LAW, DIGITAL MEDIA, AND THE DISCOMFORT OF CHILDREN’S RIGHTS

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Introduction

This chapter seeks to bring a ‘counter-narrative’ to discussions about children and their use of digital media. This narrative is centred on a view of children’s rights that stresses the autonomy rights of children ahead of their protection rights. In challenging more orthodox stances about the place of children and adult emphases on the need to protect children, this narrative is often highly contested by many who hold to more conservative views of family. Thus, the conceptualisation of children’s rights argued for here gives rise to discomfort for some adults, but it will be explained here that this is a discomfort that is truly necessary if the meaning of childhood is to be protected while giving proper effect to the rights of children. This discussion is also of contemporary importance as it connects the transformation of children’s lives by digital technology with other challenges to the authority of adults, institutions, and governments over children. The advent of social media, for example, has meant that individuals under 18 who previously had minimal media presence, if any, and thus little voice to call to account those who caused them harm, can now challenge orthodox understandings and explanations of social phenomena that affect them. In positive terms, children have become active participants in defining their identities and what they stand for through their access to digital media. This is not, of course, to argue that such participation of children is straightforward or without problems, but it is important to recognise the transformative nature of what is occurring and how children and young people use new media to explore their place in society (Chalfen, 2009; Simpson, 2005). Importantly, regarding the sole focus of the law as the need to protect children from the purported ‘harmful’ effects of digital media ignores the manner in which the law must also support the right to transgress norms (sometimes outdated) as part of enabling individuals to challenge narratives that seek to inhibit their potential or subordinate them (Abiola & Hernwall, 2013; boyd, 2014; Karaian, 2012; Presdee, 2000).

The role of the law in regulating or supporting this process of allowing individuals to transgress norms is muddied and confused. What is meant by this is that legal responses to the role of digital media in the lives of children often fit within what could be called a traditional understanding of the role of law. This understanding of law tends to see law as a set of ‘rules’ that has, as its purpose, the protection of a set of social understandings about what is ‘good’ and ‘bad’, what is ‘beneficial’ and what is ‘harmful’ about digital media, as applied to children. What this
notion of law disguises, however, is that those who make the law also construct the definitions of what is ‘good’ and ‘bad’. In history, this has usually been about supporting the definitions of the powerful who in fact manipulate the law to advance their interests while paying lip service to the notion that law is the product of a democratic process and social consensus. (See, for example, Kairys, 1998.) The messiness of the law’s response to the use of digital media as a tool of identity formation, and as a challenge to established and potentially outdated norms, is that while many of the stated tenets of the law articulate the rights of individuals to dissent and, in effect, transgress, this creates a struggle for legal institutions that have tended to see their purpose historically as the preservation of the rights that underpin the status and political power of those with wealth and influence. (See, for example, Kennedy, 2004.) In this sense, law has more to do with ideology, politics, and economics than legal doctrine, which itself is often ambiguous and lacking in coherence (Carson, 1980) leading to more symbolism than sense (Freiberg, 2007, p. 81). For this reason, it is important to recognise that while a discussion of the nature of law in this context is important, it would be folly to assume that it is possible to come to a position where there is any clarity about the role of law, or what reforms are necessary to create ‘better’ laws. To understand ‘law’ does not imply any insight as to how to make it ‘better’.

Debates about the role of law in regulating digital technology rarely include significant discussion about what is meant by ‘law’. Such debates seem to assume that, when providing a ‘legal’ response to, say, children’s use of social media, the role of the law is to bring to the matter some kind of neutral arbiter. It is assumed that the law is itself a result of a process that rationally considers competing views, weighs up the evidence, and then formulates appropriate legal principles to apply to the situation. This unquestioning approach to what law is, and hence the role that law does or can perform, is against a proper understanding of how law operates in relation to social events. A better understanding of law, and hence a basis for discussing how it impacts on children and digital media, is to acknowledge its primary role in preserving status, power, and privilege within society while cloaking this “in the fabric of a discourse of rights” (Williams, 1987, p. 133). This understanding of law is an important underpinning to the counter narrative discussed here about children, law, and digital media. While the law mythologises its manner of development as a rational and scientific one, in fact the law is formulated around shifts in society that direct its development rather than in any necessary coherent or formulaic manner. Many of those who operate within the law understand the extent to which ideology and politics – counter-narratives if you will – influence what law ‘is’. To that extent, and to the extent that those other narratives enter legal debates from time to time somewhat haphazardly, it should be of no surprise that law can often seem more ambiguous or contradictory in its response to social problems or phenomena than its stated legal principles would suggest. (See, for example, King & Piper, 1995.) In effect, and as will be further articulated below, in the area of children and digital media, the law tends to adopt understandings of the child that both support adult romantic notions of childhood and also meet society’s needs to produce citizens that are broadly economically productive and unquestioning of the existing social order. This leads to the focus on children’s protection rights mentioned previously, leading the law away from rights that support challenges to the social order. Considering the conjunction of children, law, and digital media, however, offers the opportunity to embed the counter-narrative in law’s role, and to add to the tension surrounding law’s purpose.

The Shifting Terrain of Law, Children, and Status

An understanding of the law’s approach to the regulation of digital media as it affects children also requires an understanding of how law views the status of children. The legal status of children is shifting and dynamic. It cannot be assumed that the concept of children’s legal
status results from some developmental and coherent process. Nor should it be assumed that the legal notion of consent – pivotal in stated legal doctrine to the capacity of the child to make life decisions – has held the same meaning through legal history. As Holly Brewer (2005) demonstrates, the way in which the law constructs the legal capacity of children reflects ideological shifts in society. She traces the development of society through the 17th and 18th centuries from an authoritarian system of government towards a democratic one. In this period, she also identifies an important shift in constructions around the legal capacity of children. Prior to the formation of democracies, the child’s capacity to consent on its own behalf was attached to their status. In effect, the aristocratic child could enter into various legal relationships that relied on this status (Brewer, 2005). The advent of democratic theory, however, shifted the basis of the meaning of consent away from status and towards reason; that is, to be governed democratically required a form of consent that depended on an understanding of this nature of government. This excluded children from democratic participation. As she explains:

‘Consent’ has not had an unchanging meaning. The new principle that consent must be ‘informed’ and reasonable, which led to the exclusion of children, was part of what made democratic political ideology viable, acceptable, and above all, legitimate. It became the marrow of the law. The principle that responsibility was necessary for both criminal matters and voting became established as consent became more important to the law, at the same time as birth and perpetual status became less important.

(Brewer, 2005, p. 341)

By the mid-18th century “some began to characterise teenagers, in particular, as ruled by passion, whereas adults were guided by reason” (Brewer, 2005, p. 335). It would be a mistake to understand this shift simply in terms of a greater enlightenment about the capacity and maturity of children. Instead, other contemporaneous changes provide a more credible explanation of what was occurring around this conceptualisation of the child. At that time, older power structures were being challenged by new ideas about how society should be governed. Within that context, the recasting of the child’s capacity as diminished, based on children’s inability to reason, had the effect of removing children’s influence in those new forms of power. Other groups within society were also having their capacity to participate in democracy nullified, for example women and indigenous people, who were said to be unable to be full citizens because of their ‘superior virtue’ or emotional immaturity (Russell, 1950). Thus, as Brewer acknowledges, the law constructed an ‘age of reason’ in such a way that it portrayed children as having an almost complete inability to exercise judgement, elevating reason as important beyond all other human attributes and, in the process, putting great weight on this supposed difference between the adult and the child. The dominant narrative of the immaturity and incapacity of the child persists today (Brewer, 2005, p. 351).

Law, Digital Media, and the Protection of Children as the Dominant Paradigm

Viewed as a legal and not a psychological construct, the claimed immaturity of the child has arguably done more to harm children than protect them (Ferguson, 2007, p. 134; Simpson, 2015, p. 345). In the first instance, this state of immaturity forms the basis for removing from the child the capacity to consent in law on their own behalf in relation to how their body will be dealt with by others. Of course, children can and do consent as a matter of fact, but the law removes this as operative for the purposes of many legal decisions. The protection of children in
this context thus depends on the proper and responsible behaviour of adults, usually parents or guardians, but sometimes the state, to exercise their judgement on behalf of the child. However, experience shows that this is problematic for many reasons.

One problem is that there is a legal culture created by the stated immaturity of the child that removes from the child the possibility of participation in decisions that affect them, even where some legal principles seem to support their involvement. For example, there was a time in the past when the Australian Law Reform Commission described the evidence of children as based on an “assumption of unreliability” (Australian Law Reform Commission, 1997, para. 14.15). Formally, judges are now not permitted to warn juries that children are unreliable witnesses. (See, for example, Evidence Act 1995 (NSW), s.165A(1).) However, that does not preclude a judge warning a jury about the unreliability of a particular child’s evidence for reasons “other than solely the age of the child” (Evidence Act 1995 (NSW), s.165A(2)). The problem is that, in saying the child’s age should not determine their capacity, it affirms that this may be an issue. Thus, while the law attempts to place children in the same position as adults in relation to their competence to give evidence, attention is drawn to the historical treatment of children as immature while, at the same time, trying to remove that very perception. This means that even where the law attempts to involve children in legal processes that affect them, it must confront a view of the child that is against granting them the capacity to participate meaningfully. (See, for example, RCB and The Hon Justice Colin James Forrest [2012] HCA 47, per Heydon, J at paras. 51–52.) Of course, there are, as stated in the example of the formal rules of evidence, shifts in legal discourse that represent other narratives of the child as capable and mature. However, this is not to say that this alternative way of understanding children’s position is in any way in the ascendancy. It is still fair to say that the dominant narrative in discussions about law, children, and digital media persists, with an overriding concern with the welfare and protection of children that needs to be understood to appreciate fully the role the ‘counter-narrative’ plays.

**Digital Media, Harm to Children, and Their ‘Best Interests’**

The legal test to determine whether a course of action is harmful to a child is often expressed in terms of whether or not that course of action is in the child’s ‘best interests’. The mechanics of this legal concept is that it rests on the assumption that a child is generally unable to make their own decisions about such matters as their body, interactions, or living arrangements, and so it becomes the standard against which other persons are expected to make those decisions for them. Thus, quite simply and some might say sensibly, parents, guardians, and the state are often expected to act in the child’s best interests when substituting their decisions for those of the incapable or immature child. The problem, however, with the ‘best interests’ approach lies within its own internal logic. For many adults, the determination of what is in a child’s best interests is regarded as self-evident, when in fact this matter is heavily value-laden. In removing from the child its capacity to make its own decisions, recourse to the best interests of the child as the justification for various courses of action can allow the interests of others – parents, guardians, or the state – to operate under the smokescreen that the legal standard creates.

The dilemmas this creates for decision-makers in the field of children and the law are illustrated by the points made by Brennan, J in his dissenting judgment in the High Court of Australia in Marion’s case, about the way in which the best interests standard operates. The case is not about children and digital media, but its discussion of general principles to do with the protection of children is still relevant. The case was concerned with the sterilisation of an intellectually disabled child. The parents wished to have their child undergo the procedure, and, in the usual case (that is, where the medical procedure does not involve invasive surgery such as in sterilisation), it was accepted that parents could consent to the treatment on behalf of a child incapable of
making their own decision. In Marion’s case, however, the nature of the treatment being undertaken raised the question of whether parental agreement would suffice or whether the law required that court approval was required in such cases. While the majority found such approval was required, and that the determination of the matter must be based on the best interests of the child concerned, Brennan, J dissented, finding that any authorisation of such an invasive procedure would undermine any claims that a child has a right to bodily integrity. In effect, he held that the right of a child to own their own body would be rendered meaningless by others who were deciding the matter for the child based on their view of the child’s best interests. In his judgment, he provided a critique of the best interests principle that many would agree with. He said:

In ascertaining where the welfare of a child lies, the courts have sought to discover what is in the child’s ‘best interests’. The ‘best interests’ approach focuses attention on the child whose interests are in question. By asserting that the child’s ‘best interests’ are ‘the first and paramount consideration’, the law is freed from the degrading doctrines of earlier times which gave priority to parental or, more particularly, paternal rights to which the interests of the child were subordinated … But, that said, the best interests approach does no more than identify the person whose interests are in question: it does not assist in identifying the factors which are relevant to the best interests of the child … the best interests approach offers no hierarchy of values which might guide the exercise of a discretionary power to authorise sterilisation, much less any general legal principle which might direct the difficult decisions to be made in this area by parents, guardians, the medical profession and courts … it must be remembered that, in the absence of legal rules or a hierarchy of values, the best interests approach depends upon the value system of the decision-maker. Absent any rule or guideline, that approach simply creates an unexaminable discretion in the repository of the power. Who could then say that the repository of the power is right or wrong in deciding where the best interests of an intellectually disabled child might lie when there is no clear ethical consensus adopted by the community?


Brennan went on to state that “the power [to decide such matters] cannot be left in a state so amorphous that it can be exercised according to the idiosyncratic views of the repository as to the ‘best interests’ of the child” on the basis that “that approach provides an insubstantial protection of the human dignity of children” (p. 142).

What then is the place of considerations of the human dignity of children when it comes to digital media? For the most part, as has already been observed, such discussions tend to focus on matters to do with the protection of children, which is of course one aspect of human dignity. Such discussion of the protection of children in the context of digital media does require consideration of harm from which children are to be protected, and an incapacity on the part of children to protect themselves. As noted above, Brewer’s work illustrates the construction of the child as incapable of judgement in law from the 18th century. However, the identification of harm from digital media also has to be established to justify the protection of the child in this context, and this has generally been achieved by identifying those parts of digital media that harm, endanger, or threaten ‘childhood innocence’. (See, for example, Simpson, 2015.) Childhood innocence in this context might be broadly understood as the nature of childhood which explains the child’s incapacity to make mature judgements. In other words, the counter-narrative regards discussion of the innocent child as fraught, problematic, and a social and legal construct itself.
However, both the perception of the harms that digital media contains for children and the construction of the child as innocent are highly problematic. The notion that digital media contains aspects that can harm or threaten the child, while other parts may bring benefits to that child, itself relies on a utopian versus dystopian view of digital technology which has been a common approach to all new technologies throughout history, but which also depends on the acceptance of a number of myths about that technology (Papacharissi, 2010). Clearly, what is to be regarded as ‘good’ or ‘bad’ online will be a matter of values which are often left unstated for the very reason that clear definitions are fraught, if not impossible. There may be general agreement that cyberbullying is wrong, but can any agreement be reached on how it should be defined? Beyond that common example, is the child who explores their sexual identity online engaging in the ‘positive’ or the ‘negative’ aspects of digital media? The answer here is probably not one that even begins with a universal consensus that then flounders on subsequent definitions.

A possible reason for believing that digital technology has clear positive and harmful aspects is that deciding matters in this context for the protection of children based on their best interests becomes a relatively easy exercise for adults entrusted with their care; they need simply direct the child away from the ‘harmful’ parts of digital media, and towards those parts of the media that are ‘good’. Indeed, such a view of digital media underpins and appears in many legal systems. One such example is the Australian Enhancing Online Safety Act 2015 (Commonwealth) which creates an e-Safety Commissioner with specific functions to promote online safety for Australians and for Australian children (s.3). The legislation defines ‘online safety for children’ as the “capacity of Australian children to use social media services and electronic services in a safe manner and includes the protection of Australian children using those services from cyber-bullying material targeted at an Australian child” (s.4). Such provisions contain many unstated assumptions about the nature of digital media and what constitutes ‘good’ or ‘safe’ behaviour online. The explanation of cyberbullying material highlights the extent to which such definitions are value-laden as they depend on the judgement being made that an ordinary reasonable person would conclude that:

(i) It is likely that the material was intended to have an effect on a particular Australian child; and
(ii) The material would be likely to have the effect on the Australian child of seriously threatening, seriously intimidating, seriously harassing or seriously humiliating the Australian child. (s.5)

(It may well be appropriate to ask here “who is the ‘ordinary reasonable person’ that the judgement is to be based upon?” Certainly, it is a standard that itself could change over time.)

In addition to this ambiguity around how cyberspace and online activity is seen, there is also the matter of how the child is constructed within this context. As previously indicated, children are often constructed in one of two ways. The first way leads to a focus on their vulnerabilities and immaturity, which then leads to an obligation to protect them from harm. This approach to children is one that is well entrenched in everyday culture and that is constantly reinforced in mainstream media and, as a consequence, applied to debates about children and digital media. It forms part of a romantic notion of children that portrays them as angelic and chaste and fits nicely within many people’s notion of what a child should be (Synnott, 1983). This view of childhood also draws heavily on notions of childhood innocence, which is seen most clearly in arguments that digital media, and what children can access through it, corrupts or removes children’s innocence. Governments, eager to show that they are addressing parental anxieties about digital media and children, have long utilised the concept of the innocent child when explaining their policies on online regulation. For example, in 2007 in Australia, the then Howard Government mailed to all Australian households the document NetAlert protecting Australian families online (Australian Government, 2007), which was presented as an informative guide clearly addressed to parents about how to protect their children online. The section on ‘inappropriate material’ began:
An eight-year-old boy came across offensive images when he innocently conducted an Internet search for films about boys. Devastated and afraid he would get into trouble, he initially refused to explain why he was upset when his mother discovered him in tears at bedtime. His parents contacted NetAlert for advice on how to block sites with inappropriate content.

(Australian Government, 2007, p. 12)

Of course, this story is far more likely to have been manufactured in a government policy unit than in a real Australian home. The referencing to the child’s age – young enough to be credibly ‘innocent’ (would the story have had the same resonance if the child here was 14 years old?) – his ‘innocently’ conducting a search resulting in ‘confirmation’ that “offensive materials are just a few clicks away” online (Australian Government, 2007, p. 3) leading to ‘tears at bedtime’ creates a narrative that draws heavily on childhood innocence being corrupted by ‘bad’ digital content. It also explains the role of the e-Safety Commissioner’s office, mentioned above, to promote online safety. This concern with protecting the child is grounded in these notions of childhood innocence and immaturity. It could be argued that, because children may contact the Commissioner directly where they feel unsafe online, this recognises the capacity of the child to claim their right to protection. This is the ‘digital resilience’ notion promoted in the United Kingdom by various commentators. (See, for example, Children’s Commissioner for England, 2017, p. 4.) But this fails to articulate a complete understanding of children’s capacity and their digital rights. If children’s capacity is to be fully recognised, then this must also embrace the right to be ‘annoying’ online and digitally, because this means that the child would possess the most valuable aspect of a right – to assert it against powerful interests who would otherwise define their behaviour as inappropriate (Simpson, 2018, p. 60). Thus, the granting to children the ability to claim protection disguises a subtle reinforcement of children’s continuing innocence and incapacity to claim a fuller set of rights in this domain.

Yet ‘childhood innocence’ is as problematic a concept as is the notion of what is ‘inappropriate content’ online. The innocence of children is often proclaimed in a sexual context, especially in relation to children’s use of social media. Yet commentators such as James Kincaid note that the child’s sexual innocence can itself become eroticised, as focussing on the very notion of a child’s sexual innocence necessarily raises the issue of children’s sexuality (Kincaid, 1998, p. 55). Debates about children, sexuality, and innocence often become proxy debates about children’s assumed incompetence more generally. Jenny Kitzinger points out that childhood innocence becomes an effective way of denying children their rights:

The twin concepts of innocence and ignorance are vehicles for adult double standards. A child is ignorant if she doesn’t know what adults want her to know, but innocent if she doesn’t know what adults don’t want her to know.

(Kitzinger, 2015)

Judith Ennew has also argued that, in relation to the exposure of children to sexual exploitation, “the key to solving the problem lies not in denouncing repressive morality, but in denying the presence of childhood innocence” (Ennew, 1986, p. 61). Ultimately, Ennew’s position seems to be that the education of children about sexuality in a manner that is age-sensitive is more likely to lead to their ability to protect themselves from sexual exploitation (Simpson, 2018, p. 107). Similarly David Archard argues that the dominant narrative around children is that they are “incompetent innocents” (Archard, 1993, p. 218), which justifies denying children rights. Yet, to the extent that innocence is equated with ignorance, Archard emphasises that “any strategy to
protect children from abuse will be inadequate if it maintains children in their ignorance and powerlessness” (Archard, 1993, p. 206).

However, while the concept of the innocent child is perhaps not as clear as first thought, the related question is whether the notion also clouds the discussion of child protection where the perpetrator is also a child. In other words, children’s innocence may be utilised as the rationale for protecting children from harm, but how does this model accommodate the child perpetrator, the child who causes harm to other children? What happens to the innocence of children in such cases? The short answer is that the model of innocence is dispensed with and replaced with the ‘demonic’ child, the child that is worthy of blame (Synnott, 1983). The notion that children can be viewed as angelic or as uncontrollable devils is embedded in law and popular culture, but this dichotomy sits uneasily with notions that children need to be protected by adults from unwanted harm. The demonic child may actually be the child who knows things that adults do not want them to know, and for that reason is more likely to be seen as more in need of punishment or control rather than protection. Clearly, such competing views of the child are not readily reconciled, and create problems for legislators and policymakers seeking to demonstrate their concern for children. They lead, as is often the case in juvenile justice policy, to often contradictory positions about the offending child that, on the one hand, they are innocent, immature, and unworthy of being blamed for their deeds, while, on the other hand, they are seen as little devils that need to be punished and controlled. But if punishment is to be justified as a deterrent, it requires a certain degree of understanding on the part of the child of their behaviour. Under this view, the child must be accorded a certain level of understanding or maturity as would justify their punishment as being knowing and responsible (for their behaviour). The logical consequence of this position is that they must also be accorded certain legal rights, such as due process.

This was acknowledged by the United States Supreme Court in its landmark decision In re Gault in 1967. In that case, a child in Arizona aged 15 had been accused of making an offensive telephone call. On the basis that the juvenile court proceedings were focussed more on ‘helping’ children rather than punishing them, the accused was accorded no due process, including notification of the complaint nor cross-examination of their accuser. Gault was, in effect, placed in state care until he was 21, while an adult convicted of the same offence would have received a maximum sentence of two months and/or a fine of up to $50. The United States Supreme Court eventually heard the case and remarked of the Arizona State law and its rationale:

The idea of crime and punishment was to be abandoned. The child was to be ‘treated’ and ‘rehabilitated’, and the procedures, from apprehension through institutionalisation, were to be ‘clinical’, rather than punitive.

These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the state was proceeding as parens patriae . . .

The right of the state, as parens patriae, to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right ‘not to liberty, but to custody’. He can be made to attorn to his parents, to go to school, etc. If his parents default in effectively performing their custodial functions – that is, if the child is ‘delinquent’ – the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the ‘custody’ to which the child is entitled. On this basis, proceedings involving juveniles were described as ‘civil’, not ‘criminal’, and therefore not subject to the requirements which restrict the state when it seeks to deprive a person of his liberty.
The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualised treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness...

Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy. Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise.

(In re Gault 387 US 15–20)

It is difficult to envisage now but in 1967 to speak about children in terms of their due process rights was a watershed moment. It shifted the paradigm about the punishment of children away from simple notions of paternalism and gave children in effect the same rights as adults. But such change is never simple, and to think that this shift in thinking was universally accepted — then or now — would be wrong. To this day, debates in juvenile justice between ‘welfarist’ (paternalistic) and ‘justice’ models continue. In part, this is because the first approach in many ways recognises a form of childhood innocence that speaks more to the idea that children need to be nurtured and allowed to mature, thus making discussion of their rights unnecessary, while the latter approach accords children substantive and due process rights, but on the basis that children are mature enough to possess and exercise those rights. For those that adhere to the former approach to children, there is great discomfort in accepting that children have that level of maturity, even if this means denying them various rights.

Law can thus be portrayed as a pendulum that swings between various conceptions of childhood. Or it might be explained as a confused and muddled ‘grab bag’ of ideas about children and their capacity to make their own decisions. Either way, any notion that law relies on a consistent and coherent set of rules that applies to the treatment of children must be disavowed. The argument in this chapter has been that the need to protect children based on their immaturity often prevails as a narrative. But the chapter has also argued that a counter narrative exists that challenges the dominant one and, in doing so, identifies various flaws in the protectionist approach. There are of course various legal principles pertaining to the treatment of children that are agreed almost universally, such as the need to act in the child’s ‘best interests’ and that children can and do possess a number of rights, as for example appear in the United Nations Convention on the Rights of the Child. But these principles set up contests over meaning and content rather than settle any understandings of the role of law in relation to children generally if the competing narratives are understood. It is in this legal context that the child in digital media can be further explored [See Chapter 30].

References


**Legislation**

Enhancing Online Safety Act 2015 (Commonwealth).

Evidence Act 1995 (NSW).

**Cases**


*Gillick and Wisbech AHA [1985] UKHL 7.*

*In re Gault 387 US 15.*


**Treaties**