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Just let kids be kids

by [David L. Tubbs](#)

In American law, the “rights revolution” of the last five decades shows scarcely any signs of abating. Federal and state judges continue to invalidate laws on flimsy constitutional grounds, justifying their actions on the basis of invented notions such as “the right to privacy” and strained readings of established legal principles such as the “equal protection of the laws.” In some states, judges effectively wield more power than legislators, as evidenced by the judicial imposition of “same-sex marriage” in Massachusetts (2003) and Connecticut (2008).

Left-leaning judges and their allies in the legal academy have no dearth of causes to champion, especially causes relating to sexual politics. If they achieve today’s overriding goal—redefining marriage in all fifty states—they will soon embark on something else.

What might that be? Although it is unlikely to persuade readers who are not already well disposed to the idea, Barbara Bennett Woodhouse’s book provides evidence that a full-fledged “children’s rights” movement could be in the offing.

That a movement for children’s rights would follow a movement for adult “sexual rights” might seem strange, but it shouldn’t. Children have been the biggest victims of the sexual revolution. Today, 36 percent of American kids are born out of wedlock, and suffer appreciably diminished life prospects as a result. Children are now more likely to be subjected to a surfeit of sexual trash, since hard-core pornography has come to receive the same constitutional protection as a letter to one’s congressman. Liberal jurists and political and legal scholars seem to have difficulty understanding that adult behaviors can affect the well-being of children, and rather than limit the scope of adult freedoms, they would prefer to extend the rights revolution to children. The coherence of this approach, including the enforceability of new and projected rights, matters little: Assigning more rights to children soothes the liberal conscience, and few scholars and activists will consider the possibility that the project will actually diminish children’s welfare.

Woodhouse holds an endowed chair in family law at the University of Florida, and like many liberal scholars, she considers herself an advocate committed to expanding people’s rights. Nonetheless, she does allow that children’s rights must differ in some ways from adult rights. Take the matter of “autonomy.” Even when they reach adolescence and show a capacity for independent thought and action, children still require various protections, some of which are codified into law. Woodhouse favors giving children both “autonomy rights” and rights to certain forms of protection. In line with current liberal thinking, she wants children to have a lot more autonomy; she knows, however, that they must sometimes be protected from other persons and themselves.

Complexities like these might give the impression that her book is highly theoretical. It isn’t. She

advances and defends five broad principles relating to children's welfare—privacy, dignity, equality, agency, and protection—but that defense takes up just over one chapter. From those principles, she derives a large number of putative rights.

The five principles are more fully developed in a series of historical narratives about children's lives. Focusing on figures such as Frederick Douglass, Helen Keller, and Willa Cather, these narratives transform much of the book into social and legal history, albeit with a left-liberal political agenda. Woodhouse justifies her approach by declaring that such narratives bring “the marginalized voice into the center of the conversation.” Notwithstanding that justification, a few of these accounts are genuinely moving, particularly the chapter on children in the civil rights movement.

In the narratives, Woodhouse continually stresses the ideas of “agency” and “voice”—the corollaries or substrates of “autonomy.” The narratives remind us that children have played surprisingly large roles in pivotal chapters in American history. Still, her interpretation of these events leads to some dubious conclusions. She submits that a “core principle of children's rights is the obligation of government to foster the direct participation of children in civil life.” But it is unclear why this should be a core principle.

Consider the role of children in the civil rights movement. Leaders such as Martin Luther King, Jr., invited controversy by allowing black children to participate in organized protests against segregation, sometimes without parental consent. Thousands of youths, including pre-teens, were arrested, and southern officials unleashed attack dogs and turned fire hoses onto others. Because the civil rights movement achieved its aims, the children who risked their lives achieved something heroic. But those were extraordinary times, and the valor of a few does not mean that all or even most children are capable of such deeds. Nor does it mean that we should now be aggressively pushing children into adulthood.

Because she emphasizes the themes of agency, voice, and autonomy, Woodhouse must explain why children sometimes need laws that afford them special protection. She offers several cogent explanations, but applies ideas selectively. In opposing the death penalty for minors, she cites scientific research on the relative underdevelopment of the adolescent brain, and argues that adolescents are “impulsive” and “far less capable [than adults] of understanding the seriousness of their acts.” If this is true, however, the argument should apply in other contexts—say, to children participating in the civil rights movement and to pregnant teenagers contemplating an abortion. But here (and elsewhere) Woodhouse affirms autonomy.

This inconsistency is striking, and American liberals seem especially prone to it. In recent decades, liberal justices on the Supreme Court of the United States have routinely succumbed to it. If minors are subjected to something liberals generally dislike—including the death penalty and quasi-religious exercises in public schools—the liberals on the Court will stress the immaturity of the young and their susceptibility to social pressures to argue that they should be exempt from such things. But if minors are doing something liberals broadly approve of—challenging political authority, “exploring” their sexuality, or waging sundry protests in school—the same justices will urge that these choices be respected.

To expand the catalog of children's rights, Woodhouse wants activists, scholars, and jurists to mine various United Nations documents, including the Covenant on the Rights of the Child. To further the cause, federal judges will need to accept the tenets of “living constitutionalism,” which she plainly favors. Highly confident in the ability of judges, she openly questions the fitness of state legislatures to make sensible policies on behalf of the young.

That confidence is ironic, because Woodhouse fails to give some big questions their due. She worries about children being exposed to violent stimuli, but plays down the possible harms of

pornography to children. More broadly, she does not want to admit that children's rights may clash with the rights of adults; she evasively remarks that the rights of both need not be "mutually exclusive." Yet anyone seriously interested in the welfare of American children must reject such complacency.

Woodhouse is passionate in her advocacy, and a large-scale movement for children's rights might be propelled by a similar kind of passion. But passion cannot save this book. Stimulating in places, it fails to make a compelling case for a broad expansion of children's rights in a liberal direction. Children may deserve more rights than they now have, but it would be risky to adopt this book as a guide.

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