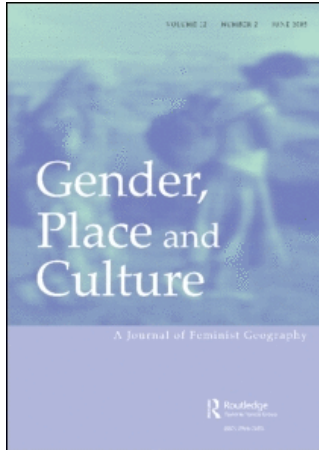


This article was downloaded by:[University of Toronto]
On: 13 December 2007
Access Details: [subscription number 768497842]
Publisher: Routledge
Informa Ltd Registered in England and Wales Registered Number: 1072954
Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Gender, Place & Culture A Journal of Feminist Geography

Publication details, including instructions for authors and subscription information:
<http://www.informaworld.com/smpp/title~content=t713423101>

At the Horizons of the Subject: Neo-liberalism, neo-conservatism and the rights of the child Part One: From 'knowing' fetus to 'confused' child

Sue Ruddick^a

^a University of Toronto, Canada

Online Publication Date: 01 October 2007

To cite this Article: Ruddick, Sue (2007) 'At the Horizons of the Subject:
Neo-liberalism, neo-conservatism and the rights of the child Part One: From
'knowing' fetus to 'confused' child', Gender, Place & Culture, 14:5, 513 - 527

To link to this article: DOI: 10.1080/09663690701562180

URL: <http://dx.doi.org/10.1080/09663690701562180>

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.informaworld.com/terms-and-conditions-of-access.pdf>

This article maybe used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

At the Horizons of the Subject: Neo-liberalism, neo-conservatism and the rights of the child

Part One: From 'knowing' fetus to 'confused' child

SUE RUDDICK

University of Toronto, Canada

ABSTRACT *The inability of the child to represent his or her own interests as a legal subject (by definition), and the continued interest of the state in the child as a futurity or resource locks the child in an eternal pas de deux: the child continually approaches the possibility of 'personhood' but never achieves it. In the past 40 years, in western nations the child's legal personhood has been simultaneously invoked and constrained: through a growing array of persons and organizations that, as an exteriority, purport to 'best represent the child'; and through an ever more finely gradated mapping of the child's interiority—which filters the child's voice through a range of interpretive theories, and mechanisms. In this myopic and hyperopic reading of the child, the child's voice disappears. This paper is the first of two examining the relationship of the child to the liberal notion of the subject. In the case law explored around fetal rights and custody issues in the United States and elsewhere we find a paradoxical situation where the 'fetus' is granted a more authoritative voice in terms of what it 'wants' than is the child, whose wishes are perpetually called into question. Together these papers raise questions about the nature of the subject qua individual. They highlight the potential for a ventriloquist discourse around the child whereby neo-liberal and neo-conservative groups that purport to speak for the child mobilize their own political interests.*

KEY WORDS: Child; rights; neo-liberalism; neo-conservatism; family

Who speaks for the jaguar? Who speaks for the fetus? Both questions rely on a political semiotics of representation. Permanently speechless, forever requiring the services of a ventriloquist, never forcing a recall vote, in each case the object or ground of representation is the realization of the representative's fondest dream. (Haraway, 1992, p. 311)

Why is it just at the moment when so many of us who have been silenced begin to demand the right to name ourselves, to act as subjects rather than objects of history, that just then, the concept of subjecthood becomes problematic? (Harstock, 1990, p. 163)

Correspondence: Sue Ruddick, Associate Professor and Director of Planning, Department of Geography/Program in Planning, University of Toronto, 100 St. George Street, Toronto, Ontario M5S 3G3, Canada. E-mail: ruddick@geog.utoronto.ca

Introduction

Feminist scholars have long debated the appropriateness of the liberal subject to a feminist politics. Carol Pateman (1988) observed early on that the seminal texts of liberalism 'overlooked' women, arguing the task was to write women into a liberal concept of the subject. Kate Nash (1998) has suggested this oversight was a necessary one, critical in the maintenance of a public and private divide, and that the liberal conception of woman as subject was not absent, but ambivalent, and offered a political possibility for women's recognition as political subjects *and* as caregivers—a successful strategy during the Keynesian era. More recently, scholars of children's rights are exploring the ways the child as social actor help us to re-imagine children's subjecthood. But these streams have had surprisingly little to say to one another: perhaps because of the different and specific relationship each has as liberal subject; perhaps because each sees the other as a constraint (women's rights restricting those of children and vice versa); or perhaps because each sees rights as individual and additive, expanding in a complex field as different groups contest their discrimination.

In this paper—the first of two—I map the dangers of this divide. I explore contemporary politics around the child as subject, beginning with the rights of the fetus and progressing through a range of sites where inter-subjectivity is at issue (custody rights, caregivers' rights). Conceptually I argue that the child is a limit condition to the liberal subject: it is, *de jure*, an impossible subject since, by liberal definition, the child cannot speak for him or herself without adult authorization. Conjuncturally, I suggest that certain so-called children's advocates are using this 'ventriloquist' quality of the child subject, in an historical backlash to undercut the rights of children themselves and a whole range of 'unruly subjects', and to re-establish neo-conservative, patriarchal and neo-liberal boundaries of the subject. And, as a geographer, I argue it is precisely the *space* of the subject that is at issue here: this backlash is achieved through a distortion of sites of inter-subjectivity, in a topographical and soma-topographical redrawing of the child subject to *prevent* her/him from 'coming to voice'. As feminist and children's geographers, then, we should have something significant to say about inter-subjectivity, and something to say to each other. But we must first become familiar with this terrain of the liberal subject and its distortions, before attempting to rethink the nature of subjectivity itself, lest we find ourselves back here mistaking this for new ground. These papers are devoted to mapping this terrain (see also Ruddick, forthcoming).

Liberalism's Limit

In Hobbes' view, the liberal subject exists in independence and antagonism to others, constrained by a state that prevents the possibility of a 'war of all against all' (Hobbes, 1651, Ch. 1, 12). Seyla Benhabib (1999, p. 408) attests to the undeniable centrality and impossible shortcoming of this view of subjecthood:

Liberalism, old and new, is committed to the premise that the consent of the autonomous individual in the face of the major institutions of our society is the basis of all political legitimacy. But autonomy is not autarchy or self-sufficiency ... Autonomy ... cannot be reduced to the perspective of the disembedded, non-relational male ego, which in the

words of Thomas Hobbes, could be considered as 'but [a mushroom], sprouted freshly from the earth'.

It is *this* constitution of the individual subject that most troubles calls to identity, or Harstock's lament over the 'right to name ourselves'. Over the past 40 years, a variety of failed and heterodox subjects have attempted to alter the boundaries of this Hobbesian ideal. This vigorous debate has turned on the role of 'woman' in relation to the notion of the liberal subject (Pateman, 1988; Nash, 1998, 2001); the issue of nature or nurture as the foundational basis of mothering (Lacquer, 1990; cf. Ruddick, 1990) and the extent to which fathers are also ill-served by the liberal construct of the subject (Aitken, 1998, 2000). It is not just men and women (or mothers and fathers), however, who have been ill-served by this construct, but children as well. Treatment of the child, even by feminists, tends to be confined to questions of 'socially necessary work' (Alenan, 1994) rather than incorporated into a re-imagining of the boundaries of the subject. Although recent work that figures the child as social actor can be seen as an move towards theorizing the child as a liberal subject, its treatment is often selective: children are 'heard' most clearly in accepted roles—consulted in designing their own leisure spaces, parks and playgrounds, spaces where their voice is not complicated by its relationship to 'others'. The result, perhaps unwittingly, is to re-enshrine a liberal concept of the individual, antagonistically constituted subject. This might be viewed as an effort to conceptualize the distinctiveness of women and children, a hard-won distinction at that (see for example Hanson & Monk, 1982). But the result is that the relationship *between* them is scarcely treated at all, or primarily in its limiting dimensions: children constrain women's labor market choice (Rose, 1984; England, 1993; Hanson & Pratt, 1994); parents limit children's rights (James *et al.*, 1998, p. 68; Valentine, 1996). More recently work on their interconnections centers on household or affective labor (Aitken, 2005; Robson, 2000; Nieuwenhuys, 1994; Mitchell *et al.*, 2004; Katz, 2004).

But these contributions tend to work within rather than against an (albeit expanded) concept of the liberal subject, each relatively silent on the status of the other. Currently this manifests in the political strategy of feminists to confront neo-liberal cuts to entitlements by focusing exclusively on the needs of poor children. This capitalizes on the indisputable entitlement of children in need (Jenson, 2000). But this strategy comes at a political and conceptual cost. It leaves children's interests open to ventriloquism, a politics of representation (pace Haraway, 1992) and sidelines women's needs in the process (Dobrowolsky & Jenson, 2004). The difficulties of articulating a politics that champions *both* caregivers and children speaks not only to a political zeitgeist, but also the pervasiveness of liberalism's discursive divide—the either/or of choosing between subjects imagined as independent and (potentially) antagonistic.

Against hopeful characterizations of liberalism's potential, I will argue that the legal and political subjecthood of children confronts us with a limit condition that cannot be circumnavigated. I base this argument on precedent-setting cases, largely in the United States, in which a liberal construction of child rights has been mobilized to promote neo-liberal and neo-conservative agendas, and undermine historical gains made by women under Keynesianism (see Nash, 1998). These laws are significant in their attempts to define and fix—following liberal notions of the subject-as-individual—the boundaries of the body and inter-subjective responsibilities between parent or caregiver, state and child.¹

The Problems of a Politics of Representation

Contemporary scholars often champion the child as social actor as the symbol of a new and enlightened era of child activism. But we cannot assume *any* representation of the child (as actor or victim) is inherently more progressive than another. A century ago, the idea of *innocence* that child savers fought so hard to construct, to protect children from exploitation at work and provide them with education, became the very thing that discounted young children as legal subjects in cases of children's sexual abuse. They were thought 'too innocent' to process such actions, unaffected by abuse in any lasting way, and thus 'impervious to real harm'—a finding which conveniently absolved the perpetrator of any wrongdoing (Smart, 1999).

We might see the contemporary celebration of the child as social actor as preferable in its valuation of children's perspectives and experience, but it carries its own dangers, specifically a tendency to confine children's activism to certain acceptable places (parks and playground design); to discount the 'political child' who speaks out against war, injustice or environmental degradation as naïve, or idealistic; and finally, to invoke the child as social actor as punishable for a range of behaviors that are inextricably linked to the erosion of public resources for their education and training (Ruddick, 2006). We need to be wary of championing *any* construct of the child without a critical exploration of its context and consequences.

To consider the child as subject is to situate oneself in a debate about subjecthood at its horizon, in three different senses. The first is *precisely* in relation to a liberal subject who cannot speak for her/himself, who must in the last instance be spoken for. The second is a horizon of the subject-in-general, immediately calling into question the legitimacy of a proliferation of caregivers: the divorced mother, the religious school, the biological grandparents, the father who fights for custody across international borders, the Christian Scientist parent, the trans-gendered husband, the commune, the kibbutz, to name a few. And the third is the possibility of a threshold, beyond the liberal idea of the Hobbesian subject—an inter-subjectivity, not just for children but for all of humanity.

At this horizon a peculiar and distended topography is emerging. Since the child (by definition) cannot legally speak for him or herself, these battles over rights are being staged effectively through an empty site. Here, the state, parents and other caregivers become alternate partners with the child in an interminable *pas de deux*—a dance where the child continually approaches but never achieves the possibility of personhood—sometimes presenced, sometimes absenced but always represented by and through the voices of others.

At this horizon, we see an increasingly complex *somatography*, an *interior mapping* of the body of the child-subject—a site of infinite physiological and psychological refraction, both emerging in the struggles to constitute, or discount, the child as subject. This begins with debates about where life begins and extends through to discussion of when childhood ends, with increasingly precise internal mappings of the adolescent brain and its functions. And we see a ballooning topography—a proliferate *exteriority* of interests—legal and quasi-legal organizations, psychologists, caregivers' associations (fathers' rights, grandparents' rights, gay and lesbian parents, trans-gendered parents, caregivers' rights, guardian *ad litem*) that purport to 'best represent the child'—reframing what the child says with what he or she 'really means'. This somatography and topography

ultimately speak to the view that the child cannot truly know him or herself. In this reading, which is at once myopic and hyperopic, the child as subject disappears.

Restrictive Somatographies: The 'Knowing' Fetal Subject

The boundaries of the subject are most fiercely patrolled in cases of uncertain somatography²—where the boundaries of the body itself (between idealized subjects) is ambiguous, as in the case of the fetus, the trans-gendered person, or co-joined twins. Issues of inter-subjectivity and its problematic relation to the Hobbesian subject emerge most clearly in relation to the fetus. Here the lack of clear boundary between mother and fetus 'leaves us without any proper subject to actualize its rights in a freedom of will and action . . . serving to question the model of the autonomous and integral subject central to the discourse of abstract rights' (Ahmed, 1989, p. 39). Yet, curiously, in the current era, it is often the fetus—surely the unspeaking subject *par excellence*—whose free will and intention is readily presumed, and by contrast the (speaking) child whose will is increasingly called into question.

This tendency to invoke the 'voice' of the fetus was illustrated most recently in 2000, in a controversial case in French law. The rise of a vehement ad hoc politics of representation in relation to subjects who can no longer speak for themselves should be a matter of interest here—other cases such as that of Tracy Latimer and Terri Schaivo come to mind.³ Here however, the rise of fetal rights stands in a paradoxical relationship to tendencies to discount the voice of actually speaking subjects (which I will treat later on in this paper).

In the Perruche case the courts awarded damages to his parents because doctors had failed to diagnose his exposure to Rubella in the womb, which left him from birth blind, and with severe mental impairment. The ruling provided Nicholas with lifelong protection against financial difficulties, but it was based on *his imputed desire not to have been born* with such a condition. In the words of his father: 'Would my son really have wanted to live if he'd known he had all these disabilities? That's the question I'm posing' (BBC World News, 17 November 2000; 'Boy compensated for being born', <http://news.bbc.co.uk/1/hi/world/europe/1028648.stm>, translated from *Journal le Matin*, 11 November 2000).

The constitution of a 'knowing fetal subject' who would choose death over disability allowed the courts to provide compensation (because of the doctors' culpability in allowing this particular birth to proceed), while neatly sidestepping questions about the state's more widespread responsibility to provide for its differently-abled subjects. By sleight of hand it conjured from the scene any reference to the intentions, motivations or responsibilities of the parents or the state. At the same time it provoked huge outcry among disabled groups who rightly saw the more sinister eugenic overtones in the imputed choice of death over disability.

This positioning of the fetus as *independent subject* has a longer history rooted in technological developments such as the ultrasound and feta-scope. We are by now all familiar with the image of the fetus in an amniotic sack photographed against the blackness of the universe, an image that highlights the extreme fiction of the fetus as floating a 'state of independence'. As for the mother, to the extent she appears at all, she is relegated to mere 'backdrop' (Condit, 1995). This framing has the effect of positioning the pregnant woman as 'a child to the fetus' in the sense

that she becomes '*minor and less politically represented than the fetus*, which is in turn made more *national* more central to securing the privileges of law, paternity and other less institutional family strategies of contemporary American culture' (Berlant, 1997, p. 85, emphasis added).

But there is something else happening here as well. The construction of the fetus–mother relationship as potentially hostile, defines a terrain in which the mother is exclusively responsible, while shifting focus away from the larger social context within which pregnancy and childrearing occurs. This imagery erases both the mother as subject, and hard-won recognition of her role as caregiver (following Nash) reestablishing her in an antagonistic relation to the fetus. This is achieved, moreover, by effectively splitting her from her own body, which is dismembered and served back to her as hostile terrain for the fetus—or, worse, as a weapon.

This view of mother's body as 'contested terrain' is forcefully advanced by the American Center for Law and Justice—a right-wing religious organization founded in 1990 to defend and advance 'religious liberty, the sanctity of human life and the two parent, marriage bound family'. Walter Weber, the organization's Senior Litigation Council writes:

At the border between 'non-personhood' and 'personhood' and citizenship, under ... the Constitution, is the event of birth ... The Supreme Court has never defined 'birth' for the purposes of the constitution ... The range of possible definitions ... extends from the onset of contractions or the rupture of the amniotic sac, at one end, to complete delivery of both child and placenta, at the other. A more focused approach looks at the child's passage from the womb to the world outside, a passage that goes through the birth canal. This is precisely the 'territory' in which the 'partial birth/abortion infanticide battle is fought ... The child who 'crosses the goal line'—by hand foot, or head—into the realm of legally recognized 'personhood' must receive full protection under the law ... Congress therefore has every right—and given the lives at stake, the obligation—to define birth as occurring when the child breaks the plane of the cervical os [the upper or inside end of the birth canal]... the child who breaks the plane of the birth canal would 'touch home plate' so to speak, and be regarded as legally safe from destruction. (Weber, 2004, p. 7)

Although this group has made little headway in overturning *Roe v. Wade*,⁴ its discursive logic has become the organizing principle for a particular variant of fetal rights which is making its way through the courts. Since the early 1990s there has been a rash of cases prosecuting women for actions that may have adversely impacted their fetuses. Until recently these cases were generally unsuccessful, but the language they mobilize is instructive, as it splits the pregnant woman from her body, treating it in an entirely instrumental relationship to the fetus. The umbilical cord becomes a mechanism through which women 'deliver drugs to minor children';⁵ a positive drug test for cocaine, present in the mother and newborn act as 'contributing to the delinquency of a minor' or 'assault with a deadly weapon'.⁶

Most of the cases have been launched against poor Black women 'selected for punishment as a result of the inseparable combination of their gender, race and economic status' (Roberts, 1991, p. 1424) lending credence to the wider argument that this glorification of the fetus functions expressly to undermine the rights

claims of 'failed citizens'—the woman, the black, the immigrant, the homosexual (Berlant, 1997).

Whitner v. South Carolina represents a landmark in this development. Upheld by the Supreme Court of South Carolina and refused appeal by the Supreme Court of the United States (a de facto endorsement) this case set the stage for a radical redefinition of both the fetus and the actions of pregnant women towards their unborn children. Here, Cornelia Whitner was sentenced to an eight-month jail term following the birth of her child who had suffered *in utero* from her cocaine addiction. The case broke new legal ground, reinterpreting the state Children's Code to include the fetus in its definition of 'child protection', and thus suggesting that Whitner had 'neglect[ed] to provide the proper care and attention for such child or helpless person, so that [their] life health or comfort is endangered' (cited in *Whitner v. South Carolina*, 1996, p. 29). This interpretation did more than transform the reality of the addict-become-pregnant into mother recklessly dabbling in cocaine—it criminalized medical services as well:

The Whitner decision radically expands the concept of child abuse, requiring health and social service professionals to report an ill-defined yet vast array of conduct that might damage a fetus. This standardless extension of child abuse law has caused substantial confusion and fear in the medical community. South Carolina practitioners must now divine, upon threat of imprisonment, what conduct by a pregnant woman adversely affects her fetus's 'physical or mental health or welfare' S.C. Code § 20-7-510 (A) and must report all women with viable pregnancies engaging in such conduct who seek their professional services to state authorities for possible prosecution. No proof of harm to the child is required. (*Whitner v. South Carolina*: Abrahamson, 1997)

Not surprisingly in this atmosphere of care-provider turned enforcement-officer, demand for pre-natal services by addicted women dropped sharply—in some centers between 50% and 80%—neither helping mothers nor furthering the rights of their unborn children (Ibid.).

Whitner v. South Carolina opened the door to more insidious developments. In May of 2002, in a questionable reinterpretation of the Children's Code, the Supreme Court of South Carolina charged Regina McKnight with feticide after the birth of her stillborn five-pound baby girl. Following the logic which stretched child protection laws to include the fetus, McKnight was found guilty of 'failing to supply the child with adequate health care'. The courts ruled the fetal death arising from cocaine use of the mother as a homicide. Once again the mother as subject vanished, repositioned in relation to her own body as theater for the pregnancy. This erasure of mother-as-subject and her refiguring as mere mechanical theater for the pregnancy surfaces in pathologist's testimony, instrumental in the court's findings, where she appears only as criminal subject whose cocaine use caused the deterioration of the placenta—'the *major heart-lung machine* while the baby was in utero' (State v. Regina McKnight, 2003, p. 168, emphasis added).

Apparently unimportant were the facts surrounding the case: the abysmal lack of social support for the young woman; her inability, with an IQ of 72, to find work; her reliance on her mother who she lived with; following her mother's sudden death, her spiral downward into homelessness, cocaine addiction and then pregnancy; and finally her lack of access to an adequate treatment program

for her substance abuse (Altrow & Goldberg, 2003). Before the onset of labor there was no indication the fetus was in difficulty; on her daughter's stillbirth she asked to hold the child, name her, request photographs—all the symptoms of a bereaved parent, belying the State's findings of depraved indifference. As the writ suggests, however, 'within minutes of the stillbirth, hospital staff assumed a second role . . . obtain[ing] a urine sample from McKnight and, upon evidence of cocaine, McKnight's signature on an informed consent form' (Ibid., p. 4). McKnight was charged with homicide by child abuse and sentenced to 20 years in jail to be suspended on service of 12 years. Her appeal to Federal Supreme Court was denied.

South Carolina remains the only state to charge a woman with homicide for a stillbirth, but several states now have legislation promoting fetal rights, including legislation that counts the fetus as a child in resources for prenatal care. And the United States is not the only country to experience a sea change in the scripting of the body of the pregnant woman. In Canada several provincial court cases have recognized the rights of the fetus as a person, although these findings were later overturned in federal courts.⁷ The most celebrated case was a father who sued his child's mother for prenatal injuries sustained in a car crash (*Dobson v. Dobson*). Here (affirming) Canadian judges practiced a kind of alchemy. They argued: 'birth transforms physical injury sustained by the fetus into actionable harm . . . what is actionable in this appeal is not whatever happened to the respondent as a fetus. What is actionable in this appeal is what is now happening to the child' (*Dobson v. Dobson*, cited in Nelson, 2000, p. 32). The effect was to treat the fetus as subject without ever having to pronounce on it as such, in hairsplitting logic that simply projected the impacts into the future onto the child.

Child Custody: From the 'Certainty' of the Fetus to the 'Confusion' of the Child

These cases attempt to elevate the fetus, directly or indirectly, to status of child. But they stand in curious contrast to recent attempts to silence the voices of children themselves, particularly in emerging politics around the nuclear family. In the past 40 years, mechanisms have proliferated that attempt to constitute the child as a legal person through increasingly complex systems of juridical representation. These included appointment of lawyers to represent children's interests independently from their parents; the expansion of guardian *ad litem* services; private consultation of the child by the judge in chambers; appointment of 'best friends' to speak on the child's behalf; court-appointed special advocates. These mechanisms are often burdened with a woeful lack of resources, to such an extent that 'children who have entered the legal system due to abuse or neglect in their own homes were often inadvertently re-victimized by the courts and public social service agencies' (Office of Guardian Ad Litem, Indiana, n.d.). Like the old mathematical puzzle in which one can continuously approach, but never reach, the end of a line by advancing half the remaining distance, this infinite regression of representatives can never effectively speak *as* the child.

These systems act in the child's best interests rather than according to the child's stated and expressed wishes. The effect is to lock the child in an interminable *pas de deux*. The child dances around the issue with a series of partners: parents who defend their liberty to raise children as they see fit; the state, which has an abiding interest in the child as a futurity; and an increasingly complex array of representatives. Up until the 1990s, this dance seemed to take children in a halting

progression towards increasing the child's voice. But new cases are emerging—particularly over custody—where the child's voice is increasingly under attack. Children's expressed interests have been subject to interpretive mechanisms at the best of times: a desire to stay with one parent over another might be dismissed as the subconscious rebellion against a disciplining parent; psychologists may engage children in role-playing games as interpretive mechanisms to divine the child's 'real' as opposed to stated needs or wishes. The most recent challenge to the child's voice takes the form of a theory known as parental alienation syndrome (PAS). Borrowing its rationale from the celebrated Stockholm syndrome, which suggests that hostages may, over time, come to adopt the views of their captors, this theory suggests that the more clearly a child asserts a preference to remain with one parent over the other (usually the mother over the father) the more likely that parental alienation syndrome is at work.

The late Richard Gardner, a clinical professor of child psychiatry at Columbia University, pioneered PAS, which he defined as:

a childhood disorder that arises almost exclusively in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from a combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent. (Gardner, 2002, p. 6)

Gardner's language is instructive as it ties a discourse of child empowerment to an argument about brainwashing, and de-emphasizes the nurturing bonds of the parent (usually the mother) who is reduced to status of 'programmer': 'the primary source of PAS children's empowerment is the child's programmer who empowers the child in the context of a campaign of denigration' (Ibid.). Gardner cites eight symptoms of parental alienation including: 1) a campaign of denigration; 2) weak, frivolous and absurd rationalizations for deprecation; 3) lack of ambivalence; 4) the 'independent thinker' phenomenon; 5) reflexive support of the alienating parent; 6) an absence of guilt over cruelty to and exploitation of alienated parent; 7) the presence of borrowed scenarios and 8) a spread of animosity to extended family and friends of the alienated parent.

The discrediting of the mother and child in this 'theory' revolve around two insidious strategies. First, it inverts and discredits key elements of an argument that might be used to support the child's preference—specifically a unequivocal opinion on the issue of custody that is supported not only by one parent but by family and friends. Unwavering opinion of the child and supportive opinion of family and friends is no longer a valid basis for the child's preference, but evidence of a campaign of 'brainwashing'. Second, the unfit parent or parent with a problematic relationship to the child is recast as victim, and the 'loved parent' is cast as 'emotionally disturbed and keeping the child from the relationship with the healthier parent' (Lund, 1995, p. 308). One wonders, with the eight criteria set out above, what conditions might *support* the child's preference to remain with one parent over the other if neither ambivalence nor certainty of evidence is adequate to the test.

Since its introduction in 1987, according to its originator, the growth of court cases in which parental alienation syndrome has been raised has been rapid. Internationally from 1987 to 2003, 81 cases in seven countries have used PAS as part of their argumentation, including the United States, Canada, Australia,

Germany, Great Britain, Israel and Switzerland (Gardner, 2003).⁸ One might argue this speaks to fathers becoming more interested in nurturing and care-giving roles, and certainly this role of fathers has been conspicuously overlooked (see Aitken, 2000), but fathers using PAS tend to want sole custody rather than a joint arrangement. More importantly, critics, including the California chapter of the National Organization of Women and the American Prosecutors Research Institute argue that the 'theory' is based on Gardner's own untested suppositions and stereotypical and largely misogynistic image of women rather than on fact. Gardner's instruction to court officials recommends that they 'choose therapists who will not "respect" a child's wishes when he or she prefers not to interact with the alienated parent and who will have a "thick skin" against the child's protestations, shrieks and screams, who are "comfortable with authoritarian and dictatorial approaches including threat therapy"' (Gardner, 1998, p. 377 cited in Kooklan, 2002).

Other critics have argued that the 'syndrome' is in fact the product of anecdotal evidence gathered from Gardner's own practice. PAS has not been subject to peer review and is not included within the American Psychiatric Association's DSM-IV, the manual which defines recognized psychiatric conditions. Moreover, 'absent from this definition is specific reference to sexual abuse allegations, but these are often the "denigration" to which Gartner referred in his definition. In this context, PAS becomes a litigation tool for the accused parent to discredit the validity of the child's sex abuse allegations by mounting an attack on the "inducing parent"' (Ragland & Fields, 2003a). The presumed prevalence of PAS and its suggestion of trumped up charges of abuse, moreover, have not been empirically tested and are at odds with national data sets which suggest that this type of false accusation is relatively rare (Ibid.). In addition, Ragland and Fields argue, 'Gardner often expressed disdain for child abuse professionals labeling them as "validators" theorizing that greed and desire for increased business prompted some sexual abuse allegations, and speculating that parents and professionals alike make false allegations "because [according to Gardner] all of us have some pedophilia in us"' (Ibid.).

In spite of PAS's shaky foundations, and the criticism that PAS is unable to offer any opinion of fact as to whether sexual abuse has occurred, there is a possibility that a jury will see the court's acceptance of the defendant's PAS expert as an endorsement of a scientific basis for the argument. It is difficult to determine the extent that PAS is being raised in custody battles although many mental health and legal professionals think it is fairly prevalent and making its way slowly through the courts (Bruch, 2001). In at least two states it has passed the Frye test of scientific admissibility, and it has become a favored argument in 'backlash' fathers' rights groups.⁹

It is important to remember that family law in the United States tends to be enacted at the state level. The social geography of such rulings and their relationship to regionally hegemonic value systems suggest divergent cultures between the north and the southern United States and between coastal states and the mid west, and is worthy of broader investigation. But this is not to suggest that such rulings are 'merely' local. When successful, they become part of the repertoire of legal reasoning that influences outcomes and directions of future decisions in other states. And at the Supreme Court level, evolving moral cultures at the local level can provide an argument for federal decisions. Finally, these 'local' cultures can jump scale and influence international legislation, as

evidenced in the role of American anti-abortion politics on United Nations Declaration of the Rights of the Child.

Conclusion

These struggles chart a battle along a continuum, which are not a story of expanding rights, but a tale of complex and shifting alliances where the invocation of rights for one 'group' can be effectively used to disenfranchise others. In this sense one cannot *add* children's rights to the long list of voices demanding to be heard. These cases, considered together, demonstrate that a politics of representation can be equally mobilized to distort the child's voice, arising from the limits of a liberal construct of the subject, in which children's voices are filtered through the wishes and agendas of others. At one end we have the case of an apparently 'knowledgeable' fetus that would have chosen death over birth to avoid a life with physical and mental impairment, at the other end we have children able to vocalize preferences that are actively discounted by self-styled experts who contest the child's ability to know their own wishes, and who suggest that the more clearly they voice their intentions, the more perfectly this becomes evidence of 'brainwashing'. Equally important, this selective presencing and absencing of the child's voice has broader ramifications for the subjecthood of others, discrediting or supporting the agendas of subjects who are entrusted as their caregivers.

More significant, it is precisely the impossibility of the child as liberal subject that must make us wary of calls for liberal constructs of children's rights. Under liberalism the child remains an abbreviated—and abbreviating subject: never fully independent and whose dependency serves to limit the personhood of others. Indeed it is the liberal limits to the child as person that is mobilized in the erasure of the rights of others. This occurs across all stages of childhood (see also Ruddick forthcoming).¹⁰

Emerging discourses around fetal rights and development of interpretive 'theories' such as parental alienation syndrome are two such examples where a politics of representation is being used to re-instantiate neo-conservative and neo-liberal agendas. They suggest that, as feminists, we need to rethink the basis of the subject of liberalism itself: not in terms of children as 'failed subjects'—as partial or incomplete persons, never fully actualized, but in terms of their inter-subjectivity, in terms of relationships of exchange and dependence that work across 'the' subject's divides.

Acknowledgements

Draft first presented at the Association of American Geographers, Los Angeles 2002.

Notes

1. In most Anglo-American countries (with Australia as the exception), legal decisions governing families and children tend to be organized around a principle of subsidiarity—that is, unless key issues are at stake it is the lowest court in the land that reviews a case. It would be impossible because of the dispersed nature of these rulings to present a comprehensive overview of legal decisions affecting the child. There are, however, precedent-setting cases that work their way into national and international public discourse—either because they have been heard in national-level courts, or because they have particularly significant effects on specific interest groups. To

- document shifts in the positioning of child as legal subject and the role of the family, therefore, I have focused largely on these types of cases, which have become critical points of reference in shaping subsequent legal debate and decision.
2. Thanks go to Barbara Hooper for this concept.
 3. A parallel can be drawn in the case of the murder of Tracy Latimer—a ten-year-old afflicted with cerebral palsy who was killed by her father by carbon monoxide poisoning. Although the sentence for the father was life with parole after 25 years the judge, considering this to be a mercy killing, commuted it to one year in prison. Here it is not the imagined wishes of the already born, but the conveniently now dead that come into play.
 4. *Roe v. Wade* is a landmark ruling in the United States that enshrined pregnant women's right to chose pregnancy or abortion.
 5. *Johnson v. State*, 602, So. 2d 1288 (Florida, 1992).
 6. *Ibid.*; *People v. Hardy*, 469, N.W. 2d 50 (Michigan); *State v. Inzar*, Nos. 90CRS6960 90CRS6961 North Carolina, Super. Ct. Robeson City 1991, cited in Center for Reproductive Law & Policy, 1996.
 7. In *Tremblay v. Daigle*, for instance, the federal government overturned a provincial ruling that would have required a woman to carry a fetus to term at the request of her 'dominant, jealous and physically abusive' estranged boyfriend. Here, federal rulings around fetal rights often follow a kind of alchemy that limits the recognition of the fetus as Hobbesian subject as an *effect* of the juridical process without ever claiming to speak directly about the issue of the personhood of the fetus. Thus the federal court ruled: 'The issue was thus not whether a foetus is a person *per se*, but whether the relevant legislation accorded a foetus legal status and rights for the purpose of granting an injunction restraining Ms. Daigle from having an abortion. For the Court, the broader social, political, moral and economic issues were to be more appropriately left to the legislature.' Case Summary *Tremblay v. Daigle* [1989] 2 S.C.R. 530.
 8. This observation itself is a matter of some debate. Although Gardner's website suggests by implication that the cases he lists are examples where PAS has been demonstrated, many of these cases, while not discrediting the theory, simply rule that it does not apply to the families in question. See for example *McLelland v. McLelland*, British Columbia Supreme Court Docket Nanaimo 07907, 1999, Carswell BC 1706, 2 July 1999.
 9. This is a term the National Organization of Women (NOW) has used to characterize fathers' rights groups that are intent on re-instating a neo-conservative and patriarchal nuclear family. It is not intended to apply to all groups representing fathers' rights (see Part Two of this article).
 10. Aspects of this argument that relate to state supports for social reproduction will be more fully developed in Part Two of this article.

References

- Abrahamson, Daniel (1997) Amicus Brief from the Lindesmith Center, No 97-1562, *Whitner v. South Carolina*, 24 pages.
- Ahmed, Sara (1989) *Differences That Matter. Feminist Theory and Postmodernism* (Cambridge, Cambridge University Press).
- Aitken, Stuart (1998) *Family Fantasies and Community Space* (New Brunswick, NJ, Rutgers University Press).
- Aitken, Stuart (2000) 'Fathering and Faltering: 'Sorry, But You don't Have the Necessary Accoutrements'', *Environment and Planning A*, 32(4), pp. 581–598.
- Alenan, Leena (1994) 'Gender and generation: feminism and the 'child question'', in: Jens Qvortrup, Marjatta Bardy, Giovanni Sgritta & Helmut Wintersberger (Eds) *Childhood Matters*, pp. 27–42 (Aldershot, UK, Avebury Press).
- Altrow, Lynn & Goldberg, David (2003) Petition for a Writ of Certiorari, *McKnight v. State of South Carolina*, 70 pages.
- Benhabib, Seyla (1999) 'The Liberal Imagination and the Four Dogmas of Multiculturalism', *The Yale Journal of Criticism*, 12(2), pp. 401–413.
- Berlant, Lauren (1997) *The Queen of America Goes to Washington City* (Durham, NC and London, Duke University Press).
- Bruch, Carol (2001) 'Parental Alienation Syndrome: Junk Science in Child Custody Determinations', *European Journal of Legal Reform*, 3, p. 383.
- Center for Reproductive Law and Policy (1996) *Part I. Punishing Women for their Behavior During Pregnancy: An Approach That Undermines Women's Health and Children's Interests* (New York, Center for Reproductive Law and Policy).

- Condit, Deirdre (1995) Fetal personhood: political identity under construction, in: Boling Patricia (Ed.) *Expecting Trouble: Surrogacy, Fetal Abuse and New Reproductive Technologies*, pp. 25–54 (Boulder, CO, Westview).
- Dobrowolsky, Alexandra & Jenson, Jane (2004) Shifting Representations of Citizenship: Canadian Politics of 'Women' and 'Children', *Social Politics*, 11(2), pp. 154–180.
- Dobson v. Dobson* (Litigation Guardian) (1999) 174 D.L.R. (4th) 1 S.C.C.
- England, Kim (1993) Suburban Pink Collar Ghettos: The Spatial Entrapment of Women?, *Annals of the Association of American Geographers*, 84(3), pp. 225–242.
- Gardner, Richard (1998) *The Parental Alienation Syndrome: A Guide for Mental Health and Legal Professionals* (Cresskill, NJ, Creative Therapies).
- Gardner, Richard (2002) Empowerment of Children in the Development of Parental Alienation Syndrome *American Journal of Forensic Psychiatry*, 20(2), pp. 5–29.
- Gardner, R. (2003) Court rulings specifically recognizing parental alienation syndrome in the United States and internationally, Accessed on http://www.rgardner.com/refs/pas_legalcites.html.
- Hanson, Susan & Monk, Janice (1982) On Not Excluding Half the Human in Human Geography, *The Professional Geographer*, 34, pp. 11–22.
- Hanson, Susan & Pratt, Geraldine (1994) Commentary on 'Suburban Pink Collar Ghettos: The Spatial Entrapment of Women?', by Kim England, *Annals of the Association of American Geographers*, 84(3), pp. 500–502.
- Haraway, Donna (1992) The promise of monsters: a regenerative politics for inappropriate/d others, in: Lawrence Grossberg, Cary Nelson & Paula Treichler (Eds) *Cultural Studies*, pp. 295–337 (New York, Routledge).
- Harstock, Nancy (1990) Foucault on power: a theory for women?, in: L. Nicholson (Ed.) *Feminism/Postmodernism* (London & New York, Routledge).
- Hobbes, Thomas (1651) *Philosophical Rudiments Concerning Government and Society*, Reprinted (1972) in: William Molesworth (Ed.) *De Homine and De Cive* (New York, Doubleday Anchor).
- HSS Press Office (1996) Fact Sheet, Administration for Children and Families. The Personal Responsibility and Work Opportunity Act of 1996.
- Katz, Cindi (2004) *Growing up Global. Economic Restructuring and Children's Everyday Lives* (Minneapolis, University of Minnesota Press).
- Kooklan, Paria (2002) Parental Alienation Syndrome in the Family Courts, *California National Organization of Women. Family Court Report*, 65 pages.
- Laquer, Thomas (1990) The facts of fatherhood, in: Evelyn Fox-Keller & Maryanne Hirsch (Eds) *Debates in Feminism*, pp. 205–221 (New York & London, Routledge).
- Lund, Mary (1995) A Therapist's View of Parental Alienation Syndrome, *Family and Conciliation Review*, 33(3), pp. 308–316.
- Mitchell, Kathryne, Marston, Sallie & Katz, Cindi (2004) *Life's Work. Geographies of Social Reproduction* (Oxford, Blackwell).
- Nash, Kate (2001) Feminism and Contemporary Liberal Citizenship: The Undecidability of 'Women', *Citizenship Studies*, 5(3), pp. 255–268.
- Nash, Kate (1998) *Universal Difference: Feminism and the Liberal Undecidability of 'Women'* (Hampshire & London, MacMillan Press).
- Nelson, Erin (2000) Case Comment: *Dobson v. Dobson* (Litigation Guardian), *Health Law Review*, 8(3), pp. 30–35.
- Nieuwenhuys, Olga (1994) *Children's Lifeworlds: Gender Welfare and Labour in the Developing World* (London & New York, Routledge).
- Office of Guardian Ad Litem, State Court Administration, Indiana, n.d. Available at <http://www.state.in.us/judiciary/galcasa/about.html>.
- Pateman, Carole (1988) *The Sexual Contract* (Cambridge, Polity Press).
- Ragland, Erika & Fields, Hope (2003) Parental Alienation Syndrome: What Professionals Need to Know, Part 1, *Update. American Prosecutors Research Institute*, 16(6). Available at http://www.ndaa-apri.org/publications/newsletters/update_volume_16_number_6_2003.html.
- Ragland, Erika & Fields, Hope (2003) Parental Alienation Syndrome: What Professionals Need to Know' Part 2 *Update. American Prosecutors Research Institute*, 16(7) American Prosecutors Research Institute 16(7). Available at http://www.ndaa-apri.org/publications/newsletters/update_volume_16_number_7_2003.html.
- Roberts, Dorothy (1991) Punishing Drug Addicts Who Have Babies: Women of Color, Equity and the Right of Privacy, *Harvard Law Review*, 104(7), pp. 1419–1482.
- Robson, Elspeth (2000) Invisible Carers: Young People in Zimbabwe's Home-based Health Care, *Area*, 32(1), pp. 59–69.

- Rose, D. (1984) Rethinking Gentrification: Beyond the Uneven Development of Marxist Urban Theory, *Environment and Planning D: Society and Space*, 2(1), pp. 47–74.
- Ruddick, Sara (1990) Thinking about fathers, in: Evelyn Fox-Keller & Maryanne Hirsch (Eds) *Debates in Feminism*, pp. 222–233 (New York & London, Routledge).
- Ruddick, Susan (2006) Abnormal, the New Normal, and Destabilizing Discourses of Rights, *Public Culture*, 18(1), pp. 53–78.
- Smart, Carolyn (1999) A History of Ambivalence and Conflict in the Discursive Construction of the ‘Child Victim’ of Sexual Abuse, *Social and Legal Studies*, 8(3), pp. 391–409.
- State v. Regina McKnight* (2003) 124 S. Ct. 101.
- Valentine, Gill (1996) Children Should Be Seen and Not Heard? The Role of Children in Public Space, *Urban Geography*, 17, pp. 205–220.
- Weber, Walter (2004) Partial Birth Abortion Ban: Defending Against Infanticide at the Border, Available at <http://www.acjl.org>.
- Whitner v. South Carolina* (1997) 328 S.C.1, 492 S.E.2d 777.
- Wright, David, Gould Ellen, Ingrid & Schill, Michael H. (2001) *Community Development Corporations and Welfare Reform: Linkages, Roles and Impacts* (Albany, NY, Rockefeller Institute Press).

ABSTRACT TRANSLATION

Al horizonte del sujeto: neo-liberalismo, neo-conservadorismo y las derechas de la/el niña/o Primera parte: Desde ‘conocer’ el feto hasta la/el niña/o confundida/o

RESUMEN La imposibilidad de la/el niña/o para representar sus propios intereses como un sujeto legal (según la definición), y el interés constante del estado en la/el niña/o como el futuro o un recurso atrapa la/el niña/o en un *pas de duex* interno: la/el niña/o continuamente se acerca la posibilidad de ser ‘persona’ pero nunca lo logra. En los últimos cuarenta años, en las naciones occidentales las posición legal de la/el niña/o como persona han sido simultáneamente invocado y restringido: a través de una selección creciente de personas y organismos que, como un *exterioridad*, pretenden ser ‘el representante mejor’ de la/el niña/o; y a través de un cada vez más finamente matización del mapa de la *interioridad* de la/el niña/o, lo cual filtra la voz de la/el niña/o a través de un rango de teorías interpretativas y mecanismos. En esta lectura miope y floja de la/el niña/o, la voz de la/el niña/o desaparece. Este papel es la primera parte de dos artículos que examinan la relación entre la/el niña/o con la noción liberal del sujeto. En la ley sobre las derechas del feto y asuntos de custodia en los Estados Unidos y otros lugares, se encuentra una situación paradójica donde el ‘feto’ se da una voz más autoritativa en términos de lo que ‘quiere’ que la/el niña/o, cuyos deseos se cuestionan perpetuamente. Juntos, estos dos papeles plantean cuestiones sobre la naturaleza del sujeto qua individual. Subrayan la potencial para un discurso de ventrilocuo acerca de la/el niña/o del cual los grupos neo-liberales y neo-conservadores que pretenden hablar por la/el niña/o movilizan sus propios intereses políticos.

PALABRAS CLAVES: Niño; derechas; neo-liberalismo; neo-conservadorismo; familia