

HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN'S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE.

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HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN'S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE

by Barbara Bennett Woodhouse. Princeton, N.J.: Princeton University Press, 2008. 376 pp. Cloth. \$27.95/ £16.95. ISBN: 9780691126906.

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pp.806-810

Children's Rights: A "History and Law" Solution?

Scholars have traditionally categorized children's rights as the right to protection and the right to autonomy. In the United States, during the last quarter of the nineteenth century, the right to protection emerged when child-savers organized Societies for the Prevention of Cruelty to Children to protect children from parental abuse. By the Progressive Era, the movement led to the creation of the juvenile court system, and in the New Deal to child labor laws. In the 1960s, a second children's rights movement emerged, characterized by "child liberationists," such as John Holt (1974) and Richard Farson (1974), who advocated adult rights for children. In 1967, the Supreme Court in *In RE GAULT* (1967) granted minors involved in delinquency proceedings many of the constitutional procedural protections previously granted only to adult criminal defendants. Two years later, in another landmark decision, *TINKER v. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT* (1969), the Supreme Court finally designated children as persons.

Ultimately, however, Barbara Bennett Woodhouse, David H. Levin Chair in Family Law at the Frederic G. Levin College of Law, and Director of the Center on Children and the Law and Co-Director of the Institute for Child and Adolescent Research and Evaluation at the University of Florida, aims to convince readers to support the international human rights embedded in the United Nations Convention on the Rights of the Child (UNCRC). Adopted by the UN General Assembly on November 20, 1989 and ratified by 192 nations, the UNCRC is the most comprehensive United Nations human rights treaty in force today. In addition to recognizing and seeking to ensure a series of substantive and procedural rights, the UNCRC specifies the full range of civil, political, economic, psychological, social, and cultural rights of children. The UNCRC also provides four core principles for implementing these rights: nondiscrimination; commitment to the best interests of the child; the right to life, survival, and development; and respect for the views of the child. The United States and Somalia are the only two nations that to date have refused to ratify the UNCRC, although Woodhouse neglects to mention that the United States signed the UNCRC in February 1995. It also later ratified the Convention's two

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Optional Protocols – the Optional Protocol on the Involvement of Children in Armed Conflict (raising the age of combat to eighteen years) and the Optional [*807] Protocol on the Sale of Children, Child Prostitution and Child Pornography.

Woodhouse’s study is thus a response to a substantial body of work produced over the last two decades by critics who oppose the US ratification of the UNCRC. Some of these earlier critics fear that it compromises US sovereignty by making UN law superior to the US Constitution, impinges upon states’ rights, undermines parent-child authority, and gives children rights identical to those of adults. The major stumbling block to US ratification, according to its critics, has been the UNCRC’s autonomy model, epitomized in Article 12; “State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, either directly, or through a representative or an appropriate body” (<http://www2.ohchr.org/english/law/crc.htm>).

Unfortunately, Woodhouse does not directly engage these critics; this is a book written for a general audience. Although she is the author of more than thirty-five law review articles on family law and children’s rights, HIDDEN IN PLAIN SIGHT, is Woodhouse’s first book. The bulk of it takes the form of biographical sketches drawn from her vast corpus of previous work, now rewritten, expanded, and revised in order to advance a child-centered approach to the law. Woodhouse uses few primary sources, the volume resting mostly on secondary sources. Woodhouse explains her research strategy in this way: “academic debate and endnotes play a supporting, not a starring role. In this book, I draw upon a lifetime of research and experience as an academic but also as a child and daughter, nursery school teacher, parent and foster parent, and grandmother” (p.xv).

HIDDEN IN PLAIN SIGHT comprises fifteen chapters divided into an introduction and five parts. The introduction, composed of two chapters, Woodhouse labels “theory.” In Chapter One, “How to Think About Childhood,” Woodhouse very briefly summarizes a number of theories drawn from the disciplines of history, psychology, sociology, and the health sciences, about child development, of which she believes an advocate representing the best interests of the child must be cognizant. These include Steven Mintz’s historical insights, pediatricians T. Berry Brazelton’s and Stanley Greenspan’s “six irreducible needs of children,” Jean Piaget’s and Erik H. Erikson’s models of psychological development, and Urie Bronfenbrenner’s and Glen Elder’s ecological perspective. To these, Woodhouse adds what she considers a fundamental aspect to the development of a child: “voice” or “agency,” based on the work of psychiatrist Robert Coles and sociologist James Garbarino. At the heart of Woodhouse’s concept of children’s rights is a child-centered approach to law, incorporating children’s voices and respecting their physical and cognitive development.

In Chapter Two, “How to Think About Children’s Rights,” Woodhouse augments the developmental perspective by introducing the term “ecogenerism” – “a way of thinking that combines the skills of an ecological perspective – a focus on the environments in which life unfolds – with Erik Erickson’s concept [*808] of generativity” – a state of human and social maturity marked by a commitment to the needs of the next generation” (Woodhouse 2007). But these theoretical concepts are undeveloped and not well integrated into the book: the term ecogenerism rarely appears again. And, though Woodhouse relies throughout the book on the term “developmental perspective” as a framework for understanding and advocating children’s rights, it remains ambiguous and is never clearly defined.

Also in Chapter Two, Woodhouse transcends the protection and autonomy children’s rights dichotomy, first by renaming them as needs-based and capacity-based rights and then identifying five basic human rights values – privacy, agency, equality, dignity, and protection – that incorporate both needs and capacity rights. Woodhouse finds these five values embedded in the Declaration of Independence, the Constitution, and in watershed moments in American

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history, such as the Civil War, the women's suffrage, and the 1960s civil rights movements. However, *HIDDEN IN PLAIN SIGHT* is neither a constitutional history of children's rights nor a history of those watershed moments. Instead, in the next eleven chapters Woodhouse grounds children's rights in American history and personal experience through many different stories about the early lives of famous and unknown individual children, with each story meant to epitomize one of the human rights values. Thus, the experiences of slave children Frederick Douglass and of Dred Scott's daughters, Eliza and Lisa, illustrate the principle of privacy; the apprentice Ben Franklin illustrates the principle of agency; civil rights marchers John Lewis and Sheyann Webb, as well as Helen Keller and Louisa May Alcott, the equality principle; Holocaust victim, Ann Frank, the dignity principle; and sexually abused children, Maya Angelou and a thinly disguised Barbara Bennett Woodhouse, the protection principle. Why use the discipline of history rather than the law to press the case for children's rights? Woodhouse gives two reasons: "The stories of children are important as narratives but also as historical evidence that justice for children is integral to America's fundamental values. The stories also provide proof that American children, through their own agency and voice, have earned their right to claim rights" (pp.46-47).

As a work of history, *HIDDEN IN PLAIN SIGHT* is disappointing. Woodhouse does not appear to be familiar with recent developments in the discipline. She believes that history is "written by the powerful," though that generalization has been inaccurate for at least three decades. She also makes outdated statements that history books have been "purged of children's stories of children's agency and expression" (p.6) or that they still contain accounts of George Washington cutting down the cheery tree. Such statements ignore the fact that a sub-discipline, childhood studies, has been in existence for a quarter century, with its own professional organization – the Society for the History of Childhood and Youth – which publishes a journal and holds international conferences. More troubling, *HIDDEN IN PLAIN SIGHT* is profoundly ahistorical. Woodhouse asks a very important question: when does childhood begin? But she goes astray by answering it using only [*809] developmental psychology and the law, referring to the age of consent. The concept of childhood, however, is socially and historically constructed. Adolescence, for example, was not recognized as a separate stage of the life course until the late nineteenth century. What this means in practice is that the society in which they lived viewed "children," such as colonial Virginia's 14- to 16-year-old indentured servants, the 16-year-old apprentice Ben Franklin, the 15 year-old enslaved Frederick Douglass, and the teenagers on the orphan trains, as adults. And why not? As late as the mid-nineteenth century, when the age of consent was 13 and the median age of death was 35, a person's life was half over by the age of 16. Viewing a Franklin or Douglass as children, as Woodhouse does, is presentist.

How can these problems be explained in a scholar as accomplished as Woodhouse? The answer, I believe, lies in the nature of Woodhouse's methodology as a critical legal studies scholar. Woodhouse, in particular, practices "the law as literature" approach, which uses storytelling and personal experiences of discrimination to develop new critical approaches to law. Within this approach, as legal scholar Gary Minda has written (1995), one technique – narrative jurisprudence – "relies on the analyst to develop the text of a story for appraising the narrative content of the official stories told in the law." An example of such an approach can be found in Woodhouse's (1993) classic article, "Hatching the Egg: A Child-Centered Perspective on Parents," where she famously used Dr. Suess's *HORTON HATCHES THE EGG* as well as William Faulkner's *LIGHT IN AUGUST* and the *GOSPELS OF LUKE AND MATTHEW* to deconstruct family law opinions in favor of moving "children from the margin to the center of formal legal analysis." What is unique about *HIDDEN IN PLAIN SIGHT* is that Woodhouse has substituted historical events for literature – a sort of "law and history" approach. Like Richard Delgado (1989), Derrick Bell (1987), and Stephen L. Carter (1991), Woodhouse uses historical stories and her own experiences to destroy a mindset, in this case the widespread belief that children are incapable of reason, and to advance the idea that they deserve to be treated with

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dignity and respect and be permitted to express and act in their own interest.

Unfortunately, narrative jurisprudence, when transported to historical events will probably not change many minds about the ratification of the UNCRC. At bottom, *HIDDEN IN PLAIN SIGHT* is an appeal to emotion, not reason. The biographical vignettes, beautifully written and accessible to the general reader, are profiles in courage: all the children in the book are victims who react with bravery, honesty, creativity. But to the critically minded, such historical portraits are hardly representative of children in history; half of them are not really about children at all. They also avoid confronting the unintended consequences that have resulted from children's rights "reforms:" trying children as adults or imposing zero-tolerance policies in schools. Nor will they spark debate, as Woodhouse hopes, when the world is already drowning in media saturation of child prostitution exposés in South Asia, news of the genocide of thousands of Bosnian Muslim children in 1995 [*810] following the capture of Radovan Karadzic, and the ubiquitous use of children as soldiers across Africa. Or rather, the plight of today's children, in America and the world, underscores Woodhouse's point that children need protection. But there is little argument from the critics of the UNCRC for this type of children's rights. The real problem with these historical stories is that they fail to grapple intellectually with the legitimate objections of the UNCRC's critics. *HIDDEN IN PLAIN SIGHT* has a noble purpose to support the UNCRC, but it will take more than these poignant and inspiring stories from the past to convince skeptics to accept the radical change in mindset – children's autonomy – that is at the heart of Woodhouse's eloquent plea for children's rights.

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