RESPONSE TO MAGSINO

Children, Parents, and Educators: From Control to Partnership

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The most useful feature of Romulo Magsino’s “Students, Parents, and Educators: An Approach to Conflict of Rights” is its precise and knowledgeable exploration of case-law and legal principle in this increasingly vital area of social reform. Our society is involved now in a juridical regrouping in the structure of child-raising responsibility, and Magsino ably reveals the conflict between parental rights and state intervention in this whole process. Clearly, his sympathies lie with parental rights. His ultimate solution to conflicts between parental and state agencies regarding young people is via a Millian criterion of utility: namely, that individual parental rights are to be restrained in their exercise if, and only if, they threaten children’s long-term happiness (e.g., through refusal of a life-saving device).

The great weakness of Magsino’s argument is that he is quite content to leave young people themselves with no rights whatever in determining what their own happiness is or will be. For example, he does not once in his long article report (let alone support) a single argument for the desirability or necessity of young people having even a partial share over what is done to them in the name of their own happiness. His unyielding, if unspoken, assumption throughout is that some people (those over 18 years of age) ought always to decide for other people (those under 18 years of age) what is good for them in every aspect of their existences. The only problem here that Magsino visibly concerns himself with is the conflict between adult authorities over which of them has the final right to determine young people’s lives.1

It is true that Magsino accords brief pro forma deference to children’s “potentiality” for rationality and so on, and even on one short-lived occasion mentions “developmental rights” for children — which would seem to have to include their thought and participation in determining who they are, what they say, and what they do.2 But his argument immediately falls into vagueness here, and then moves quickly on to conclude negatively that children “shouldn’t be allowed to be their parents’ crosses.” (Magsino neglects to notice that it was the son who bore the cross.) In all, it is certain where he stands. If, say, religious groups believe in indoctrinating their children with certain theistic dogmas, then that’s fine with Magsino so long as these youth are required also to pass state examinations. That young persons themselves should have any role at all in the formation of their own belief systems, any right to “freedom of conscience” or “freedom of speech” that adults have in the face of other people’s coercive impositions and dogmas — well, that issue does not even arise as a question for Magsino. Though he argues throughout within the parameters of a legal framework, he ignores the case for the legal personality of young people altogether.

There are several ways in which this systematic bias against recognizing the claim of children to any voice in their own lives reveals itself in Magsino’s
argument. Primarily, there is the sheer blindspot, the simplistic refusal to acknowledge that there is even a problem. Not only does Magsino never so much as consider that young people might have a right to some say in what they believe, think or speak, or that any of this might have something to do with their happiness; but he never once refers to any of the possible threats to this "happiness" by settled adult law — for example, by parent and teacher beatings, which are legal "by way of correction" under North American law governing parental or in loco parentis relationships, though they constitute a serious breach of the same law when done to anyone who is of adult age. It is certainly not the case that the normally criminal act of assault and battery has been shown to promote long-term happiness in its victims. Yet such counterthesis problems do not enter into Magsino's otherwise legally punctilious article. In a word, he follows the long familiar adult pattern of talking abstractly about maximizing youths' "happiness" and "fulfilment," while overlooking the major obstacles and threats to this happiness and fulfilment under present adult rule. 3

Denial of Children's Rights
The oversights here, I might add, go much further than the very broad areas I've mentioned. Not only are young people not protected against assault and battery by their adult guardians so long as they are not incurably injured thereby; they are not protected (as adults are) against arbitrary punishment, involuntary commitment or treatment, unwarranted search and seizure, libelous accusation, or coercive prohibition of personal association. Not only are they denied the rights of religious, political, or social belief or freedom of speech accorded all adults in our society but, also they are denied any rights of privacy, of assembly, of publication, and of pursuit. 4 Yet at no point does Magsino think it necessary to justify any of these special deprivations or even to observe that they exist. His only reply to the argument that the children's lot is thereby akin to slavery is to deny that "parent/child relationships are exactly the same as master/slave relationships" (p. 3). And even when he directly refers to the case for young people's emancipation from their servile status, he ignores all the legal disablements that are involved and focuses only on a strawman version of this characterization of their status. 5 There is, in sum, a very serious problem of disregard here. Magsino seems quite unwilling to consider the rights or non-rights of children themselves in his enthusiasm to determine how their lives should be decided for them.

Professor Magsino's defence of parents' rights over their children, however, suffers from no such inhibitions. He exalts their value, with little critical afterthought (see pp. 3, 4, and 10, for example). Children may have no rights over their own lives, and Magsino has no quarrel with this so long as, like household pets, they are not wilfully injured or allowed to die. 6 But he is very concerned that parents retain, and indeed increase, their rights over their children. His inconsistency on the rights of the individual here may strike us as grotesque, but it is conventional. The pluralism of society, it is argued, must be protected from encroachments by the state when it is parents' rights over their children which are involved. But this sentiment for pluralism suddenly wanes into non-existence when it is encroachments on children's rights over their own beliefs, or speech or non-harmful actions which are involved. Much reverence is accorded, for example, to parents' religious opinions and their right to impose them on the young in their care as a matter of civil liberty (eg. p. 10); but no reverence at all is accorded to young people's right to their own religious beliefs, or to their protection from coercive indoctrination by parents (eg. p.