

Suffer the Children

Amitai Etzioni

Several leading civil libertarian groups and advocates (and libertarians) argue that minors of all ages are entitled to First Amendment rights. (To save breath, they are all referred to from here on as civil libertarians.) Reference is mainly not to "production" of speech but to "consumption," the unfettered access to cultural material. Basically, these civil libertarians maintain that children should be treated the same as adults in this matter. After laying out the arguments advanced by civil libertarians in favor of this surprising position, I question the underlying reasons for these groups to embrace this position. I conclude by suggesting that civil libertarians can defend their liberty without hurting children.

Children's First Amendment Rights

Four Policies. Four recently contested issues show the way civil libertarians view minors' First Amendment rights. All concern the protection of children from sexually explicit material and gratuitous violence in the media, from health hazards (specifically, luring cigarette ads), and from commercial exploitation.

One policy concerns the introduction of filters into computers used to access the Internet. Such software

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blocks access either to a given list of Web sites or to messages that contain certain key words (e.g., bestiality). Brand names include X-Stop, Cyber Patrol, and Net Nanny. These filters are reported to be quite effective, although occasionally materials they seek to block out slip through, and sometimes material that arguably should be allowed through (e.g., the Starr report?) is screened out.

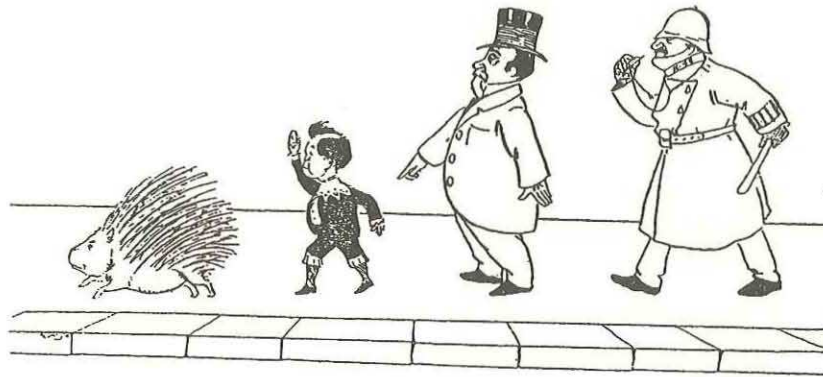
The second policy at issue involves public efforts to persuade tobacco companies to stop placing the so-

called "Joe Camel" type of ads. These ads reportedly target children and are believed to be particularly effective in enticing them to smoke.

A third policy concerns self-imposed limitations that several major corporations and industrial associations have adopted, which limit the information they collect about children who access their Web sites or send them e-mail. These limitations apply especially to "cookies," devices installed by corporations in a person's computer, often unbeknownst to that person. Cookies allow marketers to recognize an individual's computer when its operator approaches the Web sites again, and to tailor advertising to that user. In addition, information about users is often sold to other corporations. Responding to complaints that such profiling of clients violates their privacy, corporations such as Disney and Kellogg and associations such as the Direct Marketing Association and the Online Privacy Alliance announced that they would refrain from collecting information about children twelve years or younger unless the youths' parents consented.

The fourth measure entails the introduction of V-chips in television sets, which enable parents to block their TV sets from screening programs that have more violent or vile content than they deem appropriate for their children to view. Federal law requires that V-chips be installed in all TV sets made after 1993. For the V-chip to differentiate between programs according to their violence rating or some other content attribute (e.g., offensive sexual material), the broadcasted programs must include ratings. For this to occur there must be an agreed-upon set of ratings, and a method for programs to include these ratings in a manner that the V-chip can recognize. Most networks have reluctantly agreed to introduce a rating system.

Civil Libertarian Objections. Civil libertarians argue that these policies limit the free flow of information and ideas and hence offend the First Amendment. The main parties challenging these policies are the American Civil Liberties Union (ACLU), the American Library Association (ALA), libertarians (specifically the Cato Institute), and the National



From More Beasts for Worse Children, by Hilaire Belloc (Duckworth and Company, 1898).

Campaign for Freedom of Expression (NCFE). It is crucial for all that follows to note that these associations have demanded—and in some cases succeeded—that various protective devices be removed not simply for minors approaching maturity, but demand unencumbered access for children of all ages to all cultural materials. Indeed, public debates about the policies at issue center around the question of whether protecting children who are *twelve years old or younger* comports with the Constitution. (Both protection that may be provided by the state and allowing or enabling parents to act are at issue.)

A colleague who read a previous draft of this article, wondered why the line was drawn at the age of twelve, and pointed out that older children require protection as well. This particular age is discussed not merely because it is at the focus of public attention (such as it is) on this matter, but also because children age twelve and younger serve as a sort of litmus test. If one cannot convince civil libertarians, judges, and policy makers about the need to protect infants, toddlers, and first graders—one can hardly expect these adults to shield adolescents.

Civil libertarians seem to realize the difficulty of convincing the public of the legitimacy of their position, hence, they often make their case indirectly. For instance, in objecting to limiting Joe Camel ads, the ACLU argues that it is unreasonable to suppress ads

that target children because doing so also limits the information flow to adults. As the ACLU states, "Adults cannot be reduced to reading only what is fit for children." And, "attempts to reduce the exposure of minors to tobacco advertisements cannot avoid restricting the same information for the adult population." Thus, occasionally the ACLU avoids directly claiming that it favors exposing children to tobacco ads, but achieves the same goal by insisting that such curbs intrude on the First Amendment rights of adults.

Other times the ACLU simply states that *everyone* should have access to material considered damaging to children, but does not explicitly mention that children are to be included. Thus, the ACLU declares that "We believe that the enactment of the proposed tobacco advertising restrictions would impose a drastic curtailment of commercial speech and could have a chilling effect on the right of the public and businesses to engage in free speech about controversial subjects." Similarly, Steve Dasbach, the party chairman of the Libertarian Party, holds that "if Congress ratifies this agreement, Americans will suffer from the second-hand smoke of the Bill of Rights being torched. . . . In their frenzy to control tobacco, politicians want the power to drastically restrict the First Amendment."

In other situations, civil libertarians state their position quite explicitly. Thus, when a public library in Kern County, California allowed children free access to

The Monochrome Society Amitai Etzioni

Amitai Etzioni is one of the most influential social and political thinkers of our day, a man synonymous with the ideas of communitarianism. In this book, Etzioni challenges those who argue that diversity or multiculturalism is about to become the governing American creed. On the surface, America may seem like a fractured mosaic, but the country is in reality far more socially monochromatic and united than most observers have claimed. In the first chapter, Etzioni presents a great deal of evidence that Americans, whites and African Americans, Hispanics and Asian Americans, new immigrants and descendants of the Pilgrims, continue to share the same core of basic American values and aspirations. He goes on to show that we need not merely a civil but also a good society, one that nurtures virtues. He assesses key social institutions that can serve such a society ranging from revived holidays to greater reliance on public shaming. He also challenges moral relativists who argue that we have no right to "impose" our moral values on other societies. Etzioni explores and assesses possible new sources and definitions of community, including computer-mediated communities and stakeholding in corporations.

"These wide-ranging essays are full of fresh insights and challenging ideas. Etzioni takes us on a voyage of discovery, in an open-minded spirit of study and exploration. He suggests ways of thinking about specific policy areas, including crime, child protection, and the Internet, as well as basic issues in moral and social theory, such as making cross-cultural moral judgments. Anyone interested in communitarian thinking will find much refreshment in this book."

—Philip Selznick, University of California, Berkeley

"These essays apply sound sociological reasoning to such themes as diversity, human rights, and the maintenance of social norms. They are very well written, avoiding both excessive academicism and a popularizing tone that seems to talk down to the reader. Thus, these essays are both highly readable and informative."

—Dennis Wrong, author of *The Problem of Order* and *The Modern Condition*

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unfiltered computers after being threatened by an ACLU lawsuit, Ann Beeson, an ACLU National Staff Attorney, wrote, "We applaud the Board of Supervisor's decision to honor the First Amendment rights of Kern County citizens by . . . allow[ing] all adult *and* minor patrons to decide for themselves whether to access the Internet with or without a filter." Note that the term "minor" references children of all ages, and Beeson does not suggest protecting any of them or that there is any age at which they are unable to "decide for themselves." This is not a slip of a pen but a position consistently adopted. The same position was struck by the ACLU when it charged the Loudoun County Library Board of Trustees in Virginia, that has introduced filters, of "'removing books from the shelves' of the Internet with value to both adults *and* minors in violation of the Constitution."

The American Library Association (ALA) makes the same case but more explicitly. Its basic charter argues, with reference to Internet access, that "the rights of users who are minors shall in no way be abridged." This position is based on the Library Bill of Rights, which holds that "A person's right to use a library should not be denied or abridged because of origin, age, background, or views." In the original 1948 version the document referred only to "origin, background, or views," as grounds which could not be used to deny service. Age (any and all ages) was added in 1996.

Some tobacco industry advertisements have targeted young people, according to internal documents introduced in various trials. In addition, some statistics indicate a strong correlation between certain tobacco advertisements and increasing numbers of teenage smokers. For example, "The largest increase in adolescent smoking initiation was in 1988, the year that the Joe Camel cartoon character was introduced nationally." In response to government efforts restricting tobacco advertising, the ACLU has stated that "we [should] allow consumers to make decisions for themselves and stop government from deciding for us what speech we should be free to hear about legal products."

The ACLU opposes the V-chip on the grounds that children's access to television should not be curbed, because devices such as the V-chip screen out ideas, and because there is no evidence "that explicit sex information and even pornography . . . by themselves cause psychological harm to *minors of any age*."

In 1998, a group of representatives of privacy advocacy organizations met at the Electronic Privacy Information Center (EPIC) to prepare for a White House conference on ways to deal with privacy violations. A representative from the Center for Media Education as well as one from the Communitarian Network favored the self-imposed, voluntary policies of corporations not to collect information from chil-

dren age twelve or younger who visit their Web sites, or to send them e-mail without their parents' consent. The ACLU's representative objected on the grounds that a young child may seek information about ways to deal with HIV or pregnancy and fear disclosing such a quest to his or her parents. EPIC's representative concurred.

Similarly, the Cato Institute's reasoning is that "[I]t makes little sense to morally condemn those who sell to children when we ourselves give children the means to buy. So regulation of marketing . . . that contain[s] information about children is *no more justified than regulation [that] contain[s] information about adults.*" The

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Cato Institute also points out that "the vulnerability of children is not a unique justification for restrictions on marketing, since myriad other speech activities may influence children." And the Cato Institute wonders, "Do children face any real harm from marketing? The main risk seems to be that children might end up with a little more useless junk than they would otherwise."

Are Children "Mini-Adults" or a Distinct Subcategory?

In evaluating the civil libertarian position one must consider whether children constitute a distinct category of persons. Obviously, suggestions that special measures should be introduced to protect children but not adults can be justified only if children are substantially different from adults in ways that are relevant to the exposure of minors to all elements of our culture. The answer to this question is not as self-evident as it might seem; the ways minors have been characterized and categorized have changed significantly over the ages and vary from one culture to another.

In the Middle Ages, children often were treated as mini-adults, that is, were not considered a distinct category of people. For instance, when children misbehaved, they were considered to have acted out of ill will rather than from having not yet acquired societal mores. Punishment meted out did not differentiate between minors and majors. In contrast, in the modern era, especially in democratic societies, children often have been considered a distinct kind of people, especially vulnerable, incompetent, dependent, and in need of protection. Moreover, in these kinds of societies children are usually treated as members of a specific soci-

etal unit, the family, and parents have been charged with attending to their children and consequently accorded many rights of control over their offspring.

In recent decades, we have witnessed a retreat from regarding children as dependents and as family members. In an extension of various liberation movements, and the very legitimate rising concern for the human rights of minorities, women, gay and lesbian people, senior citizens, and disabled persons, we have also witnessed a new concern for the rights of children to make autonomous decisions—like adults. This tendency has been further fueled by those who view the family as being phased out, hence requiring a new positioning of children. While typically these observations have not led to arguments that there are no remaining differences between children and adults, when it comes to First Amendment issues, arguments move the social construction of children by civil libertarians as well as some liberals towards treating them as mini-adults rather than as substantially different. This is in sharp contrast to the position taken by the same group in opposition to treating children as adults in the court of law and in placing juveniles in adult correctional facilities and jails.

The treatment of children as mini-adults runs contrary to almost the total body of social science evidence, enormous bodies of law, and values embodied in the major institutions of democratic societies, all of which view children as *developmental creatures*. That is, children begin life as highly vulnerable and dependent persons, unable to make reasonable choices on their own, and gradually grow to become (as society hopes, and parents and educators labor to achieve) people able to make moral judgments, competent to act on their own, and ready to be autonomous persons.

Stanford Law Professor Michael Wald makes this point as follows: "Younger children, generally those under 10-12 years old, do lack the cognitive abilities and judgmental skills necessary to make decisions about major events which could severely affect their lives. . . . Younger children are not able to think abstractly, have a limited future time sense, and are limited in their ability to generalize and predict from experience." Yale Professor Joseph Goldstein adds, "To be a *child* is to be at risk, dependent, and without capacity to decide what is 'best' for oneself. . . . To be an *adult who is a parent* is to be presumed in law to have the capacity, authority, and responsibility to determine and to do what is good for one's children."

John O'Neill puts it succinctly, when he writes, "Currently, there are attempts to define children's rights on the liberal model of individual rights exercised by potentially autonomous agents—despite the reality of children's dependency."

Society's expectations from children, and the rights society accords them, reflect this developmental per-

spective. Society first requires children to be cared for by their parents and to heed them, as well as to attend school, while society allows children to leave both as they grow older. And society allows young people to consume alcohol, drive, marry, vote, serve in the armed forces, and sign contracts at different ages, but only rarely when they are very young. There seems to be no foundation in social science to assume that when it comes to exposure to information, children are initially less in need of adult protection and guidance than in other aspects of their lives.

One may ask, as children grow to be independent individuals, won't each undergo a vulnerable trial period during which they will first be exposed to potentially harmful media images (e.g. cigarette ads, pornography, violence)? Might it not be more important for them to be exposed to this material at a younger age, when parents can more effectively provide a moral context for the incoming information? If the ultimate goal of a child's education is to have him/her making moral choices for him/herself, then shouldn't the child be confronted with both positive and negative images early on and guided to the correct choice, rather than initially robbed of the option to choose and have the "better" choice made for them?

Gradually exposing children to the violent and vile side of the adult world is indeed called for, but only commensurate with their ability to deal with the material. There is no reason to rush to expose pre-teens to sexually alluring material in order to teach them to deal with it. Moreover, for parents and educators to be able to help shape the children's responses they must be aware of the specific inputs the children face and be able to arrange them in line with some kind of an educational agenda rather than allow them to be engulfed by violent video games and trash TV, and lost in the World Wide Web. Above all, for parents and educators to participate in developing judgment they must be given the tools that enables them to actively participate in the cultural choices their charges make and the ways they initially deal with them.

Notching the Slope

Why do leading civil libertarians ignore the significant differences between children and adults? One reason might be the tendency of strong advocates to push their thesis to its illogical conclusion. (Just as civil libertarians tend to treat children like adults, hard core social conservatives often treat adults like children, for instance, by seeking to ban access to pornography to people of all ages.) In addition, civil libertarians fear the metaphorical slippery slope. For instance, the ACLU warns that "if this legislation [regarding tobacco ads] prevails, Congress could clearly impose similar restrictions on any commercial product." If

children are denied full court First Amendment rights in order to improve their characters, could one not favor the same for adults?

This particular slippery slope, though, is clearly different from others in that clear markers can be set to prevent slippage. Unlike the difficulty in defining differences between fighting words (which, due to their dangerous effect, may be banned) and others, differences in age are rather easy to determine. Hence, public policies that prevent children from accessing certain materials, and above all policies enabling parents and educators to protect their wards, will not spill over to adults unless a more encompassing policy is deliberately embraced. Indeed, society expects parents and educators to actively participate in selecting the material to which their children are exposed. Civil libertarians should not hinder the development of the needed policies and tools merely for the sake of a paradigm that does not apply to children in the first place.

The attempt to extend First Amendment rights to protect children against their parents (rather than the government) is particularly puzzling and troubling. Such an extension is so farfetched that one may wonder whether it might be inadvertent. One may oppose

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a voluntary ban on Joe Camel ads because it was offered under pressure from Congress. Likewise, objection to the introduction of filters into public library computers may be justified. However, while the V-chip has been incorporated into TV sets by force of law, it is not activated unless parents so wish. And the refusal of libraries to inform parents of their children's choices in books has nothing to do with protecting them from Big Brother.

The notion that children should be treated as basically small adults is difficult to comprehend. The great classical liberal philosophers, who laid the foundations for our conception of individual rights, directly addressed this matter. John Stuart Mill, for instance, stated: "Children below a certain age cannot judge or act for themselves; up to a considerably greater age they are inevitably more or less disqualified for doing so."

Our respect for people's choices rests on the assumption that their basic ability to render judgments has been formed and is intact. (This is the reason we, for instance, limit the choices of those whose mental capacity is significantly impaired.) Minors gradually develop the capacity to make choices, but are not born with it. For this reason when their age is tender, we are

not charged with violating their right to free assembly when we prevent them from running into the street, or their privacy rights when we examine their homework, even without prior consent.

As I see it parents not only have a right but a duty to help shape the educational environment of their children, help them choose which books they should read, which music to listen to, which TV programs to watch—and which to avoid. Of course, as children grow older such guidance is less necessary, but the debate swirls largely around those who are twelve or younger, who badly need their parents' counsel. This may include limiting the kind of pornography they are exposed to, the games they may play, or even how many hours a day they may surf on the Internet—or watch TV—in the first place.

Even for teenagers, parents need to be involved rather than shut out. Thus, given the high suicide rate among teens, and the tendency for such acts to be emulated, if a child committed suicide in my son's school, and my son seems rather depressed and he is spending long hours alone in the library, it is my duty to know if he merely reads Dostoevsky or also the books of the Hemlock Society, which informs its readers how to best end their lives, with minimal discomfort. I also had

better find out if one of my children is deep into *Mein Kampf*, the Unabomber Manifesto, or *The Anarchist's Cookbook*, so I can help him learn to properly deal with these poisonous books.

In effect, attending to the character development of children, so when they grow up they will be equipped with the moral and intellectual faculties needed to make responsible choices, is to a large extent what parenting is all about. Anybody can provide room and board. Love comes naturally. But providing education—laying the foundations for adult choices—is the highest duty of parenting, which no civil libertarian should deny.

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