to one of the members is at stake.⁶¹ Even within a family, individual members may have different understandings of any given situation, different emotional reactions, different personal needs and agendas (both conscious and subconscious), and different values.

B. *Unique Position of Female Adolescents*

Yet, both the liberal and traditional household models neglect the unique nature of the female adolescent's relationship with her family and the world, a relationship that does not necessarily magically change upon her delivery of a child. One of the best-selling books on adolescent girl psychology of the late twentieth century, *Reviving Ophelia*, describes a teen girl's psychological situation in this way:

Adolescent girls are saplings in a hurricane. They are young and vulnerable trees that the winds blow with gale strength. . . .

. . . .

. . . Early adolescence is a time of physical and psychological change, self-absorption, preoccupation with peer approval and identity formation. . . .

. . . .

efficient outcome).

59. See *id.* (observing that negotiating with several people in a mediation requires more logistical skill than a single-party negotiation).

60. See, e.g., Julius Grossenbacher, *The Case of Terri Schiavo: Ethics at the End of Life*, 28 J. LEGAL MED. 419 (2007) (book review) (describing the familial conflict about whether Terri Schiavo should have her feeding tube removed).

61. See, e.g., *id.* at 422 (discussing the conflict between family members during the Terri Schiavo case).

... Adolescence is the time for cutting bonds and breaking free. . . .

Adolescents still have some of the magical thinking of childhood and believe that parents have the power to keep them safe and happy. They blame their parents for their misery, yet they make a point of not telling their parents how they think and feel; they have secrets, so things can get crazy.⁶²

Researchers who have studied young women note five distinctive characteristics of adolescent female thinking that have a significant bearing on their ability to make mature decisions for themselves and the children that they bear.⁶³ First, teen girls are primarily, intensely, and in very complicated ways, relational.⁶⁴ The experience of being alone is alienating for them. By contrast, girls report that with their peers, they have a "higher sense of self-esteem, and feel happier, more powerful, and more motivated than when alone."⁶⁵ Studies have shown that too much time alone for female adolescents is significantly correlated with "early involvement with sex, drugs, alcohol, and the legal system," and that they resort to television and sleep to fill their time.⁶⁶ Continuing a relationship with a boyfriend, whatever his lack of investment in her welfare or their child's may be, may fill this need.

At the same time, girls' relationships are not idyllic. Teen girls often become "obsessed with complicated and intense relationships," feeling "obligated and resentful, loving and angry, close and distant, all at the same time with the same people."⁶⁷ Dr. Martha B. Straus describes girls displaying this phenomenon as "reliant and defiant."⁶⁸ That is, adolescent girls may crave and even demand "the same supports of money, time, and effort that they've always had"⁶⁹ and may even seek security in childhood rituals.⁷⁰ Yet at the same time, they may respond rebelliously

62. MARY PIPHER, *REVIVING OPHELIA: SAVING THE SELVES OF ADOLESCENT GIRLS* 22–24 (1994).

63. *See generally* MARTHA B. STRAUS, *ADOLESCENT GIRLS IN CRISIS: INTERVENTION AND HOPE* (2007) (describing how teenage girls view and interact with the world).

64. *Id.* at 7–9.

65. *Id.* at 7.

66. *Id.* at 8.

67. PIPHER, *supra* note 62, at 35.

68. STRAUS, *supra* note 63, at 19.

69. *Id.*

70. *See id.* at 5 ("On their birthday, they may expect the same kind of chocolate cake with green frosting they had when they were 8, and into emerging adulthood insist on sitting in 'their' chair at the dinner table. They have a few stuffed animals

against the very persons they need for that support.⁷¹ Dr. Mary Pipher notes that “[s]mall events can trigger enormous reactions,” and that girls will try to stop these emotions by denying their feelings or projecting them onto others.⁷² Indeed, Straus points out that young girls who feel the most weak and dependent may be most likely to rebel.⁷³ These contradictory feelings are most often directed at their parents,⁷⁴ especially their mothers.⁷⁵

Pipher argues that adolescent girls’ rebellion typically begins in junior high, when they begin holding their parents responsible for their loss of “childhood gaiety and zest.”⁷⁶ When something goes wrong, they blame their parents, rather than themselves or the culture in which they are raised.⁷⁷ In spite of this rebellion, however, “girls want to stay close to their parents,” and “may even argue as a way to maintain a connection.”⁷⁸ Following Pipher’s argument, we might expect that in a tense situation such as that which occurs when a teen gets pregnant and keeps her child, we would find the teen mother simultaneously rebelling against and blaming her parents while also seeking their approval.⁷⁹ Pipher also notes that teenage girls “engage in emotional reasoning, which is the belief that if you feel something is true, it must be true.”⁸⁰ This ability to wish away reality might be at its height when a teenager finds herself unexpectedly pregnant and having to confront the disappointment or anger of the parent whose support she now needs more than ever.⁸¹

they won’t part with that they’ll take to college or their own apartment with them one day.”).

71. *See id.* at 19 (“A 1990s parenting guide has the humorous and revealing title: *Get Out of My Life but First Could You Drive Me and Cheryl to the Mall . . .*”).

72. PIPHER, *supra* note 62, at 57–58.

73. STRAUS, *supra* note 63, at 19–20 (“Often . . . the defiance is in exact proportion to how weak and dependent a girl feels. Confident girls can afford to rebel less; they feel they have more control of their lives.”).

74. *See id.*

75. PIPHER, *supra* note 62, at 103–04. Pipher attributes this in part to Western social expectations that girls are supposed to separate from their mothers and not be like them, in order to achieve “individuation, activity and independence.” *Id.* at 103.

76. *Id.* at 81–82.

77. *Id.*

78. *Id.* at 65.

79. *See id.* at 81–82.

80. *Id.* at 60.

81. *See, e.g.,* Elaine Bell Kaplan, *Black Teenage Mothers and Their Mothers: The Impact of Adolescent Childbearing on Daughters’ Relations with Mothers*, 43 SOC. PROBS. 427, 429 (1996) (describing how Black teenage mothers, after being forsaken by their own fathers, their children’s fathers, and school systems, turn to

Such a dynamic does not square with either liberal assumptions about autonomous decision-making that undergirds the law's treatment of teen mothers, or with the traditional familial model. In the autonomous model, the decision-maker almost "prefers" to be alone, without the interference or even guidance of others. In the liberal imagination, the autonomous actor methodically gathers all available relevant information, then objectively develops and assesses the pros and cons of alternatives.⁸² Finally, in a completely internalized decision-making process, the autonomous actor comes to a relatively logical decision about what to do after weighing the pros and cons.⁸³ To the extent that decision-makers may be influenced by relational ties or the emotional dynamics occurring between themselves and those whose welfare their decisions will affect, the decision-makers are able to largely name and prioritize those ties, examine themselves to categorize and hold at arm's length those relational dynamics, and sort their relevance to the decision.⁸⁴ By definition, Pipher suggests, a teen mother will neither be able to see such dynamics nor to get any emotional or rational distance on them, so as to sort their relevance to her decisions.⁸⁵

Clearly, such a highly ambivalent mode of reacting to others also poses trouble for the traditional familial model, characterized by a strong head whose word is law.⁸⁶ It is difficult to imagine how

their mothers for support, but often find themselves facing their mothers' anger and resentment).

82. See, e.g., Nina W. Tarr, *Employment and Economic Security for Victims of Domestic Abuse*, 16 S. CAL. REV. L. & SOC. JUST. 379, 426 (2007) ("The process of decision-making defines autonomy: the ability to get information, reflect on that information, and make independent decisions.").

83. See, e.g., Susan Stefan, *Silencing the Different Voice: Competence, Feminist Theory and Law*, 47 U. MIAMI L. REV. 763, 791 (1993) ("The world constructed by competence doctrine is one in which the norm is a rational, autonomous, volitional individual who makes choices by receiving information and weighing the pros and cons of a given decision in a rational way. It is a world in which law presumes that all people are empowered to act as their own agents and to effectuate their own decisions.").

84. See, e.g., Regina Burch, *The Myth of the Unbiased Director*, 41 AKRON L. REV. 510, 536 (2008) ("[W]hen making decisions, emotions do not sway rational individuals.").

85. See, PIPHER, *supra* note 62, at 59 (explaining how teenage girls are "unable to think abstractly" which "makes it difficult to reason with them").

86. Men are more commonly seen as the heads of traditional households. See Linda C. McClain, *The Domain of Civic Virtue in a Good Society: Families, Schools, and Sex Equality*, 69 FORDHAM L. REV. 1617, 1643 (2001) (explaining the scriptural basis for the "husband as 'head' of the household, both as breadwinner and as authority, and wife as caregiver/homemaker and submissive or deferential to the husband's authority"); see also Nimish R. Ganatra, *The Cultural Dynamic in Domestic Violence: Understanding the Additional Burdens Battered Women of Color*

a traditional mother or father will be able to both make and enforce decisions affecting the rest of the family when a major subject of those decisions alternately submits to and rebels against the decisions.⁸⁷ Moreover, such a head is likely to be challenged in his or her ability to maintain his or her position when one of his or her "subjects" has so grievously flaunted the norms of the family.⁸⁸

Second, teens are primarily peer-directed rather than parent-directed.⁸⁹ "As girls pull away from parents, peers are everything. . . . Peers validate their decisions and support their new independent selves."⁹⁰ Indeed, the desire for peer validation may overcome the desire to excel academically or display their capabilities or ambitions in public.⁹¹ As adolescents confront social pressure not to display anger, they may become "expert at indirect aggression,"⁹² defined by researchers as "a type of behaviour in which the perpetrator attempts to inflict pain in such a manner that he or she makes it seem as though there has been no intention to hurt at all."⁹³ The paradox of relational aggression results in girls using verbal cruelty to "define their social groups, support one another, protect themselves from male ridicule, and

Face in the United States, 2 J.L. SOC'Y 109, 118 (2001) (describing how, in traditional families of color, power is vested in a male head). However, upon examining historical and anthropological studies, it becomes clear that families can take "very different forms" even within the same culture, suggesting that "family formulation" is actually much more dynamic than the traditional nuclear family (with a husband, wife, and child). Failinger, *supra* note 6, at 221.

87. See Glenda L. Cottam, *Mediation and Young People: A Look at How Far We've Come*, 29 CREIGHTON L. REV. 1517, 1528 (1995) (describing how children whose parents are authoritarian "may become quite rebellious").

88. Emily Buss, *The Parental Rights of Minors*, 48 BUFF. L. REV. 785, 790 (2000) ("[Adult mothers'] ability to exercise parental authority and influence over their own children is significantly compromised when one of their children becomes a parent"); see also Kaplan, *supra* note 81, at 429 ("These [mother-daughter] relationships may be further complicated if the adult mothers believe that their daughter's pregnancy is a reflection of lower-class behavior. These adult mothers may feel that they are also affected because the daughters' pregnancy is not their fault, but they will be perceived by others to be responsible for their daughters' situation. The adult mothers distance themselves from their daughters' behavior and align themselves with conventional expectations about teen mothers by linking themselves to traditional culture in unique ways.")

89. PIPHER, *supra* note 62, at 82 ("Parents are not the primary influence on adolescent girls. Instead girls are heavily swayed by their friends, whose ideas come from the mass media.")

90. *Id.* at 67.

91. See STRAUS, *supra* note 63, at 18-19 (explaining how teen girls are pressured to "hide their capabilities" to attain social status among their peers).

92. *Id.* at 13.

93. Kaj Björkqvist et al., *Do Girls Manipulate and Boys Fight? Developmental Trends in Regard to Direct and Indirect Aggression*, 18 AGGRESSIVE BEHAV. 117, 118 (1992).

distance themselves from dominant gender roles,” even using shunning to enforce their status and values on others.⁹⁴

Pipher notes that teen girls who have been pressured to give up a true sense of themselves

are vulnerable to peer pressure to reject all parental advice. They are more likely to do things that cause great conflict in the family. Because they are operating from false selves, they have no way of keeping peer culture in perspective. They give up the relationship they most need, the relationship with people who would protect them from girl-diminishing experiences.⁹⁵

She describes how “[t]eenagers are under great social pressure to abandon their families, to be accepted by peer culture and to be autonomous individuals.”⁹⁶ And, at the same time, in the absence of adult involvement, Straus notes, “the peer group becomes a mixed blessing because it supports girls while seldom raising expectations for behavior. For many, the social group comes to offer values at the lowest common denominator—but it beats being alone.”⁹⁷

Teen girls thus confound the rational, experience-based decision-making paradigms of both the liberal model and the traditional extended household model of the family. A teen mother’s decisions about how to support and raise her child are quite likely to be directed by advice from other teens who have little life experience to go on, particularly about the negative consequences of errors in judgment.⁹⁸ She may not, for example, realize the consequences of lying to the welfare worker or deciding to stay home with the baby and not finish school.⁹⁹ She may not comprehend the long-term consequences of moving in with a boyfriend who is a drug abuser or in trouble with the law, but who expects her to drop everything to make him happy.¹⁰⁰ If the peer

94. STRAUS, *supra* note 63, at 14–15; *see also* PIPHER, *supra* note 62, at 68–69.

95. PIPHER, *supra* note 62, at 67.

96. *Id.* at 65.

97. STRAUS, *supra* note 63, at 7.

98. *But see* Joanna Gregson Higginson, *Competitive Parenting: The Culture of Teen Mothers*, 60 J. MARRIAGE & FAM. 135, 142 (1998) (describing how teen mothers are “besieged” with advice from family members, doctors, and teachers, but are selective in accepting advice, as “no one could know better than they how to best raise their children.”).

99. *See* Buss, *supra* note 88, at 799 (explaining how teens’ “greater impulsiveness may lead them to act, without engaging in a deliberate decision-making process at all”). Buss adds that teens “will give great weight to short-term consequences, and little weight to long-term consequences.” *Id.* A common impulsive decision made by teenage mothers is dropping out of school to avoid the costs of childcare. *Id.* at 804.

100. *Id.*; *see also* Marsha Garrison, *Promoting Cooperative Parenting: Programs*

advice a teen mother is getting is based on values at “the lowest common denominator,”¹⁰¹ she is unlikely to be getting reinforcement for responsible and difficult choices such as staying home to care for her baby when she could be out partying, or pursuing an education plan when she could be working, at McDonald’s for example, and making her own money.¹⁰² Given that many welfare workers are socialized into the view that they should not be judgmental or attempt to influence their clients’ decisions, even for paternalistic reasons,¹⁰³ the state may draw back from extending its own influence to shape the teen mother’s behavior.

Even in situations involving otherwise healthy families, a caseworker who is committed to non-intervention or who is not savvy about adolescent girls’ decision-making processes may not be able to help a teen understand the difference between the immature analysis of her peers and caring adults’ experience-based evaluation of what is best for her and her child. Similarly, peers may be more likely than parents to reinforce a teen mother’s intense emotional ties to the father of her child, complicated by a culture that “saturates” girls with the view that a male should be taking care of them.¹⁰⁴ If he is still in the picture, the boyfriend’s needs will likely outweigh the teen mother’s and baby’s own needs: often, he may pressure her to keep her baby because of his own delight at fatherhood, even though half of the time he will be out of the relationship with the mother within a year after the baby’s birth.¹⁰⁵ The teen mother’s fantasies about her boyfriend may

and Prospects, 9 J.L. & FAM. STUD. 265, 277 (2007) (explaining how teenage mothers “are particularly prone to unstable relationships”).

101. See *supra* note 97 and accompanying text.

102. Studies show that programs offering at-risk teenage mothers coaching and “reinforcement for positive interaction with their children” can be effective in fostering good parenting skills. Joseph R. Stevens, Jr. et al., *Family Support Interventions for Adolescent Parents*, 24 CHILD & YOUTH CARE F. 283, 290 (1995).

103. Susan L. Brooks, *Representing Children in Families*, 6 NEV. L.J. 724, 733–736 (2006) (explaining how the “generalist approach” in social work emphasizes clients’ strengths, promoting “client self-determination and empowerment” and describing “family systems theory” as a “strengths-based non-judgmental orientation” that studies the entire family to understand the individual).

104. STRAUS, *supra* note 63, at 20.

105. Press Release, Policy Studies Inst. at the Univ. of Westminster, *Teenage Mothers: Decisions and Outcomes - Provides a Unique Review of How Teenage Mothers Think* (Oct. 30, 1998), available at http://www.psi.org.uk/news/pressrelease.asp?news_item_id=37.

overlook his reckless and even criminal behavior, putting her and her baby at risk.¹⁰⁶

If she comes from a traditional household, a teen mother's rebellion against her parents may cloud the decision-making picture, since her parents will discover, when they attempt to assert some influence and authority over her decision-making, that their influence is at best suasive, and not legally enforceable for the most part.¹⁰⁷ In traditional family situations, if the grandparents do not throw the teen mother out of the house, the grandmother may assert control over the situation and reduce the teen parent to a position of a child once again, perhaps because of the grandparents' own sense of loss of control.¹⁰⁸ State workers may find themselves buffeted between the angry but powerless grandparents' attempts to influence the process and the mercurially indecisive teen mother's efforts to move ahead.

Third, adolescent girls' thought processes are, at least at many junctures, almost the antithesis of the rational, autonomous decision-maker: they are self-focused, concrete, binary, and present-oriented thinkers.¹⁰⁹ Female adolescents are "egocentric in their thinking. That is, they are unable to focus upon anyone's experience but their own."¹¹⁰ Rather than selfishness, Pipher notes, this egocentrism is simply a developmental stage they go through.¹¹¹ Moreover, early adolescents are not experienced abstract thinkers; "the immaturity of their thinking makes it

106. See Pamela Saperstein, *Teen Dating Violence: Eliminating Statutory Barriers to Civil Protection Orders*, 39 FAM. L.Q. 181, 187 (2005) ("Being unfamiliar with dating, teenage girls are less likely than women to identify a dating relationship as abusive. Adolescent girls frequently see 'jealousy,' 'possessiveness,' and even physical, sexual, or emotional 'abuse' as proof that their boyfriends love them.").

107. See *supra* notes 37–46 and accompanying text.

108. See Telephone Interview with Melissa Rossow, *supra* note 12; Telephone Interview with Susan Mills, *supra* note 43. Mills estimates that in roughly a third of the extended families she works with, parents tell their daughters that the child is completely their responsibility; in another third of the cases, the grandparent demands that the teen mother do exactly what she expects or completely takes over child care; and in a final third of the cases, the grandparent offers to advise and help the teen parent if requested, but encourages her to seek out other sources of advice or help as well. *Id.*

109. See Buss, *supra* note 88, at 799 (explaining how adolescents' decision-making processes look similar to that of adults, except insofar as their choices may be "impaired" by their impulsiveness, and their inability to weigh long-term consequences and adequately analyze risks); see also PIPHER, *supra* note 62, at 59 (explaining how the "concreteness of girls' thinking can be seen in their need to categorize others").

110. PIPHER, *supra* note 62, at 60.

111. *Id.*

difficult to reason with them," and they tend to be "extremists who see the world in black-and-white terms, missing shades of gray."¹¹² Straus notes that adolescents also "lose track of time," and are primarily focused on the present, operating on a "need-to-know-basis."¹¹³ As a result, adolescent girls may become easily bored or chafe at long-term restrictions, while at the same time missing deadlines, which is often chalked up by adults to "histrionics, self-involvement, and poor planning."¹¹⁴ Given their concrete, egocentric focus, teen mothers may not realize the consequences of their behavior on their children.¹¹⁵ They may, for example, bring their babies out to parties instead of putting them to bed; they may not realize that when they are hungry or tired or cold, their babies are also likely hungry or tired or cold.¹¹⁶

For teen mothers who live in traditional households, adolescent behavior cuts against the grain of the image of "mother." For these households, the paradigmatic mother is selfless to the point of sacrifice for her child, the person who takes the long view and who willingly sacrifices her own needs and even egocentric thinking for the sake of her child.¹¹⁷ In such households, the teen mother's parents may perceive her as morally bankrupt, in that she has not only violated their cultural expectations about chastity,¹¹⁸ but now is not playing the role of the good mother.¹¹⁹ This perception may explain why they attempt to substitute for her, becoming surrogate parents to the grandchild, and taking

112. *Id.* at 59.

113. STRAUS, *supra* note 63, at 20 (internal quotation omitted).

114. *Id.* at 21 (explaining how, for a teenage girl, "sitting through a dull class" or "having to wait three weeks for the dance is almost intolerable," while "time can pass so quickly" when, for example, a paper is due).

115. *See supra* note 99 and accompanying text.

116. Telephone Interview with Susan Mills, *supra* note 43. Mills says that many teenage mothers have poor decision-making skills, and consequently need to be taught to anticipate their children's needs. *Id.*

117. *See* Linda J. Panko, *Legal Backlash: The Expanding Liability of Women Who Fail to Protect Their Children from Their Male Partner's Abuse*, 6 HASTINGS WOMEN'S L.J. 67, 75 (1995) ("Traditionally, a mother's *raison d'être* was to be nurturer, caretaker, and homemaker. These personal, uncompensated and disempowering sacrifices are simply expected of mothers." (footnote omitted)).

118. Kaplan, *supra* note 81, at 434 (describing how the unsupportive mothers of pregnant teens "assailed their characters," calling them names such as "bitch," "whore," and "tramp"). Kaplan adds that many of these adult mothers expected their teenage daughters to "follow the traditional path to motherhood, by marrying first." *Id.* at 437.

119. *See, e.g., id.* at 435-36 (recounting the story of an adult mother who told her teenage daughter that she was a bad mother because "[s]he stays out late, leaves the baby with me all the time, doesn't do any work around the house, and sleeps late every day.").

over the maternal functions that the teen mother seems incapable of exercising because of her self-centered, emotional, present-focused decision-making.¹²⁰

For the liberal model, as the teen mother confronts the choices that the liberal state expects her to make on behalf of herself and her child,¹²¹ this combination of self-reference and inability to manage time creates a perfect storm.¹²² Given the realities of a teen mother's reasoning processes, there is little chance that she will seek out relevant wisdom and experience, except from her immediate peers.¹²³ What older mothers who have been through the same struggle can advise may appear to her to be ancient history or irrelevant.¹²⁴ The likelihood that she will voluntarily consult expert advice, such as academic studies, "how-to" texts, and social workers' views, is small.¹²⁵

Fourth, secretiveness is an important part of an adolescent's success in creating an independent self and managing the power relationships between herself and her parents.¹²⁶ The welfare state reinforces adolescents' ability to gain power over their parents in this way by protecting many of their reproductive and health care choices against parental discovery and interference.¹²⁷ One

120. See *supra* note 108 and accompanying text.

121. See *infra* note 127 and accompanying text.

122. See *supra* notes 110–111 and accompanying text (explaining teenage girls' egocentrism); see also *supra* note 114 and accompany text (explaining that teenagers have poor time management skills).

123. See *supra* notes 98–103 and accompanying text.

124. See Higginson, *supra* note 98, at 144 ("Not only did teen mothers compare themselves with other teenage parents, but also with mothers who delayed having children until their 20s, 30s, or 40s, including their own parents. In comparing themselves with these older mothers, the teen mothers found reason to criticize and discredit them, while legitimizing themselves.").

125. *But see id.* at 142–44 (explaining that many teenage mothers consult with doctors, social workers, and their parents on raising their children, but stating that teenage mothers vary in whose advice they choose to follow: some will ignore the advice of experts and listen to their parents, while others have "total faith" in experts).

126. See PIPHER, *supra* note 62, at 21 ("Because [teenage girls] are secretive with adults and full of contradictions, they are difficult to study. So much is happening internally that's not communicated on the surface."); see also STRAUS, *supra* note 63, at 5 (stating girls "lead mysterious lives," using drugs, starving, and bingeing, for example, while the adults responsible for them "may hardly have a clue").

127. Buss, *supra* note 88, at 792 ("In no state does the law require the minor to consult with her parents, let alone to obtain parental consent, before acting on these decisions [to keep the baby and take on parental responsibilities]. In no state does the law include minority among the factors that can justify an involuntary termination of parental rights. In no state does the law give the parents of a minor parent any special standing to seek some form of custodial authority, even shared authority, over their grandchild who resides with them and much of whose care often falls to them. The law in no way qualifies minors' legal rights to control the

exception is the abortion decision, since in many states, including Minnesota, children must inform at least one parent of their pregnancy, although the judicial bypass can close that loophole.¹²⁸ Given the strong privacy protections for teen mothers that the public assistance programs provide, the power of secrecy can have its price.¹²⁹ If the teen mother's parents cannot have access to legal papers filed to establish child support, or public benefit documents their daughter is signing, they cannot discover factual errors she may have inadvertently made.¹³⁰ They cannot know about, much less challenge, poor decisions that the teen parent might have made, even inadvertently.¹³¹ Even the best state workers often will not have any context from which to understand either the teen mother's ability to comprehend her own situation, her ability to be candid and complete in describing family dynamics, or her capability to make mature decisions that fully substitute for her parents' decisions.

While an adolescent's penchant for keeping secrets may, on first appearance, seem quite consonant with the liberal model, the grandparents' inability to gain access to information without their daughter's permission puts the burden of decision-making back squarely on the minor mother. Apart from the vulnerability of these decisions, her ability to choose isolation also obscures the fact that the grandparents' own agency is effectively compromised by the teen mother's choices.¹³² Rather than living into a future that promised freedom in their mature years, these grandparents

upbringing of their children, even if they give birth at the age of eleven." (footnote omitted)).

128. See GUTTMACHER INST., STATE POLICIES IN BRIEF: PARENTAL INVOLVEMENT IN MINORS' ABORTIONS (2010), http://www.guttmacher.org/statecenter/spibs/spib_PIMA.pdf (noting that thirty-four states require parental involvement in a minor's decision to have an abortion, with twenty states requiring at least one parent's consent, ten states requiring at least one parent's notification, and four states requiring both parental consent and notification). The Guttmacher Institute notes that all of these states have a judicial bypass procedure which allows a mature minor to obtain court approval, while six of these states also permit an abortion if "another adult relative is involved in the decision." *Id.*

129. See Buss, *supra* note 88, at 808 ("[A]ffording the minor autonomy not only makes it possible for her to avoid all input from her parents over this singularly important and life-shaping decision, but it may also seriously encumber her parents' ability to fulfill their parenting responsibility in all respects. From the moment the minor becomes a parent, lines of authority are profoundly affected for the remainder of that minor's childhood: While the adult parents still have custodial authority over their child, they have little authority over the most important aspect of her conduct—how she behaves as a parent—and no direct authority over their child's child." (footnotes omitted)).

130. *See id.*

131. *See id.*

132. *See id.*

find that freedom hijacked by the decisions of their adolescent daughters.¹³³ They are confronted with a stark choice: they can accept the notion that their child has become a legal adult and put their child and grandchild out of the house—a decision fraught with both immediate and long-term dangers and lost opportunities—or they can put aside part of their own futures to assume the economic, social, and personal burdens (and joys) of co-parenting and grandparenting.¹³⁴

Finally, in contradistinction to the previous four attributes of adolescence, teen mothers are simultaneously growing into adulthood and learning (albeit in fits and starts) how to assume parental responsibility for a vulnerable child.¹³⁵ Pipher notes that parents and their teenage children are constantly negotiating how far teens can move away from their parents emotionally.¹³⁶ Parents are attempting to keep their teens safe as if they were once again toddlers, while teens, like toddlers, “are outraged when their parents don’t agree with them about the ideal balance of freedom and security.”¹³⁷ In the fraught situation of teen parenthood, teen mothers’ own parents may resort to treating them as children, especially as they confront a complex and seemingly unconcerned social services system.¹³⁸ These grandparents attempt to keep their child safe by assuming responsibility both for the grandchild and the teen mother’s decisions; however, they neglect the reality that somehow, the teen mother must learn the skills and habits of motherhood.¹³⁹

Neither the liberal model nor the traditional extended household model can fully account for the emerging adulthood of these teen mothers. The liberal model, on which much law—including the contemporary social services structure—rests, imagines autonomy and agency in binary terms: an individual

133. *See id.* at 790–91.

134. *See id.*

135. *See* Pamela S. Nath et al., *Understanding Adolescent Parenting: The Dimensions and Functions of Social Support*, 40 *FAM. REL.* 411, 418 (1991).

136. PIPHER, *supra* note 62, at 65.

137. *Id.* Pipher notes, in particular, that

[m]others are expected to protect their daughters from the culture even as they help them fit into it. They are to encourage their daughters to grow into adults and yet to keep them from being hurt. They are to be devoted to their daughters and yet encourage them to leave. Mothers are asked to love completely and yet know exactly when to distance emotionally and physically.

Id. at 103.

138. *See supra* Part I.

139. *See* Nath et al., *supra* note 135, at 418.

person is either competent or incompetent to make his or her own decisions; either an adult with full capacity and authority to make difficult life decisions or a child or disabled person who possesses no capacity at all.¹⁴⁰ It cannot account for the fact that many individuals are on an ever-moving and slow pathway between lack of capacity and full autonomy, a pathway that sometimes regresses as quickly and dramatically as it progresses.¹⁴¹ The traditional extended household model similarly does not make room for more than one decision-maker in the family.¹⁴² The possibility of sharing decision-making with another person poses an unwelcome threat to the authority and certainty of the traditional model.¹⁴³

III. Restorative Decision-Making as a Way Forward

As unsatisfying as the liberal and traditional models can be for navigating the troubled waters between childhood and adulthood, they are not the only paradigms available to the state as it defines the rights and duties of teen parents within their families of origin. The restorative justice movement has reimagined the nature of the individual's relationship to the state in five important ways that portend a healthier legal engagement between the teen mother, her family, and the state.

First, the restorative movement recognizes the reality and value of interdependence,¹⁴⁴ and makes legally visible those relationships with family, friends, and community that exercise dynamic and interactive influences on the subject of government intervention.¹⁴⁵ Restorative justice anticipates a collaborative process among primary stakeholders such as the teen parent, grandparents, spouses, siblings, friends, teachers, and co-workers—some of whom are currently involved in helping the teen

140. See *supra* Part II.A.

141. See *infra* note 152. For an interesting critique of the current legal approach to children and family issues, see Gary B. Melton & Brian L. Wilcox, *Children's Law: Toward a New Realism*, 25 LAW & HUM. BEHAV. 3, 3–6 (2001). Melton and Wilcox argue that law reform energies have been focused around symbolic issues such as the age or attributes of the capacity to consent, rather than on systemic improvements that can “preserve family integrity, promote healthy socialization, and protect child liberty and privacy.” *Id.* at 5–6.

142. See *supra* note 53 and accompanying text.

143. See *supra* note 53 and accompanying text.

144. See, e.g., KAY PRANIS ET AL., PEACEMAKING CIRCLES: FROM CRIME TO COMMUNITY 12 (2003) (noting the restorative assumption that we are all profoundly related).

145. See HOWARD ZEHR, THE LITTLE BOOK OF RESTORATIVE JUSTICE 19–20 (2002).

parent.¹⁴⁶ However, it also includes among participants such secondary stakeholders as neighbors, government officials, and those in organizations affected by the incident that gives rise to restorative practices.¹⁴⁷ The restorative movement rejects the legal fiction of the individual as an isolated decision-maker who can stand at arm's length from his or her situation and make an objective assessment of fully available facts that have an impact on the situation.¹⁴⁸ Instead, the restorative movement recognizes that in each moment, the individual is acting on and being acted upon by others related to him or her, and that these relationships constitute the warp and woof of the individual's capacity to make successful choices.¹⁴⁹

Second, the restorative movement redesigns the anthropology of most social services programs, which implicitly assume that a person accorded legal capacity will consistently make self-maximizing, self-regarding decisions along a progressive trajectory.¹⁵⁰ Restorative planners understand that human beings often make choices that undermine their well-being for a variety of reasons, ranging from confusion about what is in their best interests, to impulsivity, to a sense of worthlessness and hopelessness.¹⁵¹ Restorative planners bring the community in to surround offenders for a long-term process expected to confront behavioral reverses.¹⁵²

Third, the restorative movement demands accountability to others harmed, both those who suffer immediate injuries from the offender's actions and those whose community is more indirectly impaired because of the fear, anger, or other emotions caused by the offender's conduct.¹⁵³ The restorative movement requires the offender come face-to-face with the harms that he or she has caused, and refuses to accept offending subjects' desires to blame

146. Paul McCold & Ted Wachtel, *In Pursuit of Paradigm: A Theory of Restorative Justice*, EFORUM, Aug. 12, 2003, <http://www.iirp.org/pdf/paradigm.pdf>.

147. *Id.*

148. See HOWARD ZEHR, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE 70–71 (1990).

149. See PRANIS ET AL., *supra* note 144, at 170 (“Few can . . . develop new behavior patterns without caring, supportive relationships.”).

150. See *supra* notes 82–83 and accompanying text.

151. See PRANIS ET AL., *supra* note 144, at 48–49; ZEHR, *supra* note 148, at 70–71.

152. PRANIS ET AL., *supra* note 144, at 206 (noting that life changes “usually involve moving forward and stepping back many times before a new way settles in”).

153. See ZEHR, *supra* note 148, at 200–03.

others and to view themselves as victims, thereby empowering these subjects to change.¹⁵⁴

Fourth, accountability for change is reflexive in the restorative model—not only is the offender accountable to those closest to him or her, but the community is accountable for “seeing” the offender as a whole person with strengths as well as flaws, without excusing or ignoring the offender’s blame for his or her condition.¹⁵⁵ The community takes responsibility for working with the offender to create the conditions that make it possible for the offender to thrive as a responsible person.¹⁵⁶

Fifth, restorative justice is built on reality-tested hope. As Professor Howard Vogel has described it, restorative justice is “rooted in a *wager* about the nature of reality and the human condition,”¹⁵⁷ specifically that every person wants to create positive connections with others and, in a “safe space,”¹⁵⁸ we can “take action through dialogue to build community so that all life might flourish.”¹⁵⁹

In the criminal setting, perhaps the most common process by which this different imagination about human responsibility is played out is the restorative circle, in which both intimate relations and members of the extended community—such as judges, prosecutors, and community volunteers—participate.¹⁶⁰ Members of the circle come together to demand that the offenders listen to the stories of harm that they have caused, to push them to accept internal responsibility for that harm rather than simply giving it lip service, and to probe their defenses to help them acknowledge what caused them to offend and what conditions need to change so that they do not reoffend.¹⁶¹ The members may offer the offenders a reflective mirror to see their own lives, advice about their experiences with similar problems, tangible support such as employment or help getting necessary education, or simply the emotional support that comes from a listening ear and the

154. *See id.*

155. *See* PRANIS ET AL., *supra* note 144, at 220–21.

156. *Id.*

157. Howard J. Vogel, *The Restorative Justice Wager: The Promise and Hope of a Value-Based, Dialogue-Driven Approach to Conflict Resolution for Social Healing*, 8 CARDOZO J. CONFLICT RESOL. 565, 565 (2007).

158. PRANIS ET AL., *supra* note 144, at 10.

159. Vogel, *supra* note 157, at 565.

160. For a description of this circle, *see id.* at 587–93.

161. *See* ZEHR, *supra* note 145, at 25–27.

belief and demand that offenders can develop assets to turn a new page in their lives.¹⁶²

A. Interdependence and Teen Mothers

As suggested, the current social support models for teenagers assume that there can only be one decision-maker for the teen mother (usually the guardian) and one for the child (usually the teen mother).¹⁶³ While conflicts between the teen mother and her parents may not be visible at the point where they confront the legal system, where conflict does arise, the legal system provides ambivalent direction about which person has the decision-making power over the whole situation.¹⁶⁴ In most cases, the teen mother is in charge, while in some, as in paternity cases where the grandparent is appointed guardian, the grandparents may have more say.¹⁶⁵ And generally, with the legal decision-making power comes the ability to access needed information, whether it is about the teen mother's relationship with the baby's father, her work and school involvements, her income or social situation, or even family dysfunction.¹⁶⁶

For the reasons suggested earlier, the legal system's failure to recognize family members' interdependence for each others' welfare unnecessarily creates dilemmas for state actors in the system.¹⁶⁷ In fact, teen mothers who are living in their households of origin are interacting on a daily basis with other members of the household, often engaging in emotional power struggles to define what territories will be ceded to the teen for decision and what territories the grandparents will retain.¹⁶⁸ The grandparents' attempt to parent both their child and grandchild, or to instruct or insist that their child raise the grandchild in a particular way, may exacerbate authority conflicts.¹⁶⁹ Michael Spencer and his co-authors have speculated that normal teen conflict that is re-

162. See PRANIS ET AL., *supra* note 144, at 222–23.

163. See *supra* Part II.

164. See *supra* notes 33–36 and accompanying text.

165. See *supra* note 33 and accompanying text.

166. See Telephone Interview with Shannon Friberg, *supra* note 43.

167. See *supra* Part II.

168. See Buss, *supra* note 88, at 807.

169. See Michael S. Spencer et al., *Multigenerational Coresidence and Childrearing Conflict: Links to Parenting Stress in Teenage Mothers Across the First Two Years Postpartum*, 6 APPLIED DEVELOPMENTAL SCI. 157, 165–67 (2002) (noting that grandparent/teen-mother parenting conflicts, often involving over-participation by grandparents in caregiving, are highly associated with parenting stress, and may “undermine young mothers’ confidence in their caretaking abilities”); Telephone Interview with Susan Mills, *supra* note 43.

directed toward childrearing in households with teen mothers may be interpreted by the teen as an indication that she is not prepared for parenting or is too dependent on her mother for support.¹⁷⁰ Teen mothers may exacerbate conflict with their own parents as they attempt to move toward autonomous individuation, while at the same time recognizing the need for their families' help with their children.¹⁷¹

Restorative justice calls for the legal system to recognize the household, not the individual teen mother, as the relevant unit which the law affects, just as it recognizes the corporation as the entity to which securities law and environmental regulation apply.¹⁷² Even though the corporation may presumptively speak through a single voice—the corporate executive—corporate law contemplates that legal decision-makers should “see” the entire corporation as the entity of concern, and make a separate inquiry about whether the titular decision-maker in fact speaks for the best interests of the corporation and its shareholders.¹⁷³

As a first matter in teen parent situations, recognizing that the entire household is the entity of concern entails that all but the most private information, such as health data that would normally be kept between a physician and patient, needs to be legally accessible to the adult decision-makers in the household, at the least. The Minnesota Government Data Practices Act anticipates that parents can have access to information about their minor children unless the teen requests confidentiality and the agency concurs.¹⁷⁴ However, as the operations of Minnesota public assistance programs attest, this access does not include information about the teen's child or programs affecting that child's interest and, thus, much of the teen mother's life as well.¹⁷⁵

In the normal case, grandparents should be legally entitled to receive the same information that is available to the teen mother

170. Spencer et al., *supra* note 169, at 167.

171. *Id.*

172. See Zvi D. Gabbay, *Exploring the Limits of the Restorative Justice Paradigm: Restorative Justice and White-Collar Crime*, 8 CARDOZO J. CONFLICT RESOL. 421, 458–60 (2006) (discussing the application of restorative principles to corporate entities).

173. See, e.g., Roger C. Cramton, *Enron and the Corporate Lawyer: A Primer on Legal and Ethical Issues*, 58 BUS. LAW. 143, 144–45 (2002) (describing the importance of a corporate structure that will act in the interests of the corporation and shareholders, and not corporate managers).

174. MINN. STAT. § 13.02 subdiv. 8 (2008).

175. See Telephone Interview with Shannon Friberg, *supra* note 43 (stating that all information regarding county programs requires teens to authorize access to their parents).

about the teen and her child from social service agencies, even over her objection.¹⁷⁶ Even without a formal appointment of guardianship, they should be allowed to seek information directly from the teen mother's or her child's caseworker about the public assistance application, a list of the paperwork or documentation that has been or needs to be provided, the status of the teen's and her child's cases, the benefits due the teen mother and/or her child, and the reasons for denial or postponement of benefits decisions.¹⁷⁷ They should be able to attend interviews and strategy sessions between the teen parent and her caseworker or the prosecutor representing her on paternity, custody, and child support, without a legal recognition of guardianship. Their voices should be heard in court hearings and administrative meetings about the development of the teen mother's and child's cases.

Enabling the grandparents to have a full understanding of the case situation and a voice in the process empowers them to correct misinformation and to follow up with their teen daughter to ensure her compliance with requests and regulations.¹⁷⁸ Giving them an informational voice in administrative processes can provide a perspective on the daughter's own history and character that may not otherwise be accessible to the caseworker, prosecutor, or judge from a conversation with the teen alone. And, indeed, the experience of many state workers that teens *do* bring their parents with them as they encounter state processes suggests that teens recognize the loneliness that comes with being isolated decision-makers with no one to turn to for support or advice.¹⁷⁹

Apart from the gain in efficiency that full access can create, ensuring a presumptive right of access to both the teen's and her child's information also acknowledges that the extended family is involved in the situation. The extended family is affected by the decisions of the state, whether they are decisions about how to

176. See Stephanie A. Zavala, *Defending Parental Involvement and the Presumption of Immaturity in Minors' Decisions to Abort*, 72 S. CAL. L. REV. 1725, 1746 (1999) (arguing that parents should be involved in their pregnant teen daughter's decisions, particularly concerning abortion, because it "may increase the likelihood that the adolescent receives adequate and immediate psychological and medical services and information").

177. See Telephone Interview with Shannon Friberg, *supra* note 43 (explaining that it is helpful to have the grandparents involved because of the confusing nature of the process).

178. See *id.* (stating that the grandmother often helps her child understand confusing situations).

179. See *id.* (stating that eighty percent of teens are comfortable with having their mothers help them).

represent the teen mother's and her child's interests in a paternity or support case, or decisions whether to grant or deny her public benefits and on what conditions.¹⁸⁰ Acknowledging that any wise decision-making must account for the impact of the teen mother's decisions on the rest of her household is the only way to respect others whose lives are profoundly affected by these decisions.¹⁸¹

B. Accountability, Mutuality, and the Extended Family

One valid challenge posed against treating the extended household as the decision-making entity in the state's welfare program decisions is that the grandparents may hijack the process of decision-making.¹⁸² Just as grandparents often assume the primary childrearing role for themselves with their grandchildren, they may also attempt to drown out the teen mother's voice or exert pressure on her to make decisions in the grandparents' best interests, but perhaps not in her own.¹⁸³ From a process standpoint, they may be so insistent on "taking over" a child's social services case that they encourage the teen mother to surrender any responsibility for what she has done and for the decisions that will affect her life.

Of course, most of the time, the grandparents may be acting from the best of motives: they may believe that the teen's pregnancy is proof positive of her incompetent decision-making skills, or that they are in a better position to judge what she might come to regret later in life based on their own experiences.¹⁸⁴ However, by taking away both the accountability and the responsibility to participate in important decisions affecting her child's life, grandparents can both encourage further irresponsible behavior by the teen, and provoke her resistance to further cooperation in establishing a new life pattern. For example, the teen mother may be reluctant to assume the childcare chores

180. See Buss, *supra* note 88, at 792 (stating that there is no "legislation aimed at mitigating the three-generational harm imposed if and when the minor decides to keep the baby and take on parental responsibilities" even though much of the care may fall to the grandparent).

181. See *id.*

182. See Telephone Interview with Shannon Friberg, *supra* note 43 (explaining that grandmothers have the tendency to take over the parenting responsibilities).

183. See *id.* (noting that it can be unhealthy for grandparents to take over the decision-making process when the mother is legal custodian).

184. See Bert Hayslip, Jr. & Patricia L. Kaminski, *Grandparents Raising Their Grandchildren: A Review of the Literature and Suggestions for Practice*, 45 GERONTOLOGIST 262, 263 (2005) ("In one study, nearly two thirds of custodial grandparents expressed disappointment in their child . . .").

necessary for her to create an intimate parental bond with her child because of a grandparent's take-over of those duties.

As earlier suggested, many a teen mother's decision-making competence is indeed likely to be flawed because of her immaturity.¹⁸⁵ Her tendency to imagine the situation from the perspective of her own concerns, to act out of the moment or out of defiance rather than reason, and to resist or be unable to process the experience and views of others may make her a poor candidate to make a fully mature decision.¹⁸⁶ But robbing her of the opportunity to exercise adult responsibility in a supportive atmosphere that will help to moderate any truly rash and damaging decisions she may be tempted to make is no solution either.¹⁸⁷ The fact is that she is a mother, and her own child has immediate needs to be well-mothered that cannot wait until the teen is mature enough to make unaided decisions.

Unlike the contemporary liberal model, the restorative movement underscores the importance of placing responsibility on, and demanding accountability of, everyone involved when a damaging decision is made.¹⁸⁸ The expectation of personal responsibility extends to those who are legally children, even those children who act in the most socially unacceptable ways. The demand for accountability especially embraces those who demonstrate clearly that their decision-making skills are at best impulsive and poor, and at worst completely self-regarding and indifferent to the harm that they cause others.¹⁸⁹ Organizing a restorative circle for a teen mother and her child, one that would involve her legal representative, her caseworkers, her extended family, and others in her life who know and understand her, has the best chance of helping the teen mother to see how her decisions have affected others.

In a restorative circle, members can review the teen mother's behaviors and choices and press her to be accountable for the full consequences of her actions—to her own family, the family of her

185. See *supra* notes 109–116 and accompanying text; see also Buss, *supra* note 88, at 799 (arguing that adolescents' decisions are impaired by their impulsiveness and focus on short-term consequences).

186. See Buss *supra* note 88, at 799.

187. See Telephone Interview with Susan Mills, *supra* note 43 (stating that teen mothers will take responsibility for parenting, but may need more encouragement from outside sources such as parents and community workers to do so).

188. See ZEHR, *supra* note 145, at 26 (“[R]estorative justice emphasizes the importance of participation by those who have a direct stake in the event or offense—that is, those who are involved, impacted by, or who otherwise have a legitimate interest in the offense.”).

189. See *supra* note 186 and accompanying text.

child's father, and the community that is stepping forward to provide economic and legal support to her—if she is going to be successful.¹⁹⁰ The grandparents can grieve their losses and help her to see what her actions have meant to them in a setting where her dependence on them and their approval is not ultimately at risk. The family's willingness to press for acknowledgement that the teen's decisions have profound consequences for everyone involved, including her child and herself, offers the prospect of empowering her to assume the responsibilities of adulthood without the fear that assuming an adult role means that she will be abandoned by those she needs.

At the same time, having a more public circle of mutual responsibility can press the members of the family household to be accountable for their own behaviors that may threaten to rob the teen mother of her agency in these important decisions affecting her life and the life of her child.¹⁹¹ At the least, the restorative circle will press the grandparents to understand how their own behaviors may be exacerbating conflict with the teen parent. The circle can then exert pressure on those grandparents to moderate their attempts to control the situation so completely that their minor daughter is reduced to the role of a passive child in the household.

Restorative justice is as much about providing support as accountability.¹⁹² At its best, the circle may be able to generate options for supporting the family that the grandparents and teen would not have known existed, or may have felt reluctant to ask for because of their shame over the situation or belief that the community does not care about their plight. In many teen pregnancies, the grandparents may press to assume complete control of the situation because they too feel desperate, because they feel as if their household is out of control.¹⁹³ The grandparents may be grieving the loss of the future they have imagined for themselves and their own children.¹⁹⁴ Or they may be

190. See ZEHR, *supra* note 145, at 37 (stating that restorative justice requires the offenders to "understand how their actions have affected other people and take responsibility for those actions").

191. See PRANIS ET AL., *supra* note 144, at 16 ("[Circles focus on] building long-term networks of support—networks in which we share responsibility for working through difficulties as they arise").

192. See *id.* (stating that in the restorative justice model, the parties involved share responsibility for the situation).

193. See *supra* note 182 and accompanying text.

194. See Bonita F. Bowers & Barbara J. Myers, *Grandmothers Providing Care for Grandchildren: Consequences of Various Levels of Caregiving*, 48 FAM. REL. 303, 303 (1999) ("Grandparents are typically not anxious to take on the care of their

hiding their anger that their lives and freedom have been partly stolen from them by an irresponsible and unthinking act, or their fear that others who know them are judging them to be bad parents or their daughter to be promiscuous because of her pregnancy.¹⁹⁵ The restorative circle, composed of professionals from the county, the teen's school and work, and community volunteers, some of whom have been down the same road, can give these grandparents the space to come to terms with their new lives, and to imagine a realistic happy future for their child and grandchild.

At the same time, the mutuality of the restorative circle can support the grandparents' decision to assume responsibility for a grandchild they probably did not expect or initially want by letting them know that they, too, are not alone in assuming responsibility for raising their grandchild. Members of the circle will be able to present the family with options that they may not have known existed, from government benefits or services, to private supports such as day care and respite care, to educational opportunities for the teen mother, to support groups for both sets of parents, and so forth.

As with successful mediation processes, generating new options for the family, rather than attempting to adjudicate (or wait out) a conflict of wills between the teen mother and her parents, is more likely to result in a trajectory of maturity for the teen mother that is built on family consensus.¹⁹⁶ Generating new resources and support for both the teen mother and her parents may obviate their sense of desperation. In many of these situations, where material resources are stretched thin, judicious suggestions about how to seek support from the infant's father's family (who should also be part of the circle where the potential for physical or emotional harm is not significant) or other community resources may ease some of the stress that the teen's extended family is experiencing.

grandchildren because of the changes they will be forced to make in their own lives. As middle or late adults, these grandparents have most likely anticipated having more time for their own interests.”).

195. Mills notes that while she cannot share information about her teen mothers' cases with the grandparents without the mother's consent, she serves an important function as a listening ear for those grandparents, especially in the beginning, when they are processing their guilt, shame, confusion, and lost dreams. See Telephone Interview with Susan Mills, *supra* note 43.

196. See PRANIS ET AL., *supra* note 144, at 16–17 (stating that restorative circles are not about assigning blame but “resolving things in ways that include and respect everyone involved”).

In situations where the ability to be a good parent is already overtaxed, as where the teen's mother is herself a single parent with other children, the circle may be able to generate some support that will reduce the added stress on the family. Circle members may be able to recruit a volunteer "great-grandma" to spend time with the teen's siblings, or a partner "grandma" to teach the teen how to parent in a less emotionally complicated relationship than what she has with her mother. Or, the paternal grandparents may be happy to assume responsibility for childcare and expenses that they would not assume if relations between them and maternal grandparents are stormy.

Of course, the restorative circle is a resource-intensive process. It demands the willingness of volunteers, including some who have minimal contact with the family and others who already bear a large share of responsibility for the family's welfare, to spend precious time to talk out a family's grief, anger, despair, and the practical matters that come with a new child.¹⁹⁷ If a teen mother is going through paternity and support determinations, applying for childcare assistance, MFIP, and medical care, and going to school, gathering those who are working with her may be logistically difficult.¹⁹⁸ To pour resources into sustaining a potentially long-lasting circle, the state will need to be convinced that the intensive upfront investment will reap later rewards, such as the teen's assumption of responsibility for her own sexual behavior, her willingness to get the education and training necessary for her new family to be self-supporting, and the growth in her parenting skills.¹⁹⁹

Perhaps a final barrier to introducing restorative processes may be the teen parent's or her own family's desire for privacy. While the moral stigma of teen pregnancy has obviated to some extent, much of the social stigma remains.²⁰⁰ Particularly in

197. Cf. Kristen Henning, *What's Wrong with Victims' Rights in Juvenile Court?: Retributive Versus Rehabilitative Systems of Justice*, 97 CAL. L. REV. 1107, 1165-66 (2009) (acknowledging that restorative justice methods in the criminal context are often more costly than traditional methods).

198. Mills notes that she visits teen mothers at the school so as to include the context and views of school authorities who interact with teens. See Telephone Interview with Susan Mills, *supra* note 43. Friberg notes that Ramsey County has a unique visiting nurse program which serves as the go-between for teen mothers, ensuring that they are complying with program requirements and have the social services they need for their families. See Telephone Interview with Shannon Friberg, *supra* note 43.

199. See *supra* note 187 and accompanying text.

200. See Amber Hausenfluck, *A Pregnant Teenager's Right to Education in Texas*, 9 SCHOLAR 151, 179 (2006) ("Teen pregnancy is looked down upon in society and often a pregnant teen is branded as an 'outcast' and a failure.").

middle class or traditional communities, teen pregnancy may suggest family failure or even bring on social judgments that the parents were foolish not to encourage their daughter to get an abortion, given the life limitations that teenage motherhood will place on her.²⁰¹ Families used to being independent may not wish to air their “dirty laundry” in a circle composed of strangers. Yet, just as families have had to adapt to working with caseworkers and prosecutors in establishing rights for the minor’s child, so making a restorative process a common option may encourage them to take advantage of this opportunity to open up in ways that they cannot bring themselves to do among family and friends.

Finally, even with the resources of the restorative circle, members of an extended family may still find themselves at loggerheads, and the question of who should speak for the teen mother and her child may still be left to the state at the end of the day. Like the abortion decision, the decision about whether a teen mother is competent to speak for herself and her child on matters such as public assistance and child support may ultimately need to be left to adjudication by a court or administrative tribunal. But the restorative process holds out two possibilities for a better outcome. First, adjudicating decision-making power may not be necessary because the restorative process gives the extended family the skills and support necessary to manage their own conflict. Second, even if these processes are not successful in eliminating severe conflicts, the state will have a much more comprehensive picture of the teen mother’s maturity and ability to make competent parental decisions, rather than relying on brief and assistance-focused conversations between a teen mother and her caseworker.

Ultimately, the promise of restorative justice is in its transformative possibilities in the midst of the tragedy for the community and the family that marks most teen pregnancies. It promises a tempered hope: that the whole family can move forward “into the promise of a new future in which new relationships are forged so that all life might flourish. This hope, and the promises and the possibilities it presents, are rooted in the wager of restorative justice.”²⁰²

201. See Telephone Interview with Susan Mills, *supra* note 43 (stating that grandmothers typically express guilt and shame).

202. Vogel, *supra* note 157, at 566.

