

CHILDREN'S VOICE AND JUSTICE: LAWYERING FOR CHILDREN IN THE TWENTY-FIRST CENTURY

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I. INTRODUCTION

Although children in the United States have been subject to public regulation and protection since colonial times, during the twentieth century notions of children as autonomous and as rights holders who are entitled to "justice" have become pervasive. States have created specialized juvenile and family courts; large federal and state entities exist to aid in the protection, education, and control of children; the Supreme Court has extended many constitutional rights to youth, including the right to counsel in juvenile justice proceedings;¹ and Congress has required states receiving child welfare funding to appoint representatives for children subject to child abuse or neglect proceedings.² As a result, minors are widely understood to have both substantive and procedural rights and interests and, accordingly, they receive legal representation in a number of legal proceedings involving children's rights and interests.

It is far from clear, however, whether these notions of justice and rights, and the corresponding creation and growth of a children's attorney bar, have promoted children's objectives or made their worlds more just. On the contrary, children have fared poorly in the five or six decades since they were acknowledged to be constitutional rights-holders in *Brown v. Board of Education*³ and entitled to due process protections against certain coercive state action in *In re Gault*.⁴ The United States has one of the highest poverty rates among children of the western, industrialized world, and child poverty here has actually increased by more than fifty percent in the past quarter century.⁵ We

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¹ *In re Gault*, 387 U.S. 1 (1967).

² Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a (b)(2)(A) (2000 & Supp. 2003).

³ 347 U.S. 483 (1954).

⁴ 387 U.S. 1 (1967).

⁵ LEE RAINWATER & TIMOTHY M. SMEEDING, POOR KIDS IN A RICH COUNTRY 22, 29 (2003). Indeed, poverty among children increased from fourteen to twenty-one percent between 1969 and 1990. Paul E. Peterson, *An Immodest Proposal*, 121 DAEDALUS 151, 153 (1992).

subject our children to extreme surveillance in their schools and elsewhere,⁶ and suspend and expel them from school at alarming rates.⁷ It is not surprising then that schools have become a track to incarceration⁸ and the United States, one of only four countries that sentences persons to life for crimes they committed while minors, has over 2,000 people serving such time.⁹

Moreover, by virtue of their diversity and developmental spectrum, children do not have strong voices in matters of policy, and even in matters regarding their own legal interests. Thus policy makers and children's lawyers are particularly unfettered to promote law and outcomes in the name of children that, in fact, may be unresponsive or even hostile to them, their families, and their communities.¹⁰ Indeed, a war against youth seems to have replaced our failed War on Poverty¹¹ as we make policy choices that either target youth or, through neglect, diminish their opportunities.¹²

⁶ See Bernardine Dohrn, *Look Out Kid/It's Something You Did: Zero Tolerance for Children*, in ZERO TOLERANCE 89, 95 (William Ayers, Bernardine Dohrn, & Rick Ayers eds., 2001) (describing closed campus schools with "metal detectors, locker and backpack searches, contraband, interrogations and informers, heavily armed tactical police patrols, surveillance cameras, [and] uniforms"); Linda S. Beres & Thomas D. Griffith, *Demonizing Youth*, 35 LOY. L.A. L. REV. 747, 759-63 (2001) (discussing punitive statutes that label youth as gang members, contain few safeguards against wrongful identification, and make gang membership a crime or grounds to enhance a crime; and describing police data bases of gang members).

⁷ The number of students pushed out of schools through suspensions has increased from 1.7 million in 1974 to 3.1 million in 2000. Monique Dixon, *Combating the Schoolhouse-to-Jailhouse Track Through Community Lawyering*, 39 CLEARINGHOUSE REV. 135, 136 (2005); see also, ZERO TOLERANCE, *supra* note 6 (collecting a series of essays regarding school discipline, and criminalization, of youth). School discipline is disproportionately meted out to students of color. Dixon, *supra*, at 137.

⁸ See, e.g., Dixon, *supra* note 7, at 135-137 (rehearsing anecdotal instances involving young children and statistics showing a large increase in arrests for student misconduct, despite a significant decrease in violent crimes by students).

⁹ Adam Liptak, *Locked Away Forever After Crimes as Teenagers*, N.Y. TIMES, Oct. 3, 2005, at A-1 (citing October 12, 2005, Human Rights Watch and Amnesty International Report, and noting that the other three countries have a mere handful of persons serving those sentences). Child and anti-capital punishment advocates were able to convince the Supreme Court to outlaw the death penalty for children who committed crimes under the age of eighteen. *Roper v. Simmons*, 546 U.S. 551 (2005).

¹⁰ See Annette R. Appell, *Disposable Mothers, Deployable Children*, 9 MICH. J. RACE & L. 421, 442-64 (2004) (discussing adoption and child protective policy and practice in the name of children); Dorothy Roberts, *The Community Dimension of State Child Protection*, 34 HOFSTRA L. REV. 23 (2005).

¹¹ See LAWRENCE GROSSBERG, *CAUGHT IN THE CROSSFIRE, KIDS, POLITICS, AND AMERICA'S FUTURE* 15-74 (2005) (describing this war); Beres & Griffith, *supra* note 6, at 747-50 (illustrating that the War on Drugs and California Proposition 21 have transformed police officers into warriors, utilizing paramilitary mind-sets and techniques against gangs). For a collection of studies regarding our racialized abandonment and demonization of youth, and poor youth of color especially, see ZERO TOLERANCE, *supra* note 6.

¹² See GROSSBERG, *supra* note 11, at 175-189, 235-37, 251-52, 259-60, 271 (discussing the failure to invest in the future, including social and economic programs for children); Martha Minow, *Children's Rights: Where We've Been, and Where We're Going*, 68 TEMPLE L. REV. 1573 (1995) (noting backlash regarding children's rights); Nancy Scheper-Hughes & Carolyn Sargent, *Introduction*, in SMALL WARS: THE CULTURAL POLITICS OF CHILDHOOD 28 (Nancy Scheper-Hughes & Carolyn Sargent eds., 1998) (noting with alarm the recent proliferation of child-hostile public policies in the United States).

Motivated in part by these paradoxes between increased rights and decreased welfare, in 1995, a group of children's advocates, legal ethicists, and other academics convened for the *Fordham Conference on Ethical Issues in the Legal Representation of Children* ("Fordham Children's Conference").¹³ That Conference forged consensus among leading members of the children's bench and bar that children, not attorneys, should direct the objectives and scope of legal representation.¹⁴ This norm was grounded in the ethical rules governing attorneys and sent an important message that children should have voice in legal proceedings affecting their lives and their rights: that children are moral beings whose volition matters.

Ten years after that important conference and despite its clarity and depth, children's attorneys continue to grapple with a number of questions, including the ongoing struggle to meet the norm of client directed lawyering for children¹⁵ and the challenges of ethically representing children as autonomous beings who are deeply embedded in, and still being formed by, their families and communities.¹⁶ The 2006 *UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham* ("UNLV Children's Conference") aimed to take the next step in answering these and other questions. This paper contributes to this discussion by establishing a framework for exploring the relationships between children's advocacy and justice. It acknowledges that despite our good intentions, if we children's attorneys are not mindful we can idealize children and subordinate their specific wishes and identities to our own notions of what is good for them. Moreover, children's attorneys play a dominant role in defining and making policy regarding children's rights and needs. Yet it is not clear why or how attorneys, rather than children's families and communities, are well-suited to make these determinations.

This paper rests on the belief that although children's lawyers do what we do to help children, the natural dominance and myopia of lawyers is exacerbated when representing children in ways that can easily mask children's disparate identities, needs, and desires. These specifics—identity, desire, need—constitute part of what I mean by "children's voice." For children, like adults, but perhaps more so, are complex, multi-relational, and changing; and children

¹³ Bruce A. Green & Bernardine Dohrn, *Foreword: Children and the Ethical Practice of Law*, 64 *FORDHAM L. REV.* 1281, 1284-86 (1996).

¹⁴ *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 *FORDHAM L. REV.* 1301 (1996).

¹⁵ 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 (2006).

¹⁶ This is a particularly pressing question because representing children can isolate them from, and even pit them against, their families and communities. See Janet E. Ainsworth, *Youth Justice in a Unified Court: Response to Critics of Juvenile Court Abolition*, 36 *B.C. L. REV.* 927, 935 (1995) (noting that since *Gault*, the juvenile courts have increasingly abandoned their rehabilitative mission in favor of a retributive approach); Annette R. Appell, *Uneasy Tensions Between Children's Rights and Civil Rights*, 5 *NEV. L.J.* 141 (2004) (illustrating how advocating for children's dependency rights can separate children from their families and communities); Martin Guggenheim, *How Children's Lawyers Serve State Interests*, 6 *NEV. L.J.* 805 (2006) (offering examples of children's attorneys in child protection cases presuming conflict between parent and child).

are, in many cases, less articulate and less able to understand and say what they mean. Because children are not able to direct their lawyers as forcefully or coherently as adults, lawyers for children should exercise extra care and special strategies to ascertain children's needs and wishes, such as viewing children in multiple lenses (not just "developmental" and legal) and engaging children's families and communities in our work. The next section provides a conceptual framework for child advocacy and justice, dividing, and briefly assessing, the ways in which we seek justice for children at any given time or in any given setting into three approaches to justice: procedural, legal and social. The final section explores what it might mean to represent children in families, which for me means representing children in context and in their individuality: a manner of advocacy in which children can have voice both in legal proceedings to which they are parties and in defining justice. The primary aim of this paper is to challenge myself and other child advocates to oppose essentialized and idealized views of children and instead hear, and find meaning in, each child's voice. These challenges require us to cabin our professional expertise and life experiences so that we can view children in their complexity, variety, contexts, and uniqueness.

II. CHILD ADVOCACY AND JUSTICE

I cannot say with empirical certainty that children's lawyers are motivated to do good¹⁷ but based on my extensive experience over nearly two decades with attorneys who represent children, it is clear that most of us do so to help children—individually or as a group. Approaches to "helping children" seem to range from: protecting children from their parents, themselves, or the state;¹⁸ to giving children voice;¹⁹ to empowering children;²⁰ and to improving

¹⁷ See Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 31, 33 (Austin Sarat & Stuart Scheingold eds., 1998) [hereinafter CAUSE LAWYERING] (discussing what is meant by altruistic lawyering). Based on two decades of studying public interest lawyers, Professors Scheingold and Sarat find "political or moral commitment an essential and distinguishing feature of . . . [such] lawyering." STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN, POLITICS: PROFESSIONALISM, AND CAUSE LAWYERING 4 (2004).

¹⁸ This may be the approach of attorneys who represent children in custody, child protective, contested adoptions, domestic violence, juvenile justice, or education matters.

¹⁹ This may include those attorneys who seek to give children voice in the proceedings mentioned in the preceding note. See also Peter Margulies, *The Lawyer as Caregiver: Child Client's Competence in Context*, 64 FORDHAM L. REV. 1473, 1476 (1996); Catherine J. Ross, *From Vulnerability to Voice: Appointing Counsel for Children in Civil Litigation*, 64 FORDHAM L. REV. 1571 (1996).

²⁰ Katherine Hunt Federle, *The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client*, 64 FORDHAM L. REV. 1655 (1996). Empowerment could also include creating more procedural rights for children. Barbara Bennett Woodhouse, *Enhancing Children's Participation in Policy Formation*, 45 ARIZ. L. REV. 751 (2003) (focusing on "child-centered" approaches includes integrating children's voices into law and policy formation through a number of methods including: appointed counsel, child-friendly courtrooms and evidentiary standards).

the systems that purport to serve children.²¹ Other attorneys may seek to improve the material conditions in which children live, but it appears that they do so outside of an attorney-child-client relationship.²² All in all, we are a passionate bunch who seek to do justice for children.

Justice, however, is one of those capacious terms that, to compound its many meanings and uses, falls easily off the tongue and keyboard but is rarely defined.²³ Lawyers for children may each, or as a group, have multiple, and perhaps conflicting notions of justice. Most child advocates probably seek procedural justice for children; here the idea is to make sure children have a voice in proceedings where their rights are at issue.²⁴ Other notions of justice are more substantive—the desire to create or extend substantive rights for children—to achieve legal justice for children.²⁵ Other lawyers may take notions of justice even further to the area of distributive justice—of improving the material conditions in which children live by eradicating socio-economic structures that present the largest risk factors children face—to achieve social justice for children.²⁶ Any particular lawyer or law office may seek justice in any or

²¹ E.g., Bazelon Center for Mental Health Law; Children's Inc.; National Center for Youth Law; Juvenile Law Center; see also Casey Trupin & Richard A. Wayman, *From Street Lawyering to Systemic Lawyering: Meeting the Basic Needs of Unaccompanied and Homeless Youth Through Systemic Legal Advocacy*, 39 CLEARINGHOUSE REV. 177 (2005). This category surely includes the individual litigation that children's attorneys conduct in child protection, education and juvenile justice proceedings.

²² Children's Defense Fund, www.childrensdefense.org (last visited May 16, 2006); Center for Law in the Public Interest in Los Angeles, California, www.clipi.org (last visited May 16, 2006). This is not to suggest that children's attorneys do not engage in such advocacy in addition to providing direct or class representation to children. E.g., JUDGE DAVID F. BAZELON CENTER FOR MENTAL HEALTH LAW, *MAKING CHILD WELFARE WORK* (1998). Children's attorneys also collaborate with social and medical service providers who provide assistance to the non-legal needs of children and their families. E.g., University of Connecticut School of Law Kid's Counsel Center for Children's Advocacy, <http://www.kidscounsel.org/programs.htm> (last visited May 16, 2006); Martha Stone, Stacey Violante Cote, Christina Ghio, Ann-Marie DeGraffenreidt, *Center for Children's Advocacy: Providing Holistic Legal Services to Children in Their Communities*, 39 CLEARINGHOUSE REV. 244 (2005).

²³ See Austin Sarat & Thomas R. Kearns, *Legal Justice and Injustice: Toward a Situated Perspective*, in *JUSTICE AND INJUSTICE IN LAW AND LEGAL THEORY 1* (Austin Sarat & Thomas R. Kearns eds., 1996) (discussing the absence, and futility of attempts to develop, universal accounts of justice).

²⁴ For example, this approach might refer to children's attorneys in their capacity of defending children in child welfare and juvenile justice proceedings.

²⁵ E.g., Marcia Lowry, *Derring-Do in the 1980s: Child Welfare Impact Litigation After the Warren Years*, 20 FAM. L. Q. 255 (1986) (describing constitutional rights litigation); Suellyn Scarnecchia, *A Child's Right to Protection from Transfer Trauma in a Contested Adoption Case*, 2 DUKE J. GENDER L. & POL'Y 41, 45-46 (1995) (arguing for legal protection of existing relationships with non-biological parents).

²⁶ The Children's Defense Fund may be the most well-known entity that takes a relatively distributive approach. Of course there are many types of justice, some of which may be applicable to advocacy for youth. See, e.g., PENDA D. HAIR, *LOUDER THAN WORDS: LAWYERS, COMMUNITIES AND THE STRUGGLE FOR JUSTICE* (2001) (defining and describing racial justice community lawyering); Susan Brooks, *Representing Children in Families*, 6 NEV. L.J. 724 (2006) (advocating therapeutic and preventive justice approaches to representing children); Cheryl Graves, Donyelle Gray, & Ora Schub, *Making the Case for Restorative Justice*, 39 CLEARINGHOUSE REV. 219 (2005) (discussing the utility of community-based

all three of these senses. I discuss them, however, as conceptually discrete models and weigh each approach's relationship to children's voice in experiencing and defining justice to help illuminate, and promote self-reflection regarding, what children's lawyers do.

A. *Procedural Justice Approach*

Under the procedural justice approach, lawyers represent children's objectives in legal settings. This approach concerns itself with protecting or prosecuting children's rights under the law and does not involve political action such as changing or creating law.²⁷ Instead, legal representation is an end in itself.²⁸ This approach aims to provide legal representation to promote legal interests, and fairness in application and implementation of the law,²⁹ and to promote children's voice.³⁰ Here, the lawyer advances the client's individual objectives without undue regard to the interests of others.³¹ This approach does not aim for substantive change because these lawyers seek primarily to provide access to the justice system without challenging that system itself.³² Of course, holding persons or institutions to the law's mandates can itself be transformative, particularly when courts or other governmental institutions have ignored children's legal rights.³³ In any event, lawyers seeking procedural justice, by definition, confine themselves to relatively narrow legal advocacy, rather than political or social action in which the lawyers might aim to change policy or shape social responses and strategies.

A procedural justice approach to representing children, for better and for worse, cabins children's lawyers in at least three ways. First, as noted above, children's procedural justice lawyers attend to legal rights, rather than political or social change. Thus, there is less likelihood that attorneys will subordinate

restorative justice for disputes regarding juveniles delinquency charges, schools and teen dating violence); Marcheta Lee Gillam, Steven Fischbach, & Ralph Scott, *Poisoned by Poverty: A Call to Improve Health Outcomes for Low-Income and Minority Children*, 39 CLEARINGHOUSE REV. 4 (2005) (urging child advocates to incorporate environmental justice approaches into their work).

²⁷ See Thomas M. Hilbink, *You Know the Type . . . : Categories of Cause Lawyering*, 29 LAW & SOC. INQUIRY 657, 665-73 (2004) (describing "proceduralist lawyering" as a basic commitment to providing legal representation to persons within the legal system, in contrast to trying to change the system).

²⁸ *Id.* at 668; See also Ross, *supra* note 19, at 1571 (arguing that particularly because of their vulnerabilities and to protect their interests, children should have appointed counsel in civil proceedings); Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathic, Heroic Public Defender*, 37 U.C. DAVIS L. REV. 1203, 1208-10 (2004) (describing public defenders' faith in adversary system and their motivation to protect substantive and procedural liberties).

²⁹ Hilbink, *supra* note 27, at 668.

³⁰ Lewis Pitts, *Fighting for Children's Rights: Lessons from the Civil Rights Movement*, 16 U. FLA. J.L. & PUB. POL'Y 337, 347 (2005); Ross, *supra* note 19; U.N Convention on the Rights of the Child, Article 12, 28 I.L.M. 1448, 1461 (1989).

³¹ Hilbink, *supra* note 27, at 672.

³² See Pitts, *supra* note 30, at 347-50 (claiming children's procedural rights should not be confused with, or affect, substantive law governing the proceedings).

³³ See Hilbink, *supra* note 27, at 669 (acknowledging that even "proceduralist lawyers" challenge the status quo when they seek to enforce their clients previously disregarded rights).

their clients' interests to larger systemic goals.³⁴ Moreover, they do not seek changes in the substantive law based on their own or their clients' notions of what the law should be. Second, and relatedly, procedural justice lawyers advocate in the context of existing rights, protecting their clients' legal interests and, perhaps, the related social and legal consequences of the client's choice. These lawyers may be less likely to see their clients as members of larger communities, identify the systemic legal and social issues that affect the child's life and choices, or assess the substantive justice of the legal system in which the attorney is advocating.³⁵ In other words, this procedural justice approach may have limitations attendant to viewing children in terms of their legal problems and legal solutions; this view can inhibit identification of, and solutions to, problems that are grounded in larger socio-economic structures. Third, procedural justice lawyers tend to be the most traditional in their approach to lawyering so they are less likely to deviate from professional norms;³⁶ this fidelity might inhibit them from reaching out to parents and others who might be seen to have interests that conflict with the child client's.

These limitations reveal both weaknesses and strengths regarding identifying and promoting children's voice. The procedural justice approach confines the lawyer to enforce the child's rights even if the underlying law is not particularly just—or more accurately, does not meet the attorney's (or child's) notion of justice.³⁷ This approach can also limit the attorney to viewing and listening to the client in the context of an individual with a legal problem, rather than in the child's own frame. Thus, the attorney may not engage with the child to identify other options, needs or interests that the child may have. Nor may the attorney look beyond his or her individual client to those to whom the child looks to for care and identity, such as family and community members and norms.

Yet these limitations are also positive because child clients, even more than adult clients, are often inhibited from forcefully directing the lawyer.³⁸ Although children have definite ideas—even at very young ages—about fairness and justice,³⁹ their ability to form ideas about policy is either limited or, more likely, easily discounted, and so it is more vulnerable to subordination even by their own attorneys.⁴⁰ Representing children under the procedural justice approach does not require answers to these larger questions; instead, the

³⁴ See *infra* notes 72-76 and accompanying text.

³⁵ Guggenheim, *supra* note 16, at 326-27, 829-30; Hilbink *supra* note 27, at 672.

³⁶ Hilbink, *supra* note 27, at 668, 672.

³⁷ See Guggenheim, *supra* note 16 (suggesting that even procedural justice lawyers insert their own or other's visions of substantive rights into representation of children in child welfare proceedings).

³⁸ Emily Buss, "You're My What?" *The Problem of Children's Misperceptions of Their Lawyers' Roles*, 64 *FORDHAM L. REV.* 1699 (1996); Martin Guggenheim, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions*, 97 *MICH. L. REV.* 1488, 1495-96 (1999) (book review).

³⁹ See BERRY MAYALL, *TOWARDS A SOCIOLOGY FOR CHILDHOOD: THINKING FROM CHILDREN'S LIVES* 21, 88-90 (2002).

⁴⁰ These risks are not confined to children. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *YALE L.J.* 470 (1976); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 *BUFFALO L. REV.* 1, 4 (1990).

procedural justice lawyer seeks more cabined and concrete information and direction from the child: what does the child want in this particular matter; what does he or she think is the just outcome in this case. The discreteness and concreteness of this inquiry, as opposed to more complex and abstract questions regarding justice, may, in fact, better elicit the child's voice because the child can speak more forcefully and knowingly about his or her own life. Thus, ethically representing children's existing legal interests defers determinations of what is just for children as a group to more democratic and public fora than the attorney-client relationship and concerns itself instead with what is just for the child in question.⁴¹ In these ways, the procedural justice approach narrows the child's voice in ways that are both limiting and empowering for the child.

B. Legal Justice Approach

The more substantive legal justice approach to lawyering for children seeks to enlarge children's positive rights and liberties, or the duties of others toward children.⁴² This approach includes lawyers who aim to promote change through expanding, challenging or changing substantive law.⁴³ Here lawyers advocate to increase their clients' rights and benefits within our current legal system. Thus legal justice lawyers may litigate matters to push the boundaries of children's constitutional rights,⁴⁴ or engage in policy-making, often in the form of legislation, that will create or enlarge children's rights.⁴⁵ Unlike the procedural justice approach, this one expands the lawyer's role to the political

⁴¹ Cf. Martin Guggenheim, *Reconsidering the Need for Counsel for Children in Custody, Visitation and Child Protection Proceedings*, 29 *LOY. U. CHI. L.J.* 299, 300-01 (1998) (illustrating how the attorney's views regarding justice can determine how she interprets the law or her role).

⁴² For thoughtful discussions of the nature of children's rights, see, e.g., DAVID ARCHARD, *CHILDREN: RIGHTS AND CHILDHOOD* 55-56 (2d ed. 2004) (identifying liberty rights, welfare rights, and children's rights); Harry Brighouse, *How Should Children be Heard?*, 45 *ARIZ. L. REV.* 691, 701-03 (2003) (identifying welfare rights which refer to duties adults owe toward a child's well-being; and agency rights, which include the right to act on one's own judgment); Martha Minow, *Interpreting Rights: An Essay for Robert Cover*, 96 *YALE L. REV.* 1860, 1867 (1987) (discussing rights as expressions of claims used to persuade others about how one should be treated); Michael S. Wald, *Children's Rights: A Framework for Analysis*, 12 *U.C. DAVIS L. REV.* 255 (1979) (identifying children's social, protective, adult, and family rights).

⁴³ See Tomiko Brown-Nagin, *Elites, Social Movements, and the Law: The Case of Affirmative Action*, 105 *COLUM. L. REV.* 1436 (2005); William N. Eskridge, Jr., *Channeling: Identity-Based Social Movements and Public Law*, 150 *U. PA. L. REV.* 419 (2001); Edward L. Rubin, *Passing Through the Door: Social Movement Literature and Legal Scholarship*, 150 *U. PA. L. REV.* 1 (2001); Austin Sarat & Stuart Scheingold, *Cause Lawyering and the Reproduction of Professional Authority*, in *CAUSE LAWYERING*, supra note 17, at 3, 4.

⁴⁴ E.g., *Brown v Bd. of Educ.*, 347 U.S. 483 (1954); *In re Gault*, 387 U.S. 1 (1967); *Bellotti v. Baird*, 443 U.S. 622 (1979); *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816 (1977); *Tinker v. Des Moines*, 393 U.S. 503 (1969).

⁴⁵ E.g., Education for All Handicapped Children Act, Pub. L. No. 94-142, 89 Stat. 773 (1975) (now amended and known as the Individual with Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1141 (1990), as amended in 2004); Interethnic Adoption Act, Passed as Section 1808 of the Small Business Job Protection Act of 1996., Pub. L. No. 104-188 § 1808, 110 Stat. 1755, 1903-04 (1996) (codified at 42 U.S.C. §§ 671, 674, 1996); but see Beth A. Ferri & David J. Connor, *Special Education and the Subverting of Brown*, 8 *J. GENDER RACE & JUST.* 57 (2004) (tying over-representation of minorities in special educa-

arena⁴⁶ and has the potential to enlarge the child's substantive rights and thus expand possibilities of substantive justice for children.

The strengths of this approach are that it can promote children's interests in a variety of areas in which their interests are subsumed within family or state, or are simply disregarded because children have little actual and political power. Through legal justice approaches, law can be a mechanism both for increasing rights⁴⁷ and challenging laws that serve as markers of subordination and inferiority.⁴⁸ Children's liberationists of the 1960s and 1970s called for extension of adult civil liberties to children, including the right to vote, work and make education decisions.⁴⁹ Although not all of these calls were heeded, children certainly have gained important freedoms through legal justice approaches.⁵⁰ These victories include limited speech and privacy liberties,⁵¹ and the right to equal protection⁵² and procedural due process.⁵³

Weaknesses in this approach's ability to identify and effect children's voice are three-fold. First, as suggested above, legal justice relies on legalistic,

tion to segregation and the eugenics movement); Appell, *supra* note 10, at 459-64 (noting the racist, classist, and misogynist aspects of the Interethnic Adoption Act).

⁴⁶ Martha Minow, *Political Lawyering: An Introduction*, 31 HARV. C.R.-C.L. L. REV. 287, 289 (1996) (discussing labor and civil rights legal advocacy as political); Hilbink, *supra* note 27, at 673; *but see* Robin West, *Re-Imagining Justice*, 14 YALE J.L. & FEMINISM 333, 335, 341 (2002) (arguing that legal justice is "facially apolitical" and, under its dominant conception, serves to defend against politics).

⁴⁷ See JOSEPH M. HAWES, *THE CHILDREN'S RIGHTS MOVEMENT: A HISTORY OF ADVOCACY AND PROTECTION* 110-13 (1991) (describing children's rights won through litigation and legislative advocacy on behalf of children in child welfare and education contexts); ROBERT H. MNOOKIN, *IN THE INTEREST OF CHILDREN: ADVOCACY, LAW REFORM, AND PUBLIC POLICY* (1996) (studies of major children's rights litigation in the twentieth century); Appell, *supra* note 16 (rehearsing civil rights children achieved through litigation); Eskridge, *supra* note 43, at 450-51 (describing positive rights people with disability gained through legal advocacy); Lowry, *supra* note 25.

⁴⁸ *E.g.*, *Brown*, 347 U.S. 483; *see also*, William N. Eskridge, Jr., *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062, 2064-65 (2002) (discussing the role law plays in defining and then preserving subordination of social or identity groups such as racial and sexual minorities and women and how movement lawyers "translate[] the problems and aspirations of women and minorities into constitutional discourse"); Gary B. Melton, *Litigation In the Interests of Children: Does Anybody Win?*, 10 LAW & HUM. BEHAV. 337, 340 n.4 (1986) (because children have been subjected to segregation and unequal treatment, age-based discrimination should be subject to strict scrutiny).

⁴⁹ HAWES, *supra* note 47, at 98-121 (describing children's rights movements from 1960-1990); Minow, *supra* note 12, at 1575-76 (describing children's rights literature from 1960s and 1970s).

⁵⁰ Appell, *supra* note 16, at 154-56.

⁵¹ *Tinker v. Des Moines*, 393 U.S. 503 (1969) (freedom of expression); *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943) (freedom of expression); *Bd. of Educ. v. Pico*, 457 U.S. 853 (1982) (freedom to read); *Bellotti v. Baird*, 443 U.S. 622 (1979) (freedom to seek judicial by-pass of parental consent to abortion); *Carey v. Population Servs., Int'l.*, 431 U.S. 678 (1977) (right to contraception).

⁵² *Brown*, 347 U.S. at 483; *Levy v. Louisiana*, 391 U.S. 68 (1968); *Weber v. Aetna Cas & Sur. Co.*, 406 U.S. 164 (1972); *Gomez v. Perez*, 409 U.S. 535 (1973); *N.J. Welfare Rights Org. v. Cahill*, 411 U.S. 619 (1973); *Plyler v. Doe*, 457 U.S. 202 (1982).

⁵³ *In re Gault*, 387 U.S. 1 (1967); *Breed v. Jones*, 421 U.S. 519 (1975); *In re Winship*, 397 U.S. 358 (1970); *Goss v. Lopez*, 419 U.S. 585 (1975); *Ingraham v. Wright*, 430 U.S. 651 (1977).

rights-based notions of justice. Although rights are extraordinarily important—particularly for those who, like children, have few rights or inhabit a place without political power,⁵⁴ rights are also limited in that they generally are individualistic, individualizing, legalistic, and reinforce existing power structures and socio-economic inequities.⁵⁵ Thus, legal justice approaches do little to address systemic problems that create risks for children, such as racism, poverty, poor schools, lack of economic opportunity, and lack of access to health care.⁵⁶ Indeed, legal justice approaches are, by definition, confined to maneuvering within the law and legal systems which are, by nature, conservative.⁵⁷ As Professor Carrie Menkel-Meadow explains: “In creating legal arguments, lawyers legitimize at least some aspects of the system, and the kinds of legal arguments and reasoning that they employ often cut them off from more imaginative ways of solving problems.”⁵⁸ In this way, legal rights advocacy may co-opt those working for social change into more conventional frameworks.

⁵⁴ Annette R. Appell, *Virtual Mothers and the Meaning of Parenthood*, 34 U. MICH. J.L. REFORM 683, 765-78 (2001) (defending the political importance of family rights for families that do not meet dominant norms of class, race, marital status and gender); Sarat & Scheingold, *supra* note 43, at 9 (noting lawyers can “use rights claims” to expose inequality and lay bare power disparities and social differences); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 416 (1987) (“rights imply a respect . . . which elevates one’s status from human body to social being.”).

⁵⁵ See, e.g., Wendy Brown, *Rights and Identity in Late Modernity: Revisiting the “Jewish Question”*, in IDENTITIES, POLITICS, AND RIGHTS 85, 87, 118-19, 123 (Austin Sarat & Thomas R. Kearns eds., 1995) (claiming rights depoliticize groups and individuals and instead serve merely to privatize and mask social and material conditions and political and economic forces); Richard Delgado, *About Your Masthead: A Preliminary Inquiry into the Compatibility of Civil Rights and Civil Liberties*, 39 HARV. C.R.-C.L. L. REV. 1, 9-11 (2004) (expressing this critique in context of civil liberties, rather than civil rights); Minow, *supra* note 12, at 1579 (“The language of individual rights does not begin to illuminate the locus of power and responsibility in corporate, foreign policy, and other adult decisions that have foreshortened the life options of so many young people.”)

⁵⁶ West, *supra* note 46, at 340; see also William E. Forbath, *Not So Simple Justice: Frank Michelman on Social Rights, 1969 – Present*, 39 TULSA L. REV. 597 (2004) (rehearsing the ultimate failure of constitutionally-based economic justice litigation and theory); Sarat & Scheingold, *supra* note 43, at 8 (noting conservatism of the law and limitations even of political or legislative strategies for achieving distributive justice); Bell, *supra* note 40, at 478, 488 (explaining how the legal strategy for school desegregation failed to account for “the complexity of achieving equal educational opportunity for children to whom it so long has been denied” and the fact that “racial subordination of blacks [would be] reasserted in, if anything, a more damaging form.”)

⁵⁷ Sarat & Scheingold, *supra* note 43, at 9; Menkel-Meadow, *supra* note 17, at 49-50. There is a rich body of critique and analysis of legal justice advocacy and solutions. E.g. Sarat & Scheingold, *supra* note 43, at 7-10; Michael McCann & Helena Silverstein, *Rethinking Law’s “Allurements” A Relational Analysis of Social Movement Lawyers in the United States*, in CAUSE LAWYERING, *supra* note 17, at 261, 262-64; Menkel-Meadow, *supra* note 17, at 48-50; Martha Minow, *Law and Social Change*, 62 U. MO. KAN. CITY L. REV. 171 (1993). In the context of children’s rights, Appell, *supra* note 16; Guggenheim, *supra* note 16.

⁵⁸ Menkel-Meadow, *supra* note 17, at 49. She further asks whether it is “a good thing for social change that the NAACP, the Children’s Legal Defense Fund, the Women’s Legal Defense Fund, and the Sierra Club are now included in legislative hearings and administrative regulatory proceedings?” *Id.* at 49-50.

Although legal rights are extraordinarily important for those without power in a liberal political system that values private property and has both hostility toward and lack of beneficent interest in poor people,⁵⁹ it is not difficult to see in the context of children's advocacy that the legal justice approach may not be the most effective means to promote children's voice and justice. The individuating aspect of legal justice approaches disregards children's developmental, economic and psychological dependencies by viewing the child as separate and discrete. Yet, to the extent that children are embedded in families, the welfare and needs of the entire family (and community) are essential to the child's welfare.⁶⁰ Treating a child as an individual rights holder can unduly narrow advocacy which should, in many cases, address the needs of the child as member of a family and community.

Second, a large category of children's rights, though important, is not designed to promote children's voice. Unlike most adults, children are both subjects of dependency rights and holders of emancipatory rights.⁶¹ The emancipatory rights, which protect certain liberties of children, promote children's voice and personhood.⁶² For example, advocating for children's liberty against, or while in, state care protects a child's freedom of expression and conscience⁶³ and freedom from arbitrary and unfair treatment.⁶⁴ In contrast, those rights arising out of children's dependency and need for protection govern adult care of children and are designed to socialize children into parental or state values.⁶⁵ These rights relate to what adults and the state owe children: education, basic sustenance, and physical and medical care.⁶⁶ These very important dependency rights may, in the long run, promote children's freedom and interests as adults, but they promote little immediate freedom for children, and are most salient for young children with small voices who cannot effectively advocate or provide for themselves. Moreover, dependency rights are defined and applied in terms, on occasions and with choices that adults dictate.⁶⁷ In other words, even if children do have choices in these contexts, those

⁵⁹ Appell, *supra* note 54.

⁶⁰ Susan Brooks captures the importance and utility of representing the child in context, rather than as individuals. *E.g.*, Susan L. Brooks, *Therapeutic and Preventive Approaches to School Safety: Applications of a Family Systems Model*, 34 NEW ENG. L. REV. 615 (1999-2000); Susan L. Brooks, *Therapeutic Jurisprudence and Preventive Law in Child Welfare Proceedings: A Family Systems Approach*, 5 PSYCHOL. PUB. POL'Y & L. 951 (1999); Susan L. Brooks, *A Family Systems Paradigm for Legal Decision Making Affecting Child Custody*, 6 CORNELL J.L. & PUB. POL'Y 1 (1996). *See also* Berta Esperanza Hernandez-Truyol, *Asking the Family Question*, 38 FAM. L.Q. 481 (2004) (sketching out an argument for placing the needs of children and families at the center of international norm creation).

⁶¹ ARCHARD, *supra* note 42, at 55; Appell, *supra* note 16, at 154-61; Brighthouse, *supra* note 42, at 698-99.

⁶² Appell, *supra* note 16, at 154-56.

⁶³ *E.g.*, *Tinker v. Des Moines*, 393 U.S. 503 (1969); *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).

⁶⁴ *E.g.*, *Breed v. Jones*, 421 U.S. 519 (1975); *Goss v. Lopez*, 419 U.S. 585 (1975); *In re Winship*, 397 U.S. 358 (1970); *In re Gault*, 387 U.S. 1 (1967).

⁶⁵ Appell, *supra* note 16, at 156; Kim Taylor-Thompson, *Girl Talk—Examining Racial and Gender Lines in Juvenile Justice*, 6 NEV. L.J. 1137 (2006); Guggenheim, *supra* note 16.

⁶⁶ Appell, *supra* note 16, at 156-57.

⁶⁷ MARTIN GUGGENHEIM, *WHAT'S WRONG WITH CHILDREN'S RIGHTS* 17-18, 90-91, 130-32 (2005).

choices are confined to the options adults have selected. Thus, advocates may argue that children should be able to choose where they live, but grant only specific options such as parent or foster/adoptive parent and only when there is an adult conflict regarding custody.⁶⁸ Similarly, children may have a range of choice as to where to attend school, but they do not have the choice not to attend. Indeed, unlike emancipatory rights, dependency rights are not designed to promote or even account for children's voice.⁶⁹ On the contrary, these dependency rights are historically and currently primarily concerned with protection of children and social control of families and children.⁷⁰ I do not mean to understate the vitalness of such rights, but wish merely to make clear that they do not necessarily value children's voice or choice.

A third challenge the legal justice approach poses for children's voice is that this approach involves legal advocacy and rights, and thus places lawyers in a particularly heightened position of dominance. Lawyers seeking legal justice are in their milieu and can view themselves as substantive—as well as technical—experts.⁷¹ In other words, believing themselves to be the experts, these lawyers may bring their own notion of substantive justice to the table and fail to search for the child's view. Movement lawyers, particularly in class action and legislative advocacy contexts, can be unduly dominant when they or organizations are directing legal reform efforts.⁷² In these contexts, the clients are a large and diffuse group with different goals and interests while the lawyers are more identifiable and united.⁷³ For example, Derrick Bell's classic treatment of the school desegregation litigation revealed how the lawyers and movement organizations chose a strategy, complete school desegregation, that overlooked the socio-economic conditions that create and maintain racial subordination of African Americans; this disconnect occurred in part because the lawyers and movement leaders were elites and not representative of the poor families who most needed equal education opportunity and on whose behalf the legal strategy was waged.⁷⁴ Similarly, Neta Ziv, in the disability rights and legislative context, illustrated how the lawyers who successfully worked to create and pass the Americans with Disabilities Act, chose to press dominant

⁶⁸ E.g., Melissa LaBarge, "C" is For Constitution: Recognizing the Due Process Rights of Children in Contested Adoptions, 2 U. PENN. J. CONST. L. 318 (1999); Pitts, *supra* note 30, at 347-49; Scarnecchia, *supra* note 25.

⁶⁹ Even arguments for children's liberty interest in "choosing" parents are about adult determinations and an adult-defined range of choices. GUGGENHEIM, *supra* note 67, at 246-49; Appell, *supra* note 16, at 170-71.

⁷⁰ Appell, *supra* note 16, at 156-71; see also Guggenheim, *supra* note 16; Taylor-Thompson, *supra* note 65.

⁷¹ MNOOKIN, *supra* note 47, at 342.

⁷² See e.g., Bell, *supra* note 40 (describing how Black and White middle class lawyers and established civil rights groups pushed for complete desegregation without accounting for the effect such would have on poor African Americans); Ronald R. Edmonds, *Advocating Inequity: A Critique of the Civil Rights Attorney in Class Action Desegregation Suits*, 3 BLACK L. J. 176 (1974) (describing the same situation as Bell); Neta Ziv, *Cause Lawyers, Clients, and the State: Congress as a Forum for Cause Lawyering during the Enactment of the Americans with Disabilities Act*, in CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA 211 (Austin Sarat & Stuart Scheingold eds., 2001).

⁷³ Neta Ziv, *supra* note 72, at 218-20, 222-23.

⁷⁴ Bell, *supra* note 40.

movement goals of mainstreaming and inclusiveness over the goals of others in the movement who desired more specialized and segregated resources.⁷⁵ In this legislative context, the lawyers had multiple loyalties and little contact with clients so these minority views received less zealous advocacy.⁷⁶

Representing children places lawyers in a magnificently powerful role. This dominance is particularly acute because children's rights are normally identified and pressed by adults on behalf of, not by, children. The children's rights or advocacy movement, such as there is one or are several, mainly consists of lawyers representing children (or their parents), law professors writing about children, and policy makers making laws to protect or protect against children.⁷⁷ Lawyers are deciding the terms of justice, but attorneys may have limited perspectives regarding children and may not be in an optimal position to define justice for children. Consider the distortion of children that children's lawyers experience: lawyers mostly see children in the context of a legal problem. These legal problems generally come to the attention of an attorney when the family is severely distressed, as in divorce, coercive state intervention to protect or discipline children, or proceedings involving unaccompanied or dependent non-citizen minors. Moreover, coercive state intervention disproportionately falls on the backs of poor families and families of color who have fewer resources and experience more stress than more mainstream families.⁷⁸ Multiply this view of children in trouble from under-privileged or distressed families by the repetition of attorney-client relationships in which the child is the client and the context is litigation, and it becomes difficult to see children beyond their problems, to see how similar to other children they are, and how rich their lives are. In other words, it is natural to both narrow our gaze regarding children's needs and identities and generalize our experience with troubled children to form a vision of justice based on pathological experiences. Thus legal justice advocacy for children can be based on negative and limited (although repetitious) experiences regarding children, rather than positive and organic views of children.

Under the legal justice approach, the expertise and power of the lawyer diminish the power and volume of child. Instead, the lawyer seeks rights for the child without, perhaps, an informed sense of how those rights will affect the client and children more generally. Even in the civil rights context, *Brown v. Board of Education*, an extraordinarily important victory for racial justice,⁷⁹ may not have provided the remedy the children wanted and, as we know in hindsight, caused children and their families great suffering. Had the poor black parents and children of Kansas been consulted, different relief may have been sought.⁸⁰

⁷⁵ Ziv, *supra* note 72, at 227-35.

⁷⁶ *Id.* at 217-21, 227-35. The lawyers themselves "described their clients as 'all people with disabilities in the U.S.,'" *id.* at 223, while they had most contact and confidential relationships with legislators, lobbyists and disability organizations. *Id.* at 217-19, 224, 226, 231.

⁷⁷ See *infra* notes 150-53 and accompanying text.

⁷⁸ See Appell, *supra* note 54, at 769.

⁷⁹ Edmonds, *supra* note 72, at 176; see also James T. Patterson, *Brown v. Board of Education and the Civil Rights Movement*, 34 STETSON L. REV. 413 (2005) (briefly rehearsing the positive and negative influences of *Brown*).

⁸⁰ Bell, *supra* note 40, at 489-93; Edmonds, *supra* note 72, at 178-80.

For the most part then, individual children or groups of children are not articulating or actively shaping the content of legal justice; nor often are their parents or communities. On the contrary, it is generally lawyers, often informed by other professionals, who determine what rights to create or expand.⁸¹ It is easy and natural for these lawyers to extrapolate from the few to the many, allow legal theory and social science to guide them, or follow their own ideas about justice for children.⁸² Such cognitive leaps are possible and “natural” because lawyers and other professionals are “experts,” particularly in law and policy contexts and when identifying general solutions. Yet, this type of knowledge is both distilled and divorced from the intended beneficiaries of these rights, particularly when one considers that those who are disenfranchised are the ones most often in need of rights. For example, in the school desegregation litigation, class distinctions between those who drove the litigation (white liberals and middle class blacks) and those who would live with the bulk of the “relief” (poor black children) led to results that disregarded the wisdom and goals of lower class black parents.⁸³ Similarly, advocating for children in other contexts without engaging them, their families and their communities may lead to unwelcome, and perhaps destructive remedies and results. As Derrick Bell noted in the context of class-action litigation, “lawyers’ freedom to pursue their own ideas of right may pose no problems as long as both clients and [those directing the litigation] share a common social outlook.”⁸⁴ Similarly, lawyers acting on behalf of children may find it easier to follow their own voices toward legal justice rather than the voice of the child, but it is unlikely that the attorneys and their clients share a common outlook.

C. *Social Justice Approach*

A third approach to lawyering for children is to advocate for social justice. This approach reaches beyond legal justice and toward modifying the social structures and material conditions that oppress certain groups of people. Social justice refers to fair distribution of economic and social goods and opportunity, and to other conditions necessary for individuals to be self-determining and meaningful participants in social and political institutions.⁸⁵ Social justice embraces the complex interrelationships among economic well-being, access to social goods—such as quality education and freedom from oppression, and par-

⁸¹ Melton, *supra* note 48, at 346-51.

⁸² I include myself here. For example, since representing children who resisted termination of their parents’ parental rights and adoption because they did not want to lose contact with their families, I have worked for nearly two decades on litigation and legislation to guarantee children the opportunity to have ongoing contact with members of their birth families after adoption. *E.g.*, *In re M.M.*, 619 N.E.2d 702 (Ill.1993); 2005 Nev. Laws Ch. 413 (A.B. 51).

⁸³ Edmonds, *supra* note 72, at 178-79.

⁸⁴ Bell, *supra* note 40 at 490.

⁸⁵ IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 37 (1990); Forbath, *supra* note 56, at 621; John A. Powell, *The Needs of Members in a Legitimate Democratic State*, 44 SANTA CLARA L. REV. 969, 976 (2004). *But see* HOWARD COHEN, *EQUAL RIGHTS FOR CHILDREN* 42 (1980) (equating social justice for children with having rights equal to those adults have).

ticipation in public affairs.⁸⁶ As with other approaches to justice for children, social justice advocates may pursue legal strategies. Like the legal justice approach, a social justice approach, may involve political action through engagement in policy development and advocacy. However, social justice lawyers further engage a political approach to the attorney's role and mission that combines self-consciousness (and restraint) regarding the attorney's power vis-à-vis clients and goals of collective good (rather than individual rights and solutions).⁸⁷ Thus the social justice approach infuses the lawyer's means and ends with notions of social justice: the goal is social justice and the method is engagement with the client and the client's world. In other words, social justice lawyers seek justice as the client defines it.

Indeed, in the abstract, it is not clear what social justice for "children" would look like. The primary goal of social justice is to remove barriers to, or otherwise create the conditions for, self determination—to have the freedom to choose one's own path and to participate fully in public life. For children, that goal could be construed as an immediate aim: to provide the conditions necessary for children, while still children, to be full citizens in the sense of self determination and civic participation.⁸⁸ Perhaps more practically, social justice advocacy for children might be construed as providing the conditions for them to become self determining persons on the road to and throughout their majority.⁸⁹ Indeed, this view of social justice for children is consistent with—but more expansive than—current dominant perspectives of childhood and the role of children, parents and the state in which childhood is widely understood to be a time of social, psychological and physical development, of becoming adults

⁸⁶ See, e.g., Peter Edelman, *Where Race Meets Class: The 21st Century Civil Rights Agenda*, 12 GEO. J. ON POVERTY L. & POL'Y 1 (2005) (urging a civil rights strategy for the present century that would address structural economic, racial, distributive, social and spatial barriers to equality); Nicola Lacey, *Theories of Justice and the Welfare State*, 1 Soc. & LEGAL STUD. 323, 326-27 (1992) ("freedom . . . depends on the positive provision of certain facilities, the meeting of needs and so on, which allow us to live a free life in the sense that we can be said genuinely to be authors of our own decisions"); Powell, *supra* note 85, at 975-91 (discussing the complex relationships between economic need, social exclusion, political power, and freedom).

⁸⁷ See Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 300-05 (1996); Gerald P. López, *Living and Lawyering Rebelliously*, 73 FORDHAM L. REV. 2041 (2005); Gerald P. López, *An Aversion to Clients: Loving Humanity and Hating Human Beings*, 31 HARV. C.R.-C.L. L. REV. 315, 321-23 (1996); Lucie E. White, *Facing South: Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 813 (1998). See also Hilbink, *supra* note 27, at 682-90 (discussing "grassroots lawyering" as critical of law and lawyers as agents of social change, interested in empowering clients and working in the context, or as part, of social movements).

⁸⁸ See HOWARD COHEN, *supra* note 85, at 42-73 & 101-14 (arguing that beginning at birth, children should have the same rights as adults); Minow, *supra* note 12, at 1575-78 (describing children's liberation movement, including Cohen); Peterson, *supra* note 5, at 170-71 (arguing that if children voted, they might achieve the same the same level of rational social and economic benefits that the elderly enjoy).

⁸⁹ This appears to be the approach of the Children's Defense Fund. Marian Wright Edelman, *Why Don't We Have the Will to End Child Poverty?*, 10 GEO. J. ON POVERTY L. & POL'Y 273 (2003); see also JOHN O'NEILL, *THE MISSING CHILD IN LIBERAL THEORY* 4-9 (1994).

and during which children need care, nurture and education.⁹⁰ Under our liberal, capitalistic political and economic structures, children receive these social goods according to the ability of their parents and community to provide them.

The provision of many social and economic goods, however, is beyond the means of many parents and beyond the reach of their communities. It may make sense then to think of social justice, and social justice advocacy, for children as seeking a floor of social and economic opportunity so that children would be guaranteed opportunity without regard to where or to whom they happened to be born. This goal might encompass meaningful educational opportunity and benefits (including head start),⁹¹ economic benefits (family supports, including a living wage, child care, and adequate affordable housing),⁹² safe neighborhoods, parks,⁹³ and eradication of racism, homophobia and other subordinating preferences or moral differentiations that inhibit equality.⁹⁴ This list reflects the needs of children and also extends to their families and neighborhoods and larger communities, reflecting the fact that children are not isolated, independent beings. As Marian Wright Edelman says: "children do not come in pieces but in families and communities."⁹⁵

This list of objectives or needs also stands in contrast to the way we tend to think of children and their needs in legal contexts where goals or objectives are often framed in individual psychological terms of child development. Thus, in child welfare or other custody matters, the children's needs are primarily individualized, privatized, and developmental. That is, principles of child development define children's social needs in terms of preserving psychological attachments, providing a safe home (rather than house, school or community) in which the child's needs for physical and emotional growth and safety are met, and ensuring the child receives education. If children do not or cannot receive those things in their home, they are placed into another home. Although the child welfare context suggests that services should be provided in

⁹⁰ E.g., ARCHARD, *supra* note 42, at 55-56; ALLISON JAMES & ADRIAN L. JAMES, CONSTRUCTING CHILDHOOD 36 (2004); Brighouse, *supra* note 42, at 698-99. Indeed, this theme of aspiration toward autonomy in the face of dependency is, according to Hendrick Hartog, at the root of our conception of constitutional rights. Hendrick Hartog, *The Constitution of Aspiration and "The Rights That Belong to Us All"*, 74:3 J. AM. HIST. 1013, 1018-20 (1987).

⁹¹ Wright Edelman, *supra* note 89; Martha Minow, *Just Education: An Essay for Frank Michelman*, 39 TULSA L. REV. 547, 556 (2004); Hillary Rodham, *Children Under the Law*, 43 HARV. EDUC. REV. 487, 502-3 (1973).

⁹² See Edelman, *supra* note 86 (listing the economic, racial and social barriers to leaving poverty and suggesting a strategy of framing issues in large social and economic terms that addresses and organizes around a living wage, jobs, appropriate education, child care, affordable housing, and spatial de-concentration of poverty). For more narrow strategies for establishing government obligations to provide a basic level of subsistence primarily through cash assistance to children and their families, see, e.g., Kay P. Kindred, *God Bless the Child: Poor Children, Parens Patriae, and a State Obligation to Provide Assistance*, 57 OHIO ST. L.J. 519 (1996); Sarah Ramsey & Daan Braveman, "Let Them Starve": *Government's Obligation to Children in Poverty*, 68 TEMP. L. REV. 1607 (1995).

⁹³ Robert Garcia et al., *Healthy Children, Healthy Communities: Schools, Parks, Recreation, and Sustainable Regional Planning*, 31 FORDHAM URB. L.J. 1267 (2004).

⁹⁴ HAIR, *supra* note 26, at 4-7 & 9-12; see also YOUNG, *supra* note 85, at 36-37; Carol Quillen, *Feminist Theory, Justice and the Lure of the Human*, 27 SIGNS: J. OF WOMEN IN CULTURE & SOC'Y 87, 95-96 (2001).

⁹⁵ Edelman, *supra* note 89, at 276.

the home or to the parents before a child is placed with another family,⁹⁶ those services are individualized—homemaker, cash assistance, counseling, drug treatment—and not aimed at the underlying social, economic, spatial and political factors that create or maintain risk for families.⁹⁷ In the juvenile justice context, the problems and remedies may involve community, but are designed to treat the child and not the communal lack of employment and educational opportunity and other social and economic goods that contribute to youth crime.⁹⁸ Educational advocacy too is generally aimed at getting children into schools and pushing schools to meet their cognitive, behavioral and physical needs, but not aimed at conditions that contribute to inequities within and among schools.⁹⁹

Similarly, the social justice approach may stand in contrast to viewing children's problems and solutions as the subject of professional and technological expertise.¹⁰⁰ A social justice approach views community and structural issues while engaging the members of those communities to identify what they need, rather than relying on the assessments of professionals. More dominant approaches rely on professionals and technology to assess and meet the needs of children. For example, the structure of our child welfare system privileges the developmental well-being of individual children within individual families and provides the greatest material benefits and support to care for children in foster families; the child welfare system does not privilege a public health or distributive model that addresses the material conditions of families and their communities.¹⁰¹ Other examples of technological, rather than holistic, approaches are found in international aid that seeks to meet the needs of the child without taking into consideration the child's larger family system and

⁹⁶ Kathleen S. Bean, *Reasonable Efforts: What State Courts Think*, 36 U. TOL. L. REV. 321, 345-46 (2005).

⁹⁷ Indeed, a recent special issue of the Child Welfare League of America journal devoted to "Community Building and 21st Century Child Welfare" addressed primarily services to families and did take a broader approach to advocating for improvement of community well-being. 84 CHILD WELFARE J. 101-336 (2005).

⁹⁸ Youth crime is inversely tied to lack of resources. Linda Harris, *What's a Youngster to Do? The Education and Labor Market Plight of Youth in High-Poverty Communities*, 39 CLEARINGHOUSE REV. 126 (2005). Yet even the "Positive Youth Development" approach to juvenile justice appears to acknowledge but skirt larger questions of social and economic resources in communities. See Jeffrey Butts, Susan Mayer, & Gretchen Ruth, *Focusing Juvenile Justice on Positive Youth Development*, CHAPIN HALL ISSUE BRIEF, Oct. 2005, at 4-8, abstract available at http://www.chapinhall.org/article_abstract.aspx?ar=1414&L2=62&L3=105. Similarly, the ready availability of guns to youth is a major contributor to gun violence which begs for a public health approach that would eliminate the material source of the problem—the guns. Garen J. Wintemute, *Where the Guns Come From: The Gun Industry and Gun Commerce*, THE FUTURE OF CHILD., Summer/Fall 2002, at 55.

⁹⁹ HAWES, *supra* note 47, at 110; David M. Engel, *Law, Culture, and Children With Disabilities: Educational Rights and the Construction of Difference*, 1991 DUKE L.J. 166, 169-94. Of course one reason for this relatively narrow advocacy is tied to the practicalities of operating in a legal system where formal, rather than substantive, equality rules. For example, education advocates have long sought equitable funding for education, but have not fared well. *E.g.*, San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).

¹⁰⁰ Appell, *supra* note 16, at 159-60; Appell, *supra* note 10, at 440.

¹⁰¹ LEROY PELTON, FOR REASONS OF POVERTY (1987). *But see*, MAKING CHILD WELFARE WORK, *supra* note 22 (describing reform efforts that addressed certain material needs of children and families and sought systemic reform of the child welfare system).

labor conditions. Thus, provision of oral rehydration therapy technologies to impoverished children is of little benefit if there is not clean water, adequate child care, accessible medical care, and enough food.¹⁰² Similarly, promotion of breast-feeding without accounting for the entry of poor, rural mothers into the paid labor market, does not provide a workable solution to the serious problem of feeding young babies bottled formula.¹⁰³ Attempts to protect girls by prohibiting marriage before they turn eighteen do not address the “redistributive and structural changes needed to address the causes of early marriage [and] . . . [do] not implicate the developed nations in the causes or the cure.”¹⁰⁴ International child labor movements promote elimination of child labor rather than improving the working conditions for child laborers who have no choice but to work.¹⁰⁵

Of course, my discussion of social justice so far takes little account of the aspect of the social justice approach which engages the children—the persons who are seeking (or perhaps needing) social justice. Instead, it reflects a generic adult view of such justice. It is not clear what children would consider to be social justice, though I suspect it would vary greatly by age, economic status, race, and other aspects of identity and social standing.¹⁰⁶ Indeed, the category of child is so contingent and variable that it may be difficult to discern communal principles. The breadth of social justice, combined with the incoherency of “child,” may fail to cabin attorneys unless attorneys use the contextualized approach of social justice advocacy. Without such context, the primary weakness of the social justice approach, lays, as it does under the legal justice approach, in the inordinately unbalanced power between adult attorneys and child clients.

This imbalance is particularly problematic because children’s attorneys do not regularly speak the language of social justice.¹⁰⁷ Instead, social justice advocates are women’s, anti-poverty, civil rights, or community lawyers or advocates.¹⁰⁸ These social justice advocates and their communities may in fact

¹⁰² Scheper-Hughes & Sargent, *supra* note 12, at 3-5.

¹⁰³ *Id.* at 5-7.

¹⁰⁴ Annie Bunting, *Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue*, 14 SOC. & LEGAL STUD. 17, 32 (2005).

¹⁰⁵ Antonella Invernizzi & Brian Milne, *Are Children Entitled to Contribute to International Policy Making? A Critical View of Children’s Participation in the International Campaign for the Elimination of Child Labour*, 10 INT’L J. CHILD. RTS. 403 (2002).

¹⁰⁶ For a sampling of children’s concerns, see Wiebina Heesterman, *An Assessment of the Impact of Youth Submissions to the United Nations Committee on the Rights of the Child*, 13 INT’L J. CHILD. RTS. 351, 354-73 (2005).

¹⁰⁷ Although there are attorneys working on behalf of children and their families and communities who do speak this language. *E.g.*, Marian Wright Edelman (at the Children’s Defense Fund); Center for Law in the Public Interest, Los Angeles, CA, www.clipi.org (last visited May 16, 2006); *see* Garcia et al., *supra* note 93, at 1276-90.

¹⁰⁸ *See* Doug Imig, *Mobilizing Parents and Communities for Children*, in WHO SPEAKS FOR AMERICA’S CHILDREN: THE ROLE OF CHILD-ADVOCATES IN PUBLIC POLICY 147-49 (Carol J. De Vita & Rachel Mosher-Williams eds., 2001) [hereinafter WHO SPEAKS FOR AMERICA’S CHILDREN]; Theda Skocpol & Jillian Dickert, *Speaking for Families and Children in a Changing Civil America*, in WHO SPEAKS FOR AMERICA’S CHILDREN, *supra* (describing social justice work of the National Parent Teacher Association, Children’s Defense Fund, National Partnership for Women and Families, and Texas Industrial Areas Foundation). *See also* CENTER FOR COMMUNITY RESEARCH & SERVICE, UNIVERSITY OF DELAWARE, COMMU-

be motivated by the needs and future of children and use rhetoric regarding children, but they do not appear to identify with children's attorneys, nor the children's attorneys with them.¹⁰⁹ This divorce between advocacy for children and for their communities illustrates the challenges of consulting children in a quest for social justice. Just as children's voice can be subsumed by the attorney's superior knowledge of legal norms in the legal justice context, so too in the social justice context it may be difficult for the child's voice—in literal terms—to drive the quest for justice unless children's attorneys embrace the bottom-up holistic methods of social justice advocacy. Social justice lawyers allow the client to guide them—in context, in need, in objectives. For child clients, this approach contemplates a dynamic, collaborative engagement with children, their parents and their communities both to define (and modify) problems and solutions and to develop (and modify) strategies for achieving solutions. It seeks child's voice in a broader but more grounded, contextual arena, and this may be a promising and respectful approach to engaging children in the pursuit of justice because engaging children means engaging those whom they value. In the next section, I will return to these questions and to adult social justice advocacy in an attempt to sketch some models for discerning children's voice.

* * *

In summary, there are three relatively distinct conceptual approaches to seeking justice for children: procedural justice—representing children in proceedings in which they have legal interests; legal justice—enhancing existing, or creating new, rights for children through litigation or policy advocacy; and social justice—advocating for the conditions needed for substantive equality and freedom for children as children or as they become adults. In all cases, children's attorneys seek to represent their client's wishes and interests in judicial and administrative proceedings or to promote a cause larger than the interests of an individual client. The strengths and weaknesses of each approach, perhaps inversely, relate to their possibilities for substantive change and the breadth of the attorney's role. These strengths and weaknesses cut each way in identifying and respecting children's voice. Whatever approach children's lawyers take, we should be mindful of the heightened balance of power we as attorneys have in relation to child clients who are disadvantaged by lack of education and varying levels of intellectual and emotional maturity. This imbalance can easily allow children's attorneys to substitute our notion of the good for our client's, particularly as the lawyer's approach to justice becomes more expansive.

NITY DEVELOPMENT AND FAMILY SUPPORT: FORGING A PRACTICAL NEXUS TO STRENGTHEN FAMILIES AND COMMUNITIES 10-13 (2003), available at <http://www.aecf.org/publications/browse.php?filter=3>.

¹⁰⁹ Cf. Carol J. De Vita, et al., *Nonprofit Organizations Engaged in Child Advocacy, in WHO SPEAKS FOR AMERICA'S CHILDREN*, *supra* note 108, at 3 (reporting on their study of IRS records that revealed few legal advocates and little advocacy).

III. REPRESENTING CHILDREN IN FAMILIES

Depending on how we approach our professional roles and who our clients are, our advocacy can embody more of ourselves (our values) or the children (and their values). The *Fordham Conference* on representing children outlined the delicacy of representing children, of ensuring that we do not run over them, that we hear and see them.¹¹⁰ Those lessons are particularly poignant when we seek to give children voice and when we seek more substantive justice. These are not necessarily identical endeavors. I argue that they should be—that children's voice should guide lawyering for children under any approach to justice. I further suggest that we start to take more of a social justice approach, at least in its contextual method of representation, and that we cast a critical eye toward our advocacy because children's rights are not necessarily informed by, and do not necessarily promote, children's voice.

In the absence of contextual approaches to children's voice, the lawyer's role, particularly in the social and legal justice models, can become too large and undefined. This incoherence is compounded because "children" does not signify a uniform, constant or coherent referent. On the contrary, the "child's voice" is contingent on which children are being given voice and for what purpose. The very notion of the child's voice, especially in larger policy contexts, is challenging because children speak with so many different voices and often in the context of individual cases.¹¹¹ Moreover, children do not necessarily speak the language of adults or the legal systems in which they are being given voice; thus their own voice is susceptible to interpretation and translation, *i.e.*, distortion, by the adults—even their own lawyers.¹¹² This section sets up and then begins to resolve the conundrum of seeking justice for children in children's terms. First, I make explicit what we all know: that there are few generalizations applicable to children or even a particular child and that the category "child" is as full and empty as other categories we use for people, such as "woman" or "Native American." Next, I discuss strategies lawyers can use to identify their child clients' voices. I conclude this part with a reflection on the thinness of legalistic attorney-dominated child advocacy and suggest a more expansive, social justice oriented approach.

A. *The Contingency of Childhood and Children's Voice*

It is not clear for social or legal justice purposes who the "children" are and who determines precisely what constitutes justice for children. "Child" as a legal category refers in most contexts to human beings between the age of

¹¹⁰ See *supra* text accompanying notes 13-14.

¹¹¹ See JAMES & JAMES, *supra* note 90, at 82-83 (discussing the contingency of the contents of rights under the UN Convention on the Rights of the Child).

¹¹² See Alexandra Natapoff, *Speechless: The Silencing of Criminal Defendants*, 80 N.Y.U.L. REV. 1449, 1493 (2005) (claiming that the law's and defense lawyers' silencing of criminal defendants can both mask their misunderstanding of the proceedings and make them less cognitively engaged in their defense); Lucie E. White, *Seeking "... the Faces of Otherness ...": A Response to Professors Sarat, Felstiner, and Cahn*, 77 CORNELL L. REV. 1499 (1992).

birth and 18.¹¹³ Once they attain certain ages, developmental stages, or engage in various behaviors, the law may view them more like adults.¹¹⁴ “Child” as a legal category seems to beg for legal solutions: provision of legal and procedural rights and removal of legal and procedural disabilities. “Child” as a social category, however, presents deep challenges regarding what self-determination—or the means to achieve it—would mean. Socially unifying themes or aspects of children are elusive because human beings within this age group vary according to developmental stages, race, native language, culture, sex, gender, sexuality, class membership, social status, education and educational choices, religion, custodial relations, immigration status, etc.¹¹⁵ This elusiveness is especially pronounced in the United States where the material conditions of children are heavily dictated by class and race, and the content of self-determination is heavily dictated by culture and gender.¹¹⁶

It is thus difficult to discern a universal theory of what rights and social goods children need and should have precisely because it is difficult to discern a unifying factor for the identity of “child.”¹¹⁷ This of course is true of most identity-based groups, e.g., “woman,” “Black,” “African American,” “lesbian,” “gay,” or “bisexual,”¹¹⁸ but it seems even more so for children, perhaps because of the liminality of “child.” In other words, childhood is defined in opposition to so many things: e.g., adulthood, parenthood, competence, independence that it becomes difficult to identify to what or whom “child” refers. Moreover, “childhood” even as a legal construct has become less stable.¹¹⁹

Just as children differ from one another as individuals and in terms of age, race, class, religion, geographical location, social status, language, and culture, they also each experience different roles in their own lives: for example, they are child at home (*vis-à-vis* parent); student at school; caretaker at home when helping with younger siblings, cousins, or a disabled parent; employee at work; defendant or respondent in criminal or juvenile justice matters. Assessments of power, oppression, opportunity and justice may be different depending on each of these settings because although children are children in each of these instances, their oppositions may vary and the power holder and the child’s

¹¹³ Though at least one jurisdiction has extended childhood to the womb. *E.g.*, *Whitner v. State*, 492 S.E.2d 777 (S.C. 1997).

¹¹⁴ Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547 (2000).

¹¹⁵ Bunting, *supra* note 104; *see also* JAMES & JAMES, *supra* note 90, at 29 (critiquing universal notions of “child”).

¹¹⁶ *See* Appell, *supra* note 54, at 782-87.

¹¹⁷ *See* Barrie Thorne, *Re-Visioning Women and Social Change: Where are the Children?*, 1 GENDER & SOC’Y 85, 96, 98 (1987) (noting that the variability within the category of children makes it difficult to identify a “child-like nature” and that viewing “children in terms of development and socialization . . . deflect[s] attention from children’s varied circumstances, experiences, and social relations.”)

¹¹⁸ *See*, e.g., Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 NEV. L.J. 774 (2006); Katherine M. Franke, *Cunning Stunts: From Hegemony to Desire a Review of Madonna’s Sex*, 20 N.Y.U. REV. L. & SOC. CHANGE 549, 555-72 (1994); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 608-12 (1990).

¹¹⁹ *See* Scott, *supra* note 114, at 550-58 (rehearsing the divergent legal constructions of youth in various contexts).

experience of that power holder are contextual.¹²⁰ For example, a child at home might experience an older sibling as an oppressor, even as the child loves that sibling and has some power to alter the rules of engagement; a child in police custody experiences oppression from a true adversary, has less power against that adversary with much at stake, and fewer resources to marshal toward freedom; and children playing in the street share common rules, power relationships, dispute resolution systems, and conceptions of justice. Thus, just as child is contingent, so too may children's justice depend on the setting.¹²¹

It is important also to remember that when we talk about lawyers for children or advocacy for children, we are usually talking about poor children.¹²² In our version of liberal democracy, rich children have their needs met by their parents and are "protected" by the privacy of family. That is, their parents can pay for their own and their children's needs. These children, with their social and economic capital, have access to what they need and are less likely to encounter the justice system because they are not routinely targets of police or social service surveillance; also, they have more options and fewer unmet needs, so the stakes are, generally, too high for these youth to risk serious legal trouble. Moreover, children may view and experience justice and the power of the state very differently based on class and race, and state action may have different outcomes along these lines. Doing our best to bring children's voices to our representation should both maximize the best aspects of our professionalism and bring to bear children's perspectives to the content of justice.¹²³

Lawyers for children should be mindful of these complex and disparate relationships between children's voice and justice. Children's voice should inform and guide justice, but its variety, softness, and youth easily confound that goal. Children are extraordinarily diverse and each child inhabits multiple roles, so universal principles of children's justice are difficult (perhaps impossible) to devise and execute. The answer is not, I hope, to throw our hands up at these challenges and substitute our own platonic professional opinions regarding justice for children. Instead, these challenges make our work much richer, engaging and, hopefully, more meaningful for ourselves and the children we seek to serve. The challenge for us is to check ourselves so that we do not overwhelm our clients, so that we can hear them. In other words, children's lawyers might do best for their child clients if we embrace traditional ethical

¹²⁰ For a series of studies regarding children's assessments of their various roles, see MAYALL, *supra* note 39.

¹²¹ Moreover, the utility of rights-based justice then may vary according to these settings or oppositions. See GUGGENHEIM, *supra* note 67, at 245-54 (distinguishing between children's rights against parents and against the state); Appell, *supra* note 16, at 166-71 (distinguishing between children's civil and dependency rights).

¹²² As youth advocates note, "[o]n any given week a lawyer assigned to protect the rights and interests of children . . . wonders: 'The youth I serve are from families struggling to survive in low-wealth communities, where crime, disinvested schools, a dearth of jobs, and a lack of quality social services are normal. What difference am I making?'" Joe Scantlebury, et al., *Preparing Vulnerable Youth for Adulthood Through Youth Workforce Development*, 39 CLEARINGHOUSE REV. 229, 229-30 (2005).

¹²³ Cf. Natapoff, *supra* note 112, at 1501 (claiming that the silencing of criminal defendants "affirmatively shapes the law in ways that further disadvantages them").

boundaries that separate our goals from those of our clients.¹²⁴ Yet we should also depart from traditional boundaries that view a client as an automaton and instead view children as embedded in their own families and communities with their own unique identities, values, and needs. This is not to say we should give up on furthering substantive justice, but that we should be sure our notions of the good are grounded in our clients' worlds, rather than our own.

B. *Discerning A Child's Voice*

Whatever vision of justice one brings to representing children, the preferred methodology of social justice lawyers may be useful for finding and discerning children's voice.¹²⁵ Professor Jean Koh Peters's defining article for the *Fordham Conference, The Roles and Content of Best Interests in Client-Directed Lawyering for Children in Child Protective Proceedings*,¹²⁶ and her subsequently published book, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions*,¹²⁷ arise out of the social justice lawyering method of engaging clients. Peters provides an elegant, nonlinear structure for representing children in child protection cases that is heavily aimed at checking lawyers' tendency to disregard the individuality of less competent clients and substitute the attorney's judgment of what is in the client's interest, rather than digging deeply and broadly enough to understand the client's perspective.

Peters addresses advocacy in child welfare matters and prescribes lawyers to engage other professionals to aid the attorney in representing the child and understanding the importance of parents and community to the child's psychological development.¹²⁸ I want to build on these prescriptions to further the goal of respecting the client's uniqueness and individuality in any forum and will do so by exploring the role of the child, family and community in illuminating and understanding the child's voice. My goal, like Peters' (though she is too polite to put it this way), is to undermine our arrogance as attorneys in a way that respects our expertise and creates room for the child to emerge. My goal too is to expand our views of children beyond legal and mental health frameworks.

1. *Maintain Role Veracity*

So what does it mean for children's attorneys to allow the child to emerge and remain on top? First, it means doing our best as adults and professionals to

¹²⁴ See Sarat & Scheingold, *supra* note 43, at 7-9 (distinguishing between traditional and public interest lawyers).

¹²⁵ See *supra* note 94 and accompanying text; GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); LÓPEZ, *Living and Lawyering Rebelliously*, *supra* note 87; White, *supra* note 112.

¹²⁶ Jean Koh Peters, *The Roles and Content of Best Interests in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 *FORDHAM L. REV.* 1505 (1996).

¹²⁷ JEAN KOH PETERS, *REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS* (2001). Peters describes the book as trying to answer "the central question facing lawyers for children: How do lawyers for children represent children in a lawyerly way, one that is deeply respectful of the individuality and unique perspective of the client?" Peters, *supra* note 126, at 1508.

¹²⁸ Peters, *supra* note 126, at 1514-53.

maintain a clear understanding of, and adherence to, our roles as legal professionals. This means that we provide legal representation or legal skills to planning or problem solving. I continue to be struck by my own arrogance and that of my peers when we think we know best for our clients, especially our child clients. I moderated a plenary regarding legal ethics in 2004 at the Annual Conference of the National Association of Children's Counsel in Las Vegas, Nevada.¹²⁹ There were around one hundred children's attorneys in the room and a large proportion of them felt obliged, even if not required under law, to protect their clients from harm, even if that meant betraying their client's confidence or operating against their express wishes. Thus, these lawyers might, perhaps unconsciously, seek to avoid for their clients certain risks rather than others. But we must remember that there may not be risk-free choices for our clients and that our assessment of which risk is more desirable or safer for the child is just that, our assessment. How are we to say whether the risk or near certainty of abuse or neglect is worse or better than the risk of losing one's home and family? Or whether entering into a plea in a juvenile or criminal matter that implicates a family member or neighbor is the best course of action? Who are we to predict what will happen in the future or to know, assess and balance certain risks? We think we know what is best for children, what children should want, and what they deserve because we all were children, most of us had parents, and many of us are parents.¹³⁰ Yet our experiences as children and as parents are not why we are appointed or retained to represent children. We inhabit this role because we have legal training.

2. *Mute Our Voices*

Second, finding and respecting a child's voice means doing our best as adults and professionals to mute our voices. That means doing our best not to project our class, race, gender and professional orientations or values onto our clients and their dilemmas. Besides guarding against viewing our clients as ourselves or our children, muting our voices means that we search for our clients' views and voices. We must have faith in their wisdom and their identity, as far away from our own wisdom and identity as our clients may be. This is difficult for all lawyers, not just those who represent children, but having faith in our clients, or biting our tongues when we are losing faith, can be the most respectful and wise course. Professor Nancy Polikoff describes a situation in which she was representing the "Radical Faeries" in a civil disobedience action at the Supreme Court during the National March on Washington for Lesbian and Gay Rights in 1987.¹³¹ Polikoff writes that she disagreed with their tactics because she believed that men in skirts were too provocative to promote understanding and that their actions and appearance would be too far outside the

¹²⁹ *Ethical Issues in Legal Representation in Children's Cases*, National Association of Children's Counsel, 27th National Children's Law Conference, held in Las Vegas, NV, Sept. 10, 2004.

¹³⁰ Michele Cortese, Tanya Krupat & Ronald Richter, *Engaging Parents as a Path to Reunification: Surfacing Values and Dismantling Assumptions*, 24 A.B.A. CHILD L. PRACTICE 81, 89 (2005).

¹³¹ Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443, 444 (1996).

norm for the Radical Faeries' to persuasively convey their message of peace and tolerance.¹³² Polikoff muted her doubts and her own notions of what constituted acceptable and effective demonstration and as a result, "[b]y the time they were out of jail, [she] . . . saw their bravery and courage to be true to their innermost selves."¹³³ I know I have had similar experiences with my adult and child clients, doubting their judgment or the way that their actions would be perceived, but also coming to recognize the wisdom and integrity of those actions. These experiences humble me as I learn and re-learn that my clients are the ones who know their worlds and often know what actions are most effective; my clients also know when they need to undertake an action or stake out a position to preserve their own integrity.

Another way in which we should be mindful of muting our voices is when we are concerned that our advocacy for our clients will disrupt our professional personas and reputations. This is a very real problem particularly for repeat players—attorneys who regularly appear in the same court room or against the same institutional players, such as public defenders or children's law office attorneys who regularly advocate for clients before and among the same decision-makers. For example, Marty Guggenheim raises examples of courts removing children's attorneys and calling their competency into question, when they take positions against the state in child protective proceedings.¹³⁴ Similarly, attorneys who appear in the same courtroom or before the same players regularly risk appearing unreasonable or incredible if they push too hard for an apparently unreasonable or unpopular position on behalf of a client. Such advocacy or identification with a client may harm the attorney's ability to advocate effectively for other clients and can threaten the attorney's identification with the other professionals with whom she or he works repeatedly. Moreover, we want to look good in the eyes of our peers—those judges, social workers, community leaders, and other attorneys with whom we spend more time than with any one client and to whom we often look for approval and reflection; becoming associated too heavily with our "bad" or "unreasonable" or "radical" clients threatens our association with and status before our professional colleagues.¹³⁵

3. *Actively Engage the Child's World*

Third, finding and respecting children's voice means getting to know children on their terms in their worlds. This requires us to be searching out and then open to the people who are important to our clients. Such an approach is needed because children during much of their minority are less able to articulate, predict, or understand the relationships between present and future, one

¹³² *Id.* at 464-65.

¹³³ *Id.* at 465.

¹³⁴ Guggenheim, *supra* note 16.

¹³⁵ Polikoff also rehearses a story of a prominent, mainstream lesbian and gay movement attorney whose ACT UP clients handcuffed themselves to members of the AIDS organizations against whom they were pressing health care demands. Polikoff, *supra* note 131, at 465-66. The attorney disagreed with these tactics and after unsuccessfully counseling her clients to stop, she resigned as their counsel and left the demonstration. *Id.* at 466. One of her clients experienced the attorney's conduct as an attempt "to make herself look good in front of her peers at the table." *Id.* (quoting ACT UP member Juan Mendez).

aspect of their lives and another, and the needs and motivations of those important to them. While it is true that children have their own rich, complex and unique life experiences and desires, and that as they age, they have increasing moral autonomy, it is also true that they are not as independent as adults (who of course also have dependencies). Like adults, children have multiple attachments, loyalties, and identities, but children generally do not have the material conditions (e.g., economic independence, physical maturity, and cognitive ability) to meet many of their own needs and desires. It is the adults who surround them, help define them, and help identify and meet their needs, who we must engage if we want to engage children. Moreover, it is those people—the child's parents, extended family, fictive kin—who know the child best and who the child knows best. Thus, engaging the people who are part of the child's world might constitute representation that is "deeply respectful of the individuality and unique perspective of the client."¹³⁶

4. *Know but Question Authority*

Fourth, just as finding and respecting children's voice means muting our own voice, it also means taking a critical perspective on both our own and other professionals' framing and assessment of the issues. One crucial piece of this process requires identifying and exploring the perspectives—world views—of our clients and their communities. This is not an easy task, but one which requires deep and broad familiarity with our clients in their worlds. Entering these worlds is difficult given our own limitations (e.g., case loads or teaching loads) and our differences from our clients. Understanding and apprehending these other perspectives is also difficult for it requires a level of intimacy and trust between lawyer and client along with an ability to respect difference and the truth of different perspectives.

A crucial piece in this critical perspective prescription is to identify our own world views and recognize their contingency: that they are ours by training and perspective, but are no more true or natural than the views of our clients. We professionals are accustomed to, and good at, working within bureaucratic systems and the conventions of our own disciplines. But as we know, various professional disciplines' ways of ordering the world do not reflect various lay world views. Any of us who work in the legal and social services systems are all too familiar with the way that bureaucracies view the world: as funding streams and pots of money. Services are accessible according to how they are characterized to fit into state, county or federal categories. Too often, services are not created or framed in terms that correspond to individual, family or community needs. To do our jobs, we must understand these bureaucratic boxes and the conventions of our own and other disciplines; for example, we should be able to use and appreciate psychological models and recognize the legal questions. We cannot, however, lose sight of the fact that bureaucratic boxes and our professional conventions do not necessarily correspond to the lived lives of others, including our clients. If we aspire to making the legal and social systems that purport to serve our clients intelligible and responsive to our clients (and I think we should), we must be able to step out of the boxes in

¹³⁶ Peters, *supra* note 126, at 1508.

which we and our colleagues in other disciplines frame issues confronting children.

The Bazelon Center's *R.C. v. Hornsby* litigation against Alabama's child welfare system provides a glimpse of this type of approach. Utilizing a self-described "bottom-up" method to child welfare reform,¹³⁷ the lawyers and expert consultants engaged the families and the line social workers to identify and develop needed family supports.¹³⁸ Indeed, rather than relying primarily on federal funding statutes that frame the issues in terms of protection and the solutions as foster care and regulation, Bazelon viewed the children as individuals who were members of families and communities.¹³⁹ This bottom-up approach literally transformed the system and the people in it—case workers, children, and parents—so that the line workers began to approach their role as collaborating with families, viewing their positive features, and building on their strengths;¹⁴⁰ parents could understand risks to their children and take responsibility for those risks and their solutions;¹⁴¹ and the needs, experiences and desires of children became central.¹⁴² Assistance to the children and families (including foster families) were designed to meet their needs, in their homes, and with the help of their communities, rather than the more dominant bureaucratic template of psychological counseling and generic substance abuse treatment at professional offices.¹⁴³

* * *

With our training, wisdom and power, it is so tempting for lawyers to see ourselves in the role of rescuer, particularly when we represent children. Children are vulnerable and need protection from themselves or others who might victimize or neglect them. Many of the children we represent are from families subordinated through racial or economic status or from families disrupted and disputing. It may feel natural for us to assume the role of protector when children seem to be without the kinds of support systems we think are necessary and appropriate. Such a vision, though, demeans the child and the very things that have helped form the child's identity: parents, siblings, neighborhood, community, cultural norms, race, ethnicity, gender, etc. Saving children under-

¹³⁷ MAKING CHILD WELFARE WORK, *supra* note 22, at 1.

¹³⁸ *Id.* at 29-36, 49. Lead attorney Ira Burnim even refused to phase in reform by services or age of children; instead, he urged them to "do the whole job right" for a specific group of children [at a time]." *Id.* at 27.

¹³⁹ Thus, Bazelon framed the legal question as "children's constitutional right to family integrity—their right to be raised by their parents." *Id.* at 16.

¹⁴⁰ *Id.* at 34-36.

¹⁴¹ *Id.* at 53-54.

¹⁴² *Id.* at 22 (listing five values of the settlement decree); *id.* at 27 (stating that settlement included an "elaborate set of policies that gave children in out-of-home placements the right to daily telephone and mail contact with family and friends" and frequent, unsupervised visitation with family and friends); *id.* at 29 (describing individualized services for a child based on her needs).

¹⁴³ *See id.* at 51-70. *See also* Kathleen Kufeldt, Marie Simard, Paul Thomas & Jacques Vachon, *A Grass Roots Approach to Influencing Child Welfare Policy*, 10 CHILD & FAM. SOC. WORK 305 (2005) (describing approach to child welfare reform in Canada).

mines their humanity and diminishes their ability to guide their attorneys in identifying the problems and their solutions as the client sees them.

C. *Representing Children in Families and Communities*

I return here to the phenomenon of social movements I alluded to above. There is an extensive legal and social science literature regarding social movements.¹⁴⁴ Much of this literature is not pertinent here, but it contains some lessons to help children's attorneys identify what organized, coordinated advocacy is, what it means for children, and how our own advocacy may or may not be grounded in the social conditions of children, their families and communities. A social movement is, in grossly simplified terms, an organized, collective, political action designed to press a claim and affect public opinion.¹⁴⁵ Social movements come in all shapes and sizes, and experts seem to define them by their function or structure, not by their constituents or aims; social movements need not be composed of those for whom the movement advocates. Thus, social scientists have characterized the environmental and animal rights movements as social movements even though the collective action is not undertaken by, and the constituents are not, animals, streams or forests.¹⁴⁶ In fact, social movements are increasingly comprised of professionals, rather than the persons or groups on whose behalf the change is sought.¹⁴⁷ In the context of politically disempowered groups, lawyers may, in effect, compose the movement.¹⁴⁸

It is not surprising then that social movements can be organized on behalf of children but without children in leadership or membership roles. Indeed, in

¹⁴⁴ E.g., MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS & THE WELFARE RIGHTS MOVEMENT, 1960-1973* (1993); HOW SOCIAL MOVEMENTS MATTER (Marco Giugni, Doug McAdam, & Charles Tilly eds., 1999); FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* (1977); CHARLES TILLY, *SOCIAL MOVEMENTS, 1768-2004* (2004); WAVES OF PROTEST: SOCIAL MOVEMENTS SINCE THE SIXTIES (Jo Freeman & Victoria Johnson eds., 1999) [hereinafter WAVES OF PROTEST]; WHO SPEAKS FOR AMERICA'S CHILDREN, *supra* note 108; Joseph Helfgot, *Professional Reform Organizations and the Symbolic Representation of the Poor*, 39 AM. SOC. REV. 475 (1974). See also Brown-Nagin, *supra* note 43; Eskridge, *supra* note 43; Rubin, *supra* note 43 (each discussing social movements from a legal-centric perspective).

¹⁴⁵ TILLY, *supra* note 144, at 3-4. Tilly provides this schematic definition of social movements: "1) Campaigns of collective claims on target authorities; 2) an array of claim-making performances including special-purpose associations, public meetings, media statements, and demonstrations; 3) public representations of the case's worthiness, unity, numbers and commitment." *Id.* at 7.

¹⁴⁶ James M. Jasper, *Recruiting Intimate, Recruiting Strangers: Building the Contemporary Animal Rights Movement*, in WAVES OF PROTEST, *supra* note 144, at 65-82; Luther P. Gerlach, *The Structure of Social Movements: Environmental Activism and Its Opponents*, in WAVES OF PROTEST, *supra* note 144, at 85-97.

¹⁴⁷ Skopcol & Dickert, *supra* note 108, at 144-45; Suzanne Staggenborg, *Consequences of Professionalization and Formalization in the Pro-Choice Movement*, in WAVES OF PROTEST, *supra* note 144, at 99.

¹⁴⁸ See David L. Chambers & Michael S. Wald, *Smith v. Offer*, in MNOOKIN, *supra* note 47, at 67, 75-78 (describing the origins of the New York Civil Liberties Union Children's Rights Project which relied heavily on the attorneys to create and direct class actions on behalf of children); Ziv, *supra* note 72, at 216-17 (describing the primary role lawyers played in crafting and passage of the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (1994)).

the case of children, with a number of possible exceptions during the 1960s and 1970s,¹⁴⁹ social workers, lawyers and other adults have constituted children's movements.¹⁵⁰ Today, it appears that discrete entities headed by professionals, not children or their parents, constitute social movements on behalf of children. There is no widespread, if any, grassroots movement for children.¹⁵¹ Instead, leading national organized advocacy on behalf of children consists of various legal and judicial organizations, such as the American Bar Association's Children's Law Center, Bazelon Center for Mental Health Law, Children's Rights, Inc., Juvenile Law Center, National Center for Youth Law, National Juvenile Defender Center, National Council of Juvenile and Family Court Judges, and the Youth Law Center; and social policy organizations, such as the Children's Defense Fund and the Parent Teacher Association.

All of these organizations engage in very high level, important, and in some instances truly progressive work on behalf of children and their families. They are not, however, community based or community driven. Like most social movement organizations, children's advocacy groups have small, if any, memberships¹⁵² so they are advocating for fewer people and are increasingly removed from the people for whom they advocate. These advocacy groups are the primary non-elected and non-appointed actors who develop public policy through policy and litigation. Yet these groups are not comprised of the children or parents of the children we generally represent.¹⁵³ These are not criticisms at all, but instead are meant to point out our riches so that we can explore what more it is that children might need to compliment the professionally driven work.

Moreover, while law is increasing statutory and administrative in this country, judges do still make and interpret law. Judges too can be—simply by virtue of education and class—far from the worlds of our clients, so judicial actions may not be receptive to the needs of children and their communities. In addition, the roll-back of rights, particularly any sort of anti-subordination content to the equal protection doctrine,¹⁵⁴ has further limited courts' identification with and responsiveness to our clients and their communities. As child advocates we find ourselves in a game played by rules made by decision makers who may have little connection to, or concern about, the children for whom we advocate.

We may want to think then about our approaches to justice. This is not to say that what we do for children as lawyers is not important and noble, but we

¹⁴⁹ THE CHILDREN'S RIGHTS MOVEMENT (Beatrice Gross & Ronald Gross eds., 1977).

¹⁵⁰ HAWES, *supra* note 47. Emmett D. Carson, *Introduction: How Are the Children?, in WHO SPEAKS FOR AMERICA'S CHILDREN*, *supra* note 108, at xii-xiii.

¹⁵¹ Imig, *supra* note 108, at 191, 199.

¹⁵² See Skocpol & Dickert, *supra* note 108, at 147-49 (two-thirds of the associations formed since the 1960s that have any sort of child or family focus have 1000 or less members).

¹⁵³ Theda Skocpol notes that "[w]hat is missing is any sort of broad popularly rooted effort of the sort that the nationwide women's associations of the early twentieth century were able to mobilize. Child advocates find themselves relegated to lobbying Congress while writing detailed informational reports and trying to attract media attention." THEDA SKOCPOL, *LESSONS FROM HISTORY: BUILDING A MOVEMENT FOR AMERICA'S CHILDREN* 13 (1997).

¹⁵⁴ E.g., *Washington v. Davis*, 426 U.S. 229 (1976); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

may want to question how much we procedural justice lawyers are doing to maintain and refine a series of laws that are elite and disconnected from the lives of the children, families and communities who these laws primarily affect. Similarly, we legal justice lawyers face limitations of doctrine and federal policy that affects what we can do at the local level and at a minimum may frame the discourse in terms that are more bureaucratic than reflective of the lives of our clients. Those of us who engage in social justice advocacy may be faced with our own disconnection from communities or with the lack of resources and support for community-based work.

While I do not suggest that we all can or should leave our practices or move our offices into our clients' communities, I do suggest that we begin to think and work as creatively and broadly as we can. We should not be content with the traditional legal work we do for children and the types of relationships we have with them. Instead we should consciously follow (and further develop) the types of principles I outlined in the preceding section and challenge the systems that our clients tell us do not serve them in their families or in their communities. We should also question ourselves when we seek to fit clients into our legal strategies rather than use legal strategies that fit our clients. We should further do what we can to bring children's voice to the discussion of child and family policy at every level to which we have access.

We might even think of other ways to serve children. We need to be guided by children, and not just professionals (including ourselves). Given the limitations of children's voice and the limited efficacy of children's litigation and policy advocacy on improving justice for children, maybe we should be representing, or supporting organizing efforts of, parents and communities—those who have stronger voices and can guide us more clearly. Despite the rhetorical appeal of advocating for children, it can have an effect of isolating children and their needs from their families and communities. In our current political and social environment that perceives problems and solutions as matters of individual will, we might revisit the individuating affects of child-based advocacy and instead explore more comprehensive advocacy for children in their families and communities—perhaps even thinking in grass-roots social movement terms. After all, mobilization for children that culminated in the well-known social and legal reforms and Progressive federal policies for children in the first half of the twentieth century were part of broader nationwide social movements of protest and concern for children.¹⁵⁵ These advances grew out of and with the support of community networks.¹⁵⁶ It is not surprising then that we are seeing some of the more concrete and progressive, if localized, reforms that promote children's health and welfare arising out of the commu-

¹⁵⁵ Imig, *supra* note 108, at 192-93, 195; Skocpol, *supra* note 153, at 10-11. This is not to suggest that the Progressive Era reforms were not without significant problems related to devaluing, and subordinating, non-dominant families. See Appell, *supra* note 16, at 156-61 (describing Anglo-supremacist history of efforts designed to protect children); Dorothy E. Roberts, *Welfare and the Problem of Black Citizenship*, 105 *YALE L.J.* 1563 (1996) (analyzing the gendered and racist norms that limited Progressive and New Deal reforms).

¹⁵⁶ Imig, *supra* note 108 at 193; Skocpol & Dickert, *supra* note 108; Skocpol, *supra* note 153.

nity or community development organizations.¹⁵⁷ These promising initiatives, like those of the past,¹⁵⁸ engage parents, promote collective identities of community members, and collaborate with social service agencies and schools to meet the needs of families.¹⁵⁹ This connection between children, parents, and communities recognizes that families and communities are in the best position to understand and mobilize resources for children.

Indeed, political scientist Theda Skocpol advocates a new social movement for children that would unite families across class and cultural divides.¹⁶⁰ This "Parents First" approach recognizes that it is the adults connected to children who can best achieve social change and identifies a unifying theme that "the work of parents and supportive communities in nurturing children constitutes a vital service."¹⁶¹ For what unites so many families in this country is the lack of social and economic support for rearing children: a living wage, health insurance, paid family leave, safe schools and playgrounds, and leisure time for connecting with family and community.¹⁶²

IV. CONCLUSION

The *Fordham Children's Conference* brought some clarity and some unity to the world of child representation. That clarity was one of vision and role, but one that did not remove, and should not have removed, the messiness and complications in representing children. This *UNLV Children's Conference* was intended to mess things up in a way that might help move us to the next steps: to identify habits through which we can overcome the difficulties in identifying children's voice and suppressing the hegemony of the lawyer and other professionals; to recognize and address the tendency for us to do violence in "translating" our clients' wishes; and to find a model for including parents and communities.

The past half century has seen tremendous strides in the legal status of children and an accompanying creation of, and rise in, the children's bar. During the latter part of this period though, overall children have become poorer,

¹⁵⁷ See Garcia et al., *supra* note 93 (describing community organizing for public parks in economically blighted urban neighborhood); Imig, *supra* note 108, at 201, 204 (listing organizations that "mobilize parents and communities on behalf of children"); Skocpol & Dickert, *supra* note 108, at 159-61 (describing the Texas Industrial Areas Foundation methods of engaging community members to advocate locally for programs and policies to aid children and families).

¹⁵⁸ See SKOCPOL, *supra* note 153, at 11-12 (describing and attributing success to the Progressive Era movements to mutually engaged professionals and grass-roots women's federations).

¹⁵⁹ Imig, *supra* note 108, at 201-03; see also ANNELESE ORLECK, *STORMING CAESARS PALACE* 93-97, 102-03 (2005) (noting that the needs of their children motivated and united the mothers who formed the remarkable Clark County Welfare Rights Organization); Nancy A. Naples, *Activist Mothering: Cross-Generational Continuity in the Community Work of Women from Low-Income Urban Neighborhoods*, 6 GENDER & SOC'Y 441, 448 (1992) (many women come to community work in response to concerns regarding their children's environment); COMMUNITY DEVELOPMENT AND FAMILY SUPPORT, *supra* note 108, at 12-20 (describing principles for effective family-based community development).

¹⁶⁰ SKOCPOL, *supra* note 153, at 14-16.

¹⁶¹ *Id.* at 15.

¹⁶² *Id.*

their opportunities have narrowed, and they are growing up in an era of zero tolerance and zero forgiveness for their youthful actions. At the same time, our legal landscape has changed drastically. We are no longer in an era of expanding civil rights and liberty. The polity is less democratic in terms of citizen voting power and engagement, and the policy makers are more professionalized and less representative of the people.¹⁶³ As those who work with or on behalf of our youth, we should take steps to position ourselves, when and if we can, to develop creative ways to promote children and youth on their terms. To do that, we must engage their families and communities because children, even more than adults, are not islands and cannot thrive unless they and those with whom they identify have what they need. We must engage their families and communities because many of us are not them; most of us are professionals and our knowledge of what is best is limited to our training.

¹⁶³ See Lawrence R. Jacobs & Theda Skocpol, *American Democracy in an Era of Rising Inequality*, in *INEQUALITY AND AMERICAN DEMOCRACY, WHAT WE KNOW AND WHAT WE NEED TO LEARN 1* (Lawrence R. Jacobs & Theda Skocpol eds., 2005).