Introduction

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When we were first approached about editing a book on children, sex, and the law, we were hesitant. First, the topic evokes a powerful taboo—so powerful, in fact, that our initial electronic conversations about the book itself were stymied by e-mail filters designed to catch the prohibited combination of the terms “children” and “sex.” Second, neither of us had written in this area, although both of us publish, teach, and present on various topics related to children and the law. Nonetheless, hesitancy gave way to curiosity as we reflected on the myriad ways in which the discourse could and should be shifted beyond the limited traditional focus on child victims of adult sexuality. What we quickly came to realize in our search for authors who could contribute to a book that explored the topic of children and sex from a novel perspective was that, where the law and legal scholars tended to address the topic of “children and sex,” it had historically done so in the context of protecting children from adult sexuality. This traditional approach, which frames children as victims, has led to the development of broad, valuable, and robust protections across many domains (criminalizing such things as child pornography, sexual contact with minors, etc.). All of these efforts, however, are aimed at reifying a normative assumption that children—or, rather, childhood itself—is, and should remain, void of any trace of sex and sexuality—an assumption we are now called to examine more deeply. It is within the context of this normative assumption that we see volumes of texts exploring the topic of adult sexuality as it affects children but few approaching the topic with a different framework in mind. Our curiosity grew to excitement as we discovered the few scholars tackling these touchy issues, all of whom accepted the invitation to contribute to the first single text presenting as rich a variety and range of perspectives on children, sex, and the law as the present one.
This book attempts to move the discourse farther along by broaching a novel framing of the topic of children and sex, one in which we position children not only as objects of protection but also with *agency* in the context of sex and sexuality and as *rights holders* within a broader discussion about sex, sexuality, and related aspects of gender. While recognizing the value of protecting children from sexual predation, we are compelled to broaden our focus in response to the increasing frequency with which we are confronted with examples that hint at the erosion of long-standing normative assumptions about children and sex. Children are not only exposed to sexual environments, they are engaging in sexual conduct and with sexual media in ways that we have never before contemplated. Whether and how we acknowledge this new reality is the challenge.

This book aims to set the stage for a more enlightened dialogue on the topic of children and sex—one that invites new legal responses reflective of both children's agency and rights.

This collection of essays reflects some of the unique challenges that accompany placing children in the broader context of sex, exploring from diverse perspectives where children emerge in sexually related dimensions of law and contemporary life. The book examines emerging issues in which children are positioned as both agents and rights holders in the realm of sex. It is the first academic or commercial text to present these issues in one comprehensive collection and from such a variety of perspectives. As our approach to the topic of children, sex, and the law frames the discussion as one primarily concerning agency and rights, this anthology unfolds in the same manner.

Within the scope of agency, the text explores the ways in which the law conceives of children's capacity for choice in the context of sex as well as their actual conduct. Paul Abramson and Annaka Abramson open the dialogue in Chapter 1 by presenting psychological theory and research pertaining to children as sexual beings. A full appreciation of both children's agency and rights within the scope of sex and sexuality rests on our baseline understanding of children's sexuality and how these understandings are present and absent within law. The research presented raises thorny questions about children as agents and, arguably, as rights holders of sexual information, conduct, and expression. Borrowing from numerous contemporary examples, Paul Abramson and
Annaka Abramson ask provocative questions regarding sexual risks and sexual rights that lay the groundwork for subsequent chapters in the text.

Jennifer Drobac’s chapter combines her expertise in both sexual harassment legal theory and juvenile law to address the inconsistent legal treatment of adolescent consent. By highlighting the influence of adolescent cognitive capacities in understanding adolescent sexual contact with adults, her chapter exposes gaps in current tort, criminal, and employment law and the challenges presented in aligning these areas of law with current knowledge about adolescent cognitive and emotional development.

Frank Zimring contributes to this collection a sharp critique of the law’s treatment of juvenile sex offenders, a population typically lumped together with adult sexual offenders for the purposes of punishment and treatment. His chapter examines existing tensions in the development of appropriate responses to juvenile sex offending based on social science research. It explores the degree to which our conceptualizations about children are transformed when regarding children as sexual actors rather than merely victims of adult sexual transgressions and the dangers of overreaching when ascribing agency to minor sexual conduct. He warns against the dangers of misidentification of juvenile sex offenders in our broader attempt to “protect” children from sexual contact.

Whereas Frank Zimring’s focus is primarily on boys, Ellen Marrus shifts attention to the specific challenges faced by girls within the juvenile justice system—challenges that stem from their gendered identities and perceptions about female sexuality. She traces discrepancies from the point of girls’ entry into the system to the ways in which girls are treated differently once in the system. This chapter sheds light on the ways in which girls’ sexual agency is criminalized, in contrast to that of boys, rendering girls’ sexual conduct non-normative or deviant. Her chapter also addresses issues concerning the appropriateness or efficacy of “treatment” for girls in a system that was designed to “protect” them from their own immoral behavior.

Much like Paul Abramson and Annaka Abramson’s introductory chapter, Piotr Bobkowski and Autumn Shafer’s chapter is intended to set the stage for the second half of our text by presenting data about children’s agency that may naturally raise questions about a corresponding scope of rights. The authors provide meaningful research in the field of
communications that can be used to support the premise of children’s right to sexual information. They focus on the ways in which children are not merely passively witnessing or being exposed to, but, rather, actively engaging with, sexual imagery in the media. This chapter serves as a critical bridge between our two frames of agency and rights by raising important questions, for example, about the ways in which children’s active engagement with and exposure to sexual information shape how we conceive of children’s First Amendment rights in this area.

The text then shifts in focus to a discussion framed more so along the dimension of rights—exploring whether and when children have a right to expression as understood within the First Amendment, a right to access information about sex and sexuality, a right to expression of gender identity, and rights of protection or special treatment based on sexual orientation.

In Chapter 6, First Amendment scholar Seth Kreimer explores children’s right to sexual expression, focusing primarily on the phenomenon of “sexting,” the electronic transmission of sexually suggestive text messages and images, and the constitutional tensions implicit in the regulation of children’s speech. Utilizing an emblematic Pennsylvania case that captures the key issues arising in juvenile sexting prosecutions, his chapter explores whether legal responses to sexting are impermissibly restrictive of children’s First Amendment rights.

Hazel G. Beh then lends her expertise to a chapter addressing children’s right to sexual education and sexual information, which includes a rich analysis of the conflicting interests of children, parents, and the state. This chapter addresses children’s right to sexual information, including affirmative sexual education in schools, sexual health services, and contraception. It is intended to present in a broad fashion the many areas in which children are either provided opportunities for or denied access to information pertaining to their sexual lives.

Sacha Coupet approaches the topic of sexual rights from the perspective of gender identity and gender expression in transgendered and gender non-conforming children. She provides a context for understanding the phenomenon of transgenderism and gender non-conformity in minors and the ways in which gender expression is subject to regulation within the public schools. Gender identity “rights” are also examined as they relate to dependent and delinquent children in custody of the state.
And finally, in the last chapter of the text, Barbara Fedders addresses the distinct legal rights of lesbian, gay, bisexual, and transgender (LGBT) children who are in state custody. This chapter explores misconceptions about LGBT youth identity development and the influence of stereotypes regarding LGBT youth on interactions with personnel and policies in the juvenile justice system.

We acknowledge that this book falls short of addressing all of the issues that may arise when discussing children as sexual agents and right holders, rather than victims. We are, however, hopeful that the essays within will lead to meaningful discussions, better informed policy making, and a richer debate regarding the legal regulation of children’s sexual lives and identities.