

THE COURAGE OF INNOCENCE: CHILDREN AS HEROES IN THE STRUGGLE FOR JUSTICE[†]

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The growing field of childhood studies has begun to gain traction among legal scholars, many of whom are giving new thought and voice to rights of children. The author, a pioneer in advocating for children's legal and political rights, explores the significance of children in social movements from the American Revolution to the civil rights movement, arguing that history is too quick to forget the lasting impact children have had on societal change. The author also mounts the case for increased legal recognition of children as people in their own right, rather than merely as "pre-adults," discussing the current status of children in legal systems. Looking primarily at foster care and child welfare systems, she points out the problems with the secondary role to which children are often relegated in proceedings that purport to have their best interests at heart. Finally, the author argues that contemporary children and young adults around the world have earned the right to increased political participation by demonstrating valuable social and political insight and judgment.

I. INTRODUCTION

We are all familiar with the saying, "children should be seen but not heard." We seldom stop to marvel at a tradition that deprives an entire class of persons of a basic human right—the right to a voice. In American law and history, as written by and for adults, children have been mute and largely invisible. My pleasure at being invited to deliver the Fall 2008 Baum Lecture was tinged with sadness in realizing that it would be the first Baum Lecture in the thirty-five-year history of the series to be dedicated to children's rights. This is not surprising, as children—the

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poorest, most vulnerable, and least empowered members of our society—are not a “suspect class.”¹

Law is not a passive discipline but shapes and channels our civic discourse. Law has been a primary force in treating children and youth as less than full persons. Always under the legal custody and control of elders, they could not enter into contracts or bring legal cases in their own names.² Minors’ rights to participation even in matters involving their own destinies have been severely limited, based on the twin principles that children need protection from harsh realities and are too immature to speak and act in matters of importance. Yet American history is rich with examples of children’s wisdom and courage, agency and voice. Children of all ages, but especially adolescents, have been key figures in American social justice movements, including the labor movement, the civil rights movement, the movement for gender equality, the movement for inclusion of persons with disabilities, and the struggle to secure equal access to education.

In the title of my lecture—“The Courage of Innocence”—I allude to a special quality that children bring to movements for social justice. In using the term “innocence,” I do not mean to invoke images of children as little angels needing coddling and protection. As many scholars have observed, idealizing children as pure and innocent can become a cover for promoting adult agendas and can lead to blaming needy parents rather than helping needy children.³ Instead, I mean to highlight the sort of innocence that allows the boy in the fable to see and to say that the emperor has no clothes. It is this brand of innocence that allows children to

1. Children, defined as persons under age eighteen, are prohibited from voting and lack the resources to lobby or donate to political parties. U.S. CONST. amend. XXVI; see Jody Freeman, *Extending Public Law Norms Through Privatization*, 116 HARV. L. REV. 1285, 1346–47 (2003). The most recent data (2007) show that children as a demographic group have the highest rates of poverty in the United States. A person aged eighteen or under is almost twice as likely to be living in poverty as a person aged sixty-five or older (18.0 percent compared to 9.7 percent). U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, Table POV01: Age and Sex of All People, Family Members and Unrelated Individuals Iterated by Income-to-Poverty Ratio and Race: 2007, http://pubdb3.census.gov/macro/032008/pov/new01_100_01.htm (last visited Aug. 29, 2009). Children are twice as likely as adults to be victims of serious violent crimes. Office of Juvenile Justice and Delinquency Prevention, Statistical Briefing Book, *Juveniles as Victims, Violent Crime Victimization* (Sept. 30, 1999), <http://ojjdp.ncjrs.gov/ojstatbb/victims/qa02601.asp?qaDate=19990930>. One in nine children lacks health insurance. CHILDREN’S DEF. FUND, *THE STATE OF AMERICA’S CHILDREN 2008*, at 27, <http://www.childrensdefense.org/child-research-data-publications/data/state-of-americas-children-2008-report.pdf> (May 30, 2009). Although half of the individuals covered by Medicaid are children, only one-fourth of Medicaid payments are for children. *Id.* at 31. Children in the United States fare far worse than children in peer nations. Though the United States ranks first in Gross Domestic Product, it ranks last in child poverty rates and twenty-fifth in infant mortality. *Id.* at 1.

2. RESTATEMENT (SECOND) OF CONTRACTS § 14 (1981); see Joan Steinman, *Public Trial, Pseudonymous Parties: When Should Litigants Be Permitted to Keep Their Identities Confidential?*, 37 HASTINGS L.J. 1, 63 (1985).

3. See Linda Gordon, *The Perils of Innocence, or What’s Wrong with Putting Children First*, 1 J. HIST. OF CHILDHOOD & YOUTH, 331, 340–41 (2008).

view old injustices with new eyes, as psychiatrist Robert Coles shows in *Their Eyes Meeting the World*.⁴

By the term “courage,” I do not mean the irrational absence of fear—the reckless disregard of risk or the tendency blindly to follow leaders into danger. This aspect of adolescent risk taking, though undeniably true, has been exploited by those who turn children into combat troops or demonize them as criminals.⁵ Instead, I mean the kind of courage that springs from hope—that makes a person willing to take a chance on the possibility that justice actually will prevail. Children, even those growing up in terrible circumstances, are less likely to have become *discouraged* and *hopeless*. These special qualities of childhood and youth—these forms of courage and innocence—have played an invaluable role in challenging entrenched stereotypes, speaking truth to power, and motivating movement elders who have grown cynical and battle fatigued.

Using narratives drawn from history and contemporary cases, I will argue that the voices and participation of children and youth are an essential component of the struggle for civil rights and civil liberties. Children and youth, representing our collective future, provide a spur to action for any social justice movement. More importantly, they have earned the right to claim participation rights in their own present-tense behalf. Participation is not only good for children and for society but a necessary component of children’s constitutional and human rights.

II. THE UNTOLD STORY OF CHILDREN AS HEROES IN AMERICAN HISTORY

Let me begin with some facts of American history that may seem surprising to those who have not been following the relatively new field called “childhood studies.”⁶ Did you know that America was built by the labor of children and youth? I am not talking about children working side by side with their parents on the homestead or in the workshop, although these children also deserve recognition. I am talking about children laboring for masters as field workers, mill hands, and servants. African American children held in slavery are an obvious group that fits this description. Scholars of African American history have documented the exploitation of millions of young humans bought and sold as chattel.⁷ We are learning more each year about the sacrifices of Native American children and other children from marginalized ethnic groups, but child

4. ROBERT COLES, *THEIR EYES MEETING THE WORLD: THE DRAWINGS AND PAINTINGS OF CHILDREN* 57 (1992).

5. See, e.g., SOS Children, *Children in Conflict: Child Soldiers*, <http://www.child-soldier.org/> (last visited Aug. 29, 2009).

6. See, e.g., Rutgers-Camden Department of Childhood Studies, <http://childhood.camden.rutgers.edu/CS-about.htm> (last visited Aug. 29, 2009).

7. BARBARA BENNETT WOODHOUSE, *HIDDEN IN PLAIN SIGHT* 52 (2008).

slavery was not confined to racial minorities. Did you know that more than half of the settlers in the colonies south of New England were minors in indentured servitude?⁸ Their average age was fourteen to sixteen and the youngest was six.⁹ Some were vagrant children or children of paupers or debtors, summarily swept up from the streets of London and Liverpool and shipped to the colonies.¹⁰ To keep social order, it was deemed legal to involuntarily bind children lacking adult supervision and care in contracts of indenture lasting well into adulthood.¹¹ Other indentured servants were volunteers—young people, looking for opportunity and escaping poverty, who paid their way to a new world by pledging themselves to work for a term of years.¹² Their courage in confronting the unknown is part of what I call the courage of innocence.

Benjamin Franklin is arguably our earliest poster child for youth activism and childhood resistance to servitude. You may picture an old geezer in granny glasses at the Constitutional Convention. But my study of his childhood shows that Ben was busy challenging authority before he was ten years old, long before the American Revolution in which he was an important participant. As a boy, Ben (who would later be the first American elected a member of the Royal Academy of Sciences) flunked math—twice—in an effort to coerce his father into taking him out of a school he loathed.¹³ Fearing Ben would run away, his father bound the reluctant twelve-year-old Ben to a nine-year term as a printer's apprentice.¹⁴ By age fifteen, Ben was secretly publishing anti-government letters under the pseudonym of Dame Silence Dogood and had to flee Boston to avoid being jailed for sedition at age seventeen.¹⁵ Ben not only palled around with subversives; he *was* a subversive, practically from birth. We all know obnoxiously gifted and independent-minded kids like Ben, and thank goodness they are still being born in America.

Ben was not the only American youth to put his freedom and body on the line to secure our liberty. Many boys served as soldiers in the Revolutionary War.¹⁶ They did not always go voluntarily. Many were apprentices and indentured servants, sent by their masters to serve in the master's place—an early American way for grown men to avoid the draft at the expense of youth.¹⁷ But many young people took up arms out of conviction—boys as young as fourteen served as volunteers in combat.¹⁸

8. *Id.* at 63 (citing MARY ANN MASON, FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS 2, 31 (1994); STEVEN MINTZ, HUCK'S RAFT 32–33 (2006)).

9. WOODHOUSE, *supra* note 7, at 63.

10. *Id.*

11. *Id.* at 65.

12. *Id.* at 63; *see also* MASON, *supra* note 8, at 2, 31.

13. WOODHOUSE, *supra* note 7, at 114–15.

14. *Id.* at 115.

15. *Id.* at 112–13.

16. *Id.* at 119.

17. *Id.*

18. *Id.* (citing MINTZ, *supra* note 8).

Youths served on both sides of the Civil War, and children of all ages suffered the ravages and deprivations of that terrible conflict.¹⁹ There is another little-known fact about the price paid by children for our freedom. One might imagine that children of slaves were freed by the same Thirteenth Amendment that freed their parents. But in the aftermath of the Civil War, thousands of former slave children were re-enslaved—indentured by local authorities to serve their former masters because their parents were deemed immoral, incompetent, or too poor to care for them.²⁰ To this day, poor Black children and families remain especially vulnerable to coercive government intervention in their lives and are over represented in both foster care and juvenile justice systems.²¹

Children fought beside their elders in the American labor movement. With the coming of the Industrial Revolution, longstanding traditions of training children for work in the home and in apprenticeships gave way to mass forms of child labor. Children were nimble and small enough to work among the clattering looms in textile mills.²² They worked in mines and on factory farms.²³ Long before child labor was regulated, young workers marched and went on strike for decent working conditions.²⁴ Jewish girls from New York's East Side garment factories marched in the battle for young workers rights, carrying banners with the slogan in both Yiddish and English, "Abolish Child Slavery."²⁵

19. See, e.g., Vicki Betts, Newspaper Research, 1860–1865, Nashville Daily Union, http://www.uttyler.edu/vbetts/nashville_daily_union_ap-jy1862.htm (last visited Aug. 29, 2009) ("Among the New Orleans soldiery who have responded to the call of Gen. Beauregard, is a regiment made up mainly of youths, many of them coming from their schools to take their places in the ranks. It is said to be a splendidly equipped corps of the best blood in Louisiana, and numbers nine hundred muskets. The regiment arrived at Jackson, Tennessee on the 7th." (quoting *Boys as Soldiers*, NASHVILLE DAILY UNION, Apr. 13, 1862, at 3)); see also SCOTTI COHN, BEYOND THEIR YEARS: STORIES OF SIXTEEN CIVIL WAR CHILDREN (2003); EMMY E. WERNER, RELUCTANT WITNESSES: CHILDREN'S VOICES FROM THE CIVIL WAR 7–21 (1998).

20. WOODHOUSE, *supra* note 7, at 71.

21. "Although Black children comprise 15 percent of all children, they are 32 percent of children in foster care." CHILDREN'S DEF. FUND, *supra* note 1, at 42. For every 100,000 black children, 767 were in residential placement facilities (i.e., jails, juvenile detention facilities) compared to 170 out of 100,000 white children. Office of Juvenile Justice and Delinquency Prevention, Statistical Briefing Book, Juveniles in Corrections, Custody Data (1997–Present) (Sept. 12, 2008), <http://ojjdp.ncjrs.gov/ojstatbb/corrections/qa08203.asp?qaDate=2006>.

22. See SUSAN CAMPBELL BARTOLETTI, KIDS ON STRIKE 8–12, 27 (1999).

23. See *id.* at 82–84; 1 CHILDREN & YOUTH IN AMERICA: A DOCUMENTARY HISTORY 145–46 (Robert H. Bremner ed., 1970).

24. See BARTOLETTI, *supra* note 22, at 82–84.

25. See *id.* at 131. Young workers march, carrying signs reading "Abolish Child Slavery," in the early 1900s (courtesy of the Library of Congress).



In 1899 the New York newsboys made headlines of their own. These Horatio-Alger-style entrepreneurs ranging in age from eight to fourteen earned their living buying papers from the *World* and the *Herald* and selling them at a small profit.²⁶ When the publishing magnates Hearst and Pulitzer raised the price they would have to pay, the newsboys called a strike, fought off the scabs hired to replace them, and forced the publishers to capitulate.²⁷ They bragged that they could hold out forever because, as one of the newsboys said, “We ain’t got no wives and families.”²⁸ This freedom from the constraints of responsibilities for dependents gives young people a space for activism that many adults lack. This is another facet contributing to children’s key role as agents of change.

26. *See id.* at 48, 53–54.

27. WOODHOUSE, *supra* note 7, at 235–36.

28. BARTOLETTI, *supra* note 22, at 58.

Understanding children's history as workers illuminates their right to work as well as their right not to be exploited. Meaningful work is another form of civic participation and another aspect of human dignity. It is a well-kept secret, in this age in which children are exploited as consumers, that children and youth continue to enjoy and take pride in work. Indeed, young workers' wages often provide basic necessities for themselves and family members.²⁹ Although too many children are exploited as undocumented farm labor and kept away from school, many others train as apprentices in licensed programs or operate small enterprises of their own.³⁰ These child workers have earned their right to participate in civic life.

Like the labor movement, the women's movement also owes a debt to youth. Famous "first" women—for example, my own mentor and friend, retired Associate Justice of the Supreme Court Sandra Day O'Connor—often say that they owe a debt to all the women who fought for equality before them and acknowledge that they are "standing on the shoulders" of these other women who paved the way.³¹ But it took me many years to realize that modern women are all "standing on the slim but sturdy shoulders of girls."³² Before there were suffragettes, there were "tomboys," like author Louisa May Alcott, who refused to accept, in her own life as in her books, that girls must grow up to be demure (and domesticated) little women.³³ There were mavericks like Willa Cather, the great novelist of the American West, who insisted on having the same horizons as boys. Cather, rebelling against gender roles, dressed as a boy from age fourteen and gave her high school valedictory speech as William Cather, M.D.³⁴ She demanded and was given respect. She abandoned her cross-dressing only when she was secure that she had found voice and agency, as a journalist and author.³⁵ Cather's courage paved the way for today's gay and lesbian youth, in schools and foster care systems, who have won hard-fought battles against those who would deny them the right to be themselves.³⁶

29. About 26 percent of teens in one survey reported that they worked to support themselves and 19 percent worked to support family members. Alison Morantz, *Teens in the Workforce*, REGIONAL REV., Quarter 2 2001, <http://www.bos.frb.org/economic/nerr/tr2001/q2/teens.htm>. Many teens, especially poor teens, are desperate for work. The jobless rate for youth aged sixteen to nineteen during the month of July 2007 was 57.7 percent nationwide even before the current recession. CHILDREN'S DEF. FUND, *supra* note 1, at 48.

30. WOODHOUSE, *supra* note 7, at 248–56; see also Paul E. Green, *The Undocumented: Educating the Children of Migrant Workers in America*, 27 BILINGUAL RES. J. 51 (2003), http://brj.asu.edu/content/vol27_no1/documents/art.3.pdf.

31. See WOODHOUSE, *supra* note 7, at 173–74, 179.

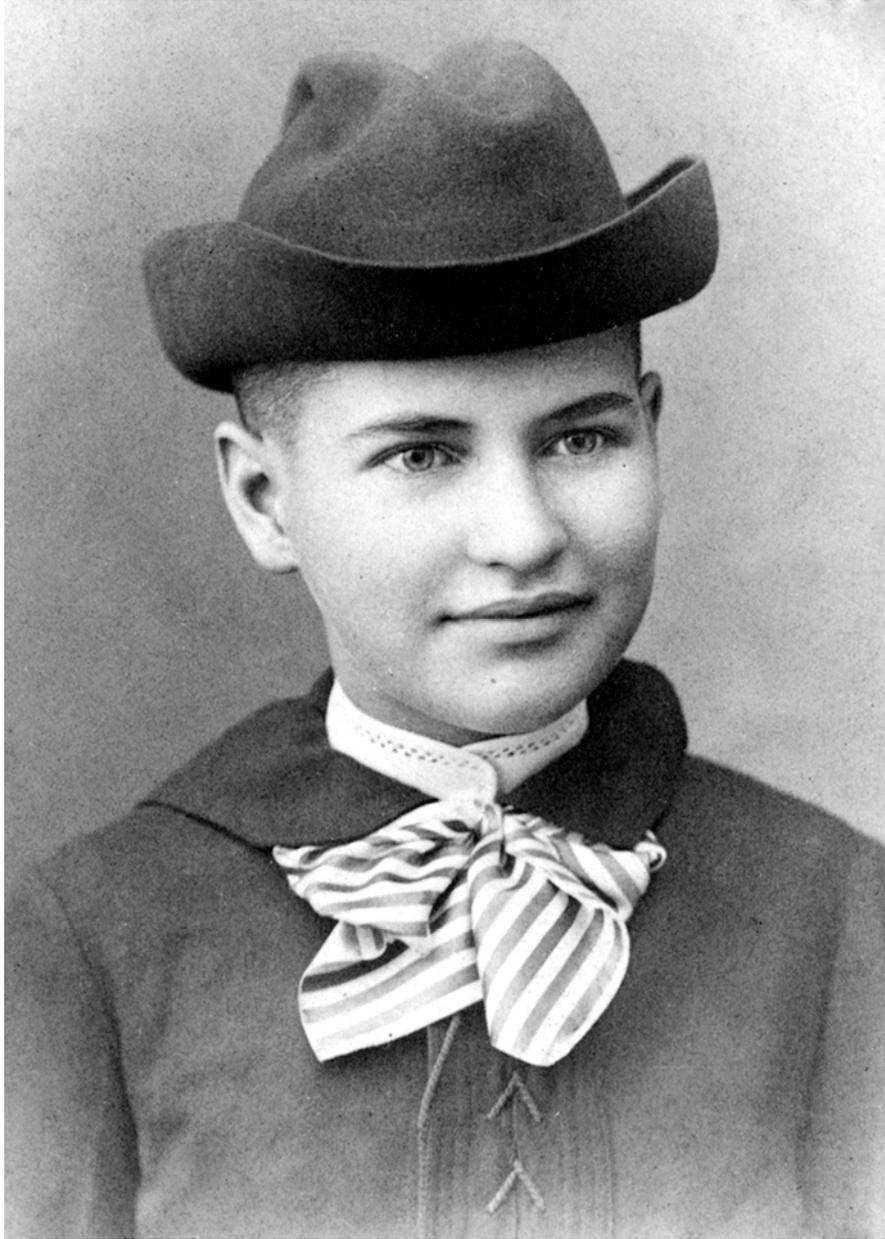
32. *Id.* at 179.

33. *Id.* at 164–66; see also Madeleine B. Stern, *Introduction* to L.M. ALCOTT: SIGNATURE OF REFORM 1, 1–3 (Madeleine B. Stern ed., 2002).

34. See WOODHOUSE, *supra* note 7, at 169–70, 173.

35. See *id.* at 170.

36. *Id.* at 175–78. Photograph of Willa Cather (courtesy of the Nebraska State Historical Society).



Our popular mythology is filled with stories of adults “rescuing” children. But often these stories are really about children rescuing themselves. Consider Helen Keller, a child who could neither see nor hear.³⁷ In the play and film *The Miracle Worker*, she is portrayed as a wild child,

37. *Id.* at 181.

completely out of control.³⁸ But it was actually Helen's thirst for expression and her determination to communicate, to make sense of a dark and silent world through touch and smell, to exercise her own precious sense of "think," that convinced her parents they *must* find her a teacher.³⁹ Alexander Graham Bell led them to Annie Sullivan, who taught six-year-old Helen to speak, read, and write with fluency within a few intense months of the day that the letters "w-a-t-e-r" were spelled into her hand.⁴⁰ By age eight, Helen was writing polished, grammatically correct letters and stories, and at age eleven, she had begun her life-long career as an advocate for persons with disabilities.⁴¹ Keller was not a victim or prisoner but an architect and hero of her own liberation.

History has a short memory—even shorter for the stories of child activists than for those of child victims or child prodigies. Stories of child activism make adults uncomfortable. Consider the children made famous during the U.S. civil rights movement of the 1950s and 60s. You probably recognize the name and image of fourteen-year-old Emmett Till, murdered for flirting with a white woman in Mississippi in 1955.⁴² You may recall the four adolescent girls (Denise, Cynthia, Addie Mae, and Carole) killed by racists in the 1963 bombing of the Sixteenth Street Baptist Church in Birmingham, Alabama.⁴³ Do you know the name of the little six-year-old girl who integrated the New Orleans schools, going each day to school, under police guard, to study alone in a classroom, shunned by white classmates? She was named Ruby Bridges; she has created a foundation, and as an adult she travels to schools to speak to children about her own experiences.⁴⁴ Her motto is, "[R]acism is a grown-up disease and we must stop using our children to spread it."⁴⁵ Do you know how many school-aged children were jailed during the civil rights demonstrations in 1963 in Birmingham? Before I studied children's history, I might have guessed a few dozen or perhaps a hundred. On the first day of the demonstrations, over 900 school-aged children were arrested and jailed.⁴⁶ Birmingham's jails filled up with children and they just kept coming. Sheriff Bull Connor had to bus the children he arrested out to the state fairgrounds for incarceration.⁴⁷ In all, an estimated ten thousand school-aged children were arrested and jailed during the

38. See William Gibson, *THE MIRACLE WORKER* act 1 (1960); *THE MIRACLE WORKER* (MGM Studios 1962).

39. See WOODHOUSE, *supra* note 7, at 184, 187.

40. *Id.* at 184–86.

41. *Id.* at 185; see also HELEN KELLER, *THE STORY OF MY LIFE* (Signet Classic 2002) (1902).

42. WOODHOUSE, *supra* note 7, at 134.

43. *Id.* at 135.

44. Ruby Bridges Foundation, *The Education of Ruby Nell*, <http://www.rubybridges.org/story.htm> (last visited Aug. 29, 2009).

45. Ruby Bridges Foundation, <http://www.rubybridges.org/home.htm> (last visited Aug. 29, 2009) (italics omitted).

46. JUAN WILLIAMS, *EYES ON THE PRIZE: AMERICA'S CIVIL RIGHTS YEARS, 1954–1965*, at 190 (1987).

47. *Id.* at 190–91; see also DAVID HALBERSTAM, *THE CHILDREN* 441 (1999).

Birmingham marches.⁴⁸ Many, like sixteen-year-old Larry Russell, refused to be bailed out.⁴⁹ I say “estimated” because, as juveniles, many of their names were never recorded or have disappeared from the historical record. The so called “children’s crusade” was instrumental in breaking the will of Birmingham’s white leaders—and in stiffening the resolve of elders who were radicalized by scenes of fire hoses and dogs being turned on innocent black children peacefully assembled.⁵⁰ Their example was contagious, and children and youth joined the movement in enormous numbers.

The Reverend Dr. Martin Luther King, Jr., and other movement leaders recognized that it was the future of children, above all, that was at stake in the movement, and they often invoked images of children in their rhetoric. Remember Dr. King’s Letter from a Birmingham Jail, talking about the pain of telling his little daughter that Funtown was for white children only?⁵¹ Or the word picture he painted in his “I Have a Dream” speech, of little black children and little white children walking hand in hand?⁵² But even Dr. King initially had serious doubts about putting children in the front lines, as he did in Birmingham. He feared that outsiders would question the morality of allowing children to get involved.⁵³ I have come to believe just the opposite—that excluding children from the movement would have been immoral. My reading of memoirs and contemporary accounts by children—some, like Sheyann Webb, as young as age eight—leaves little doubt that the children themselves felt genuinely inspired and remained enduringly proud of their role in the historic struggle.⁵⁴ Sheyann was one of the marchers on Edmund Pettus Bridge on Bloody Sunday, when John Lewis was beaten and stomped by the police.⁵⁵ Lewis’s own story highlights another overlooked fact. It was the law and not their own lawlessness that forced young people like Lewis to take the path of civil disobedience. Originally, Lewis had wanted to challenge segregation of the Alabama University system in the courts, but he was under twenty-one.⁵⁶ Unable to obtain parental permission, the only way he and other young activists could get before a judge to plead the injustice of Jim Crow laws was via the crimi-

48. HALBERSTAM, *supra* note 47, at 441.

49. ELLEN LEVINE, *FREEDOM’S CHILDREN: YOUNG CIVIL RIGHTS ACTIVISTS TELL THEIR OWN STORIES* 84 (2000).

50. HALBERSTAM, *supra* note 47, at 438–43; WILLIAMS, *supra* note 46, at 190.

51. MARTIN LUTHER KING, JR., *Letter from a Birmingham Jail*, in *WHY WE CAN’T WAIT* 64, 64 (Signet Classic 2000) (1964).

52. Martin Luther King, Jr., *I Have a Dream, Address at the March on Washington for Jobs and Freedom* (Aug. 28, 1963).

53. See WOODHOUSE, *supra* note 7, at 143–44.

54. See, e.g., LEVINE, *supra* note 49, at 122–30; SHEYANN WEB & RACHEL WEST NELSON, *SELMA, LORD, SELMA* (1997).

55. JOHN LEWIS WITH MICHAEL D’ORSO, *WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT* 327–30 (1998).

56. WOODHOUSE, *supra* note 7, at 140.

nal courts.⁵⁷ They had the courage to get arrested, and through their activism they drew their elders into the fray. Though warned by fearful parents of the consequences, these young people's arrest records became a prized stepping stone to citizenship and not the career-ending events their parents had predicted.⁵⁸

The children and youths featured in the stories I have told are only a few of the many who influenced the shape of American history, yet their contributions are often overlooked. If they grew up to become well-known adults like Ben Franklin or Congressman John Lewis, we tend to view their childhoods as a mere prelude to their adult lives. If they remained anonymous like the newsboys of New York, their stories, even when covered during their own day, tend to lapse into obscurity, blotted out by images of children as passive and lacking capacity and discernment.

III. CHILDREN'S CIVIL AND POLITICAL RIGHTS: A STORY OF REJECTION, NEGLECT, AND ABUSE

A. *Children's Rights in American History*

In telling these forgotten stories of children's empowerment, I am engaging in the method of legal argument called "oppositional narrative." It was developed by feminists and critical race theorists to break through the stereotypes of helpless dependency that blocked recognition of rights for women and people of color.⁵⁹ I have used it in the mode of analysis I call "generism," to focus attention on the role of the younger generation.⁶⁰ My purpose in using it here is to make vivid and real the fact that American children have demonstrated the capacity and, I would argue, have earned the right to participate in civic life.

To date, the U.S. Supreme Court has given limited recognition to children's civil rights and civil liberties. Historically, children were objects and not subjects of law, functioning more in the role of parental property than as persons. They were rarely seen as bearers of due process and equal protection rights. A child's parents were the injured parties when their child's health or value was damaged.⁶¹ When a child was beaten or assaulted by a third party, compensation was paid to the parent.⁶² Traditionally, a child in state custody had no more rights

57. *Id.* at 140–41.

58. *See, e.g.,* LEVINE, *supra* note 49, at 136.

59. *See* Katherine Lusby, *Hearing the Invisible Women of Political Rape: Using Oppositional Narrative to Tell a New War Story*, 25 U. TOL. L. REV. 911, 913 n.6 (1995).

60. Barbara Bennett Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parents' Rights*, 14 CARDOZO L. REV. 1747, 1754–57 (1993).

61. Barbara Bennett Woodhouse, *Children's Rights*, in HANDBOOK OF YOUTH AND JUSTICE 377, 381 (Susan O. White ed., 2000).

62. *See id.*

against the state standing *in loco parentis* than a child in parental custody would have against the parent.⁶³

But *Brown v. Board of Education*, recognizing children's rights to equality of education, and *In re Gault*, recognizing children's rights in juvenile courts, began to change the legal landscape.⁶⁴ As the Court stated in *Gault*, "[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone."⁶⁵ This promising bit of dicta has never fully matured. To date, most of the constitutional rights accorded to children have been rights of protection against state action as opposed to rights of active participation. The Fourteenth Amendment right not to be deprived of life, liberty, or property without due process of law, or the Fifth Amendment right to be protected from coercive interrogation, to name two examples, are rights to protection from abuse at the hands of the state.⁶⁶ The First Amendment right to speak free of state suppression has been only partially and patronizingly extended to children and youth.⁶⁷ The traditional understanding of children as incomplete adults or pre-citizens, needing always to be under adult control and lacking the capacity for active engagement and independent thought, has been a formidable barrier to children's rights to participation as members of a democratic society. Children and youth under age eighteen, even those who have demonstrated their maturity, do not vote. They have no right to run for election, serve on a jury, file cases on their own behalf, or participate in most other aspects of civic life. One glaring exception to the infantilization of American children is our practice of trying children accused of crimes as adults. When it comes to their rights as defendants in adult criminal courts and their responsibility to do "adult time for adult crime," America stands out from all the rest.⁶⁸ Lionel Tate's case made headlines around the world when, as a twelve-year-old, he crushed a six-year-old child during play, was charged with felony murder, and was sentenced to

63. See *id.* at 380 ("Sometimes the state displaces paternal authority But the state's relations with children are often frankly 'paternalistic' in ways inappropriate in the state's relationship with adult citizens.").

64. *In re Gault*, 387 U.S. 1, 4 (1967); *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

65. 387 U.S. at 13.

66. *In re Gault* is the landmark case for juveniles' procedural due process rights and rights against self incrimination. 387 U.S. 1. But the Court has stopped short of extending other rights, such as the right to a trial by a jury of one's peers. *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971). State actors in children's lives, such as teachers and school officials, have far greater latitude to search and seize than in cases involving adults. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 664-66 (1995) (permitting random drug testing of students); *New Jersey v. T.L.O.*, 469 U.S. 325, 341-43 (1985) (indicating that reasonable suspicion, not probable cause, applied to search of student's purse).

67. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 514 (1969), permitting students to wear black armbands to protest the Vietnam War, represented the high water mark of free speech rights for school students. Subsequent cases have allowed far greater limitations on student speech. See *Morse v. Frederick*, 127 S. Ct. 2618, 2622 (2007) (upholding a school's suspension of a student for displaying a banner interpreted as advocating drug use at an off-campus, school-sponsored event).

68. Barbara White Stack, *Is This Justice? How 'Adult Time' Law for Juvenile Crimes Has Failed*, PITTSBURGH POST-GAZETTE, Mar. 18, 2001, at A1.

life without parole.⁶⁹ Worldwide, there are 2484 juveniles sentenced to die in prison for acts they committed as children, and all of them are here in the United States.⁷⁰ In other contexts, however, American law has been slow to recognize children as persons with the capacity to exercise rights and be charged with responsibilities.

B. The U.N. Convention on the Rights of the Child and Children in Foster Care

While the United States has been slow to recognize children's rights, the rest of the world has embraced the idea of children's rights with astonishing rapidity. There have been two major catalysts for this shift in policy—first, scientific discoveries regarding child development and children's emerging capacities, and second, evolving concepts of universal human rights.⁷¹ These two forces came together in 1989 in the U.N. Convention on the Rights of the Child, often called the "CRC"—the most rapidly embraced and successful human rights charter in history.⁷² The CRC has been ratified by every United Nations member, except two: the United States and Somalia.⁷³ Though the CRC draws a bright line between childhood and adulthood for purposes of rights to protection, it adopts a graduated approach to children's rights of participation, voice, and agency.⁷⁴ Under the CRC, all persons under eighteen are protected from abuse and exploitation.⁷⁵ For example, persons who commit crimes as minors cannot be sentenced to life in prison without possibility of release.⁷⁶ The provisions of the CRC dealing with children's rights of free expression chart a new course by honoring children's "evolving capacities."⁷⁷ The CRC asks adults to respond to the child's increasing ability to participate in decisions and to contribute to discussions.⁷⁸ Children who are "capable of forming [their] own views" have

69. WOODHOUSE, *supra* note 7, at 288–92.

70. Connie de la Vega & Michelle Leighton, *Sentencing Our Children to Die in Prison: Global Law and Practice*, 42 U.S.F. L. REV. 983, 989–90 (2008).

71. I bring these two strands together in Chapters One and Two of my book *Hidden in Plain Sight*. WOODHOUSE, *supra* note 7, at 15–47.

72. Convention on the Rights of the Child, 1577 U.N.T.S. 3 (1990) [hereinafter CRC], available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

73. CHILDREN'S DEF. FUND, *supra* note 1, at 1. The CRC entered into force in 1990, and it has been ratified by 192 nations. Jean Koh Peters, *How Children Are Heard in Child Protective Proceedings, in the United States and Around the World in 2005: Survey Findings, Initial Observations, and Areas for Further Study*, 6 NEV. L.J. 966, 971 (2006).

74. See generally CRC, *supra* note 72.

75. *Id.* art. 1 ("For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."); *id.* art. 19.

76. *Id.* art. 37.

77. *Id.* art. 14 ("States Parties shall respect the rights and duties of parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right [to freedom of thought, conscience and religion] in a manner consistent with the evolving capacities of the child.")

78. *Id.* art. 5 ("States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community . . . [.] legal guardians or other

the right to express those views freely in all matters affecting the child, and the views of the child are to be “given due weight in accordance with the age and maturity of the child.”⁷⁹ Under the CRC, autonomy rights—such as rights of expression and participation—do not suddenly appear at age eighteen, but belong to children from birth.⁸⁰ They are exercised by parents on children’s behalf when they are young. As the child grows and matures, the child is perceived as taking a greater role as an individual, though still under the guidance of parents or guardians.

Although the CRC has been controversial and condemned by many on the religious right as a threat to family values and parental autonomy, there is nothing un-American about these ideas.⁸¹ For most children, safe in the family circle, these principles are consistent with social and developmental realities. Parents give young people increasing choices and freedoms as they see that children and adolescents are acquiring the maturity to handle them. Parents are the buffer between children and the dangers posed by their own immaturity, and they stand up for children who are being intimidated or abused by the state. The recognition that children have rights empowers parents to act on their children’s behalf.⁸² Parents have wide latitude in setting boundaries for children’s participation, but the state cannot deny the child a voice simply because of the child’s minority. The CRC recognizes the role of parental authority in setting boundaries on what children may do, see, and say, but it prohibits the state from limiting children’s rights of expression, religion, and participation unless provided by law and necessary for the protection of others, national security, public health, public order, or morals.⁸³

Some critics have argued that the CRC is toothless and would do little to change the status of children in the United States. Indeed, one might be excused for doubting the practical significance of a scheme that gives children rights of expression, conscience, and participation, but assigns authority to supervise their exercise primarily to parents—a theory that seems to reflect our current focus on family autonomy. But consider the importance of rights of voice and agency to children growing up

persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”); *id.* art. 12 (relating to the freedom of expression and access to information); *id.* art. 14 (relating to the freedom of thought, conscience and religion, to be exercised under guidance of parents in a manner “consistent with the evolving capacities of the child”); *id.* art. 15 (relating to the rights to peaceful assembly and to freedom of association).

79. CRC, *supra* note 72, art. 12.

80. *See id.* art. 5.

81. Jonathan Todres, *Analyzing the Opposition to U.S. Ratification of the U.N. Convention on the Rights of the Child*, in *THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION* 33 (Jonathan Todres et al. eds., 2006).

82. Barbara Bennett Woodhouse, *The Family Supportive Nature of the CRC*, in *THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS FOR U.S. RATIFICATION*, *supra* note 81, at 41.

83. CRC, *supra* note 72, art. 14.

without the protection and care of a family—the children growing up in state custody.⁸⁴ We Americans have developed a large and complex set of systems dealing with children who cannot be raised by their own parents. One branch of this complex of systems is variously called the “dependency” or “child protective” or “child welfare” system; it deals with children at risk of abuse or neglect. Though less familiar to the general public than the criminal justice system or the juvenile delinquency system, the dependency system is a massive enterprise.⁸⁵ In many parts of the nation, the dependency system is simply broken. Entire departments of children’s services have been placed in court receivership in Washington, D.C., for example, because they were found to be unconstitutionally dangerous and dysfunctional.⁸⁶

Many children are involved in the dependency system without actually being in state custody—through investigations or in-home supervision by child protection agencies.⁸⁷ But about half a million abused or neglected children are actually in state custody, either in foster families or institutional care, on any given day.⁸⁸ Over the course of a year, about 800,000 children spend some time in foster care.⁸⁹ As of September 2005, approximately 227,000 youths aged 12 to 20 were in protective state custody.⁹⁰ The dependency system—peopled by case workers, investigators, health professionals, psychologists, educators, foster parents, lawyers, and judges—decides when and whether these children will see their family members, where they will live and attend school, and whether they will receive medical and mental health care; the system even routinely seizes their property to reimburse state providers for the costs of their care.⁹¹ These adults, not their parents, decide whether they will be reunified with their families or witness their legal ties to their families permanently

84. There were 500,000 children in foster care on the last day of fiscal year 2006. CHILDREN’S DEF. FUND, *supra* note 1, at 40. At least 100,000 juveniles were in residential placement facilities. Office of Juvenile Justice and Delinquency Prevention, Statistical Briefing Book, Juveniles in Corrections, Custody Data (1997–Present) (Sept. 12, 2008), <http://ojjdp.ncjrs.gov/ojstatbb/corrections/qa08201.asp?qaDate=2006>. These figures do not include children in state residential custody due to mental illness or mental retardation.

85. See generally Marvin Ventrell, *Evolution of the Dependency Component of the Juvenile Court*, JUV. & FAM. CT. J., Fall 1998, at 17.

86. LaShawn A. v. Dixon, 762 F. Supp. 959, 989–98 (D.D.C. 1991); see also U.S. GEN. ACCOUNTING OFFICE, GAO-03-646, D.C. CHILD AND FAMILY SERVICES: BETTER POLICY IMPLEMENTATION AND DOCUMENTATION OF RELATED ACTIVITIES WOULD HELP IMPROVE PERFORMANCE 1 (2003).

87. See Ventrell, *supra* note 85, at 18.

88. Admin. for Children & Families, U.S. Dep’t of Health & Human Servs., The AFCARS Report (2006), http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report13.htm (last visited Aug. 29, 2009).

89. Admin. for Children & Families, U.S. Dep’t of Health & Human Servs., Trends in Foster Care and Adoption—FY 2002–FY 2007, http://www.acf.hhs.gov/programs/cb/stats_research/afcars/trends.htm (last visited Aug. 29, 2009).

90. Admin. for Children & Families, *supra* note 88.

91. Daniel L. Hatcher, *Foster Children Paying for Foster Care*, 27 CARDOZO L. REV. 1797, 1798–1807 (2006).

terminated.⁹² These children have committed no crime, yet they have fewer rights than accused criminals, or even tenants faced with eviction from an apartment. To date, the Supreme Court has never held that a foster child has a right to legal representation, or even to be present in court and to participate in his own case. Although lower federal courts, applying standards drawn from federal constitutional doctrine and cases, have found such a right under state constitutional law, the Supreme Court has never decided whether children in foster care have a federal due process right to counsel.⁹³

A separate question is whether foster children have a right to be present and to participate in their own cases. Some states provide by state law for children above a certain age to be present at hearings and case planning sessions.⁹⁴ A national survey, however, confirms my own observations that few children actually are present at their hearings in dependency court, and when they are, they have little or no opportunity to voice their views.⁹⁵ Many children, when asked why they did not attend, cited barriers such as school rules and lack of transportation, but almost twenty-five percent of children surveyed reported they did not attend court because no one would listen to them.⁹⁶ We like to say we are protecting children from the potential trauma of hearing bad things, but many foster children scoff at this idea. They think it is ridiculous for adults to claim they need to protect kids from hearing about situations the kids know all about and are experiencing firsthand.⁹⁷ In reality, the blame for children's lack of voice lies in our lack of appreciation for children's capacity to contribute and in our unwillingness to take the time and trouble to include them.

The value of children's participation rests on many pragmatic grounds in addition to the human rights values I have highlighted. Children have valuable factual information and a unique perspective on their own needs and lives. Developmentally, the chance to participate helps children to feel less vulnerable and more in control and allows them to see, firsthand, a process that seems confusing and frightening when re-

92. In fiscal year 2007, there were 84,000 TPRs (Termination of Parental Rights) of children in foster care. There were 51,000 adoptions, and 130,000 children who had been freed for adoption were waiting to be adopted. Admin. for Children & Families, *supra* note 89.

93. Judge Marvin H. Shoob, in *Kenny A. ex rel. Winn v. Perdue*, 356 F. Supp. 2d 1353 (N.D. Ga. 2005), sustained claims of children's right to counsel under the Georgia Constitution, drawing on principles articulated in federal constitutional cases. *Kenny A.* is typical of successful class action cases on behalf of children in foster care, in that the parties negotiated a settlement agreement prior to any ruling at the appellate level on the correctness of the holding. The negotiated agreement put into place procedures for monitoring the agency's prospective performance. See *Kenny A. v. Perdue*, 532 F.3d 1209 (11th Cir. 2008) (discussing appropriate counsel fees during the monitoring process).

94. E.g., CAL. WELF. & INST. CODE § 366.26(h)(2) (West 2009).

95. Erik S. Pitchal, *Where Are All the Children? Increasing Youth Participation in Dependency Proceedings*, 12 U.C. DAVIS J. JUV. L. & POL'Y 233, 243-44 (2008).

96. *Id.* at 244.

97. Comments of foster children at National Association of Counsel for Children 31st National Juvenile and Family Law Conference, Savannah, Ga., Aug. 3-6, 2008 (attended by author).

ported secondhand.⁹⁸ Not every child wants to be in court and some might be harmed; we have been wise to provide special procedures for children who might be traumatized if forced to confront their adult abusers face-to-face.⁹⁹ But for those who do want and often need to be in court, we must reform the dependency system so it will listen to children's voices and assure that the experience of participation enhances their sense of control and self-esteem rather than undermines it.

For children, nonverbal messages are even more important than for adults. For example, many foster children comment that caseworkers performing home visits do not even bother to talk with them and spend all their time chatting with the foster parent.¹⁰⁰ Turning a deaf ear to a child can be fatal—to the child. As important as the right to be heard is the context in which one is heard. Whenever I advocate for the child's right to participate in dependency proceedings, I worry about the failed promise of *In re Gault*.¹⁰¹ Due process for juveniles has not translated into more respectful and dignified treatment of children accused of crimes. Consider the way we treat many children and youth in juvenile delinquency courts. In my home state of Florida, their right to participate is enforced with a vengeance. They arrive under armed guard in a van from the juvenile detention center and shuffle into the courtroom wearing prison-issue jump suits that often hang on their small frames. They shuffle because they are wearing heavy leg irons and handcuffs locked into a steel ring in a wide leather belt or a chain that encircles their waist. In Alachua County where I live, the Center I direct studied a recent experiment in “unshackling”—releasing the cuffs from the children's hands while they appeared before the judge.¹⁰² Not a single juvenile “acted out” physically.¹⁰³ But a new judge was assigned to juvenile court and the experiment was discontinued. The message these children internalize is that they are dangerous criminals, “bad to the bone.” Foster children, unless treated with dignity and concern, could easily internalize similarly discouraging messages.

In 2006, Congress took a step towards establishing foster children's access to participation. It passed the Child and Family Services Improvement Act requiring that state systems receiving federal money assure that the dependency court “consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.”¹⁰⁴ Though such consultation should be a right and not just a

98. Pitchal, *supra* note 95, at 247–50.

99. See Barbara Bennett Woodhouse, *Talking About Children's Rights in Judicial Custody and Visitation Decision-Making*, 36 FAM. L.Q. 105, 128–29 (2002).

100. Cf. Barbara Bennett Woodhouse, *Enhancing Children's Participation in Policy Formation*, 45 ARIZ. L. REV. 751, 755–58 (2003).

101. 387 U.S. 1, 13 (1967).

102. EMILY BANKS ET AL., CTR. ON CHILDREN & FAMILIES, UNIV. OF FLA. LEVIN COLL. OF LAW, *THE SHACKLING OF JUVENILE OFFENDERS: THE DEBATE IN JUVENILE JUSTICE POLICY* 6 (2008).

103. See *id.* at 9.

104. 42 U.S.C. § 675(5)(c) (2008).

statutory provision, this bill at least recognizes the importance of listening to children's voices. The notion of "age appropriate" consultation, however, has sometimes been lost in translation. New York, for example, apparently considered itself in compliance. Instead of a chance to meet with the judge, the child got a law guardian assigned to represent the child's best interests but not to convey the child's own viewpoint.¹⁰⁵ Recall that large numbers of foster children are middle and high school students with plenty of insight and information, fully capable of communicating with the judge. As Erik Pitchal remarked in his article, *Where Are All the Children?*¹⁰⁶ a visitor from Mars observing a dependency proceeding in the United States would see a room crowded with adults, most of whom have a lawyer beside them—caseworkers with lawyers for the state's child protective system, lawyers for private agencies with agency representatives, and parents with their own court-appointed lawyers.¹⁰⁶ Conspicuously absent would be the person who was at the center of the proceeding—the child.¹⁰⁷ In many states, there would not even be an attorney or advocate speaking for that child.¹⁰⁸ In my view, and that of many other advocates for children, this is a violation of the child's constitutionally protected due process rights, but the Supreme Court has yet to see this light.

C. *Children's Rights of Participation in Policy Making*

In discussing foster children, I have so far focused on classic due process rights of participation in court proceedings. I would now like to shift the focus to children's rights of participation in the sphere of policy making and civic discourse. The notion seems somewhat outlandish to Americans, because we are so accustomed to the idea that minors, by definition, have few if any political rights. Obviously, the rights to vote in elections and to serve as elected representatives, as well as the rights to serve on a jury, to join in political movements, and to file lawsuits, are for adults, not for children. Not so fast. As my prior stories illustrate, children have been engaged in political and civic life since before the country was founded. Children have continued to play major roles in political discourse. First Amendment cases like *Barnette* and *Tinker*, vindicating religious and free speech rights of young people at school, arose in highly charged political contexts. *Barnette* involved conscientious objectors in World War II, and *Tinker* involved protests against the Vietnam War.¹⁰⁹ It is simply ahistorical, not to mention developmentally unsound, to think children and youth must be shielded from any engagement in civic life—

105. Pitchal, *supra* note 95, at 235 n.3.

106. *Id.* at 234–35.

107. *Id.* at 235–36.

108. *Id.* at 235 n.3; Woodhouse, *supra* note 99, at 128–31.

109. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 510–11 (1969); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 629 (1943).

or that we adults should be shielded from their views—until they reach the age of eighteen. Though I do not envision success any time soon, I support the movement by youth to lower the voting age to sixteen. Experiences with youth summits and teen legislatures suggest that most sixteen-year-olds are ready and able to engage in civic life, and moreover, I believe training in civic participation should be an integral part of public education.

The year 2009 marks the twentieth anniversary of the U.N. Convention on the Rights of the Child.¹¹⁰ These past twenty years have seen major developments worldwide and here at home. Although the United States is not a party to the CRC, it is impossible to stifle an emerging human rights movement once it has found its voice. Let me point to two different contexts as illustrations that children and youth will henceforth be both seen and heard in the political sphere. The first example is global, and the second involves youth activists here in the United States. The CRC went beyond establishing a right on the part of children to participate in matters affecting them. It also created a corresponding affirmative duty on the part of government to facilitate and enable youth participation.¹¹¹ Early efforts may have been more symbolic than substantive—youth representatives to U.N. Summits and Special Sessions recalled being the ones who handed the ceremonial pen to the adults signing the documents.¹¹² Many signatory nations, like Ecuador, got off on a good track by asking school children to vote on what *they* wanted in their own Bill of Rights.¹¹³ Since then, impressive strides have been made towards integrating children's voices in government and policymaking. These strides include creation by CRC nations of an Ombudsman for children and youth, creation of cabinet level Ministers for Youth, and engaging youth representatives in reform efforts involving schools and communities.¹¹⁴

110. See generally CRC, *supra* note 72.

111. *Id.* art. 4 (“States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.”).

112. WOODHOUSE, *supra* note 7, at 305.

113. See Ana Luisa Rivadeneira, *500,000 Children Vote in Ecuador*, PLAN, <http://www.plan-uk.org/wherewework/southamerica/ecuador/500000childrenvote> (last visited Mar. 11, 2009); see also Child Rights Information Network, *500,000 Children Vote in Ecuador*, <http://www.crin.org/resources/infoDetail.asp?ID=10177> (last visited Aug. 29, 2009).

114. For examples of youth participation, see Unicef, *Voices of Youth: Take Action, Impacts Made*, http://www.unicef.org/voy/takeaction/takeaction_3127.html (last visited Aug. 29, 2009) (listing participation in commissions, expert groups, and studies) and Unicef, *Voices of Youth: Take Action, Junior 8 Summit*, http://www.unicef.org/voy/takeaction/takeaction_2403.html (last visited Aug. 29, 2009) (showing the “Junior 8 Summit,” the youth participation in the 2008 G-8 Summit). See also Emily Middleton, *Youth Participation in the UK: Bureaucratic Disaster or Triumph of Children's Rights?*, 16 CHILD., YOUTH & ENV'TS 185 (2006); New Zealand Ministry of Youth Development, *About Us*, <http://www.myd.govt.nz/aboutus/aboutus.aspx> (last visited Aug. 29, 2009); Youth.NSW, *Youth Advisory Council*, <http://www.youth.nsw.gov.au/yac> (last visited Aug. 29, 2009) (explaining the Youth Advisory Council in New South Wales, Australia). For an overview of youth participation inspired by the CRC and suggestions for enhancing such participation, see *Youth and the United Nations*, <http://www.un.org/esa/socdev/unyin/wpayparticipation.htm> (last visited Aug. 29, 2009).

During a research fellowship in Belfast, Northern Ireland, I had the privilege of observing how the state actors charged with implementing the Good Friday Agreement were engaging youth in the creation of a new social and political order. The Good Friday Agreement contained a commitment to including the voices of marginalized groups.¹¹⁵ Originally intended to address imbalances of power between Catholic and Protestant communities, this principle was interpreted as extending to many previously excluded groups, including persons with disabilities, the elderly and children.¹¹⁶ Let me give just one example of what children taught adults about restoring a sense of safety and normalcy in Belfast. It has to do with curb painting—the practice of painting curbs green in Catholic areas and orange in Protestant areas. Law students at Queens University and Ulster University gathered information from groups of elementary school aged children, engaging them in drawing huge posters of their neighborhoods as they talked. Children brought up the subject of curb painting as they colored in the sidewalk edges on their pictures. Almost unanimously, they said they hated walking into a neighborhood with curb painting because they felt it meant trouble and danger. It did not matter what color the curb was painted or what community they belonged to. Surely, the adults who painted the curbs were expressing their own pride and allegiance and had not meant to terrorize their own community’s children. But for children, the curb paintings evoked not feelings of pride or ownership but well-founded fear that they would be caught in the crossfire of sectarian carnage created by adults. I recall that the children had concrete suggestions to voice, as well as fears and hopes. “Why not create a new flag with the design of one side and the color scheme of the other?” “Why do the Catholic and Protestant schools we attend make us wear uniforms that identify our religion? Don’t they know it makes us easy targets when we walk or ride public transportation to school?”

As Northern Ireland’s example shows, by using developmentally appropriate approaches, many states and nongovernmental organizations have developed excellent practices for implementing youth participation. In the past, children were often listened to in a way that trivialized their capacities and their contributions. They were seen as pure and unsullied “innocents” to be heard but not really included—sort of an “out of the mouths of babes” approach, followed by an unsatisfying “now run along and play” ending. These stereotypes have been replaced by more respectful methods that give young people adequate neutral background information and that create structures enabling young participants to contribute in developmentally appropriate ways and to be kept informed and engaged from start to finish. Having seen youth voice in action

115. Agreement Reached in the Multi-Party Negotiations, U.K.-N. Ir., Apr. 10, 1998, 37 I.L.M. 751, available at <http://www.nio.gov.uk/the-agreement>.

116. *Id.*

abroad, I have been discouraged at how hard it is for many adults in the United States to give up their biases and stereotypes. As leader of the ABA delegation to the U.N. Special Session on Children in 2002, I observed firsthand the work of the more than 300 delegates under age eighteen (known as the “U-eighteens”), who came from around the world to hold their own summit in the three days preceding the Session and to participate actively in each Session panel. Obviously, adults assisted in this project, as chaperones and organizers, but the U-eighteens, working in small groups and committees, as well as general sessions, really did identify the issues, hammer out disagreements, and write the report. Later, a critic of children’s rights who had not been present claimed that the children’s report submitted to the General Assembly had been written many months ahead of time by adults. His proof? Children couldn’t *possibly* have written it—it was too good. This argument has a familiar ring. I seem to recall similar attacks on the credibility of slave narratives and narratives written by women as simply too good and wise to be the work of such silly folk.

In the United States, where the CRC has no legal force, there is no legal imperative in place instructing government to enable youth participation in political life or in law reform. Goodness knows we need their participation. Of the many systems that cry out for reform, two of the primary trouble spots are the education system and the foster care system. Reforms of both systems have been stymied by attempts to suppress rather than to engage youth activism. But young people are not simply waiting around for grownups to rescue them from dangerous schools and dysfunctional foster care. They are making their voices heard, and they are actively engaging as agents of change. The Internet has revolutionized the public square in many ways, not least of which is leveling the playing field for young people. Back in colonial days, that defiant teenager named Ben Franklin was unusual in having access to a printing press. Now young people can write blogs and post comments with worldwide circulation. Most adults know about sites like MySpace and Facebook and share a certain panic about misuse or abuse of such tools for chatting with and among children.¹¹⁷ But many sites aim at more than merely social interaction. When you google terms like “youth empowerment” and “youth voice,” you get hundreds of hits. Many sites are forums for adult-operated enterprises, but many sites are truly “for and by” youth. Let me describe two movements that utilize the Internet to advance social justice ideals but actually predate the information super highway. GLSEN (which stands for Gay, Lesbian, Straight Education Network) was established in 1990 and now serves 4000 local groups of middle and high school students in groupings called “Gay-Straight Al-

117. See, e.g., Zosia Bielski, *Do You Snoop on Your Teen*, GLOBE & MAIL, Feb. 23, 2009, available at <http://www.theglobeandmail.com/life/article973948.ece>.

liances.¹¹⁸ These youths are involved in making schools safer not only for GLBT youth but for all students who are bullied and harassed at school.¹¹⁹ GLSEN has made common cause with many other groups involved in youth empowerment. For example, in 1997, GLSEN held a national conference in Utah to protest that state's proposal to shut down all school youth groups to avoid having to recognize student-organized Gay-Straight Alliances.¹²⁰

Foster youths have developed many vocal advocacy groups. For example, the California Youth Connection, or CYC, was established in 1988 by a group of foster youth and supportive adults.¹²¹ Focused equally on policy development and youth development, it now has 500 members aged fourteen to twenty-four who are in or recently graduated from foster care in California.¹²² CYC members have trained advocates in twelve other states.¹²³ CYC's spillover into adult membership illustrates one of the valuable attributes of youth empowerment. Young people who develop their own voices in such groups graduate to become active and engaged adult citizens strongly motivated to recognize the voices of new generations of young people. I am one of them. I was involved in youth-led social justice movements long before my eighteenth birthday, and one of my formative experiences was being suspended from high school for refusing to participate in an air raid drill. I was trying to make a point about the need for arms control, a point that became U.S. policy under President Richard Nixon.¹²⁴ This experience with youth activism either disqualifies me from having an opinion or makes my opinion more credible, take your pick. In any case, it is probably one reason for my own interest in studying youth as agents of social change.

Today, American policy makers are beginning to respond more constructively to the urgency of youth voices. They are following their own self-interests in mobilizing the energy and perspectives of young people. Nonprofits involved in systems reform now make youth engagement a major part of their game plans. State and local governments engage young people in initiatives to reduce smoking and drug involvement, and to combat bullying and school violence.¹²⁵ My 2003 article on this topic, titled *Enhancing Children's Participation in Policy-Making*, is

118. GLSEN: Gay, Lesbian and Straight Education Network, Our Mission & History, <http://www.glsen.org/cgi-bin/iowa/all/about/history/index.html> (last visited Aug. 29, 2009).

119. *Id.*

120. *Id.*

121. California Youth Connection, About, <http://www.calyouthconn.org/site/cyc/section.php?id=89> (last visited Aug. 29, 2009).

122. *Id.*

123. *Id.*

124. See generally LEWIS SORLEY, ARMS TRANSFERS UNDER NIXON (1983).

125. See, e.g., Rachel J. Littman, Comment, *Gun-Free Schools: Constitutional Powers, Limitations, and Social Policy Concerns Surrounding Federal Regulation of Firearms in Schools*, 5 SETON HALL CONST. L.J. 723, 758-59 n.136 (1995).

rapidly becoming dated, outpaced by the new worlds of communication and learning open to young people.¹²⁶

IV. CONCLUSION

I want to close by assuring you that I am not advocating that children take over America. My advocacy would do nothing either to hasten or to delay that eventuality. This take over by youth has been happening since before the nation began, as each new generation takes over the reins of power and (gently or not so gently) turns their elders out to pasture. I *am* advocating, however, that we take children's participation rights seriously, not just as persons we are training to become future citizens and future leaders but as persons with present-tense rights and present-tense capacities to contribute to the common good. Having a voice is a matter of basic human right, even when one does not yet have the right to make the ultimate decision about matters under discussion. In addition to rights, youth have important insights and viewpoints that just might move the social justice ball forward and indeed lead to a more perfect union for ourselves and our posterity. One organization that promotes youth engagement in social justice and community organizations has put the matter very plainly: "Social change does not come easy, and involving young people doesn't make it easier. But it does make it better."¹²⁷ With the worldwide example of the CRC, children finally have taken their rightful places in civic discourse. Rejection of the CRC by the United States cannot change the fact that American children and youth have played and will continue to play a pivotal role in building American democracy and social justice. As heroes in the struggle for justice, they long ago showed their capacity for agency and earned their rights to a voice. It is should be our solemn obligation to support and enable the voices of youth.

126. 45 ARIZ. L. REV. 751 (2003).

127. INNOVATION CTR. FOR CMTY. & YOUTH DEV., CREATING CHANGE: HOW ORGANIZATIONS CONNECT WITH YOUTH, BUILD COMMUNITIES, AND STRENGTHEN THEMSELVES 13 (2004), <http://www.theinnovationcenter.org/files/CreatingChange.pdf>.

