

# Neither Seen Nor Heard: Children's Citizenship in Contemporary Democracies\*

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**ABSTRACT** *This article addresses the subject of children's citizenship in liberal democracies. While children may lack full capability to act in the capacity of citizens, the political status to which they have been relegated leaves much to be desired. Paternalist policies dictate that children be represented politically by their parents, leaving them as or more vulnerable and excluded from private life as women were under coverture. Lacking independent representation or a voice in politics, children and their interests often fail to be understood because the adults who do represent them conflate, or substitute, their own views for those of children. Compounding this damage is the tendency for democratic societies to view children not as an ever-present segment of the populace, but rather as future adults. This encourages disregard for children's interests. Until democratic societies establish a better-defined and comprehensive citizenship for children, along with methods for representation that are sensitive to the special political circumstances faced by children, young people will remain ill-governed and neglected by democratic politics.*

*As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are dead, and those who are to be born.<sup>1</sup>*

–Edmund Burke

Children in democratic polities inhabit an uncertain space between alienage and full citizenship. Children are simultaneously assumed to be citizens – they hold passports and except in the rarest of cases receive at least one nationality at birth – and judged to be incapable of citizenship in that they cannot make the rational and informed decisions that characterize self-governance. In place of democratic citizenship, children hold an ill-defined partial membership. Their interests, while distinct from those of their parents and other adults, do not receive formal representation. Furthermore, children are subject to a degree of paternal authority that often leaves them little opportunity to

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conceive interests that diverge from the *nomos* of those who raise them. Much like women were under coverture, children are confined to the private sphere, removed from public life – ostensibly for the good of themselves and the polity in general. And just as contemporary democracies struggle with the burdensome legacy of the unrepresented interests of women in arenas ranging from public health to wage equity policies, they also must face the consequences of children’s stifled interests. From abusive clergy members at whose hands children have suffered to developmental damage resulting from exposure to chemicals not safe for developing bodies, children’s systematic exclusion from substantive aspects of citizenship has come at a high price.

Children’s exclusion from democratic politics is exacerbated by the fact that, despite a wealth of recent theoretical literature on the subject of citizenship, no normative understanding exists that admits the sort of membership most of us could imagine children holding.<sup>2</sup> Partial membership, here termed semi-citizenship, is anathema to theorists of democratic justice.<sup>3</sup> The very presence of multiple forms of citizenship is thought to debase not just those who hold them, but all those self-governing members of the society that generates them.<sup>4</sup> Yet not only do such semi-citizenships exist, but they are critical to the successful democratic governance. Examining the citizenship of children, both as it is and as it might be understood, provides an excellent lens through which to view the role of semi-citizenships within the larger context of democratic citizenship. I will begin by exploring how children’s citizenship has been treated by existing scholarship with particular attention to the fact that contemporary scholars have overlooked children’s citizenship by focusing on its parts, particularly social rights, to the detriment of an understanding of the whole. Turning from scholarly approaches to the ways in which children are actually governed, I will discuss two influential views of children, the paternal and the minor, that have informed law and policy that pertains to children. I relate the paternal view to a misappropriation of authority over children by adults, and the minor view to a substitution of adult interests for children’s distinct interests. By way of conclusion, I offer several possibilities for reconceiving children’s semi-citizenship in order to meet more of the demands of democratic justice without yielding the apparent truth that children cannot hold a citizenship that is identical to full adult citizenship.

### **Flawed Existing Approaches to Children’s Citizenship**

Full citizenship is made up of both rights (civil, social, political and, as some have more recently suggested, cultural or ethnic<sup>5</sup>) and obligations that together are bound to the status of nationality.<sup>6</sup> The parts of citizenship function together, each bolstering the others. Political rights allow people to protect their social and civil freedoms from political encroachments. In turn, social rights ensure that people are able to make use of civil and political rights. Civil rights protect civic activities beyond voting, and allow people to express political opinions that differ from those held by the dominant majority. This complex interplay highlights the difficulty that theorists of democratic justice face when trying to suggest the necessity (and proper form) of a citizenship that does not contain all of its requisite parts.

Theorists, both of democratic politics and of citizenship, have had difficulty addressing questions pertaining to the governance of children in liberal democracies and few explore the issue beyond pointing out that children do not hold full citizenship. It is easy enough to make the argument that children lack the fundamental capacities to engage in democratic

deliberation, and therefore conclude that the standards of deliberative self-governance do not apply to them. Furthermore, children have claims on things that adults do not, a fact that makes them exceptional in a number of ways that even other adult semi-citizens are not.<sup>7</sup> From Robert Dahl to John Rawls, children are seen as a justifiable and somewhat uninteresting exception to the rules of democracy rather than an instructive case of the ambiguity of membership meriting sustained academic attention.<sup>8</sup>

In contrast to aforementioned definitions of adult citizenship, discussions of children's citizenship rarely take it as the sum of its parts, and far more often look only through the lens of one of these parts. A wealth of academic studies compartmentalize the elements of children's citizenship, discussing one or another part as if it constitutes the whole of the membership of young people. This reinforces the idea that children are not in fact full citizens without probing the repercussions of disaggregating the elements of citizenship. A focus on one or another policy issue becomes justified because the issue of their status within the broader context of democratic society has not been questioned. So, for example, nationality is conflated with citizenship so that nearly all children are said to be born with citizenship as a result of policies of either *jus sanguinis* or *jus soli*. Social rights play a disproportionate role in scholarship on children's membership – both implicitly and explicitly. Discussions of family law and representation often revolve around children's physical and developmental needs rather than the potential contributions they might make to the politics shared by all members of a democratic community.<sup>9</sup>

More reasonable claims are made regarding the possibility of global and cosmopolitan citizenship for children (Veerman and Levine, 2001, pp. 373–84). Globalization is creating new possibilities for membership in political communities that transcend the nation state. Since the 1989 Convention on the Rights of the Child, several international organizations have taken substantive and innovative steps to better represent children politically in international politics and to give children better access to civil liberties crucial to exercising political rights (Stasiulis, 2002). However even under ideal circumstances of enforcement, international/human rights doctrines, and the post-national citizenships that they ground, work at best in tandem with national citizenship (Soysal, 2001). International organizations in their present form have at best dubious claims to democratic legitimacy. Furthermore, no movement has been able to address the fact that *jus soli* and *jus sanguinis*, which together form the basis for the assignment of nationality to nearly all children, are themselves arbitrary and intended to protect national interests above all else.<sup>10</sup>

Without adequate national citizenship, children's citizenship will remain grounded in abstract guarantees created by well-meaning but powerless groups of adults that at best prevent atrocious physical and emotional abuse of children caught up in international conflicts, but that can enforce very little in regard to the political circumstances of children for whose physical safety they claim responsibility. Because no comprehensive approach to children's political, social and civil needs has yet been produced by these organizations one cannot confidently claim that either cosmopolitan or post-national forms of membership serve as proxies for traditional citizenship.

### **A Picture of Children's Citizenship**

Understanding children's semi-citizenship requires rejecting approaches that conflate one element of citizenship for the whole. Examining children's access to all component elements of citizenship provides a baseline from which children's semi-citizenship can be

understood and also reconceived. We must turn to the civil and political realms to see how children are treated in the most directly active arenas of democratic citizenship. Children's civil rights are taken up most prominently in the context of the juvenile justice system – where the state attempts to mediate between the needs of a society that has been victimized by a child, and a child that often has been victimized by society. The child is once again a passive recipient, this time of either punishment, or specialized rehabilitation (i.e. “reform school”). Children bear some rights within juvenile justice systems, but many of them are held and exercised through external agents (primarily parents and other family members).<sup>11</sup> Of the classical liberal civil rights held by adults – freedom of speech, association, faith, etc., few enter into debates concerning children.<sup>12</sup> These and other civil rights are regarded as irrelevant or inappropriate to the circumstances of childhood. Laws imposing restrictions on assembly and juvenile curfew laws abound both in the United States and Europe.<sup>13</sup> Children's speech is also readily curtailed.<sup>14</sup> Nor do children have an ultimate say in issues relating to the integrity of their own bodies.<sup>15</sup> Children may also be kept from concluding legal contracts. Children are excluded almost wholesale from the freedoms that compose the oldest category of rights associated with citizenship.

The most controversial and least attended side of children's citizenship concerns their political rights. A few radical arguments have been made in favor of granting political citizenship to children (Houlgate, 1980 and Cohen, 1980). These tend to issue from libertarians who oppose the types of authority that traditional governance of children, both parental and political, imposes on minors. The child liberationists view the political and civil domination of children by adults, either in the person of parents or the state, as one of many examples of illegitimate domination perpetuated by contemporary democratic regimes. Indeed, the liberationist arguments tend to challenge the entire authority structure associated with childhood, rejecting wholesale what is probably an important, if flawed, regime. In trying to make full citizens of children, libertarians tend to ignore the traits that make children exceptional (in comparison to other citizens). In so doing they also ignore the ways in which children need an exceptional political status. As Ian Shapiro trenchantly observes, proponents of these “anarcho-libertarian” views are “not primarily concerned (perhaps not concerned at all) with rearing children who can survive and thrive in a democracy.” (Shapiro, 1999, p. 77). Liberationists literally throw the baby out with the bathwater.

### **Philosophical Pitfalls in Understanding Children's Citizenship**

It is in the space between the libertarian and more traditional approaches to childhood that the idea of citizenship gets lost, and it is also in this space that we find the conceptual and practical need for a category between citizen and non-citizen. Through an examination of two prominent ways of thinking that frame current approaches to children's political status I will demonstrate the need to rethink the membership of children with a sensitivity to their semi-citizen status. I identify these approaches as 1) the paternal category and 2) the minor category. Paternalism allows adults ownership of children's higher level interests and ultimately segregates children, confining them to the private realm of the family and excluding them from public affairs. The minor view of children treats children as means to achieve adult ends. In so doing children's own interests are often obscured or elided with those of adult society. The paternal and the minor view each contributes a distinct set of pathologies to the governance of children while also reinforcing the strength and apparent validity of the other.

*The Paternal View*

Paternalism refers to policies and philosophies of public life that “restrict the freedom of persons in order that their interests may be better served.” (Miller, 1995, p. 367–8). Such a view generates two arguments that, implicitly or explicitly, deny the citizenship of children. The first focuses on the specific abilities children generally can be said to be lacking. Paternalist policies take as their main premise the belief that children are immature and incapable of the sort of rational deliberation and decision-making that democratic self-governance requires. Psychological studies employing a range of methods are used to justify the failure of liberal states to acknowledge children formally with substantive civil and political rights (Pocock, 1995 pp. 37–9).

While an arbitrary point of majority (usually the age of 18) is convenient for adults this rule bears varying relevance to the actual capacities of children or adults to govern themselves. Certainly there is a noticeable lack of uniformity in the capabilities of minors. Examples abound of exceptional children who demonstrate abilities that most would associate with people beyond their age. Conversely many adults act irrationally, whether out of ignorance, medical disability, or other unknown causes. While it might prove inconvenient to create rules and systems that account for the possibility of politically capable “minors” it is impossible to say that there are no minors who could exercise the rights of full citizenship. Nonetheless, simply chipping away at the age of majority will not redress flaws in the political status of children. The immaturity argument ultimately holds sway, although perhaps in a more nuanced way than public law admits. Clearly, therefore, a degree of paternalism is appropriate in the political treatment of children. The very definition of the word has its roots in parent-child relations. However, the place that paternalism currently occupies is not the result of the same sort of careful deliberation that forged modern constitutional citizenship. This becomes clear through an examination of the second element of paternalism.

The second element of paternalism uses principles of political philosophy to justify the domination of children by varying combinations of parental and state authority. The balancing act between the interests of the state, parents and children is complex and ever-evolving but historically under-theorized, perhaps because the state and children have only recently inherited any influence in matters relating to the family. The history of parental rights over children has its roots in ancient Roman law. Under Roman law, parental rights were paternal rights, and paternal rights extended from labor and property to the very lives of children. (Men had similar “ownership rights” over their wives, who shared no legal stake in the fate of their children, even if the father of their children were to die. Husbands could not appoint their wives guardians in the event of their death, and wives were not considered fit to be guardians if fathers died intestate.<sup>16</sup>) It is worth recalling the status of children in Roman law because, as Pocock has convincingly argues, Roman law formed the precursor to modern, legalistic and rights-based conceptions of citizenship (Pocock, 1995). That children were so completely dominated under early regimes of citizenship may explain how and why they were excluded from the definitions of citizenship that followed from the Roman model. It is therefore not surprising that the legal citizenship of children has remained ill-defined throughout modern history (Shapiro, 1999, p. 73). While even serious attention could not redress all of the inequalities inherent in the nature of childhood, the cause of finding some kind of public status appropriate for children has not been advanced by the neglect children have experienced at the hands of those shaping early notions of citizenship.

Not until John Locke's time do we see an explicit philosophical repudiation of the ownership model of parent-child relations that characterized the Roman understanding. As Ian Shapiro reminds contemporary readers, Locke limited parental entitlement to authority over children by pointing out that parents are not ultimately the makers of children (god is) and that without the right that comes with workmanship, parents lose the absolute right to control and punish their children (Shapiro, 1999, p. 73). Locke's formulation balances parental authority with the authority of the state. Rejecting the workmanship/ownership model requires the intervention of the state as a third party has to both check and/or replace some of the functions of the parent. However it does very little to clarify the position of children within the citizenry. Power has been taken away from parents and ceded to the state but children's membership remains ill-defined. Locke's model checks the unmitigated power of parents, but stops short of addressing the more difficult question of how children can be incorporated into politics. Locke's theories accord children negative freedoms from certain kinds of domination that are imposed by parents yet fail to consider that children might be entitled to positive political freedoms of the sort that adults gained from entering in the social contract. This failure on the part of Locke and other early modern political theorists to take children seriously as (partial) citizens contributes to a pronounced tendency in current debates about children's rights/citizenship to see conflicts in authority over children as occurring solely between parents and the state. These conditions ensure that children remain the objects of paternal power exercised by the state and by parents, rather than collaborators in the shaping of their destiny.

Ian Shapiro suggests that Locke was right to reject the ownership model (Shapiro, 1999, p. 75). Shapiro posits a regime in which basic interests (security, nutrition, health, and education) are the responsibility of the state, acting as a fiduciary. Best interests, those interests directly related to the "full development of human potential," are the province of parents, who also act in a fiduciary role towards their maturing children (Shapiro, 1999, pp. 85–92). The best interests/basic interests and fiduciary formulations make sense on a number of levels and closely mirror how children are actually thought of and governed in contemporary liberal democracies. Yet the line between the ownership and fiduciary model is ambiguous. Parents do not own their children so they cannot physically punish them without limits; they cannot direct their actions beyond the age of majority. But parents do retain emotional and, to a large degree, intellectual ownership of their children. If children are eliminated from the equation as too immature to participate in the formulation of their own best interests, and the state is eliminated as being an inappropriate agent of best interests, parents by default end up with ownership of those interests. Parents can compel a variety of behaviors ranging from church attendance to participation in specific educational formats that limit the opportunities of children while imposing a conception of best interests that reflects only the parents' beliefs.<sup>17</sup> There is little to prevent parents from acting as owners rather than as fiduciaries, and the difference may be very difficult to discern in more abstract matters of personal belief.

If the line between fiduciary and owner is hard to perceive in theory it becomes even more problematic in practice, where parents have a great deal of incentive to shift that line in the service of their own interests. Shapiro says that "fiduciaries do not act in their own interests." (Shapiro, 1999, p. 70). Yet both parents and states can and do act in their own interests when attending to the best and basic needs of children. The very act of having a child is rarely a selfless one. Adults bear children for a number of reasons: to fulfill personal needs, to create an heir, to knit together a broken relationship,



to discharge a sense of responsibility to a religious community, to have someone to love them, and so on. Zygmunt Bauman writes of modern child-bearing, "Children are wanted for the joys of the parental pleasures it is hoped they will bring." (Bauman, 2003, pg. 42). While raising children may involve a degree of selflessness unimaginable to the childless it is also true that few parents can see the degree to which they impose conceptions of "best interests" on their children because those conceptions suit their own (adult) interests. Ultimately there seems little practical difference between calling a parent a fiduciary of a child's best interests, and calling that same parent an owner of that child's best interests.

A further problem with the best/basic interests formulation is that, as Shapiro acknowledges, parents end up acting as secondary fiduciaries. Parents are primarily responsible for the basic interests of children. Only when they are not present, unable, or remiss in fulfilling these responsibilities does the state take up its role as protector of a child's basic interests. So a child must be failed by a parent before that parent can be deposed (or at least supplemented) as secondary fiduciary of their child's interests. The double fiduciary model functions well as a compromise between full parental autonomy and a kibbutz-like collective child rearing model. This has the effect of segregating children from public life, and hence from the avenues of active citizenship to which most adults gain access through their civil and political rights. If parents serve as the primary fiduciaries of children's basic interests and the owners of their children's best interests, then children end up almost entirely excluded from public life unless they are unfortunate enough to have parents who fail as primary fiduciaries of their basic interests. Children are engaged by the legal system as passive victims when their parents fail but they rarely have the opportunity to engage it as active participants. Put another way, without any real citizenship of their own children's lives are almost exclusively directed from, and lived within, the private sphere. With diminished civil and political rights, they have neither a claim on, nor access to, public life.

Children are kept from public citizenship by definitions of adult privacy (and freedom from state intervention) that tend to sacralize parts of the family, marking them as beyond the reach of the liberal state. Home life and personal space are protected spaces in a liberal democracy. Yet if we accept that the "personal is political", we must regard the confinement of children to the private sphere with suspicion. The creation of private space beyond the reach of the state ensures that adults can control their own destinies and their own personal circumstances as much as possible. But it also entails that the goods, responsibilities and ultimately the power associated with family life are distributed under circumstances that are rarely liberal or democratic. Drawing a sharp line between private and public politics ensures that children, who are excluded from public politics because they are not full citizens, have little voice in either. Children as independent beings with interests separate from those of their mothers or fathers have not benefited from (or been seriously addressed by) the full implications of the knowledge that the personal is political.

#### *Other Paternal Models: The Coverture Analogy*

The fiduciary relationship is not associated solely with childhood, but rather has been invoked to justify and rationalize the segregation of other groups denied the full rights of democratic citizenship. In the past, the institution of coverture transformed married women into semi-citizens using methods very similar to those described in the fiduciary account. Understanding both the ways in which coverture is analogous to

the semi-citizenship of children and how coverture failed women can help illuminate how children might be better governed.

Coverture in its strictest sense meant that “a wife could not use legal avenues such as lawsuits or contracts, own assets or execute legal documents without her husband’s collaboration. . . the husband became the political as well as the legal representative of his wife, disenfranchising her. He became the one *full* citizen in the household.” (Cott, 2000, pp. 11–12). The laws that made up policies of coverture varied a great deal from place to place and throughout the history of the institution: married women were afforded rights in some places that they were denied in others. However the pattern of excluding married women from public life was pervasive for several centuries. Coverture folded the civil and political identity of a woman into that of her husband once they were married. Because most women were married at a relatively young age, this meant that few women ever achieved an independent legal identity. They moved seamlessly from being covered by their father’s legal identity to being covered by their husband’s legal identity. Under coverture, husbands acted as fiduciaries for their wives and daughters in almost all matters civil and political. From making contracts to property ownership to the essential forms of democratic representation, men were fiduciaries for the interests of their wives and daughters.

In many ways the arrangements of coverture made good sense to those who supported them. Women received little to none of the formal education that prepared men for citizenship. They engaged the public realm in a very circumscribed fashion. Prohibitions on married women owning property deprived them of the sorts of investments in the republic that many thought were essential in forming informed political views. In short, women did not possess many of the attributes of ideal citizens. Was it not therefore sensible to have their husbands represent them in civil and political matters? From this standpoint coverture was an eminently practical institution. Husbands would perceive the interests of their wives (indeed, of their families in general) and after careful consideration, would vote in ways that represented the sum of these interests.

Clearly this picture omits a good portion of what was wrong with coverture, and why it gradually was eliminated from the legal codes and political practices of modern democracies.<sup>18</sup> Husbands were not always faithful fiduciaries of the interests of women. They frequently squandered the fortunes of their wives, to the consternation and fury of their own families and often their in-laws as well. In a society where intimate relations did not often include the exchange of ideas among equals, men were rarely privy to the opinions and interests of their wives. When they were, it is not clear that they were always capable of representing those interests, or that they were able to judiciously weigh their own interests against those of the wives, and come to a rational conclusion about what a best course of action might be. What’s more, men who had wives they purported to represent did not receive additional weight in their vote, much less an additional vote with which they could represent their wives. And unmarried adult women were literally political orphans, with a few more civil rights than their married counterparts, but no hope of political representation.<sup>19</sup> From a contemporary standpoint it is not difficult to see how asking men to serve as fiduciaries of women’s interests was flawed, even taking into consideration the possibility that women were not ideal citizens.

The failings of the coverture system and its subsequent dismantling suggest why the fiduciary model for expressing children’s political and civil interests is dangerously flawed. Just as husband and wife, upon marriage, became one legal person,



(Hartog, 2000, p. 96) children are now folded into the legal identity of their parents upon birth. Parents are expected to represent children at the ballot box when, in fact, it is likely that the interests of those children may run contrary to the interests of their parents. School improvements mean higher taxes for parents not all of whom are willing to sacrifice for their children. Or parents may not vote at all (many don't). When they do they have only one vote, regardless of how many children their vote represents.<sup>20</sup> Presumably children who do not have parents or legal guardians are not represented politically in any meaningful way. The failure to perceive children as citizens, or at least as semi-citizens, creates gaps in governance for children living in democracies. Children have no recourse if their parents choose to absent themselves from political arenas in which young people have an interest, nor do they have an avenue for grievances should a parent place their own interests above those of their children. Parents also represent their children in a wide variety of civil matters, ranging from property ownership and contracts, to court procedures (including, very often, commitment for mental illness).<sup>21</sup> Even parents who seek a more substantial political place for their children find they have little recourse: just as men could not send women to vote in their place, parents cannot ensure civil or political rights for their children. In short, where women once ceded a public identity to their husbands and retreated (often reluctantly) to the private realm, children remain privatized by analogous forces.

The privatization of children's citizenship should not be conflated with the protection of certain aspects of children's public lives that may indeed be warranted. Jessica Kulynych cites the absence of children from the adult work-world, and the existence of a distinct juvenile justice system, as evidence of the "privatization" of children (Kulynych, 2001). But these are not privatizations. While a juvenile justice system distinguishes a set of rights and practices as belonging to young citizens, there is little that is private about such a system. Its existence is one of the few nods to children's semi-citizenship present in the liberal-democratic polity. It separates children from adults without relegating their concerns to non-public spaces beyond the reach of law and transparent procedure. However flawed in practice, it is superior to placing children in circumstances where they are judged by adult standards of responsibility having never experienced adult citizenship, and even worse, punished by adult punishments alongside adult criminals. It is, in fact, an odd irony that one of the only adult experiences of citizenship afforded to American children is the experience of being accused and tried as an adult, and in many cases, deprived of freedom (and therefore citizenship) as an adult after transgressing. A juvenile justice system is, however, one of the only formal institutions designed to address children as the semi-citizens that they are. To do away with that in favor of incorporating children into the adult justice system would be to let some of the faultiest of the liberationist arguments win the day. Rather, the theory behind having a juvenile justice system might serve as a potent model for other civil and political institutions designed to allow children a fuller and more considered form of citizenship.

### *The Minor View*

The paternal view of children is focused on keeping young people safely distant from adult politics while simultaneously allowing adults to dominate children within their sphere of influence. The "minor" view of children is preoccupied with children's status as potential adults. This future oriented perspective emphasizes the citizens they will become,

the vision of society that they ought to fit into, and the needs of the society that will welcome children as they become full adult members of this society. Their current status as minors is taken to be both temporary and preparatory, and as such, the policies and laws that affect them are designed not with a mind to the individual people that make up the youth population, but to the people *various adults wish them to become*. Certainly there is some validity to acknowledging that children are not yet fully mature and that the experiences society and their parents afford them will shape the citizens they become. Yet children are individuals with pressing political interests and needs prior to reaching the age of majority. Not all of those needs are related to the adults children will become. And some of those needs may not be discernable if one is concerned only with children as future adults and the society they will enter.

Focusing on the impending adulthood of children obscures the fact that children as a group are a permanent feature of the populace. A common response to queries regarding the rights of children is that creating undemocratic circumstances for children is justifiable in part because they will eventually mature into full citizenship whereupon they will understand (and perhaps appreciate) the restricted citizenship of their childhood – if for no other reason than that they will then hold that privilege in regard to their own children. This type of logic is similar to arguments that justify severe curtailment of the rights of resident aliens based on the fact that generally a period of continuous legal residence, qualifies them to apply for citizenship. These arguments have been for the most part rejected not just because they force people to naturalize in order to be treated justly but also because they impose deeply undemocratic norms on an already vulnerable and perpetually present part of the population. The same can be said for children. As things stand, children form the largest group of unrepresented people in every liberal democracy in the world.<sup>22</sup> Individual children mature, but this does not obviate the need to investigate and formally represent the political interests of the perpetually present class of minors in a democratic society.

A society that is preoccupied with the adults children will become is likely to pay less attention to the individuals that they are at various ages and stages of development. Lacking an independent political voice, or the space within which to exercise such a voice, children remain a class perpetually vulnerable not just to oversight, but also to the caprices of adult needs and desires. To this point, Wendy Anton Fitzgerald writes:

Instead, when representing children, parents and the state tend to perceive only those claims which serve adult purposes and protect adult interests. . . We accept that children's claims must fit adult purposes because children are potential adults and childhood is preparation for adulthood. . . Any purpose or interest of value only to children as children can command no legal recognition or representation because, by definition, any such interest or purpose is merely childish, and inferior. Children's claims to our care and concern are not childish or inferior, of course, but so long as they serve no politically powerful adult purpose, those claims remain unvoiced (Fitzgerald, 1994).

While Fitzgerald's statement is extreme, the examples cited below make it clear that the perspective of children has often been ignored or overridden by competing adult purposes.

One example of the conflation of adult and children's interests comes from the schools adults require children to attend. Public, and to a lesser extent, private schools have

traditionally operated on schedules that were convenient to the schedules of adults (both parents and school employees). Recent studies have shown that early school start times cut down on the number of hours of sleep obtained by most adolescents, and that often crucial REM sleep cycles are sacrificed in the morning hours (National Sleep Foundation, 2000). This sleep deprivation has been linked with a number of pathologies and disorders. Sleep is an important factor not only in school performance, but also in brain development (*Carpenter*, 2001). It is ironic that schooling may be responsible for limiting the abilities of students who dutifully adhere to the required schedules.

The physical needs of children have not been considered in other salient arenas. Even in this age of regulation and testing, we know very little about the adverse effects that many federally approved chemicals and pharmaceuticals have on children who come in regular contact with them because testing procedures are geared towards adults. In the United States, the EPA has basic toxicity reports for only about 25% of the 80,000 chemicals approved for commercial use. Neurotoxicity and (especially developmental neurotoxicity) reports for these substances are nearly non-existent and new pesticides are not required to be tested for developmental toxicity (Greater Boston Physicians for Social Responsibility, 2000, p. 12). Schools are also a significant source of pesticide exposure. A study of Minnesota children found that one neurotoxin in Dursban was present in 92% of the children surveyed (*Ibid*). These and other findings regarding a range of related issues<sup>23</sup> are disturbing even before one considers the questions that surround recent increases in childhood illnesses ranging from asthma to autism.

Nutrition is another policy area in which children's distinct interests have not been adequately addressed. Despite the growing chorus of voices calling for efforts to improve the diets of young people, the information on most commercially available food products pertains only to the recommended daily nutritional allowances of adults. This means complicated calculations for any person intrepid enough to calculate the nutritional impact of a packaged food on a young body. Even more disturbing are the failures that relate directly to nutritional opportunities provided by the state for children. School lunch programs remain governed in large part by concerns of adults rather than the needs (or desires) of children. It has long been the practice of the federal government to bail out agricultural producers who are in trouble by purchasing "surplus" products which it then "donates" to school lunch programs.<sup>24</sup> Unfortunately this has meant the introduction of large quantities of beef, pork and dairy products into the diets of young people. The dairy industry of the United States has successfully lobbied against the addition of soy milk, which besides being low in fat and cholesterol, can be consumed by those who are lactose intolerant, to subsidized meal programs (Wax, 2002). Given the epidemic proportions of obesity in young people today, it is a striking failure on the part of federal programs that they continue to engage in practices which blatantly place adult political and economic priorities above the physical needs of children.<sup>25</sup> Unfortunately little means exist to enforce any rigorous standards in school lunch programs. Efforts to revamp school lunches have focused on debates surrounding the addition of (or replacement with) commercial brands of fast food not just in the United States, but in Europe as well.<sup>26</sup> It is striking that despite all of the outrage that these programs provoked, the food options provided were not uniformly less healthy than those offered by state-run enterprises (Bowditch, 19).

Children's physical needs have been neglected in recent car safety standard trends advocating airbags. Airbags were designed by engineers charged with developing

a restraint system capable of protecting a male adult who was not wearing a seatbelt. Only after a disproportionate number of children had died did either the federal government or automakers seriously investigate the dangers of air bags for smaller bodies.<sup>27</sup> In this case, considering the child's point of view would have been beneficial to adults of smaller physical stature as well.<sup>28</sup>

It might be reasonably argued that the above mentioned examples of the secondary status of children's interests result from forms of capitalist domination from which adults suffer equally. The vagaries of capitalism make unreasonable demands and inflict unhealthy conditions on many adults. Yet the fact remains that in the cases cited, as well as many others, children's interests are receiving less attention than those of adults subject to similar market forces. We have studied adult reactions to seatbelts and pesticides far more thoroughly than those of children, to name just two examples. Furthermore, the prioritization of adult interests extends beyond the realm of the market. Children's distinct interests have been overlooked in ways that extend beyond their basic physical safety. Throughout history children have been subjected to the vagaries of adult philosophies of life. The very idea of childhood has been constructed, deconstructed, and reconstructed many times throughout the course of human history. Phases of youth such as adolescence are, to many minds, modern "inventions" and either did not exist, or went unrecognized, in earlier centuries.<sup>29</sup>

Children are not responsible for those dramatic changes, the majority of which have not been obviously beneficial to them. Adult economic and psychological needs have governed the larger part of the construction of childhood. When children were needed for economic survival they were brought into the world and thrust into that role as soon as physically possible (Stone, 1979). Where boys have been seen as economically or socially more valuable they have been (and sometimes still are) preferred, even to the point of widespread female infanticide.<sup>30</sup> When adults developed more emotional conceptions of family, childhood was extended and children came to serve as tools for and objects of familial bonding. When citizenship became open to the masses, children had to be educated to be citizens of the republics to which their parents belonged. Even John Stuart Mill, who is generally interpreted as having a liberal take on parental responsibilities, views those responsibilities as stemming from the right of society not to be burdened by children who have been neglected by their parents (Galston, 2003 pg. 220). More recently, when adults wish to severely punish children accused of particularly heinous crimes they try them as adults. In cases of international conflict children may also be victimized by manipulation of combatant/non-combatant distinctions that strip them of human rights protections.<sup>31</sup> In these and many other ways, the line between childhood and adulthood has been manipulated by adults to achieve results that benefit adults.

Adult autonomy can trump children's needs in surprising ways. In the liberal democratic context the right to parent itself is sacrosanct. Only under very extreme circumstances can someone who is clearly unfit to raise children be prevented from bringing more into the world. Drug addicts have children. Abusive parents have children. People have children knowing they are likely to pass deadly diseases on to them. Men and women produce children after conclusively demonstrating the inability and/or an unwillingness to support the children they already have. Older women are increasingly likely to utilize assisted reproductive technologies that carry high risks to the infants they conceive. The adult right to reproduction under almost any circumstances far outweighs any possible right a child might have to be born into circumstances of physical and

emotional safety and health. The liberal state has been cowed into acquiescence to these “rights” by the accusations of eugenics or even genocide hurled at any attempt to curtail unfit would-be parents. Why is it that the adult right to bear children overrides the child’s right to be born into habitable circumstances? Democratic legal and political systems make compromises between a number of competing interests. Children’s interests are rarely even invoked in that balancing process.

The tendency of adults to view children through the lens of adult interests extends to the philosophical level. There is a marked tendency of individual adults (including parents), social groups (such as religious sects) and ultimately even the state, to treat children as vessels for the reproduction of various sets of privately and publicly held values. This tendency has been supported by the liberal state in a number of surprising ways. On the parental side, the logic given in Supreme Court decisions such as *Wisconsin v. Yoder* tends to support the idea that parents are entitled to curtail the boundaries of their children’s world in order to ensure a reasonable likelihood that the children will not affirm the values and practices that the parents prefer.<sup>32</sup> The Amish parents who brought the suit were explicitly exempted from giving their children the legally mandated public education (or some reasonable facsimile thereof) in order to facilitate their inculcation of a very illiberal set of values in their children.<sup>33</sup> Writing for the Court, Chief Justice Warren Burger stated;

It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society as the majority live, but it is quite another if the goal of education be viewed as the preparation of the child for life in the separated agrarian community that is the keystone of the Amish faith.<sup>34</sup>

Burger’s message is that it is acceptable for parents to choose not to prepare their children for life in modern society – to deny them the elements necessary to choose freely to stay in the Amish community rather than join the larger society.<sup>35</sup>

In addition to Burger’s reasoning, the decision heavily relied on precedent found in the case *Pierce v Society of Sisters*, in which it was affirmed that parents have the right to choose a religious over a public school for their children.<sup>36</sup> The opinion in *Pierce* makes no reference to either discerning or representing the wishes of the child. Rather, it firmly reinforces the parents’ right to raise children as they see fit. A corresponding affirmation of children’s diverse spiritual and intellectual options is not given voice. As a parent one is entitled to raise a child in the religion or ideology of one’s choice. In fact, as long as they are not caught inflicting severe physical harm or crippling emotional damage on a child, parents are likely to be able to impose a nearly limitless range of belief systems on a child.<sup>37</sup> Thanks to recent movements in home-schooling, it is possible to restrict the horizons of a child so severely as to completely deprive them of the opportunity to choose ways of life that do not correspond to their parents’ beliefs.<sup>38</sup> Without exposure to a world outside of the home, children may not even be aware that there are other ways of life. In many cases the parent-child bond may be seamless enough that children do not develop the desire to stray from the parents’ belief system. However there are also children who, for example, grow up in a cloistered environment of religious schools and must painfully reconcile years of teaching that homosexuality is a sin with their own uncertain identities. There are children who grow up so ill-informed about sex that they do not know how to protect themselves from disease or unwanted pregnancy. Girls in some communities are promised to older

men at very young ages. To be sure, children may have undeveloped, or developing, minds and capabilities. But this would seem to argue in favor of offering them more, not fewer opportunities to explore worlds outside of that which exists in their home.<sup>39</sup> Given the limited opportunities for children to agitate politically, this point of view tends to be trampled by the desires of angry parents who resent the idea that the state might tell them how to raise their families. Little room remains for anyone, parents, children or the state, to create a space for children that lies *between* the world of the parents and the world of the state.

### **Rethinking Children's Citizenship**

More clearly than almost any other group in society, children demonstrate the need for better articulated categories of citizenship that fall between alien and full citizen. Liberationists and strong paternalists each err in their assessments of how children's political needs ought to be understood and met because they lack a framework that includes semi-citizenship. Acknowledged or not, children already occupy this middle ground; they are citizens by certain standards and not by others. More importantly, they need certain protections afforded citizens despite their inability to fulfill traditional criteria of membership. Converting the current model into a workable form of semi-citizenship requires that attention be paid both to children's political and civic needs and the tools they require to fill those needs. If we are to draft a more clearly defined conception of children's semi-citizenship we must do so with an eye to the balance that the different elements of adult full citizenship provide each other. Legal status, political, civil and social rights, must each be taken into consideration when forming a more deliberately and thoroughly specified understanding of children's semi-citizenship.

Many might be tempted to point to existing institutions as filling some of the gaps in governance I have suggested in this article. Organizations like the Children's Defense Fund, in the United States, or U.N.I.C.E.F on the international level, were formed with the intention of redressing some of the ills done to children by the polities that govern them. Furthermore, many democratic states have created various agencies to deal with children's issues as need has arisen. While there are fiduciary agencies charged with the representation of certain types of children's interests in most liberal-democratic states, they tend not to rely upon a very thick conception of children's citizenship. The problem with existing well-established fiduciary agencies is threefold.<sup>40</sup> First of all they are only agencies or interest groups, not truly representative bodies. They therefore have less formal power than states.<sup>41</sup> Secondly, agencies and interest groups tend to have specific issue foci that narrow their view of children's interests. As stated in the first section of this article, citizenship is larger than any of its components. Groups that target issues or even an entire category of rights still fail to account for the content of full membership. Finally, these agencies and groups primarily serve children who are in dire need – whose circumstances are so abysmal as to have drawn the attention of outsiders who otherwise would not have noticed them. Children in need are rightfully prioritized, but shouldn't overshadow the needs of children who haven't slipped below a baseline of physical well-being. This is the political equivalent of the problem student in class who genuinely needs the attention of the teacher, but who also draws away attention from more gifted students who can get by (but perhaps not achieve their full potential) without supervision. Children who are not in immediate physical danger nonetheless have interests in politics. And if, as



has been pointed out, their parents cannot be relied upon to represent those interests through their own activities as citizens, all children need ways in which their perspectives and actual opinions can be a part of democratic deliberation.

In Marshall's chronicling of the history of citizenship civil rights form the backdrop against which political and eventually social rights are developed. Children's civil citizenship might benefit from the extension and elaboration of ombudsman programs which would supplement the juvenile justice system by creating fora in which children could engage in activism and expression. Ombudsmen perform important roles in a variety of circumstances. Historically they have been institutions designed to bring justice to individuals that might otherwise be overlooked by democratic institutions. Ombudsmen have played an important role in raising awareness of human rights issues and, in some cases, bringing justice to others who could be considered semi-citizens (resident aliens, asylum and seekers, etc.).<sup>42</sup> They have been created to mediate disputes between various levels of federal government in Canada, and between political, corporate and personal parties within the European Union.<sup>43</sup> Ombudsmen also exist to resolve grievances filed by employees of private corporations. As an institution, therefore, the ombudsman attends to conflicts that would be inappropriate or difficult or even impossible to bring in civil courts.

Yet the strengths of an ombudsman are intimately related to its weaknesses. Ombudsmen have no binding legal powers. Their representative powers likewise are symbolic more than substantive. Thus they can't really enforce civil rights. They merely offer a platform through which concerns and demands can be voiced. Because of these vulnerabilities, the quality of political representation accorded children becomes all the more significant. Both descriptive and proportional systems of representation that acknowledged children's entitlement to participate would avert some of the pathologies described earlier in this article. While the geographical system of representation in the United States has had difficulties in meeting the needs of traditionally underrepresented segments of the population, a well-crafted system of descriptive representation might include a representative for children. While not a perfect solution, it would certainly mark an important step away from the coverture model in which parents are expected to vote for their children. A bolder suggestion was recently considered, though ultimately rejected, by legislators in California who proposed that 14 and 15 year olds receive one-quarter of a vote while 16 and 17 year olds should receive one-half. The sponsors of the bill noted that recently Israel and parts of Germany and Austria have lowered voting ages. Great Britain and the European Union are also considering doing the same.

For children incapable of selecting representatives, a representative-at-large could serve to both bring children's issues to the table and balance the dependence on the coverture model of parental voting. Children could be represented much like residents of Puerto Rico and the District of Columbia are currently represented. This would avoid the libertarian error of treating children like adults but would give their viewpoints and interests an improved level of visibility. In addition, older children could be selected to represent younger age groups on advisory boards that serve to bring a diversity of viewpoints to policy making arenas that have traditionally been insulated from the views of children. Allowing children a public space in which they could express their political opinions might prove enlightening, and at the risk of falling back into future-oriented views, would also provide excellent training to future full citizens.

Developing civil and political rights will both supplement children's burgeoning social citizenship and create a better platform for the articulation of youth welfare needs that

currently go unmet. They will also give meaning to children's nationality, which right now plays the role of arbitrarily binding children to polities in which they have little to no voice. It will reduce the degree to which children find they are represented best in international fora that, while significant, lack the authority to direct the political bodies that generally have the most immediate responsibility for children's lives.

### Conclusion

Social and scientific studies have made much of the psychological and economic construction of childhood. Less attention has been paid to the ways in which *politics*, and in particular *adult politics*, constructs childhood. Law and politics play an important constitutive role in determining how children experience the early years of their citizenship. How a democratic polity engages or evades its minor citizens will shape how they see themselves, how others see them, and what options they have to change their position. Whether or not children have independent political voices and how the law approaches them will affect not just the polity to which they belong and the adults they become, but also their experience of childhood. With only the voices of parents audible in the public realm, only the perspectives of parents are heard. Certainly the needs of adult society must play a major role in determining policies that will affect children. We don't give children full citizenship in part because they aren't ready for it, and would not far well as independent political actors. Adults are not generally intentionally oppressive of children so much as they lack the conceptual or practical tools that would be necessary to give them any political autonomy. However cloaking adult interests in the language of "best interests of the child" or simply ignoring the interests and voices of children is a poor substitute for better thought-out, more inclusive policies.

Leaving aside the rather radical suggestions of the child liberationists, virtually all other commentary holds that children are not equal to the demands of citizenship. The reasons for this seem so clear and unchangeable that children are readily relegated to an ill-defined, changeable secondary status in all democratic polities. The very temporal nature of childhood, combined with wide acceptance of the domination of children by adults, seems to have obviated the need for a general justification of their status in relation to full citizens. In much the same way that it was once assumed that women possessed diminished capacities for political deliberation or action and were unfit to hold full citizenship, children are now considered to be so clearly in need of the guidance of adults that little attention is paid to whether they might benefit from political arrangements that distribute power differently. Liberal democracies owe children a more carefully defined and judiciously governed political status that acknowledges their needs alongside their weaknesses and vulnerabilities.

### Notes

<sup>1</sup> Burke, E. (1955, p. 140).

<sup>2</sup> Two excellent overviews of contemporary citizenship theory include Kymlicka, W. and Norman, W. (1994) and Turner, B. S. (1997).

<sup>3</sup> For a more thorough discussion of the meaning and import of semi-citizenship, see Cohen, (2003).

<sup>4</sup> One study that defies this simplistic understanding of membership is Isin, 2002.

<sup>5</sup> See, e.g. Levy, 1997; Will Kymlicka, 1995.

- <sup>6</sup> This definition is based on T.H. Marshall's classic lecture (Marshall, 1965). Since his Marshall lectures on the subject of citizenship, a veritable cottage industry has emerged in which the rights/nationality formulation has been added to, attacked, and affirmed. While these debates have in some cases been fruitful, I wish to sideline them in the current context, in the service of focusing on circumstances peculiar to children. I am aware that there are those who will take issue with the formulation that I have chosen, however I hope that in its generality it can win more supporters than detractors.
- <sup>7</sup> Resident aliens, convicted felons and sexual minorities all hold forms of semi-citizenship, however of these groups, only children have extensive and unique claims on society in addition to restricted rights. For two excellent analyses of the philosophical issues surrounding non-reciprocal duties, see MacCormick, 1982; and O'Neill, 1988.
- <sup>8</sup> Dahl excludes children when formulating his modified categorical imperative, in which "Every adult subject to a government and its laws must be presumed to be qualified as, and has an unqualified right to be, a member of the demos." See Dahl, 1989, p. 127). Dahl notes the difficulties inherent in differentiating between children and adults, but does not go further in his analysis of what might constitute just circumstances for the governance of children.
- <sup>9</sup> For a pithy discussion of the conflation of children's social citizenship with children's citizenship more generally, see Landsdown, 2001.
- <sup>10</sup> Ayelet Shachar underscores this point by quoting Canadian immigration law which is "designed and administered in such a manner as to promote the domestic and international interests of Canada." (Shachar, 2003, p. 351).
- <sup>11</sup> See e.g. *Parham v J.R.* (442 U.S. 584, 602 1979) in which the Supreme Court concluded that children were not entitled to due process in cases where parents were attempting to commit their children to state mental facilities.
- <sup>12</sup> The exception to this statement would be issues of racial and gender equality in education, which have received ample attention, if not remedy, from policy-makers and academics alike.
- <sup>13</sup> In the U.S. see *Johnson v. City of Opelousas*. European countries including the U.K and France have a range of youth curfew laws in place.
- <sup>14</sup> *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 271 (1988).
- <sup>15</sup> See, e.g. *Bellotti v. Baird*, 443 U.S. 622 (1979) in regard to laws requiring parental consent for a minor's abortion. See more generally Gaylin and Macklin (eds), 1982.
- <sup>16</sup> This legal structure makes coverture look positively generous in that coverture is a specific arrangement referring to the rights of married women, not all women, and coverture recognized the potential legal personhood of women, even if that recognition extended only as far as the husband who absorbed this legal personhood upon marriage.
- <sup>17</sup> In fact, Shapiro's categorization of education as a basic interest seems open to debate, as education can easily be construed as directly relevant to both best and basic interests.
- <sup>18</sup> Hartog identifies 1864 as the point at which the legal (as opposed to social or political) institution of coverture begins to be dismantled. In a reversal of a previous ruling, Judge Thomas Johnson, writing for the New York State Court of Appeals, stated that the understanding of the wife as property of her husband was in fact outmoded. Wives were "in law an individual." (Hartog, 2000, p. 98).
- <sup>19</sup> Married women could own property and conclude certain relevant contracts. (Hartog, 2000, Pg. 118).
- <sup>20</sup> It has been suggested that parents receive extra weight as a result of the burden of representing their children's interests. See Bennett, 2000. However this would not address the many conflicts of interest that exist when one private individual is required to represent the interests of other individuals.
- <sup>21</sup> Re court proceedings, see *Parham v. J.R.* in which the Supreme Court denied a child's right to due process in cases where parents sought commitment of their child to a state mental institution.
- <sup>22</sup> Data from the 2000 U.S. Census indicates that children under the age of 18 compose roughly 25% of the population. Adjusting for lower ages of majority, the U.N. reports similar to just slightly lower percentages for European states.
- <sup>23</sup> For example, the recent discovery that most wooden playground equipment is made with a chemically treated pine containing arsenic.
- <sup>24</sup> The National School Lunch Act was originally designed in part to "provide a commodity market." It continues to serve in this role, providing an outlet for surplus crops produced by American farmers. (See the USDA's history of federal food distribution programs at [http://www.fns.usda.gov/fdd/aboutfdd/fdd\\_history.pdf](http://www.fns.usda.gov/fdd/aboutfdd/fdd_history.pdf).) Also see Sims (1998, pp. 67–92).

- <sup>25</sup> One study showed that school lunches exceeded the recommended daily allowance for fat by 25 percent, for saturated fat by 50 percent, and for sodium by 100 percent (Kapner, 1995).
- <sup>26</sup> “More recently, in an attempt to lure children back to the dinner hall, schools have turned their canteens into Fuel Zones sponsored by the manufacturers of junk food and fizzy drinks. Children help themselves to high fat, sugary meals at burger bars, a practice which Glasgow City council is belatedly abandoning. Malnutrition among a minority of Scottish children is a real problem but, thankfully, a diminishing one. Of growing concern is child obesity. In Scotland 13% of girls aged 4 to 11 are overweight. Sheridan’s proposal to spend tens of millions of pounds on food for children who are already adequately fed or over-fed seems profligate.” (Bowditch, 2002, p. 17)..
- <sup>27</sup> As of March 2002, the Insurance Institute for Highway safety reports that in the U.S. alone, 129 children have been killed by airbags since 1990. ([http://www.hwysafety.org/safety\\_facts/airbags/stats.htm](http://www.hwysafety.org/safety_facts/airbags/stats.htm)).
- <sup>28</sup> A minority of those killed by airbags were adults whose height and weight were significantly under national averages.
- <sup>29</sup> Debates about how childhood has been, and ought to be, understood are ongoing. See Aries, 1962 and more recently Kertzger and Barbagli, 2004.
- <sup>30</sup> Female infanticide is a problem not just in the commonly cited case of China, but in many countries where gender inequalities render girls inferior to boys. Female children are also frequently sold to adoption agencies and into sexual slavery at young ages to both for the pecuniary rewards and to relieve their parents of the financial burden of raising them.
- <sup>31</sup> This has occurred in the U.S. Guantanamo detention cases resulting from the recent conflict in Iraq. One interesting study that investigates this subject more generally is Kinsella, 2004.
- <sup>32</sup> In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Supreme Court reversed a ruling that would have required Amish parents to send their children to public schools through the 8th grade. The Amish parents involved in the suit kept their children out of school in the belief that education beyond a certain point is inconsistent with the values and practices of the Amish community that they wished their children to perpetuate.
- <sup>33</sup> Although it is too early to tell, one wonders if recent clashes over religious expression in French public schools will yield a corresponding move toward parochial, private and even home-based education among ethnic minorities residing in France.
- <sup>34</sup> *Wisconsin v. Yoder* at 222.
- <sup>35</sup> In this case there is some evidence that at least one of the children involved shared her parents’ desire, although given the circumstances, it is difficult to see how any of the children could have freely formed and expressed contrary opinions. Nonetheless, the wording of the decision does not seem to rest on the desires of the children (in which case a more thorough and independent assessment of those desires would have been in order), but rather on the competing desires of the parents and the state.
- <sup>36</sup> *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).
- <sup>37</sup> The adult rights to bear children and raise them in extreme belief systems coalesced tragically recently in the case of David and Rebecca Corneau, whose cult beliefs have been implicated in the mysterious deaths of two of their infant children. While they have served brief jail sentences for contempt of court they are now free and able to bring more children into their questionable way of life. See Kurtz, (2002) p. B1.
- <sup>38</sup> Evidence that the simple social right to education does not guarantee children preparation for liberal citizenship.
- <sup>39</sup> Bruce Ackerman writes to this point (Ackerman, 1980, Chapter 5). He also acknowledges that the need for “cultural coherence” imposes some limits on the breadth of opportunities that can be made available to children at a young age.
- <sup>40</sup> I say well-established because a consistent and lengthy track record must be established by any organization in order to claim representativeness. Social movements are capable of generating organizations that claim to represent children, but many lack the permanence that true citizenship demands.
- <sup>41</sup> Again, the recent flouting of human rights norms by the U.S. government during the conflict in Iraq brings into relief the weaknesses of agencies charged with fulfilling these norms under adverse circumstances.
- <sup>42</sup> An excellent general discussion of the history and roles of ombudsmen can be found in the International Ombudsman Institute Booklet which has been reproduced at <http://www.law.ualberta.ca/centres/ioi/brochure.htm>.

- <sup>43</sup> The Charter of the Fundamental Rights of Citizens of the European Union states: “Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the court of First Instance acting in their judicial role.”.

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