Commentary on Chapter 3: A Reflection on 'After the Century of the Child' by Lilja and Tzimoula

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I read Lilja's and Tzimoula's chapter with an ear for silences. I asked myself what might be more resonant in a Canadian study of student competent agency. Three comparative questions about law, assimilation and religion came into my mind.

1. Do the structures of law and policy-making in Sweden and Canada shape differences in the ways students have been positioned as actors in schools? Political parties, ministries, and intellectuals move the narrative in Lilja's and Tzimoula's chapter; from a North American perspective the courts, private institutions, and non-governmental associations are absent. The invisibility of law and voluntary action might result from evidentiary choices, but it seems safe to suggest that governmental rule has been exercised in different ways in the two countries. If so, we might

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S. Frankel, S. McNamee (eds.), Contextualizing Childhoods, https://doi.org/10.1007/978-3-319-94926-0_4
ask if these structural differences explain variations in the articulation, circulation, legitimation of student’s claims to participation and self-determination in schools. I think they do, at least in part.

If we look at the law in Canada, the turning-point occurred with the legal Americanization of the country through the 1982 Charter of Rights and Freedoms. The Charter did not merely name rights and responsibilities that had always been part of Canadian culture. It fundamentally altered the relationship between individuals and the state, broke the monopoly of ruling parties and government ministries over law, and enhanced prototypically American approaches to social reform. This reconstitution of the Canadian state has had observable consequences for childhood policy and practice (Mandel 1994).

Historically, Canadian courts have been reluctant to speak on issues of student participation and discipline in schools. When it heard cases, the bench rarely framed them as questions of rights possessed by individuals or as members of groups. Consider Ruman versus Lethbridge School District [1943]. In February 1943, two Alberta Jehovah Witnesses, aged 9 and 11, refused to salute the flag during a mandatory school convocation. They were sent home by the principal in accord with a war-time school policy. The students and their parents sued. Alberta’s high court translated the facts of the dispute into the question of whether the district had exceeded their authority under the Province’s educational statutes. They had not. The individual rights of students to self-determination were illegible; their claim could not be fully written into legal discourse. Similar disputes were adjudicated by high courts in the United States, notably during WWI (See Troyer v. State, 1918, Ohio Supreme Court) and Vietnam (See Tinker v. Des Moines, 1969, United States Supreme Court). Unlike the pre-Charter Canadians, the Americans framed the question as a balance between fundamental freedoms of political and religious expression against public good and order.

American legal logic began to alter Canadian discourse on student rights in the late twentieth-century, and it came into full maturity with the Supreme Court ruling in Multani versus Commission Scolaire Marguerite-Bourgeoys [2006]. While at a Quebec school in 2001, twelve-year old Gurbaj Singh dropped his kirpan (a ceremonial knife worn by Sikh men) indiscreetly from under his clothes. This innocuous accident
set off a series of rule-making negotiations at the local level which resulted in some student codes of conduct prohibiting the kirpan outright. The dispute travelled all the way to the Supreme Court of Canada which translated the facts of the case into the question of whether a ban upon the kirpan was a violation of the students' Charter of rights to freedom of religion. It held the school board had violated a fundamental freedom of students which could not be saved by the 'reasonable limits' clause of the Charter.

By focusing on the process of dispute resolution, we might open-up interesting comparative questions. How does Swedish educational culture articulate dissent? In Canada, we can document a movement towards recognizing students as persons possessing the rights of citizenship. However, the trajectory is more ambiguous than the narrative of social democratic liberation from tradition followed by a neo-liberal backlash. In Canada, ironies persist within the Anglo-American legal tradition, and they display the paradoxes within liberalism itself.

The most obvious case in-point would be the Supreme Court of Canada's 2004 ruling on corporal punishment. This ruling increased criminal and civil exposure for schools or teachers who corporally punish a student. Here we have a significant difference in structures of law. In Sweden, the 1979 statutory prohibition of corporal punishment of all children is an important international marker. In Canada, a statutory protection for any adult in a parental or teaching relation who punishes a child as a means of correction remains on the books. The Supreme Court upheld this section of the code in 2004, but 'read-down' the statute to exclude teachers, effectively outlawing corporal punishment in any school. This may sound convoluted to those from a civil code tradition, but the legal process and its underlying logic in Canada carries important implications for generational relationships.

In 2004, the majority of the Canadian Supreme Court had refused to accept the general language of children's rights offered by the plaintiffs (and over 100 voluntary associations). The plaintiffs had asked whether a federal statute that prima facie violated the age discrimination clause of the Charter, by protecting adults who punish children corporally, could be saved by the 'reasonable limits' clause? If posed that way, the answer almost surely would have been 'no'. Instead, the majority used children
dependency on their parents to translate the question into whether parents had a right to raise their children without state interference. This legal manoeuvre deeply divided the Court (6–3), but it signals for us the fact that an older (Lockean) tension between families and the state in English-speaking countries retains the ability to erase questions about children's rights as self-possessing citizens. When parental rights to liberty from the state come to the fore, the rights of children to participation and self-determination are almost as invisible today as they were in Ruman versus Lethbridge in 1943 (Skyes 2006).

The shadow of the law and the power of parenthood hang over all discussions of student rights in Canada. Like Americans, we have become a litigious people. That admitted, the common law is not a neutral site for the essential truth to be determined. Common courts produce adversarial truths, adjudicated case-by-case, rather than a truth condensed into a small catechism pronounced from a ruling party or packaged as a new paradigm by experts. Legal practices in the English tradition order ongoing differences, they do not resolve them. This may be a sticky way to sustain a conversation about how to ‘program’ children’s engagement. Or just maybe, the English tradition makes the contradictions inherent in such efforts more obvious. This leads us to a second comparative point of silence.

2. Has the assimilation of diverse cultural groups, indigenous peoples, or migrants been as important a part of the history of student individuation in Sweden as it has in Canada?

The obvious answer is ‘no,’ but I wonder if there might be more to this question in light of ongoing controversies about migration and settlement in numerous continental European countries.

Canada has long understood itself as a nation of migrants established through British and French colonialism. And until the second-half of the twentieth-century, the Canadian approach to population management was decidedly more Eurocentric (or Anglo-centric) than that of its often-maligned southern neighbour. Nevertheless, religious, language, ethnic, or racial conflicts have never been far from the surface of Canadian educational practices. The constitutional settlement of 1867 that created the
country could not have happened without explicit protection of state funding for separate Roman Catholic schools, precisely because the assimilating and homogenizing force of children's education was recognized.

Today, Canada is the only country in the world to have held a Truth and Reconciliation Commission (TRC) for state crimes against children and youth as a group. Canada's TRC was about schools—aboriginal residential schools. These schools physically separated children from their families and communities, purportedly so they could be individuated and homogenized into a nation-building project: 'to take the Indian out of the Queen's red children.' After a century, the project collapsed under decades of protest about language loss, poor facilities and care, mistreatment, physical abuse, including rape. However, the closure of the schools did not lead directly to the TRC. The Canadian state constructed the Commission to rationalize the financial risks as they lost case after case in the new millennium. The TRC removed the dispute from the common law and insulated the state from fundamentally changing its relationship to indigenous peoples, as the discourse moved away from the law towards a public display of personal anguish (Neizen 2013).

This said, we can see a golden thread connecting the TRC to a larger Canadian legal discourse on students and schools. It shines through the very title of Commission's first major report: *They Came for the Children* (2012). The TRC perspective is from the point of views of parents and indigenous communities. Because the report positioned the residential schools as a form of cultural violence ('genocide' was the term) resulting from colonialism, it could not fully consider the policy relative to modern schooling or generational violence as such. The first narrative (contest between adults over childhood) has far more traction and it won the day. In fact, the report's critique of corporal punishment of students was entirely consistent with the line of thought on the sanctity of parental rights that saved corporal punishment as a general protection in Canadian law. This irony seems to have entirely escaped public comment in Canada. It reminds us that whenever children are the victims, it is likely that adults will push the agenda as plaintiffs. We might suspect that other attempts to establish inalienable rights to self-determination and participation for students in the context of comprehensive compulsory schooling may be vexed with serious internal contradictions.
What might be the root of the problem in Canada and is any part of this root shared in Sweden? Residential schools were part of a colonizing project, but this is not where either their pedagogy or their techniques emerged. The sources lay in the English Reformation, which leads us to a third noticeable silence in Lilja’s and Tzimoula’s narrative: religion and/or the theological.

3. Does the production of subjectivity through childhood education in Sweden or Canada retain a theological element? Or to put it a little more provocatively: What would happen if the twentieth-century social democratic narrative of Swedish educational history discovered it retained Lutheran roots?

Some may shrug and say, Sweden is a secular state defined by the task of progressively cutting such roots. Or a Canadian might say, religion is authoritarian; what could it have to tell us about the discourse of student competent agency? I pose the question, because these are unconvincing responses—at least for the English-speaking world—for two reasons: (1) early-modern shifts in English educational practices created through the Reformation have not only survived, they helped constitute the secular governmental state; and (2) these practices (whether they are currently recognized as ‘religious’ or not) are precisely how schools produce and shape student-subjectivity. Exploring these two points well is beyond the scope of this reflection. Here, I only wish to open a door upon a discussion about the limits of the social democratic narrative of a neo-liberal backlash. The twists and turns of our present might be much older than we think (Foucault 2009; Qvarsebo and Axelsson 2015).

Geneva had its influence on English theology spectacularly with the Puritans, but it was a Lutheran from Strasbourg named Martin Bucer, exiled to Cambridge, who did the most to bring a reform theology which moved the English beyond the small concerns of Henry VIII. It is worth restating the two Lutheran tenants that have animated English Christianity for centuries: sola scriptura and sola fide. A Christian must be a competent reader of scriptures. The English needed their own Bible, and they would create a majestic authorized version as one of the founding pieces of their proud literary tradition. Why? The disposition of the soul could not be
negotiated through rituals, or indulgences, or prayers for the dead. Faith and faith alone, the internal transformation of the soul, was the only authentic road to salvation. In these two simple theses, we find the grounding for the 17th Century English revolution in education.

It is no accident that mediaeval ossuaries and crypts were emptied out and the chantry houses seized by reformers in England making way for grammar schools that began to dot the English landscape. Indeed, many of these places for keeping bones and praying for the dead became school rooms and houses. They give us the most pointed institutional examples of the early-modern re-orientation of Christianity from a sacramental religion centred on a cult of the dead towards a pedagogical religion centred on literacy, catechism, and belief. What does this have to do with competent agency or student participation or citizenship? Everything.

Two-child centred educational practices in Canada will briefly exemplify how far we haven’t come. In Canada, it is common for elementary students to be placed in circles or tables that face each other. This arrangement of desks is often pictured as liberation from rows of desks facing the teacher. It may be so, but it is also a return to a spatial concept implemented in Late 18th early 19th Centuries American Sunday Schools modelled on the British Lancastrian or Monitorial system. When children are placed in circles to face each other, they cannot know when they are being watched. So, they learn to watch themselves. Hierarchical observation is the cardinal technique for producing the self-monitoring subject. It is much more effective than bolting students into rows or giving them lists of rules (Ryan 2011).

Individual education plans (IEP) are also presented as a liberation from standardized tests or the power of a teacher handing-down marks. They may be, because they demand that students participate in a form of secular confession. What is the curriculum of the IEP? It is the student, rather than the work. The substantive content becomes ancillary, as if it was the mere ritual displaced by the authentic event—the learning ‘process’ as a narrative of conversion. Recounting the process of transformation takes centre-stage even if it is ultimately ineffable. Stanley Fish called these recursive texts ‘self-consuming artifacts,’ and the paradigmatic character for the spiral of reflexivity they foster was John Bunyan’s 17C ‘Christian’ of *The Pilgrim’s Progress*. Christian may have been the first
‘life-long learner.’ Today, self-consuming IEPs are produced in a volume so awesome they could never be printed, circulated, or read by the public in Canada. But that is no longer their limited sphere. Like Bunyan’s Christian, we are all on a journey about ourselves (Sjoberg 2015; Fish 1972; Ryan 2017).

There is something unfair about listening for silences. Lilja and Tzimoula might say, write your own paper. I offer these reflections on law, assimilation, and religion in the hope that naming points of discontinuity might help us find something new in our shared, but multiple histories of childhood and youth.

References


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