4

COMMUNITY DISINTEGRATION OR MORAL PANIC?

Young people and family care

Donna Dickenson

Introduction

The spread of liberal individualism to the family is often portrayed as deeply inimical to the welfare of children and young people. In this view, the family is the bastion of the private and the antithesis of the contractual, rights-oriented model which underpins public life.[1] When the values of personal choice and individual rights 'infiltrate' families, Michael Hammond argues in chapter 5 of this volume, care within families is threatened. Examples might include proposals for freely negotiated marriage contracts,[2] or provisions allowing children to determine where they will live – even to 'divorce' their parents.[3] Although all family members suffer, in this view, the greatest impact will presumably be on children. They are more vulnerable, more dependent on care, and less able to do anything about its erosion. Thus children and young people are a touchstone for the decline in community standards and family life, on this account.

Conversely, the apparent lawlessness of children and young people is cited to prove that the thesis about family erosion is correct. The breakdown of community values is seen as both the cause and the outcome of poor discipline and bad childrearing practice. In the Jamie Bulger case, for example, the apparent amorality of the two children who killed was presented in the media as traumatic evidence of a decline in community *mores*. The Labour leader Tony Blair responded to the Bulger case by warning that 'If

we do not learn and then teach the value of what is right and what is wrong, then the result is simply moral chaos which engulfs us all.' Labour proposed a curfew on children, a model which has also been suggested in the USA. The effective lowering of the age of criminal responsibility from 14 to 10 which quickly succeeded the Bulger case in March 1994 (reversed in March 1995) represented another attempt to shore up 'traditional' standards again.

The exponential increase in expulsions from schools is likewise cited as proof that young people, corrupted by 1960s notions of freedom and rights, are beyond teachers' control and the community's powers of socialisation. The case of 13-year-old Richard Wilding, for example, attracted national attention in April 1996 when teachers at his school threatened to strike if the expulsion order against him was rescinded at his parents' request. Later that year a supposedly anarchic school in Halifax, The Ridings, was the object of similarly intensive media scrutiny, swiftly followed by a series of stories on litigation mounted by unsuccessful GCSE pupils against their schools. All were meant to show that children are now in charge, and yet simultaneously out of control.

There are several possible ways of attacking this commonly held position about community disintegration, as exemplified by family breakdown. First, one might argue that reports of the family's death are greatly exaggerated, or even that moral panic has been deliberately cultivated. Both political parties in the UK, it can be argued, have contributed to these jeremiads because blaming the *family* for a breakdown in law and order among the young removes any responsibility from *government*. If the state represents the family writ large,[4] then any decline in the family's authority is also bound to frighten politicians. The media are likewise culpable: the tearaway adolescents in the film *Kids*, for example, have been said to demonstrate that 'tarnished innocence is big bucks'.[5] To put things less conspiratorially, childrearing is newsworthy simply because most of us are or will be parents, and all of us have been children. One journalist explains her profession's obsession with children in these terms: 'Childhood is the site for a collision of the great themes of our modern narrative: for us, it is the place where too much fondness for the past meets too great a fear of the future.'[6]

Second, there might be cause to celebrate rather than mourn the death of the 'traditional' family. In Anglo-American law, most ferociously expressed in the doctrine of coverture, the entire civil existence of the wife was suspended during marriage.[7] Her property and earnings were entirely under her husband's control, and she had

no independent power to enter into contracts or conduct a business. Coverture actually strengthened rather than diminished in revolutionary America – under a regime devoted to the 'rights of man'. In the UK vestiges of it persisted nearly up to the millennium; only in 1990, for example, did married women in the UK earn the duty and right to file their own tax returns, rather than being covered on their husbands' statements. In addition the father inherited substantial control over his children from Roman law. The subordination of women and children in the common-law model of the family[8] casts into doubt the mutual trust, reciprocity and selflessless which advocates of the traditional family eulogise. Perhaps women and children had no alternative but to trust husbands and fathers, who may or may not have been able to distinguish between their own interests and those of the family as a whole. Perhaps reciprocity was really one-sidedness, and women's selflessness enforced by the lack of economic alternatives. Feminist theorists have also argued that men's freedom to enter into the social contract, which guarantees rights in the public realm, depends in its turn on the pre-existing subordination of women in the private sphere.[9] The family is, or should be, a site of struggle; the alternative is the enforced unity, in the person of the husband, which coverture represented.

I do not disagree with either of these counter-blasts against the 'community disintegration' thesis, but in this chapter I shall instead pursue two less theoretical and more empirical strategies. First, I shall argue that in many respects young people in liberal, rights-oriented systems, particularly the UK, *actually* have *less and less* autonomy.[10] Although the logic of rights is often said to be unstoppable and insatiable, I will offer case examples which demonstrate that young people's right to refuse medical treatment, for example, is considerably weaker than it was ten years ago. This radically undermines one of the most basic rights of all, on which other freedoms crucially depend: the right of bodily integrity, the freedom from invasion of the physical person. Children and young people are not covered by 'the premise of thorough-going self-determination' about what shall be done with their own bodies, the principle with which Anglo-American law has been said to begin.[11] If they lack that right, then *a fortiori* they lack others.

Instead the notion of the young person's 'best interests' or welfare dominates in current English law. This assumes that someone – the 'community'? the doctor? the judge? – is more competent to determine young people's best interests and true

wishes than they are. A disturbing increase in the numbers of children between 10 and 14 who are admitted to psychiatric wards has also been interpreted as the medicalisation of 'conduct disorders': use of a psychiatric diagnosis to control unacceptable adolescent behaviour.[12] These two phenomena are linked: the cases which established that young people have no right to refuse medical treatment involved both psychiatric diagnoses and disagreement among practitioners about whether a psychiatric diagnosis was appropriate to control these young people's behaviour.

So rather than arguing that reports of the death of the family and of community values about childrearing are greatly exaggerated, I shall be claiming that young people's rights are grossly overstated. (In passing, I think that this also applies to reports of the unstoppable growth of women's rights within the family, but I will not be making those arguments here.)[13] I conclude that young people in liberal, rights-oriented systems, particularly the UK, actually have too little autonomy, rather than too much. If there really is a decline in family or community cohesion, it does not stem from the supposed triumph of rights language and personal choice, because that 'victory' is largely illusory where children and young people are concerned.

Second, I will look at other legal systems, particularly those which privilege community standards above individual rights. Such deontological codes are found in southern Europe, where they may well apply to all patients, not only children. In Greek medical law, for example, the mere condition of being a patient *ipso facto* precludes full autonomy: 'a patient is a person whose mental and bodily capacities have been diminished due to some serious malfunction in her bodily organs'.[14] In relation to adults, at least, the right of consent and refusal is now enshrined in legislation based on northern European models.[15] But the emphasis on doctors' duties rather than patients' rights persists, for example in article 441 of the Greek penal code, which punishes doctors who unjustifiably withhold their services and their duty of care.[16]

Likewise, the language of children's rights is less prevalent in these more paternalistic systems than the rhetoric of parental duties, and it is the notion of a moral community which underpins those duties. Whereas the Bill of Rights and the Constitution can be seen to symbolise Americans' communal commitment to the language of rights, the deontological codes and constitutions of southern Europe give voice to a different community consensus.

The Spanish Civil Code, for example, promises parents the help of the state in fulfilling their duties of care towards their children. This is a discourse of *patria potestas*, not of rights. Article 39.3 of the Spanish Constitution declares that 'Parents must give assistance of every kind to their children, both matrimonial and extra-matrimonial, during their minority and in other cases in which it is legally foreseen.'[17] Parental responsibilities under such deontological systems are considerable, and courts are willing to enforce them. In December 1996, an Italian court actually required a mother to continue supporting and housing her 24-year-old son for as long as he wanted to live with her. Advocates of communitarianism are sometimes accused of appealing to hypothetical or ahistorical notions of community, which provide no grip on how we should approach the breakdown of our communities that they castigate. I think that this criticism is justified, and that an examination of actual legal and moral systems with very different attitudes towards rights and duties can be productive. Are things somehow better in countries where the language of children's rights does not dominate the discourse of the family?

The rights of children?

Children and young people are the focus of fears about the breakdown of community *mores*, whether they are perceived as the victims or instigators of moral decline. But are those fears justified? Do children and young people suffer from an excess of freedom and a surfeit of rights?

The community disintegration thesis *is* probably correct in identifying a growing societal – or even world-wide[18] – consensus in favour of extending more decision-making powers to children, and of relying less on 'because I say so' as an adequate rationale for parental authority. Over some twenty years statute and case law, reflecting wider social and political trends, has indeed sought to give greater weight to children's expressions of their own feelings.[19] This trend was made explicit in the Children Act 1989, which emphasised the importance of a child's own choices.[20] Passed with all-party approval and after wide-ranging consultations by the Law Commission, the Act also built on the 1986 *Gillick* case,[21] which established that the child's full consent to examination, treatment or assessment is required if she or he 'is of sufficient understanding to make an informed decision'. Even before *Gillick*, section 8 of the Family Law Reform Act 1969 had specified that the consent of a

young person aged 16 or 17 to medical treatment 'shall be as effective as if he were of full age'.

Recent case law in England, however, has run counter to this trend. Contradicting the spirit (if not the letter)[22] of the Children Act, a succession of judgements has sought to restrict young people's choices, especially those about medical or psychiatric treatment. The 'best interests' of the child have generally been interpreted in a paternalistic manner, ignoring the young person's ascertainable wishes and allowing even 'Gillick-competent' children no right to refuse treatment to which someone with parental responsibility for them has given consent. Essentially, children and young people under 18 now have no right to *refuse* treatment in circumstances under which English law would none the less allow them to *consent* to whatever is proposed. But it seems clear that the right to *give* consent must also entail the right to *refuse* consent; otherwise, the right to consent merely translates into a right to agree with the doctor.[23]

This is exactly what happened in *Re W* (1992).[24] The 16-year-old anorexic in this case was co-operating with non-invasive treatment that kept her weight low but stable. She was none the less transferred against her will to a clinic where she might possibly be force-fed, despite disagreement between the two presiding physicians over which course of treatment was in her best interests. The court determined that she had no right of informed *dissent* to feeding by nasogastric tube, even though she would have been permitted to give her *consent*.

The issue in *W* was *not* the young woman's mental condition, the diagnosis of anorexia nervosa. It was held in this instance that even a *competent* minor could not veto treatment so long as there was consent from someone with parental responsibility – in this case, the local authority. A 1991 case, *Re R*,[25] involving a 15-year-old girl who was given antipsychotic drugs against her will, had already found that a young person of *intermittent* competence was barred from refusing treatment to which someone with parental responsibility had consented. (Again there was conflict among the care teams called on to give consent, but the court chose to listen only to the more paternalistic evaluation of the psychiatrists; R's social worker, on the other hand, believed she *was* lucid and competent to refuse consent.) The effect of *W*, then, was to deny the right to refuse invasion of bodily integrity even to a competent young person. This in turn means that 'a child or young person whose competence is in doubt will be found competent if he or she accepts

the proposal to treat but may be found incompetent if he or she disagrees'.[26]

A third decision, *South Glamorgan County Council v. W and B* (1993),[27] took this tendency even further. R and W had at least been formally diagnosed as suffering from mental disorders, borderline though those diagnoses may have been. But the 15-year-old girl in the South Glamorgan case – although she was extremely reclusive and had a poor record of school attendance – had not been diagnosed as suffering from any psychiatric or personality disorder at all. None the less she was compelled by the High Court to receive in-patient psychiatric assessment and treatment against her will, although (contra *Gillick)* the judge had found that she *was* of sufficient understanding to make an informed decision.

I do not wish to argue that these cases necessarily reflect a general backlash of communitarianism; both *R* and *W* came under the courts' inherent jurisdiction, a fairly narrow and specific area.[28] What these cases *do* demonstrate, however, is that children's 'rights' are not all they are cracked up to be, in the 'community disintegration' thesis. In the significant area of consent to medical treatment – which epitomises the crucial, foundational rights of bodily integrity and property in the person – they underline the rights of parents and physicians instead.

> It is important to remember that these problematic cases determined that doctors could, with the parents' approval, impose invasive treatment on an unwilling young person under the age of eighteen, whatever his or her mental competence, without having to seek approval from a court. In other words, the decisions were about medical power.[29]

Thus it would be possible 'as a matter of law', according to Lord Donaldson, the judge who delivered the decisions in *R* and *W*, for parents and/or physicians to force an abortion on an unwilling 17-year-old. One is hardly mollified by his observation that doctors would never do this, especially as Donaldson added 'unless the abortion was truly in the child's interests'.[30] Even more disturbing are the possible implications of a recent wardship case – admittedly involving a much younger child – which appear to subsume the child's identity and interests entirely to those of the parent. On this view, a child might well have no independent rights whatsoever, including the right of continued existence.

The Appeal Court case of *In re T* (1996)[31] held that a child of two with a serious liver defect, in need of life-sustaining surgery, had no right to the procedure when his mother refused consent. This is the logical obverse of the doctrine validated in *R* and *W*: that children and young people have no right to refuse consent to a procedure if someone with parental responsibility does consent. What was even more extraordinary about this recent decision is that Lord Justice Butler-Sloss stated that the mother and child were one for the purposes of the decision, because the welfare of the child depended on the mother. In a startling twist of the argument based on the child's welfare, Lord Justice Butler-Sloss then deduced that the mother's right to refuse the procedure – which will almost certainly result in the child's earlier death – is also in the child's welfare. Now one could perfectly well argue the rationality of refusing a difficult procedure with only a partial chance of success; but that does not require the extraordinary dictum stating that the child has no objective criterion of welfare apart from whatever the mother thinks it to be. (Butler-Sloss chaired the Cleveland enquiry panel into what were deemed to be over-zealous investigations of child abuse, and could perhaps be expected to be particularly sensitive to parents' wishes.) Whatever the judge's reasoning or motivations, this latest case underlines the consistent trend in English law over the past few years *away* from independence, rights and autonomy for children and young people.

The duties of parents?

I argued in the previous section that advocates of the 'community disintegration' thesis have mistaken the rhetoric about children's rights for reality. Recent UK case law has radically undermined the rights of children and young people, in particular the fundamental right of bodily integrity. In this section I will present an apparent mirror image: legal systems in which the liberal rhetoric of children's rights is absent, even fiercely resisted, in favour of the deontological language of parental responsibilities. These systems are prevalent in southern Europe, although they are evolving towards more child-centred attitudes under pressure from international and European conventions (whereas, in passing, the UK system might be said to be slipping backwards). On the face of it, these systems should appeal to advocates of the 'community disintegration' thesis. They seem to reflect a societal consensus, embodied in constitutions, codes and statutes, in support of the

'strong family' and against the dissolving, individualistic discourse of rights. For example, article 147 of the Italian Civil Code actually requires parents to impose their considered judgement over any disagreement from the child, although the code does call for reasoned discussion.[32]

The origins of this doctrine may make communitarians slightly more uncomfortable. The Italian Civil Code dates back to 1942, the Fascist period. Although its emphasis on parental authority was subsequently undercut by the Constitution of 1974, even adults do not enjoy unlimited self-determination. Article 32 of the Constitution upholds the principle that patients should not be treated against their consent, but with the rather surprising exception of compulsory treatment under Act of Parliament. However, informed consent is rarely sought in any other context than surgery: not, for example, in relation to invasive drug treatment or blood transfusions.[33] There is considerable reliance on implicit consent and reluctance to use the language of rights, which is perceived as extraneously Anglo-Saxon.[34]

The *child's* right to be informed of the likely risks and consequences of proposed treatments is legally vested in the *parent* by article 28.3 of the Constitution. The same article gives the *doctor* ultimate responsibility for the child's welfare, further overriding the young person's rights. However, recently at least one Italian jurist has argued that the spirit of the Constitution is consistent with greater autonomy for children and young people, at least as a limit on the exercise of the parents' power. It appears possible for courts to uphold a minor's refusal of treatment against the wishes of his or her parents, upon request by the Public Prosecutor or a third party.[35] If this interpretation is correct, the Italian duty-based system may sometimes award more effective powers of informed refusal to children and young people than our own 'rights-based' one. Similarly, the 1995 Deontological Code for Italian doctors enjoins an absolute duty of confidentiality for information received on trust from the child, which may not even be disclosed to parents.[36]

The direction of causation from duties to rights or rights to duties is a vexed question in philosophy. A contractarian approach, of the sort which underpins political liberalism, sees rights as prior, as existing in the state of nature and as secured by the rules of the social contract by which we choose to bind ourselves in order precisely to protect those rights. Deontologists, on the other hand, present rights as a second-order concept: your rights are contingent

upon my duties.[37] Similarly, in a principle-based approach to medical ethics, rights are created by rules or principles.[38] But in actual legal practice, it seems plausible, at least, that the rights of minors in relation to bodily integrity and consent are more real in Italy than in England.

The distinction between societies emphasising parental duties and those stressing children's rights is further clouded when we look at *wider communities* than those of the nation-state. The movement towards international legal recognition of universal human rights is expressed in the UN Convention of 1989 on the rights of the child.[39] If these rights are absolute, they do not depend on capacity or competence; neither are they granted to children by adults or governments, but as a consequence of membership in humanity. As a consequence, countries are not called upon to *attribute* such rights to children, but to '*respect*' such rights because they already exist in themselves. The country must 'guarantee that they be enjoyed in practice (article 2)'.[40] The implications of this convention, for deontological systems such as Italy's, mean 'going beyond the fairly widespread view within the community at large according to which children are perceived as an appendix of an adult (parents, teachers, guardians, etc.) who, even when catering to the needs of the child, do so by exercising their own rights'.[41] Although the convention does contain a limiting clause concerning the child's 'sufficient discernment', this is not so far off 'sufficient understanding to make an informed judgement', the criterion for *Gillick* competence. But we have already seen that the effect of the *W* case is that even a Gillick-competent young person has no right to refuse treatment in English law.

An even more overt change to the language of rights can be found in the Council of Europe Convention on the exercise of children's rights, submitted to member states for ratification on 25 January 1996. The Convention is concerned with promoting children's substantive and procedural rights, particularly in relation to participation in, and sufficient information about, judicial procedures concerning them. Eschewing the language of child *protection*, the Convention freely uses the language of rights *promotion*. Member countries are urged to devise means by which children can participate directly in court proceedings, provide specialised assistance enabling them to express their opinions, and afford independent representation, particularly in family proceedings. The European Human Rights Convention likewise allows children and young people to submit claims against their national

governments in their own name before the European Court. If the Italian system is serious about incorporating the Council of Europe and the UN conventions (the latter ratified by Italy in 1991 and incorporated into statute)[42] we may have the ironic situation in which 'paternalistic' Italy affords young people more autonomy than 'liberal' England.

Conclusion

It should be clear by now that I regard the notions of family and community disintegration, under the pernicious influence of children's rights, as an instance of moral panic. If anything, the rights of young people in the UK are less secure than they were in the past decade. Meanwhile, the Italian system has moved on somewhat from its earlier emphasis on parents' duties rather than children's rights – an approach which communitarians might well find sympathetic. Yet there seems little fear among Italian jurists of any breakdown in 'community'; rather, a sense that the demands of the wider European community, and the universality of membership in the *human* community, demand some recognition of children's rights. Perhaps, too, the rhetoric of all-encompassing parental duties has its own costs for the community. It is probably no coincidence that Italy has the world's lowest birth-rate:[43] the commitment required of parents – a lifelong duty of provision and support to their children, enforceable by courts – is ironically higher in that system than in one nominally oriented to children's rights.

Why are we in the UK subject to this kind of moral panic? In possible explanation, I want to end on what is admittedly a speculative note about the social construction of childhood. Perhaps it is no more speculative, after all, than other notions about ethical consensus and community, and appropriate to a chapter in a book on that subject.

The notion is this: that 'childhood is not a fact; it is a theory, namely a social theory...One is a child when, and only till the moment when, the society decides that he or she is a child, namely that he/she has different rights and obligations from an adult.'[44] It would be much easier if childhood *were* a fact, but it is not. Past societies, as Philippe Ariès argued in his influential *Centuries of Childhood*, frequently lacked any notion of children as anything other than miniature adults. Until the Victorian period, European children were dressed in the ruffs, furbelows and bodices proper to adults, and the passage from infancy to adulthood was mediated, at

most, by a period of apprenticeship to adult life. Childhood was not idolised in the modern, post-Romantic manner, influenced by Wordsworth's and Rousseau's intimations of moral purity in children. This view may be somewhat simplistic, but it reminds us that childhood is what we make of it.

In this sense the community decides what the boundaries of childhood are. Perhaps we have a genuine and troubling sense that we are getting it wrong; or perhaps we rather envy our young people for what we perceive as their cosseted childhoods and prolonged adolescences. The German sociologists Ulrich Beck and Elisabeth Beck-Gernsheim offer a more charitable interpretation in *The Normal Chaos of Love*. Along with other attributions by formerly fixed status – 'status fates' – childhood, like the family, is an arena of contest and conflict.

> The bourgeois nuclear family has been sanctified or cursed; people have either focused only on the crises or preferred a vision of the perfect family arising from the ashes of disappointing alternatives. All these views are based on a false premise. Anyone labelling the family all-good or all-evil ignores the fact that it is neither more nor less than the place where long-standing differences between men and women come to the surface.[45]

When gender conflicts of interest *are* acknowledged in the family, 'everything one vainly hoped to find in the relationship with one's partner is sought in or directed at the child....Here an atavistic social experience can be celebrated and cultivated which in a society of individuals is increasingly rare, although everyone craves it.'[46] Childrearing unites too many of our most central fears and preoccupations: our veneration of love as a 'secular religion', our uncertainty about how to replace 'feudal' family relationships with modern democratic ones, and, most importantly, the endless possibilities for guilt that we have done too little.

> The very act of bringing up a child is emotionally highly charged. Loving it, the frail little creature, means protecting it, parents are consistently told. This injunction hits them at their weakest spot, the hopes and longings they invest in their progeny....What if something did happen? Could we ever forgive ourselves?[47]

This is the converse of the greater emotional satisfaction which can be obtained from modern parenthood. Without constant childbearing, women have more emotional and physical energy to devote to their fewer children. Men, deprived of patriarchal powers over the children, none the less gain too; witness, for example, the popular belief that the praiseworthy 'New Man' plays an equally devoted part in childrearing to his wife. But whereas children simply shared their parents' lives in pre-modern agricultural Europe, the duties of parents have now evolved into a separate and very demanding set of tasks. 'A child used to be a gift from God or occasionally an unwanted burden, but now it is above all "somebody difficult to care for".'[48] The child is a screen upon which our deepest fears are played, and as 'a dependent creature always in need of an adult to define, care for and administer its physical, emotional, current and future needs'.[49]

But whatever our motivations, we ought to recognise that the moral panic over children and the family is actually an odd and misguided attempt at reforming a community consensus. In an ironic manner, it disproves its own thesis. The decline of community cannot be all that serious when the community is so apparently united in moral panic over its children.

NOTES

1 The version of this argument which has most influenced contemporary politics, through its adoption as Thatcherite ideology, is that made by Ferdinand Mount in *The Subversive Family: An Alternative History of Love and Marriage*, New York: Free Press, 1982.

2 See, for example, Margaret Sokolov, 'Marriage Contracts for Support and Services: Constitutionality Begins at Home', *New York University Law Review*, vol. 49, pp. 1,195 ff. (December 1974), and Lenore Weitzman, *The Marriage Contract*, New York: Free Press, 1981.

3 The Children Act 1989 has been incorrectly interpreted as giving children such unequivocal rights. In fact the 'ascertainable wishes and feelings of the child' constitute only one of several factors in the 'welfare checklist' (s 1[3]) which courts are directed to consider in relation to such matters as residence and contact orders. These include 'his physical, emotional and educational needs', 'the likely effect on him of any change in his circumstances' and 'any harm which he has suffered or is at risk of suffering (s 1[b], [c] and [e])'.

4 This position is usually associated with Sir Robert Filmer's 1680 treatise, *Patriarcha*, Oxford: Blackwell, 1949, ed. P. Laslett, attacked by Locke in his *Two Treatises on Government*, 1688. Although liberalism has rejected the parallel between the father and the sovereign, the association between the state and the family persists in the twentieth

century, bolstered, for example, by Margaret Thatcher's parallels between domestic budgeting and good public housekeeping.

5 Francine Stock, 'Commentary: Time to Revisit the Child in All of Us', *The Guardian*, 24 April 1996.

6 Rachel Cusk, 'How We Turn Children into our Battlefield', *The Guardian*, 3 December 1996.

7 Donna Dickenson, *Property, Women and Politics: Subjects or Objects?*, Cambridge: Polity Press, 1997, chapter 3, 'Contract, Marriage and Property in the Person'; Marylynn Salmon, *Women and the Law of Property in Early America*, Chapel Hill and London: University of North Carolina Press, 1986; Sir William Blackstone, *Commentaries on the Laws of England in Four Books*, ed. Thomas Colley, two volumes, Chicago: 1899, fourth edition; Tapping Reeve, *The Law of Baron and Feme, of Parent and Child, of Guardian and Ward, of Master and Servant, and of the Powers of Courts of Chancery*, New Haven, 1816.

8 This inequality was probably worse in the Anglo-Saxon countries than in Continental civil law jurisdictions, where community of property regimes gave the wife some independent property interests. There is some implication under community of property that marriage is an equal partnership. Each spouse retains all property acquired before marriage, and any property inherited during marriage – all of which would belong to the husband under coverture; but the earnings of each spouse, plus all other non-inherited property acquired during marriage, become the couple's 'community' or joint property under the husband's administration. A small minority of US states also operate community of property systems.

9 Carole Pateman, *The Sexual Contract*, Cambridge: Polity Press, 1988. Other feminist critics of Lockean liberalism, in addition to Pateman, include Jean Bethke Elshtain, *Public Man, Private Woman: Women in Social and Political Thought*, Oxford: Martin Robertson, 1984, pp. 108–146; Gatens, *Feminism and Philosophy*; Zillah Eisenstein, *The Radical Future of Liberal Feminism* , New York: Longman, 1981; S. M. Okin, *Women in Western Political Thought*, Princeton: Princeton Univerity Press, pp. 200–201; Nancy J. Hirschmann, *Rethinking Obligation: A Feminist Method for Political Theory*, Ithaca and London: Cornell, 1992, pp. 55 ff.; and Joan Cocks, *The Oppositional Imagination: Feminism, Critique and Political Theory* , London: Routledge, 1989, pp. 128–135. A more favourable reading of Locke is given by Melissa A. Butler in 'Early Liberal Roots of Feminism: John Locke and the Attack on Patriarchy', in M. C. Shanley and C. Pateman (eds), *Feminist Interpretations and Political Theory*, Cambridge: Polity Press, pp. 74–94. For a sympathetic but critical exploration of Pateman, see D. Dickenson, *Property, Women and Politics*.

10 For the purposes of this argument I am running rights and autonomy together, since that is usually what happens in the view about young people's excessive freedom as a cause and symptom of community disintegration.

11 *Natanson v. Kline*, Kansas 1960.

12 Department of Health statistics for the period 1985–1990 indicated an increase of 65 per cent in numbers of children aged 10–14 who were admitted to adult psychiatric wards, together with an increase of 42 per

cent for under 10s and 21 per cent for 15–19-year-olds. At the same time the number of adult admissions fell by 9 per cent. Although many of these admissions were informal, by parental agreement, this procedure deprives young users of mental health services of the rights of challenge provided under the 1983 Mental Health Act for patients admitted under compulsory order (s 3).

13 Those wishing to pursue this line might find some of the following helpful: Christine Delphy, *Close to Home: A Materialist Analysis of Women's Oppression*, translated and edited by Diana Leonard, London: Hutchinson, in association with the Explorations in Feminism Collective, 1984; Caroline Glendinning and Jane Millar (eds), *Women and Poverty in Britain: The 1990s*, Hemel Hempstead: Harvester Wheatsheaf, 1992; Sylvia Ann Hewlett, *A Lesser Life: The Myth of Women's Liberation*, London: Michael Joseph, 1987; Ruth Lister, *Women's Economic Dependency and Social Security*, Manchester: Equal Opportunities Commission, 1992; Mavis MacLean, *Surviving Divorce: Women's Resources After Separation*, London: Macmillan, 1991; Jan Pahl, *Money and Marriage*, London and Basingstoke: Macmillan, 1989; Carol M. Rose, 'Women and Property: Gaining and Losing Ground', in *Property and Persuasion: Essays on the History, Theory and Rhetoric of Ownership*, Boulder, Colorado: Westview Press, 1994, pp. 233–263; and Ann Whitehead, 'I'm Hungry, Mum: The Politics of Domestic Budgeting', in Kate Young, Carol Wolkowitz and Roslyn McCullagh (eds), *Of Marriage and the Market*, London: CSE Books, 1981, pp. 49–68.

14 I. Manoledakes, 'Scientific and Legal Problems Concerning the Phenomenon of AIDS', *Bulletin* (Quarterly Edition of the Hellenic Centre for the Control of AIDS and STDs), 2 (1996), p. 7.

15 Greek Law 2071/1992 on the Modernisation and Organisation of the Health Care System, Article 47, section 3: 'The patient has the right of consent or refusal to any diagnostic or therapeutic procedure intended to be performed upon him. In the case of a patient wholly or partially mentally incompetent, the exercise of this right falls upon the person who legally asks on his behalf' (translation by Filimon Peonidis). Peonidis points out that this article is modelled on a relevant Belgian act of 1979 ('A Moral Assessment of Patients' Rights Practices in Greece: A Preliminary Outline', paper presented at the sixth European Biomedical Ethics Practitioner Education Project meeting in Naantali, Finland, 6 September 1996). He believes that 'the language of patient's rights is in the process of supplementing [rather than replacing] the traditional duty-based framework of medical ethics' (p. 7).

16 Peonidis, 'Moral Assessment', p. 4.

17 Article 154, summarised in Joaquin Bayo-Delgado, 'A Drug-Addict Minor and an Incompetent Family: How to Act to Assure Therapeutic Support to the Minor? The Spanish Situation', paper presented at the first meeting of the European Biomedical Ethics Practitioner Education Project, Rome, 25 May 1996.

18 John Eekelaar cites the UN Convention on the Rights of the Child as evidence of 'a world-wide context of increasing sensitivity to children's rights' ('Commentary on "True Wishes" ', *Philosophy, Psychiatry and Psychology*, vol. 2, no. 4 (December 1995), pp. 304–306.

19 Donna Dickenson and David Jones, 'True Wishes: The Philosophy and Developmental Psychology of Children's Informed Consent', *Philosophy, Psychiatry and Psychology*, vol. 2, no. 4 (December 1995), pp. 287–303, at p. 287.

20 See (3) above. The Children Act, which came into force on 14 October 1991, also gave the child the right to refuse a medical or psychiatric examination when an emergency protection order is being contemplated, 'if he is of sufficient understanding to make an informed decision). (s 44(7)). This is the wording established in the *Gillick* decision (see below).

21 Gillick *v* West Norfolk and Wisbech Area Health Authority, 1986; 1 Appeal Cases: 112–207.

22 The Act is by no means a children's charter: the paramount principle is the welfare of the child, arguably a paternalistic criterion. See n. 3 above. The dominant concept of the Act is probably parental responsibility, and the decisions in *R* and *W* – contrary to the spirit of the Act though they first appear – can be interpreted as reinforcing the supremacy of parental responsibility over children's rights.

23 Commentary, *Medical Law Review*, vol. 1, no. 2 (1993), pp. 271–273; J. A. Devereux, D. P. H. Jones, and D. L. Dickenson, 'Can Children Refuse Consent to Treatment?', *British Medical Journal*, vol. 306 (29 May 1993), pp. 459–461. For a contrary view that there should be a higher tariff for refusal than for consent in minors, see Allen E. Buchanan and Dan W. Brock, *Deciding for Others: The Ethics of Surrogate Decision Making*, Cambridge: Cambridge University Press, 1989.

24 *Weekly Law Reports* 3: 758–782.

25 Ibid., 3: 592–608.

26 Devereux, Jones and Dickenson, 'Can Children Refuse?', p. 461.

27 *Family Law Reports* 1: 576–597.

28 This important distinction is made by Eekelaar (see above).

29 Eekelaar, 'Commentary on "True Wishes" ', p. 305.

30 Ibid., p. 306. The courts have also forced treatment on young people against their wishes even when parents do *not* consent, notably Jehovah's Witnesses (*Re E* [1992], *Family Court Reports*, 2:2 19; *Re S* [1994], *Family Law Reports*, 2: 1,065). In the *E* case the young man, whose refusal of a transfusion at the age of 16 was overruled, exercised his right of choice as soon as he reached 18, and died.

31 *In re T (a Minor) (Wardship: Medical Treatment)*, reported in *The Times*, 28 October 1996.

32 Paola Daddino, 'Conflict Between Minor and Parents in Cases of Therapeutic Treatment: The Italian Law', paper delivered at the first meeting of the European Biomedical Ethics Practitioner Education Project, Rome, 25 May 1996.

33 Carlo Calzone, 'Consent or Compliance? From Informed Consent to Informed Guidance', paper given at the sixth meeting of the EBEPE project, Naantali, 6 September 1996. Articles 28, 29 and 31 of the 1995 Code of Professional Ethics in Medicine do require informed consent, 'but in practice [the Code] subordinates it to the principle of beneficence' (Calzone, 'Consent or Compliance?', p. 4). The Code specifies that 'doctors ought to commit themselves to protect children, elderly and handicapped persons....In particular, doctors ought to do what is

in their power so that children receive what is needed for a harmonic psychic and physical development and so that children, elderly and handicapped persons are guaranteed quality and dignity of life' (Article 28, 'Assistance: duties of doctors towards children, elderly and handicapped persons', translated by C. Calzone). Whilst article 29 requires doctors to inform patients about diagnosis, prognosis and consequences of proposed therapy, it also warns them to 'keep in mind the patient's limited medical knowledge, his cultural level, emotions and ability to understand....Information on the diagnostic and therapeutic programme can be limited to the elements that the patient's culture and psychological condition make possible to accept and understand, and superfluous details on scientific aspects should be omitted.' The overall aim is 'to promote compliance with diagnostic and therapeutic procedures'.

34 Daddino, 'Conflict Between Minor and Parents'; Carlo Calzone and Maria Stella d'Andrea, 'New Offspring in a Family with a Handicapped Child', paper presented at the first EBEPE meeting.

35 Daddino, 'Conflict Between Minor and Parents', referring to articles 330–333 of the constitution.

36 Arts. 9. 10, 11 and 17 of the code, as summarised by Glauco Mastrangelo and M. Serena Mastrangelo in 'Divorce and Legal Separation: The Conflicts Among Parents and the Role of the Practitioner', paper presented at the first EBEPE meeting.

37 See, for example, Charles Fried, *Right and Wrong*, Cambridge, Massachusetts: Harvard University Press, 1978, pp. 9 ff.

38 Robin Downie and Kenneth Calman, *Healthy Respect: Ethics in Health Care*, London: Faber and Faber, 1987, p. 61.

39 Similarly, the Platform for Action of the UN Fourth World Women's Conference (Beijing, September 1995) presents women's rights as universal human rights which rightfully override particular societies' traditions.

40 G. Magno, 'The Rights of Minors in International Conventions', paper presented at the first EBEPE meeting.

41 Ibid.

42 Act number 176, 27 May 1991.

43 UN data put the Italian birth-rate at 9.6 per 1,000 inhabitants. The Greek and Spanish rates are likewise quite low, at 10.6 and 11.2 respectively. Compare the rate for Great Britain of 13.6, and the American statistic of 15.5. (Table reproduced in Ulrich Beck and Elisabeth Beck-Gernsheim, *The Normal Chaos of Love*, translated by Mark Ritter and Jane Wiebel, Cambridge: Polity Press, 1995.)

44 Emilio Mordini, 'Confidentiality in Child Psychiatry', paper presented at the first EBEPE conference.

45 Beck and Beck-Gernsheim, *Normal Chaos of Love*, p. 33.

46 Ibid., p. 37.

47 Ibid., p. 119.

48 Ibid., p. 132, citing H. Hentig, foreword to the German translation of Ariès, *Centuries of Childhood*, Munich, p. 34.

49 Beck and Beck-Gernsheim, *Normal Chaos of Love*, p. 137.