Yes, Children Need Liberation

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In his sympathetic and probing comments, Professor Winchester makes three basic criticisms of "The Case for Children's Liberation." The first is that children's status cannot be properly assimilated to that of possessions, or slaves, as I argue.

The problem here is that Winchester's objection is confined to one sense of the term "slave," which is not the sense defined in the article. There it is stated at the outset that to be a slave is to be owned by another. Winchester misreads this premise as, unpacked: to be a slave is to have an identical legal status with state-recognized adult slaves of the past. These are clearly not the same. Yet it is on the basis of this misreading that Winchester goes on to argue at length that children are not slaves. In short, Winchester's rebuttal is of another claim than the one I make.

What would count as a relevant rebuttal of children's existence as possessions, or slaves, would be to show that they are not, in fact, owned. To show that they have to go to school, or can't be mutilated,1 provides no such rebuttal. That a possession must be employed in certain standard ways — for example, a car properly maintained and driven on roads, a child maintained and schooled — is not evidence against the car, or the child, being a possession. Yet this is the only kind of evidence Winchester gives.

In fact, statutory and case law explicitly as well as implicitly recognizes the child as a possession, as I show at length in my paper. But none of the examples I give is denied by Winchester. He merely denies the claim, without denying the evidence which demonstrates it. For example, it is a criminal offence punishable by ten years in prison "to deprive a parent or guardian or any other person who has lawful possession of a child," of that child: notwithstanding the fact that the child may be leaving of his or her own volition, or indeed escaping from someone who beats and imprisons him or her to someone who does not. (See The Criminal Code of Canada, Sections 249 and 250).

Moreover, by law, it is the case that the young person has no rightful say in matrimonial, family, education, welfare, health, or indeed any other matters of ordinary life, not even a party status in the proceedings upon which his or her entire present and future depends (e.g. divorces). The reason the child cannot exercise any rights here is that he or she belongs to specified adults, as the language of the laws governing guardian-child relationships discloses.2

We would not, I venture to say, be inhibited about calling this state "slavery" if it were to be imposed upon us: if we had virtually no legal right in the government of our own lives, if we could by law be punished or imprisoned for not submitting to others' discretionary control over our speech, pursuit, domicile, dress, belief, association, and movement. (See, for example, notes 5, 16, 19, 20, 21, and 22 of my article.) We only become resistant to calling it slavery, it seems, when it is we ourselves who are the masters.

Professor Winchester's second criticism is that children are not persons but become persons, "when he or she has all the powers and skills of a normal adult human being": a process of becoming in which the child is given rights and freedoms in proportion to his or her development towards these full powers.
If our criterion of a person really were, as Winchester says, the enjoyment of "all the powers and skills of a normal human being," then it follows that the blind and crippled, the infirm, the sick, the uneducated, and so on would no longer be conceived as persons. Needless to say, such a criterion of personhood is abhorrent and impossible to accept. Yet it so easily comes from us when it is a matter of disqualifying young people from the status of persons. We are, it seems, so deeply prejudiced against their personhood that even fascist-or-worse principles are endorsed by us to keep them from it. Of course, we cannot specially blame Winchester for this failing, because he is only exemplifying a conventional pattern of thought. But we certainly should learn from his bringing it out into the open.

I am not sure what the adequate criterion of a person is — one who can smile back, learn from communication, transcend his given program, or what. But I think that any criterion which rules out children rules out adults too whom we would want to include. So I hold for now to the modest idea that all humans are persons. The alternative is too dangerous.

As for the rights which attach to humans or persons, "human rights," I do not think the presumed inability to exercise them should deprive anyone of them. If there is not the ability to exercise, then there is no reason to withhold. The rights can't be exercised. If there is the ability to exercise, then there is even less reason to withhold. The rights can be exercised. Either way, withholding human rights on account of abilities seems unjustifiable. It is possible that there are special exceptions here, but the onus is on the right-depriver to show why such exceptions should apply only to young people, and not to older people who might have similar limitations of skills or abilities.

The real problem here is that the young person is economically dependent, and as such prevented by his circumstances from exercising many of his human rights, even if he had them. That is why, perhaps, our concept of young person's rights might be fruitfully reconstrued as relational rights: rights to a certain type of relationship with adult guardians, such as a relationship of mutual understanding and dialogue.

It is now the case that the legal norm of guardian-child relationships — in the home, school, or custodial centre — is the right of the adult to order and punish, and the duty of the child to obey and submit (Wilson, 1978, pp. 241-24; also note 3 below). If we can now make provision to apply this servitude norm everywhere, we should be able to make provision to apply a non-servitude norm everywhere too. I think it is time that we did.

This brings us to Winchester's third and final objection, which is that he thinks that the law does not enjoin complete obedience from children. I wish he were right, but he is not, and gives no legal evidence to suggest that he is. Moreover, he elects not to challenge any of the evidence of law in "The Case for Children's Liberation" which tells against his opinion. Again, he rejects my claim, but none of the legal facts proving it. Among these legal facts, I repeat, are laws which provide for penalties up to indefinite imprisonment of young people for breaking any bylaw or ordinance, or for resisting any norm their parental or school guardians choose to set.3

I am not sure I understand the force of Professor Winchester's remaining remarks, but I think they somewhat miss the point. However, his concern here seems to be to insist that children must sometimes obey. The problem here is, however, that his concept of obedience is incoherent: including, it seems, being hugged away from danger, learning language, and taking orders. "The Case for Children's Liberation," on the other hand, distinguishes between guardianship