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Remember the children

by *Joseph Tartakovsky*

A review of *Freedom's Orphans: Contemporary Liberalism and the Fate of American Children* (New Forum Books) by David L. Tubbs

Books in this article

David L. Tubbs

Freedom's Orphans: Contemporary Liberalism and the Fate of American Children
(New Forum Books)

Princeton University Press, 248 pages, \$66.00

In a first-century A.D. dialogue, the Stoic Epictetus tried to imagine a “city of Epicureans.” “Who will educate them?” he asked. “Who will manage the Gymnasia?” He feared that pleasure-seekers raising children in their mold would imperil the soul of youth. As far as David L. Tubbs is concerned, we are all Epicureans now. He wants to “document contemporary liberalism’s inattention” to the “interests of children.” His argument is that postwar courts, fortified by academia, have steadily enlarged individual

“rights,” and that these rights intrude on the interests of children, interests often “adverse” to the freedoms of adults. Amoral freedom of expression manifesting itself in pornography or vicious films can corrupt the imaginations of the young. Invented rights to sexual privacy help produce unstable families or illegitimacy. Aggressive anti-religious rulings deny children the benevolent instruction of faith. Liberalism, in short, displays a “tendency to regard certain freedoms of adults as indisputably more important than the competing interests of children.”

There are two culprits: modern liberal theorists, such as John Rawls and Ronald Dworkin, and the leftmost wing of the Supreme Court, Warren era to present. Tubbs makes his case by examining their major works and landmark decisions. He finds that both groups believe that liberalism “entails *both* a commitment to rights *and* an attitude of indifference to the exercise of those rights.” Equivalence between, say, the centerfolds of Ansel Adams and Larry Flynt, at least as far as public policy is concerned, Tubbs calls “moral reticence.” In his view, it betrays the classical liberalism of the nineteenth century, which denied that tolerance was indifference.

The book turns on Isaiah Berlin’s distinction between “positive” and “negative” liberty. The latter presumes that liberty’s end is maximum license. By contrast, the older notion of positive liberty emphasizes self-governance. Benjamin Constant feared that free men relishing their pleasures endangered their freedom through self-absorption. Tocqueville said that self-regard “saps the virtues of public life.” And John Stuart Mill warned that an individual left to choose between the enticements of mind and flesh often chose poorly. The notion of positive freedom, writes Tubbs, reflects the human desire to live free of constraints—not only those of the tyrants without, like prideful kings

and prouder bureaucrats, but potentially worse ones within, like lust and greed. If people “remain prey to forces and passions that they cannot control —even if they live in a society that protects many personal liberties— they are, at least to some proponents of ‘positive’ freedom, in a state of servitude.” Take compulsory education: parents are not free to deny their children a rudimentary education; nor are children allowed to determine for themselves whether to attend. This seeming restraint on liberty is actually liberty’s enabler. The “wholly unschooled” do not possess the same opportunities for independence, self-cultivation, and happiness as the educated. The “freedom” to skip school is really the freedom to destroy yourself.

Although he finds overwrought the view of men like Leo Strauss and Allan Bloom that liberalism, in its most “radically subjective” form, is no better than nihilism, he believes “moral reticence” in universities and courts prevents us from distinguishing between good and bad uses of legal freedoms. A right says nothing about its rightfulness. Demagoguery, libertinism, art that uses blood—many things are disgraceful but within the law. As Solzhenitsyn observed in his famous 1978 Harvard speech, law alone is

scarce defense against the abyss of human decadence, for example, against the misuse of liberty for moral violence against young people, such as motion pictures full of pornography, crime, and horror. This is all considered to be part of freedom and to be counterbalanced, in theory, by the young people’s right not to look and not to accept. Life organized legalistically has thus shown its inability to defend itself against the corrosion of evil

This is especially true when our legalistic organizers seem so heedless of the young. In *United States v. Playboy Entertainment Group, Inc.* (2000), the Supreme Court struck down a law designed to prevent children from exposure to pornography by restricting broadcast to the late night and early morning. Playboy won on a First Amendment challenge. In essence, the dispute concerned the balance between the right of adults to watch trash at all hours of the day and the danger that children might stumble on it. Justice Kennedy argued for the majority that sensitive viewers, young and old, may “avert their eyes” by changing the channel. Yet in *Lee v. Weisman* (1992), Justice Kennedy wrote, again for the majority, that a benediction at a public high school graduation in Rhode Island violated the Establishment Clause. It was a “state-directed religious exercise” that forced students, highly susceptible to peer pressure, to observe a ceremony potentially invasive of their consciences. Together the cases suggest a revealing inconsistency: *Playboy* argued that children could look away; *Weisman* asserted that they could not. Thus, says Tubbs, the Court variously

characterizes children as morally and psychologically fragile, and at other times depicts them as essentially indistinguishable from adults.

His solution is not to find new “rights” in the Constitution—children don’t need more rights; adults need fewer. Or, rather, the balance between *competing* rights needs to be reset in favor of the young.

Tubbs’s attempt to revive a notion of positive liberty is written with refreshing conviction. Alas, after the first chapter, his thoughtful plea sinks into a scholastic exercise. Instead of attending to the thought of Mill and Aristotle, he attends to the thought of an academic named Susan Moller

Okin and her effort to apply the theorizing of John Rawls to feminism. We learn interesting facts such as that the “details of [Okin’s] ‘dynamic of power’ are found in chapter seven of *Justice, Gender, and the Family*” and that among other schemes for social engineering she would require that, in cases of stay-at-home moms and working dads, employers endorse dad’s checks to both parents. It is unclear why Tubbs devotes so many pages to Okin’s work. It smacks of breaking a butterfly upon a wheel. Or perhaps the self-congratulatory slogan of the intellectual—ideas have consequences!—leads him to exaggerate her influence.

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Tubbs is a professor of politics at King’s College in New York, and academic habits presumably explain the tedious importation of the lecturer’s trope. In one two-sentence passage, we get: “I will first review the premises ... I then discuss ... after which I spell out...” By the book’s end, the initial plain-spokenness is a mere memory, and the -isms are tossed about with abandon, from “monism” and “ethical individualism” to “values pluralism.” Academics should be required as a condition of tenure to recite each morning this observation of Paul Valéry:

It is impossible to think *seriously* with such words as Classicism, Romanticism, Humanism, Realism, and the other -isms. You can't get drunk or quench your thirst with the labels on bottles.

Tubbs's failure to descend from the heights to provide clinching facts and illustrations makes it hard to get a fix on his claims.

Yet his mission—to remind us that we once paid proper heed to the harm that adult freedom can visit on children—is sensible and correct. Children are incomplete, delicate, impressionable, corruptible—in many respects our most vulnerable group, and therefore most entitled to the solicitude of state and society. In the end it is Mill who best represents the moral sense to which Tubbs urges liberals to return:

Capacity for the nobler feelings is in most natures a very tender plant, easily killed, not only by hostile influences, but by mere want of sustenance; and in the majority of young persons it speedily dies away if the occupations to which their position in life has devoted them, and the society into which it has thrown them, are not favourable to keeping that higher capacity in exercise.

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