

International Law, Children’s Rights, and Queer Youth: Enhancing Sexual Freedom

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In the United States (and to a lesser extent in Great Britain), there is a politically influential conservative literature on youth and sexuality growing out of the dominance of the Right in defining “appropriate” discussion of sexuality in relation to youth. One sees this very clearly in the current dominance of abstinence-only sex education in the US and in the passage of Section 28 of the 1988 Local Government Act in Great Britain.¹ Though modified by the Labour government, Section 28 still has influence in that it has not been repealed, and recent provisions, while recognizing that homosexuality must be discussed if bullying is to be dealt with, still mandates that, “there should be no direct promotion of sexual orientation.”² More progressive reactions to this literature begin to recognize the ways by which sexuality is used in the construction of appropriate masculinity/femininity, family, adulthood, and citizenship while at the same time discussing the impact of these constructions on youth. This is an analysis, however, that can benefit—despite the widespread invisibility of sexuality in these literatures—from the largely European discussion of youth and transitions and youth and citizenship, because of the extent to which that literature makes strong connections to changing political economy. Equally important, though, both potentially progressive literatures might be very helpful for queer activism because they are suggestive of the extent to which addressing the needs of queer youth might well require a broader understanding of the social circumstances of young people generally. This awareness, I will argue, points to the need to recognize youth as deserving of greater citizenship recognition. One hope for gaining this may come from the Convention on the Rights of the Child, an international human rights agreement that by explicitly combining political and economic and social rights, has the potential to push the United States to new ways of recognizing youth, something that it is currently doing in Europe.

In this regard, it is worth noting that one of the most complete analyses of the gay, lesbian, and bisexual youth in United States’ schools has been completed by Human Rights Watch (HRW).³ As HRW so clearly recognizes, the issues that gay, lesbian, bisexual, and transgender youth face can be understood as human rights issues. Further, if we move outside of the exclusive focus on schools to explore the pressures that queer youth often experience in their families, the desirability of a human

rights agenda for youth generally and queer youth in particular becomes even more compelling. Despite HRW's recognition that international human rights agreements can be an important mechanism for pursuing more equitable and just treatment, most US gay rights organizations do not make arguments that draw from international human rights agreements, nor do they see pursuing the ratification of these agreements as central, or even a component, of their agendas. In part, this may have to do with US reluctance to see itself as bound by such agreements, even to the extent that it has never ratified either the Convention on the Rights of Women or the Convention on the Rights of the Child. It is also connected to the simple reality that current dominant US discourse is leading away from seeing human rights for children as at all useful. Despite this, I want to suggest that failing to actively support international protections is a mistake.

Sexuality Rights and Youth in the United States

This section heading is, for the most part, about hope rather than reality; young people enjoy few rights that allow them to define and act on their own when they come into conflict with adult authorities, whether at home or in schools, a (and often *the*) primary institution in many youth's lives. Sexual rights, then, are virtually non-existent, making it difficult for young people to gain the information necessary to establish a sexual identity with intention and purpose. Queer youth activist Colleen Donovan sums this up:

As a youth activist, I have seen the systematic devaluation of young people's ideas, thoughts, dreams, musings, and inspirations. Discounted as immature, irresponsible, and ignorant, youth have few rights in this society, and as we have seen with the recent spate of 'parental rights' bills, even those few are tenuous. As youth within the queer movement, we challenge the ageist system with our very existence.⁴

This challenge comes from the assertion that youth can, and maybe even should, have a chosen, agential sexual identity. Ironically, although in most states, 16 year olds may be able to consent to sexual relations⁵, most will attend schools that either stress abstinence (47% of schools) until marriage or that use the \$138 million appropriated by the federal government to fund abstinence until marriage only sexuality education (30% of schools)⁶. The Alan Guttmacher Institute reports that only 14 states require that contraception be discussed as part of sex education, while 17 require that contraception be discussed as part of HIV/AIDS education.⁷ In most states homosexuality is either invisible or virtually invisible within sex education, even where abstinence until marriage does not make it an impossible topic to discuss in any way other than negatively.

A number of social theorists have detailed how this situation puts all young people at risk, though it has been most often discussed in relation to the dangers that it poses for young women who, in a culture that prioritizes and encourages them to be sexual, yet passive, provides virtually no way for them to engage in the conversation that would best allow them to make choices to experience their bodies and sexuality with pleasure as a primary focus.⁸ Instead, they experience an educational system that denies their desire, while suggesting that young men have uncontrollable desires, which oddly enough, young women should be able to control. They are also part of an educational system that defines “normal” in relation to these heterosexual contests. Queer youth, like sexually active heterosexual young people, are present primarily as a counter-current to “normalcy.” In each case, the reality that young people exercise agency in their sexual decision-making and/or gender identity is too powerful a denial of the assumption that youth are appropriately too irrational and immature to make serious decisions that might have an impact on their future. As a result, if young women become pregnant, something that they do in the United States at a significantly higher rate than in any other industrial society, they will be blamed for making “irresponsible choices” and denied the right to make a decision to have an abortion without parental consent, or judicial intervention, in the majority of states. Young gay men are “punished” through both the state’s unwillingness to take harassment seriously (whether it is inflicted in public or in the private world of family) and policies that allow HIV to continue to spread through youth populations, while young lesbians are also harassed and regulated as female. The impetus for policies that encourage these outcomes has come from the Religious Right, which, as Judith Levine simply puts it, “has all but won the sex education wars.”⁹ At the same time, the Right has focused on asserting the power of parents’ to make decisions for their children and to be responsible for the decisions of their children, a discourse that also has some currency in Great Britain.

As I’ve detailed elsewhere¹⁰, the power of parental rights in the United States, combined with the denial of voice to young people in public spaces such as schools, can create a lethal combination for queer youth, one that results in a paucity of safe spaces for these young people to explore sexuality/gender issues. The regime of parental power, which has only been strengthened by the Bush administration, means that kids who wish to assert a sexual or gender identity in opposition to parental desires are highly vulnerable to unwanted psychiatric treatment, homelessness, and schooling in religious institutions that may define queerness as a sin. At the same time, the desires of vocal parental groups mobilized by the Right have created an environment in which most public schools are unwilling (or fiscally unable) to provide an education that allows young people to develop in ways that enhance their ability to mature into decision-makers who have a sense of efficacy to affect their environment, either sexuality or

socially. As Kitzinger argues quite powerfully, the counter to the abuse of children, whether sexual or otherwise, is the deconstruction of childhood: “Children’s need for protection (by adults, from adults) or their need for assertive self-defense strategies would be substantially reduced if they had more access to social, economic, and political resources.”¹¹ For young people who try to leave their parental homes, the increasing provision of services through religious social service organizations allowed to discriminate makes the situation even more complex.¹² Without access to services in caring and supportive environments, queer youth are likely to continue to suffer from higher suicide rates, higher school drop out rates, higher homelessness rates, and greater frequency of diseases such as AIDS than other youth. Without a definition of youth as sexual agents, queer adults will continue to be discouraged from providing necessary support to youth by charges that they are recruiting young people who lack the maturity to make sexual decisions. Again, Donovan’s analysis is insightful: “Heteropatriarchy is a powerful tool that uses scare tactics to separate generations under the myth of recruitment. It is meant to threaten adult mentors, resources, or support. Those who recognize the fallacy and remain allies challenge the system by telling our stories and reclaim our his/herstory across generations.”¹³

Hope for access to greater resources and power for youth, however, is not great. It is consistent that the Bush administration is hostile to the concept of children’s rights generally and the Convention on the Rights of the Child in particular.¹⁴ Given the power of the Religious Right in America it is not surprising that even Democratic administrations are unlikely to advocate either the sexual/democratic rights of youth or any international mechanisms that might call US anxiety about youth and/or sexuality into question. It was, for example, the Clinton administration that encouraged Surgeon General Joycelyn Elders to resign in the wake of her comment that perhaps masturbation should be discussed in schools.¹⁵ It is, then, clear that the United States lacks a persuasive discourse with any potential to further youth power in relation to sexuality, or any other dimension of exclusion, whether poverty, racism, or sexism. In fact, it is hard to find grounds for disagreeing with the pessimistic evaluation of Martha Minow:

I have no plan or even hope for mobilizing public support for children, especially poor children, at this point in American history. Each of the four rhetorics—child protection, children’s liberation, *children’s* rights as potential adults, and redistribution—has failed to find a strong constituency. Instead political figures win strong support by invoking conventional authority structures, family privacy, and self-reliance and by attacking a social welfare state.¹⁶

Of course, the situation has only gotten worse for children and youth since she wrote this in 1997. However, those who write about political economy and youth cultures suggest that there is good reason to believe that such Conservative strategies are unlikely to actually address the needs of most youth or their parents, and data suggest that many parents are also quite aware of this reality. Nonetheless, the lack of a coherent counter-discourse, or even much attention to youth issues outside of the Right, makes this failure continue to be experienced as the failure of individual young people and their parents. In suggesting the foundations for a counter-narrative, I first want to turn to the work of theorists of youth transitions, theorists who recognize both the power of economic structures to constrain youth and the social forces that enable at least some people to define themselves as creative agents despite these forces.

Theorizing Post-Modern Youth Transitions and Citizenship

A variety of social scientists recognize and discuss childhood and youth as contested terms, ones constructed in ways that serve the interests of those more powerful in society. As consumption and education credentials have each become more central to economically developed countries, the role of youth in these societies has changed. In literature on youth informed by political economy and cultural studies, as in many contemporary literatures about the construction of identities, a key question involves the extent to which social structures limit agency, and in particular, the ways by which youth are increasingly excluded from meaningful citizenship as a result of de-industrialization. A number of studies on youth and citizenship and youth and transition, generally from Europe, suggest that young people want to exercise agency, that they want to have responsibility, that they are capable of what Mirjana Ule and Tanja Renner term “individualized identity,”¹⁷ but that the risks of failure are increasingly taken on by the individual, with the structural forces that make the definition of self increasingly remote from the consciousness of young people. Yet the structural forces are powerful, from those that mandate that youth remain in educational systems for longer periods of time, and that see the lack of desire to do so as a personal failure, to the increased dependence on adults fostered by the need for credentialing, a dependence that may sometimes be welcome as parents are defined by many as friends, to the reliance of many capitalist industries on the purchasing power of youth and young adults. One result of these demands on youth, Ule and Renner note, may be a increased tendency for young people to define themselves not in relation to “grandiose values that draw on powerful ideologies (politics, religion, national bonds)” but rather in relation to “more individualized values situated closer to personal experience (material and social security, friendship and interpersonal relations, a healthy environment, the quality of everyday life, and so on).”¹⁸ This broad point is illustrated not only by Ule and Renner’s data on youth in the Czech

Republic, but also in Kerstin Jacobsson and Niels Hebert's discussion of animal rights activists in Sweden, activists who clearly see activism connected to personal commitments as more important than activism within traditional political formations.¹⁹ When the subcultures that youth create are taken seriously, Irena Guidikova and Lasse Siurala suggest, it becomes apparent that "it is not young people who refuse responsibility, but adult society which denies them opportunities for participation."²⁰ It is not surprising, therefore, that European governments respond by trying to either develop programs to reintegrate youth into job markets or educational programs, or develop initiatives intended to bring young people's voice more thoroughly into the public realm. Alternatively, governments can respond, as Sharon Stephens indicates has been the case in not just the United State, but also Great Britain, by seeing the need for greater control of children. She writes, "Concerns about improperly socialized and educated children legitimize new state-supported interventions into families and new state-controlled programs in schools—billed as back to basics education and attacks on "discovery learning."²¹

In addition to asking how these different responses influence the lives of queer youth, we might also ask how sexuality plays out in academic analyses of this changing situation for young people. Although difference in gender dynamics makes an appearance in this literature²², sexuality is often much less present. In one attempt to link sexuality and these changes, Bob Coles writes:

A number of authors have also emphasized the importance of gaining a steady boyfriend or girlfriend as a signifier of becoming regarded as adult. They have also recognized that in areas of high employment, partnership with a man in full-time employment is important to young women.²³

Though the first sentence leaves open the possibility that one can be gay or lesbian and defined as "adult," the second sentence suggests that for many young women, such an option may be economically unwise. Thus, what Adrienne Rich termed "compulsory heterosexuality" could be made more compelling in a more challenging environment, yet those focusing on these economic dynamics do not explore this possibility. Authors who explore the increased dependence of youth on parents do not explore the possibility that increased dependence could be experienced in vastly different ways by queer youth and those who identify with hegemonic gender and sex norms. Given the housing shortages that young people face in most, if not all, post-industrial societies, and the fact that when housing is available it is often provided first for young people with children, this is a significant omission.

A part of the literature on structural change and youth highlights the ways by which youth engage in identity formation in light of postmodern realities, as Ali Rattansi and Ann Phoenix discuss in their

review of European approaches to youth identity and the implications of such identity formation for citizenship in democracies. They suggest that this literature has highlighted the ways by which individual identity is constructed within particular social circumstances, that identity is relational, multiple, and always undergoing change. Identities, then, are very much a product of social structures and individual agency. Despite having quoted work that indicates the importance of social institutions in constructing “stable heterosexual relationships (especially for girls) and other forms of appropriate behavior,” their conclusion reverts to the centrality of class, gender, and race for the multiple identities of youth:

The divisions of class, gender, and ‘race’ continue to be of profound significance in imposing constraints which are themselves reinforced by the officially sanctioned production of identities through a variety of regulatory agencies, from schools to prisons.²⁴

In her discussion of Rattansi and Phoenix’s essay on European youth and citizenship, Christine Griffin argues that although comparative European youth research needs, as Phil Cohen argues, to look at how ‘race’/ethnicity are enacted locally and in relation to gender and, as Rattansi and Phoenix argue, look at citizenship, it also must bring sexuality to the center of analysis. She explains that exploring sexuality is critical because to do so makes it increasingly likely that youth researchers will explore how the very concept of youth is constructed:

Issues of sexuality, and especially adult panics over adolescent sexuality, have been long central to the treatment of youth. Relations of gender and sexuality-as well as race and class-have collided in the debate over ‘teen pregnancy’ and ‘adolescent sexuality’ for example. Recent developments in research on sexuality, identity, and the construction of sexualities have important implications for youth research. In some ways (as ever) youth researchers have yet to keep up with (some) young people’s understanding in this area.²⁵

In the end, she notes, our understanding of citizenship, and how young people enter into their role as citizens, requires that we see them as involved in production, consumption, and reproduction. Without understanding how their decision-making is influenced by both global forces that restrict and expand possibilities and local forces that play the same dual role, in relation to each of these spheres, our notion of citizenship and youth will remain too constricted.

The invisibility of sexuality from the literature on identity and citizenship is puzzling. As Griffin observes, since adolescence is seen to resolve around puberty and the onset of sexual agency,²⁶ it seems that sexuality would be very present. At the same time the increased emphasis on marketing to youth has made the sexuality of young people a powerful

public presence. Further, with the delay in decision-making about the role that they will play in production, the question of sexuality seems to be an area where the potential for agency remains powerful at younger age. Given the extent to which family and relationship decisions have expanded, to a point where marriage really is optional in a number of European countries, it would seem that considering how young people develop the capacities necessary to enact different forms of family and relationship ethically would, in fact, concern those interested in youth and citizenship. Finally, the increased dependence on parents and the power of peer relationships can create real difficulties for young people who are defining their sexualities in opposition to hegemonic norms and parental norms. This is particularly a problem in the United States, since parental power remains so strong and many youth continue to lack access (other than electronically) to peer groups supportive of greater sexual freedom. Thus, the structural conditions of late modernity, though opening up the possibility for increased sexual agency, also increasingly put youth in a position where their failure to enact sexual identity may be internalized as their own failure, rather than understood in social and political terms. Ule and Rener see the dominant social forces as leading to two possibilities:

Our conclusions about the individualisation of youth in modern developed societies indicate that young people react extremely ambivalently to the contradictions of the globalisation process and post-industrial modernisation. They oscillate between two possibilities which both require various forms of expression. The first possibility is psycho-social demoralization, the second is the development of 'altruistic individualism', that is, social sensibility and responsibility in connection with personal satisfaction and personal lifestyles. The psycho-social demoralization of young people is accompanied by social anomie, personal and social loneliness, low self-respect, and intense feelings of helplessness.²⁷

This description is suggestive of the two paths that queer youth often take: either organizing locally to demand recognition or feelings of alienation and/or depression. Human Rights Watch describes these two possibilities:

One counselor we interviewed expressed concern that girls rarely excelled once they were publicly identified as lesbian. Boys were sometimes able to find a niche for themselves in the drama club, as a band major, or even as the class clown to survive, but girls rarely, if ever, seemed to find such a niche for themselves....Lesbians who can prevail against the sexism and homophobia they face report feeling empowered. Alix M. told us that it took her three years to get the courage to start a small gay-straight alliance in her school. Faced with

deepening depression and painful feelings of isolation, she turned to the Internet to get information on how to start a gay-straight alliance.” The result of her activism is that she has become a “stronger individual able to conquer her fears.”²⁸

The challenge, then, for gay organizations is to understand and work to create the conditions that might help young people to develop altruistic individualism.

As I have suggested, however, in the United States, this requires a broader focus on youth as citizens and on the rights of young people, something that is more advanced in Europe, a number of authors suggest, because the Convention on the Rights of the Child has been taken more seriously and has begun to prompt significant reflection about what it means to recognize the developing capacities of young people, and therefore, the developing citizenship of youth. In the United States, questions of youth and agency have come to focus more on getting (middle class) young people to perform community service as a mechanism to involvement in civil society, rather than encouraging youth participation in a manner that might encourage the expression of voice in the present. This is a perspective in which sexuality is made invisible, and not an approach to youth engagement likely to be of benefit to sexual minority youth. In the remainder of this paper, I want to review some of the writing on how the Convention is pushing dialogue in Europe, while suggesting that this success, particularly in the UK indicates that the United States needs a discourse that links young people to the development of identity not as future citizens, but as current contributors to society.

Prioritizing the International Convention on the Rights of the Child

In commenting on the Convention on the Rights of the Child, Roger Levesque notes that, in general, it would maintain the importance of the parent-child relationship in ways consistent with United States law. He continues: “The Convention, however, goes one step further. The Convention calls for States to take on the revolutionary obligation to ensure that parent’s recognize and ensure their children’s rights. Thus, taking the Convention’s approach seriously would call for a radical transformation of how we view children, parents, and families.”²⁹ Central to this change, is view that the “child is human being, not the germ of a human being.”³⁰ The Convention would require: 1) that the State play a role in guaranteeing that parents recognize a child’s developing capacities³¹; 2) that the State consider the judgment of a child or adolescent in making a determination of her/his best interests³²; 3) that “the state provide the child with adequate care when parents or others charged with that responsibility fail to do so³³; that the State protect children from violence, whether that violence is enacted by the State or by private individuals³⁴; and that the State take the action necessary to prevent the

abuse of children.³⁵ In other words, while the Convention sees the family as the ideal location for raising children, it ensures that the child's voice be heard, while also demanding that the State work to ensure that the best interests of the child are provided, even by the family.

These provisions would, I believe, address many of the needs of LGBTQ young people. In part, as Rochelle Jackson discusses, this is the case because the Convention attempts to articulate both the civil and political rights of children and youth and the social and economic rights of young people. It is exactly this combination that young LGBTQ youth need: civil and political rights mean that their definition of their evolving sexual/gender identity must be taken seriously by the adults and institutions that are so central to their lives, while guaranteeing social and economic rights means that those whose parents are unwilling to accept their gender/sexual identity must be provided with alternatives. Under the Convention, the State will have a meaningful obligation, enforceable by law, to provide resources for them. Jackson quotes Cohen, who summarizes the transformation mandated by the Convention: "These established civil and political rights along with [the] newly formulated individual personality rights, have expanded the post-Convention child rights equation from 'child rights = care and protection' to 'child rights = care+ protection+individual personality rights.'"³⁶ For those young people who are regularly subject to violence in schools, the Convention would also demand that the State protect their individual personality rights by addressing the violence and mandating that the state make an effort to continue to provide educational opportunity.³⁷ In general, a broad reading of the Convention, in combination with social scientific research, might suggest the following: since sexual identity is defined by young people around the age of 14 and there is significant evidence that 14 year-olds are generally approaching maturity as decision-makers, recognizing the "evolving capacities" of youth means that parents and the state must begin recognize the sexual choices that young people make and create conditions that allow them to explore and express these choices safely.

Although I've suggested a fairly liberal interpretation of what the Convention might be read to require, there are a number of realities that would limit this optimistic picture. In considering whether supporting ratification of the treaty for those concerned with LGBTQ youth, one must ask if there is there evidence that international human rights law can be an effective mechanism for increasing the rights of gays/lesbians/transgendered people, and although the evidence on this question is mixed, there is at least some evidence that indicates that international human rights bodies do in fact see sexuality as a realm in which human rights provisions are applicable. In relation to the Human Rights Committee's³⁸ actions, Eric Heinze reports:

In its more recent comment on individual State reports, the Committee has cited ill-treatment of homosexuals as

raising concerns about violations of the Covenant. In view of its expansive interpretation of the scope of protected categories, there is good reason to believe that the Committee will be generally willing to include sexual orientation as a protected category.³⁹

Although the Committee's decisions are "highly persuasive," they "are not binding in international law."⁴⁰ Nevertheless, they at least move forward the discussion of how gay men and lesbians might be protected within international human rights. The United Nations Human Rights Commission⁴¹ has also given attention to anti-homosexual discrimination: "The treatment of sexual minorities in India was denounced today at the United Nations Commission on Human Rights. This is only the third time ever that direct testimonies of abuse based on sexual orientation have been heard by this high-level body."⁴² Additionally, the International Gay and Lesbian Human Rights Commission (IGLHRC) reports that the UN is recognizing the issues facing transgendered people: "In a historic first, United Nations Special Rapporteur on Freedom of Expression, Dr. Abid Hussain, met June 26 with transgender activists in Argentina, to hear their stories of persecution. The Buenos Aires gathering follows a series of meetings with UN officials in Geneva sponsored by the IGLHRC this past April. As a result of these meetings, six United Nations Experts issued a joint statement, urging lesbian, gay, bisexual, and transgender (LGBT) activists worldwide to contact them about human rights violations. The UN experts are high level officials appointed by the UN to investigate patterns of human rights abuse. They report annually to the UN on their findings, and have wide power to address governments about suspected abuses."⁴³

Despite these positive responses, Heinze is not optimistic about the potential of international organizations to force member states to see anti-gay/lesbian discrimination as a violation of human rights, suggesting that gay rights has come to be defined as a Western imposition on other countries, and thus not something that should be imposed.⁴⁴ As evidence he cites the Fourth World Conference in Beijing's Declaration and Platform for Action, which does not include sexual orientation, as evidence that lesbian and gay rights will not win human rights protections. Ara Wilson, however, is much more hopeful, suggesting that although activists may not have won all that they desired at Beijing, what they achieved is an improvement over past meetings and provides fertile ground from which to build. She summarizes what was achieved officially: "The most successful grounds for which to argue for lesbian rights were anti-discrimination terms, since government delegates could agree that discrimination against lesbians was wrong while not agreeing to rights concerning sexuality. In the end, the term *sexual orientation* was not included in the Program for Action. However paragraph 96 addresses women's right to make sexual decisions free from coercion, discrimination, and violence and presents a strong point for future organizing around the UN."⁴⁵

Rosalind Petchesky contextualizes the Beijing discussions and the final platform by arguing that the conservative outcome must be seen as a Conservative, Vatican-led backlash against the more progressive discussions at the 1994 International Conference on Population and Development in Cairo, a conference that resulted in the first human rights document to recognize “‘a satisfying and safe sex life’ as an affirmative goal.”⁴⁶ Further, the document “urges governments to provide adolescents with a full array of sexual services and education ‘to enable them to deal in a positive and responsible way with their sexuality.’”⁴⁷ This is directly connected to the response in Beijing: “In Beijing itself, the fundamentalist campaign against ‘gender’ and ‘sexual rights’ fronted as a crusade on behalf of ‘parental rights’; its real targets were clearly the sexuality of all unmarried adolescents and lesbian sexuality.”⁴⁸ The challenge, then, is to anticipate Conservative responses and organize effectively to counter them

The ability to use effectively the language of parental rights in international human rights discussions is connected to a second concern: even countries that are making progress in hearing the voice of children may not yet be able to recognize that 14 year olds should have sexual rights. Thus, in discussing the importance of the establishment of the Children’s Rights Commissioner in Flemish Belgium, Ankie Vanfekerckhove notes:

One proposal, which triggered heated debate, was the suggestion that the age of consent be lowered from 16 to 14. The proposal was never enacted since the majority of adults consider young people unable to handle their own sexuality under the age of 16. (Needless to say, not a single young person took part in this debate.)⁴⁹

She goes on to note the irony of this situation: “Children are considered to be competent to commit crimes at 14 years of age, but are judged incapable of developing, exploring, and experimenting with their own sexuality.”⁵⁰ Importantly, however, recognition of children’s rights has prompted such a debate.

If developing an identity is not simply a process of claiming an essentialist sense of self, then exploration of the possibilities for sexual expression and family expression is a central component of constructing a self. This is particularly important in the public realm of the school because of the power that families and the media have to reinforce hegemonic norms. Ideally, Petchesky argues this means defining human rights in relation to sexuality in terms of sexual freedom, rather than simply “defense against discrimination or bodily harm.”⁵¹ The broad strokes of the convention provide such a possibility, one that has clearly been recognized in the UK by those who work in schools. The danger in putting forward an approach that grows out of human rights is that rights tend to focus on the individual, rather than fostering social equality.⁵² Despite this, it seems to me that the Convention offers a possibility for

beginning to take seriously the interrelated social and economic rights that young people need to be more free as sexual beings. Without the ability to develop relationships that matter from a relatively age, young people are vulnerable not just to the beliefs and resources of their communities, but even more to those of their parents. To have no freedom in relation to these relationships is to be deprived of the opportunity to reflexively define oneself, and, in the end, to not develop the capacity of autonomy that one needs to be a democratic citizen. Thus, gay organizations have an interest in focusing on developing not simply essentialist sexual identities, but democracy; those interested in fostering democracy should have an interest in sexual freedom; and both need to understand youth (both the concept and the real people) as of central importance.

I want to briefly illustrate the potential of the Convention by highlighting both some of the ways by which it influences British writing about youth and rights, despite some conservative rhetoric that is close to that which dominates in the United States, and the ways by which other European countries, ones without such Conservative power, are translating human rights strategies into frameworks for empowering youth. In his introduction to *The New Handbook of Children's Rights*, Bob Franklin points out that although child poverty rates, school exclusion rates, and imprisonment rates remain unacceptably high in the UK, particularly for African-Caribbean children, there have, nonetheless, "been significant developments in children's rights," since 1995. Importantly, and at least in part because of the UK's ratification of the Convention, children's rights are on the political agenda. He notes: "It's [the Convention's] centrality to discussions of children's rights is underscored by the fact that virtually every contributor to this volume⁵³ mentions the Convention and measures the value and success of their work with children and youth by the yardsticks the Convention provides."⁵⁴ Focusing on the contradictions between government policy (whether the policy of the Conservative Government or the Labour Party) and the Convention, allows Deena Haydon to argue that the UK needs to take seriously the right of children to information about sexuality, regardless of parental wishes: "Despite the obvious disapproval by the UN Committee, the Labour government has retained the right of parents to withdraw their children from sex education. This contravenes the right of children to express their views in all matters affecting them and to have their views taken seriously."⁵⁵ As she goes on to note, the refusal to grant children this level of control also contravenes other provisions of the Convention, specifically Articles 2, 13, and 24. She suggests that the government remains committed to this perspective because it is adults who have the power to define "maturity," and therefore, to determine what rights are appropriate at any given moment in a young person's life.⁵⁶ As the quotation above indicates, however, such interpretations are not acceptable to the Human Rights Commission, thus

providing at least an opportunity for the government to hear a counter voice.

Tony Jeffs argues that once one begins to ask questions about youth rights and education, the issue quickly becomes much broader. His analysis is, I believe, suggestive of the ways that calling the construction of childhood and youth into question might provide a foundation for queer activists to work much more broadly to create an alternative discourse. Jeffs indicates that to provide youth with real voice is to call into question much about the dominant educational paradigm in Great Britain, one in which the dominant assumptions—national standardization, testing, and exclusion of those deemed a threat-- are increasingly common to the US as well. British schools, he argues, have made some progress in recognizing the need to address bullying and being challenged by Human Rights agreements to see the exclusion of African-Caribbean students as a problem.⁵⁷ In both instances, this is moving farther than US schools have thus far managed. Nonetheless, without young people having a serious voice in the curriculum, mandatory attendance laws lead to conditions that challenge, rather than encourage, democratic citizenship. “Increasingly,” Jeffs remarks, “students are treated as actual or potential criminals requiring constant surveillance as schools acquire the appearance of a Northern Ireland police station. Rarely today are they places where civilized or cultured persons of any age would want to linger.”⁵⁸ Further, mandatory attendance laws are particularly a threat, Leck notes, to students whose sexual expression is denied. Instead, “It is this writer’s underlying assumption that the job of school personnel is to facilitate social interaction and to provide each child with a full opportunity for success within a compulsory public school setting. This means that it is not appropriate to ask someone to hide—or deliberately try to make invisible—the sexual diversities represented within and among the students in our schools.”⁵⁹ Educators certainly do not lack models of democratically informed schools that encourage young people to define topics that are of interest to them and discuss them honestly.

Perhaps not surprisingly, those schools that do provide students with a voice in curricular matters find that students are interested in, and able to discuss in a mature way, issues that are linked to sexuality. For example, David Sehr describes a school where students have the freedom to read novels of their choice. One discussion of what students were reading focused on the question of adults might talk with small children about sex. Most importantly, he reports, the discussion was one where students listened seriously to one another and revised their views along the way. Students in this school also engaged in a video project exploring sexism in rap music. He also discusses another school where student learning is based on inquiry-based projects, one of which, focused on community, had a group of students researching and writing about gay and lesbian religious communities.⁶⁰ In the end, the best chance for countering

the image of youth as unable to make important decisions, such as those about their own sexuality, is to provide them with the opportunity to develop their abilities and their autonomy by discussing these issues and making decisions that matter.⁶¹ Such experiences help youth to be active participants in democracy. This is why, although adults are often skeptical, real experience in decision-making leads to greater confidence in youth as decision-makers. Franklin comments,

In Nordic countries where legislation such as the Finnish Child Custody and Right of Access Act 1983 and the Norwegian Children's Act 1981 acknowledges children's competencies and offers a more democratic involvement in decision-making, this has not 'placed children at risk by allowing them greater autonomy over their own lives.' On the contrary, it has illustrated children's capacity for decision-making without any of the harmful consequences that paternalists predict.⁶²

As I've noted above, one of the places where discussion of sexuality issues does seem to be opening up is in discussion of bullying. Given the centrality of sexuality and gender to bullying, it is unlikely that reforms short of major structural changes intended to develop more participatory, democratic, and less isolated spaces, spaces where youth and adults can interact more equally, will succeed. Neil Duncan notes the extent to which age segregation plays a role in sexual bullying, an observation also made by Nancy Lesko.⁶³ This is not to say that peer relationships will not remain important for youth, but to suggest that models of development that are, in Lesko's words, recursive rather than cumulative and one way need to guide our thinking about educational environments. Such a perspective makes the learning process between adults and youth more intergenerational by recognizing that youth have much to contribute to society, even as they receive the support that they need to develop their knowledge and perspectives. Providing the space for queer youth to challenge their peers is critical to the development of a democratic citizenry that understand sexuality as the expression of active agents. Lesko concludes: "We must move between and against confident characterizations of youth, which involves including teenagers as *active participants* (not tokens) in educational and other public policy deliberations. I am not just trumpeting one 'student voice' but calling for the imagining of concrete practices in which youth demand and exercise adult like responsibilities, acknowledging that teenagers are also affected by the commonsense reasoning of their age group."⁶⁴

The Convention, I believe, provides a perspective that is very much in line with what Lesko advocates. It is a document that developed countries use to try to push less developed countries to pay attention to issues such as child labor and forced marriages, yet it may be equally important in encouraging some of these countries to explore and take

seriously their own relationship to youth. Gay organizations in the United States might well be challenged to reframe their own interactions with young people by fully recognizing the full range of opportunities that youth need to be the sexual human beings whom they wish to be. In her introduction to *Revolutionary Voices*, for example, Margot Kelly Rodriguez challenges queer adults to recognize the full range of institutional forces, including schools and mainstream gay politics, which make it difficult for queer youth to feel part of the present.⁶⁵ Yet this anthology indicates that, as for youth in Europe, such alienation does not always lead to greater alienation and disengagement, it can lead to new forms of engagement with the public. But this requires an open enough and supportive enough society, in terms of economic, social, and political rights, that young people can develop into altruistic individuals. The difficult task for adults, then, is to challenge cultural definitions and institutional structures to encourage the multiple voices of young people, while not containing them to our own ends. Despite the limits of human rights frameworks, the almost complete lack of rights discourse concerning youth in the US, combined with the power that Human Rights language has in some European countries, even Great Britain, to at provide a language for critique, leads me to suggest that adults who are concerned with youth need to demand that the United States recognize broadly the importance of international commitments, and that as part of this recognition, it commit itself to youth rights in a way that could be quite beneficial for queer youth. Further, US gay/lesbian/bisexual/transgendered/queer organizations need to engage in global battles for sexual freedom. Though a human rights approach may not be perfect, it can be an important tool, particularly if rights are understood as themselves never fixed.

¹ Section 28 prohibited that local authorities from “intentionally promoting homosexuality or publishing materials with that intention, and from promoting teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship.” Deena Haydon. 2002. “Children’s Rights to Sex and Sexuality Education.” In *The New Handbook of Children’s Rights*, edited by Bob Franklin. London: Routledge: 184.

² Ibid, 190.

³ Human Rights Watch. 2001. *Hatred in the Hallways: Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender Students in U.S. Schools.* New York: Human Rights Watch.

⁴ Colleen K. Donovan. 2000. “On Diversity.” In *Revolutionary Voices: A Multicultural Queer Youth Anthology*, edited by Amy Sonnie. Los Angeles: Alyson Books: 205.

⁵ Further, we should remember that until *Lawrence v. Texas* made sodomy laws unconstitutional, in many states there was effectively no age of consent for homosexual sex.

⁶ Statistics on percentages of schools: “Sex Education in America: An NPR/Kaiser/Kennedy School Poll,” Feb. 24, 2004. Available at <http://www.npr.org/features/feature.php?wfid=1622610>. Statistic on federal funding: Seicus Foundation, *A Portrait of Sexuality Education and Abstinence-Only-Until-Marriage Programs in the States*. Available at: <http://www.siecus.org/policy/states/FundingChart.pdf>.

⁷ Alan Guttmacher Institute, “State Policies in Brief.” Available at: http://www.siecus.org/policy/states/AGI_Chart.pdf.

⁸ See Levine, Kitzinger, and Tolman. Kitzinger notes that the maintenance of ideologies of childhood innocence and appropriate sexuality are particularly harmful for young people who are being abused within the “private” realm of family. “Keeping children in ignorance about sex perpetuates their vulnerability and may be actively exploited by abusers. Gillian’s father, for instance, obliged her to submit to his sexual demands after he discovered her masturbating, while Barbara, who was sexually involved with a female friend, submitted to her uncle because she thought he had a right to teach her about ‘normal sex.’” (186n8).

⁹ Judith Levine, *Harmful to Minors: The Perils of Protecting Children from Sex*. New York: Thunder’s Mouth Press, 2003, p. 91.

¹⁰ Valerie Lehr. 2002. “Parental Rights as if Queer Youth Mattered.” Presented at the Annual Convention of the American Political Science Association. Boston, MA. Available at: <http://it.stlawu.edu/~vleh/APSA%202002%20--final.pdf>

¹¹ Kitzinger, 184

¹² Human Rights Watch reports the story of Anika P., who “was rejected by several facilities [for homeless youth] which are run by religious organizations because they are allowed to discriminate against transgender youth” (2001: 61).

¹³ Donovan, 206.

¹⁴ Bob Franklin begins his introduction to *The New Handbook of Children’s Rights* by noting that: “Twelve days into the Bush administration, the leader of the American delegation to the UN General Assembly Special Session on Children launched a ‘blistering attack’ on children’s economic, welfare, and cultural rights...Turning specifically to the UN Convention on the Rights of the Child, Southwick stated that “The United States does not accept obligations based on it, nor do we accept that it is the best or only framework for developing programmes and policies to benefit children.” Franklin, 2002. “Children’s Rights: An Introduction.” *The New Handbook of Children’s Rights*, edited by Bob Franklin. London: Routledge: 1.

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- ¹⁵ On the other hand, although “A dozen members of the U.S. House of Representatives asked for U.S. Secretary of Education Rod Paige’s resignation after Paige said that he prefers schools that teach the “values of the Christian community,” he was not forced to resign. (Siecus Policy Update, April 2003). Available at: <http://63.73.227.69/policy/PUupdates/Arch03/arch030057.html#SEC>.
- ¹⁶ Martha Minow. 1997. “Whatever Happened to Children’s Rights?” In *Reassessing the Sixties*, edited by Stephen Macedo. New York: Norton: 118.
- ¹⁷ Mirjana Ule and Tanja Rener. 2001. “The Deconstruction of Youth.” In *Transitions of Youth Citizenship in Europe: Culture, Subculture, and Identity*, edited by Andy Furlong and Irena Guidikova. Strasbourg: Council of Europe Publishing.
- ¹⁸ Ule and Rener, 284.
- ¹⁹ Jacobsson and Hebert. 2001. “Disobedient Citizens: Young Animal Rights Activists in Sweden,.” In *Transitions of Youth Citizenship in Europe: Culture, Subculture, and Identity*: 17-40.
- ²⁰ Guidikova and Siurala. 2001. “Introduction: A Weird, Wired, and Winsome generation—Across Contemporary Discourses on Subculture and Citizenship.” In *Transitions of Youth Citizenship in Europe: Culture, Subculture, and Identity* : 10.
- ²¹ Stephens, 28 .
- ²² For example, Drilling and Gauthschin, in arguing that social welfare workers must be recognized as an important resource for youth in developing identity, argue that boys and girls in their German sample consulted with school counselors for very different reasons. In particular, girls’ problems revolved around family abuse or family conflicts much more than boys. See Mathias Drilling and Dorothea Gauthschin, “Youth Cultures and Adolescence: Limits to Autonomous Socialisation and Demands on Youth Welfare.” In *Transitions of Youth Citizenship in Europe: Culture, Subculture, and Identity*: 305-320.
- ²³ Bob Coles. 1997. “Vulnerable Youth and Processes of Social Exclusion.” In *Youth, Citizenship and Social Change in a European Context*, edited by John Bynner, Lynne Chisolm, and Andy Furlong. Aldershot: Ashgate Publishing: 72
- ²⁴ Ali Rattansi and Ann Phoenix. 1997. “Rethinking Youth Identities: Modernist and Postmodernist Frameworks.” In *Youth, Citizenship and Social Change in a European Context*, edited by John Bynner, Lynne Chisolm, and Andy Furlong. Aldershot: Ashgate Publishing: 143.
- ²⁵ Christine Griffin. 1997. “Youth Research and Identities: Same as it ever Was?” In *Youth, Citizenship and Social Change in a European Context*, edited by John Bynner, Lynne Chisolm, and Andy Furlong. Aldershot: Ashgate Publishing: 164.
- ²⁶ Griffin, 162.

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- ²⁷ Ule and Rener, 285.
- ²⁸ Human Rights Watch, 54-5.
- ²⁹ Roger J. R. Levesque. 1994. "The Internationalization of Children's Human Rights: Too Radical for American Adolescents." *Connecticut Journal of International Law*. 9: 236-93, p.
- ³⁰ Jackson. "The War Over Children's Rights," p. 236..
- ³¹ Levesque, 288.
- ³² Levesque, 289.
- ³³ Rochelle D. Jackson. 1999. "The War Over Children's Rights." *Buffalo Human Rights Law Review*. 5: 223-51: 238.
- ³⁴ Human Rights Watch. "Hatred in the Hallways."
- ³⁵ Barbara Bennett Woodhouse. 1998. "From Property to Personhood: A Child-Centered Perspective on Parents' Rights." *Georgetown Journal on Fighting Poverty*. 5: 313-19, p. 317.
- ³⁶ [Cohen] quoted by Jackson, 8.
- ³⁷ Human Rights Watch. 2001.
- ³⁸ The Human Rights Committee is the enforcement mechanism for the International Covenant on Civil and Political Rights.
- ³⁹ Eric Heinze. 2001. "Sexual Orientation and International Law." *Michigan Journal of International Law*. 22: 283-309, p. 293..
- ⁴⁰ Ibid .
- ⁴¹ As Heinze explains, there are a number of different United Nations bodies responsible for promoting human rights. The Human Rights Commission is separate from the Human Rights Committee. See Ibid., 293.
- ⁴² International Gay and Lesbian Human Rights Commission. 2001a. "UN Human Rights Commission Opens Doors to Sexual Minorities." [cited August 3, 2002] Available at http://www.iglhrc.org/news/press/pr_020411.html
- ⁴³ International Gay and Lesbian Human Rights Commission. 2001b. "UN Rep Meets with Transgender Activists." [cited August 3, 2002]. Available at http://www.iglhrc.org/news/press/pr_010629.html.
- ⁴⁴ Heinze, "Sexual Orientation and International Law," pp. 305-309.
- ⁴⁵ Ara Wilson. 1996. "Lesbian Visibility and Sexual Rights at Beijing." *Signs* 21:
- ⁴⁶ Rosalind Petchesky. 2001. "Sexual Rights: Inventing a Concept, Mapping an International Practice." In *Sexual Identities, Queer Politics*, edited by Mark Blasuis. Princeton, NJ: Princeton UP: 121.
- ⁴⁷ Ibid, 121.
- ⁴⁸ Ibid, 123.
- ⁴⁹ Ankie Vandekerckhove. 2002. "A Commissioner for Children's Rights in the Flemish Community in Belgium. In *The New Handbook of Children's Rights*, edited by Bob Franklin. London: Routledge: 363.
- ⁵⁰ Vandekerckhove. 2002: 363.

⁵¹ Petchesky, 119.

⁵² See Momin Rahman 2000. *Sexuality and Democracy*. Edinburgh: Edinburgh UP and Petchesky 2001. In relation to the specific issue of youth and the limits of human rights, see Judith Ennew, who argues that the CRC's emphasis on family and on protecting children from unfair labor practices can have negative repercussions on children who are homeless, and who, therefore, live outside of "normal" childhood. Thus, it is important to remember that the Convention contains and construct "normal childhood" through the process of defining rights. I am assuming that such constructions can be resisted and revised *if* the UN and nation states take seriously the voices of children and their advocates. Judith Ennew. 2002. "Outside Childhood: Street Children's Rights." In *The New Handbook of Children's Rights*: 388-403.

⁵³ Contributors include academics and child advocates working in a variety of public and private agencies.

⁵⁴ Franklin, 6.

⁵⁵ Haydon, 2002: 191.

⁵⁶ Ibid, 192.

⁵⁷ Tony Jeffs. 2002. "Schooling, Education, and Children's Rights." In *The New Handbook of Children's Rights*, edited by Bob Franklin. London: Routledge:

⁵⁸ Jeffs, 55-6.

⁵⁹ Glorianne M. Leck 2000. "Heterosexual or Homosexual? Reconsidering Binary Narratives on Sexual Identities in Urban Schools." *Education and Urban Society*, Vol. 32, No. 3: 333.

⁶⁰ David T. Sehr. 1997. *Education for Public Democracy*. Albany, NY: SUNY Press:

⁶¹ Hart.

⁶² Franklin, 23.

⁶³ Nail Duncan. 1999. *Sexual Bullying: Gender Conflict and Pupil Culture in Secondary Schools*. London: Routledge: 90 and Nancy Lesko. 2001. *Act Your Age: A Cultural Construction of Adolescence*. New York: Routledge Falmer.

⁶⁴ Lesko, 199.

⁶⁵ Margot Kelly Rodriguez. 2000. "'We Are the Ones We Have Been Waiting For.'" In *Revolutionary Voices: A Multicultural Queer Youth Anthology*: xxi-xxvi.