

Children Out of Bounds in Globalising Times

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Introduction

In this paper I want to focus childhood itself as a form of globalisation, and one that has proven particularly troublesome for nation-states, which face a growing need to define, implement and protect childhood.¹ Anthropology established early on that childhoods across cultures vary dramatically in content and experience; recent theoretical and ethnographic work has focused squarely on children as serious subjects of research while problematising the ways in which notions of child and childhood have been taken for granted. Childhood is, after all, neither natural nor universal. Like capitalism, it is historically and culturally specific. Like capitalism it is also globally mobile, generating new variations of itself as it moves. With childhood, the foundations of these variations include assumptions about household and family structures (not extended but nuclear), domestic arrangements (children belong in private spaces), the organisation of work (children shouldn't do it) and the institutionalisation of schooling (children belong at school during the day). This form of childhood, which I refer to as the dominant form of childhood, is neither universally practiced nor universally valued. Even when valued, this form of childhood is particularly costly and nearly unattainable in poor societies with shaky infrastructures. For Haitian peasants sending children to school is a costly endeavor many families cannot manage. School fees, supplies and uniforms are costly enough; in combination with the loss of child work that schooling also requires, the result is a heavy economic burden many cannot sustain.

At its base, globalisation is an economic process, but one with far-reaching social and cultural influence. Since the 1970s, rapid and dramatic changes in the levels of integration of the global economy have transformed not only the economic landscape, but

social, political, media and other “scapes” as Appadurai dubbed them, as well.²

Globalisation has made borders at once more porous and more problematic: information, people and goods traverse borders of nation states so fast and so frequently, that some borders at least seem nearly to have melted from the heat. Simultaneously, corporations, themselves comprising economies larger than all but the very largest nation-states, exert important pressures on social and political processes that may threaten to make some borders obsolete. The imperatives of childhood, not surprisingly, mesh neatly with those of globalisation. Children who go to school are children who do not work, or who do not work much. Adults who can secure the cash to provide for their school needs, food, and support must support them. Schooling, for its part, provides children literacy and technological skills that will aid them in taking on various forms of labor important to global production. Children who go to school are also consumers, another category of person having growing importance under conditions of globalisation, as such; they often exert pressures on families to consume more and in new ways.³ World wide, families and communities stretch—and sometimes strain—to accommodate the requirements of childhood, simultaneously transforming themselves into families and communities more able to engage with the forces of globalisation in its terms.

And yet the powerful disruptions that have accompanied globalisation have paradoxically ensured that dominant childhood is a notion out of step with the emergent realities of many children’s lives. Dominant notions of childhood assume that children are domestic, part of families, primarily unproductive, and dependent. With increasing regularity, these assumptions are challenged by children who, riding waves of global tides, head households, fight in civil wars, and travel alone transnationally. The growth

of these challenges has provoked an ongoing crisis with childhood itself: accepted notions of childhood are implemented by states that are faced with growing numbers of children who challenge the very notion of childhood. Rather than being reimagined in response to these pressures, childhood has become more strictly codified.

As states make use of globalised notions of childhood for their own purposes, and as children themselves circulate globally in increasing numbers, children and childhood can be found at the center, rather than the margins, of globalisation itself. What remains largely unresolved is entirely basic. How are children defined? What are their rights, abilities, and character? To what degree are they autonomous? The precise definitions of childhood and the children it identifies are diverse rather than coherent. The production of these definitions also entails the establishment of boundaries of childhood. Concerned primarily with what might be called children-out-of-bounds, this paper looks at dilemmas in the definition of childhood. These dilemmas illustrate how the limits of childhood are imagined and maintained. They also set the stage for reimagining childhood in globalising times.

In the case of Haiti, where up to 300,000 children live in domestic servitude, the state is asserting its commitment to dominant childhood in order to forward claims of its democratic potential and economic responsibility. Haiti's domestic laboring children are out of bounds at a number of levels, the most obvious of which is that they are children being exploited for their labor. In the global community, powerful moral opprobrium is now directed at nations who tolerate high levels of child exploitation for labor, sex or combat. So-called children without childhood become powerful symbols of a country's failure in handling the complexities of civilised, modern life. As an example, each year

UNICEF's annual report is titled "The State of the World's Children" and each year "The State of the World's Children" is implicitly an assessment of the state of the world; in countries where children fare badly, the implication is that this is a place where problems far beyond those facing children are to be expected. The purposefulness with which Haiti musters the image of its oppressed children to bolster state claims to progress and legitimacy is notable in part because it demonstrates Haiti's recognition of the power of globally circulating notions of childhood.

As Haiti moves toward reforming children's lives, it also is also expanding the implementation of childhood through regulation and adjudication. In the U.S., the complexities of such regulation and adjudication are mind-boggling. These clear and precise definitions rely more and more on scientific criteria: chronological age, biological development and cognitive ability. However, the particular ways in which such scientific objectivity is mobilised, at least in the U.S. and Europe, show striking parallels to scientific racism. In particular the circulation of third world children to the U.S. has provoked new precision and definitiveness in drawing the boundaries of childhood. In two separate cases, I turn my attention to dilemmas faced by the United States as it attempts to restructure immigration policies. Like much social policy, immigration regulation is adult-centric. Specifically, it cannot yet account for globally mobile minors who are circulating independently of their families. In discussing two cases of "unaccompanied minors" I begin with the lower end of childhood, where the state must grapple with difficult questions regarding child autonomy. At childhood's upper end, the case of the Haitian refugee Ernesto Joseph illustrates the dilemmas faced when the state must determine whether or not a particular individual is, in fact, a child. These

unaccompanied minors are particularly complicated conundra for the state: their status as children is produced by global dynamics of childhood itself, yet the circumstances of their mobility and their “unaccompanied” state place them outside childhood’s boundaries. As products of global forces, unaccompanied minors are material reminders that globalisation travels not just away from the metropolises, but increasingly, like a boomerang in flight, arcs back into the hand that threw it.

Childhood as Social Fact

Like others, I view childhood as being primarily a social construct, and, like race or gender, a social fact in the Durkheimian sense.⁴ Western ideas about children, including the scientifically articulated notions of child development, are culturally and historically specific rather than timeless and universal. Anthropologist Alma Gottlieb characterises western theories of child development as “folk models” to emphasise their particularity.⁵ As Sharon Stephens points out, the universal category of the child is a problematic assumption:

While all cultures have given meaning to physical difference of sex and age, it can be argued that the social worlds in which these physical signs become significant are so profoundly different that we are already doing analytical violence to complex constellations of meanings and practices when we single out notions of male and female or childhood and adulthood and attempt to compare them cross-culturally. These terms already presuppose a world of Western cultural assumptions—for

example, that sexual or age difference are self-evidently dichotomous and that they define the parameters for exclusive identities.”⁶

World wide, legal apparatuses, social policy and the discourse of human rights all employ a fundamentally similar notion of childhood that views children as properly domestic, apart from productive labor, and dependent.⁷ In her introduction to the influential collection Children and the Politics of Culture, Sharon Stephens notes that these assumptions are decidedly urban, modern and capitalist, a point well supported by ethnographic literature on children.⁸ Stephens goes on to argue that when this view of childhood is integrated as a normative baseline, it enforces views of “other” childhoods as deviant, problematic, or backward. Almost inevitably, I would add, race, class, or culture marks such childhoods. For example, in the U.S., poor black children hardly represent “normal” childhood although they are children and they are normal.⁹ With emblematic cases like street children, sex workers and child soldiers, the assertion about norms of childhood and deviations from it is even more basic: these are children without childhood. But this statement, which appears to have two sides, is really more like a mobius strip: follow it and you end up back where you stated. If it is the very notion of childhood that identifies children, how is it possible to have children without childhood? If you remove the concept of childhood, does the child still exist? If children do not live as children, can childhood claim them?

Rather than thinking in terms of children without childhood, I find the notion of children-out-of-bounds more useful. Thinking of child sex workers, for instance, as children out of bounds recognises childhood as a construct with edges that some children cross, acknowledging that the boundaries of childhood are to

some degree flexible or permeable. This notion also emphasises that childhood creates a territory; it does not describe something that is part of the fixed truth of the universe. Its boundaries, then, like all human constructions, are subject to history and to change. The idea of children-out-of-bounds emphasises that children and childhood are two distinct entities that may or may not be perfectly synchronised. In addressing problems facing children, childhood itself can be problematised from this point of view in a way that it is not when the problem is constructed as one of “children without childhood.”

In disentangling the ideology of childhood from the material persons it identifies, it might be useful to distinguish between this Western based category, with its universalist claims, and local childhoods, which are enacted in particular sites. All childhoods are local, just as all childhoods are also claimed by the universal idiom of childhood itself. In this vein, Alan Prout and Allison James, who have done much to theorise children as political constructions and historical agents, suggest that it is useful to think of numerous childhoods “all of which are real within their own regime of truth.”¹⁰ There can be no doubt, however, that under conditions of globalisation, such regimes of truth are increasingly unlikely to exist as separate bubbles. Almost without exception local childhoods from New York to Myanmar must all exist in some amount of tension with the globalised notions of childhood. The U.N Declaration of Children’s Rights, the legal regulation of child life (juvenile courts, compulsory schooling), and non-governmental agencies aimed at supporting childhood have all been instrumental in the spread and implementation of dominant notions of childhood.¹¹

If childhood is globalised, it is also an instrument of globalisation. This can be seen most clearly in the case of Haiti, where paying attention to children-out-of-bounds has provided the state one opportunity to stake its claim in the global, progressive arena. To understand why an appeal to childhood might be so powerful in Haiti's case, it is useful to set the scene, describing something of Haiti's current economic and social situation.

Haiti and the Global Economy

The roots of Haitian poverty lie well within the early development of the world system so beautifully described by the political economy of anthropologists like Sidney Mintz and Eric Wolf.¹² Early wealth generated by sugar plantations worked by slaves has been viewed as the initial stages of the rationalisation of labor that set the scene for factory production, the industrial revolution and the rise of global capitalism. When, in 1791, the slaves rose up against their masters in a bloody and long-lasting revolution, the world's first black republic was blackballed by Europe and the Americas to the margins of the world economy it had been central in creating.

If Haiti's 18th-century heyday was a harbinger of modernist global capitalism, Haiti today could be viewed as the ultimate postmodern economy. Even Haiti's government coffers are globally funded: in 1998 a World Bank report noted that 90% of Haiti's government "investment budget" comes from "external sources."¹³ Similarly, education in Haiti is a global, rather than national, project. Though the Haitian government provides free, public education, the U.S. State department estimates that "private and parochial schools provide around 88% of programs offered."¹⁴ A huge

number of those programs are run by organisations funded abroad; most are Christian missionary enterprises, whether Catholic, Pentecostal, Mennonite or Mormon. The only remaining production sector of any note is headed into existing and proposed free zones that operate without interference of tariffs, import taxes, or levies from Haiti's cash-strapped government.¹⁵ Nearly all shopping in Haiti is done in informal markets, at the road side, or in a tourist boutique. Well-to-do Haitians are transnational shoppers and those Haitians who have real money shop in Miami, the Dominican Republic, or in Panama for everything except perhaps groceries and domestic labor. The new clothes that are manufactured in Haiti ship out to locations abroad; those same clothes may return to Haiti as "pèpè" (which is also known as "Kennedy"): the ubiquitous second- or third-hand items including any kind of consumable imaginable: underwear, refrigerators, Happy Meal Toys, sheets, cars, cookware, eyeglasses.¹⁶ The great majority of Haitians dress themselves, furnish their homes and provide for their everyday needs through the purchase of pèpè. Thus, poor and middle class Haitians are in their own way transnational shoppers, not because they themselves move transnationally, but because the goods they consume have moved through uniquely complex global circuits. Cell phones and the internet are the only way to make most telephone calls; state-owned and operated land lines are nearly unusable. In addition Haiti has become one of the primary stolen car destinations and a transfer point for drugs moving out of Latin America and into the U.S. The global complexities of disease have infamously transformed Haiti. Drug resistant-tuberculosis is on the rise, as are preventable polio infections. Over 5% of Haiti's adult population is HIV positive, and UNICEF estimates that in 2001 there were

approximately 200,000 AIDS orphans in Haiti, a country whose overall population is about 8 million.¹⁷ Put another way, one in 40 Haitians is today an AIDS orphan.

Restaveks

Restavek is an old tradition in Haiti, a way for children of poor, rural families to perhaps get an education and to eat regularly by living with better off, urban families and in exchange performing domestic labor. The term comes from the French, rester avec, “to stay with,” and describes in the gentlest of terms a kind of domestic servitude that by any other name would be called slavery. Restavek is sometimes also referred to as a kind of informal adoption, but most restaveks live under few illusions about their status which lies somewhere below the household servants and somewhere above stray dogs. The lives of restaveks are shockingly harsh, as Jean-Robert Cadet’s memoir of his restavek childhood documents. They occupy the lower rungs of a hierarchy that is enacted through direct and naked forms of violence.¹⁸ It is difficult to briefly describe restavek life without sounding hyperbolic, but restaveks are in every way less-than, and the dehumanising treatment they receive is matter-of-fact. Cadet’s account describes a childhood of physical and mental abuse stunning in its scope and inventiveness. He was even brought into the United States by “his” family, who fully intended to keep him as a restavek while living in New Jersey. Often entering into restavek life as young as two or three years old, by their teens many restaveks have hit the streets. But the existence of restaveks does not mean that there are no people in Haiti who are understood as children. Many restaveks live in households where indulged children live as well. The overall Haitian construction of the child is actively engaged with the globalised norm,

particularly vis a vis the state, which provides institutionalised education, regulates child labor and so on. It is important to note, however, that cultural inquiry into Haitian notions of childhood remains yet to be done; local forms of Haitian childhood are neither well documented nor well understood.¹⁹ Even within these limits, it seems clear that even within Haitian understandings of children and childhood, restaveks constitute a separate category of child. This category of child is peculiarly Haitian, much as certain gender categories are culturally specific. Restaveks do not have rights to the social space defined by Haitian notions of the child and despite the huge numbers of restavek children, restavek childhood is not normative. Neither is the practice universally accepted; many work actively to destroy it, most notably Haiti's President, Jean Bertrand Aristide.

Initially elected in December 1990, Aristide's first five-year presidential term was interrupted after only eight months by a military coup. The President was forced to flee to the U.S., where he waited until 1994 when the U.S.-spearheaded "the first and only U.N coercive invasion to reestablish democracy" reinstalling him to office to finish his term.²⁰ Constitutionally barred from reelection to a second consecutive term, Aristide became president for a second time in 2000. During the parliamentary elections of 2000, despite the fact that Aristide's Lavalas party would clearly win a majority of seats, election fixing seemed to be rampant. The international community attempted to shame the Aristide government into invalidating those elections through their withholding of economic aid. The result was an intensification of already devastating economic decline. In April of 2003, with international aid still at a standstill, Haiti's minister of Social Affairs and Labor introduced a bill aiming to eliminate the labor code exemption for

child domestic labor. President Aristide, in announcing his intention to eradicate the restavek practice completely, explicitly tied the restavek problem to the two-year freeze on international aid, noting that funds being withheld from health and education projects only exacerbated the number of restaveks.

Children, and specifically street children and restaveks, have long figured prominently in President Aristide's agenda. Aristide himself is described as possessing a "famous angelic childlikeness"²¹ and there is no doubt that he is aware of the powerful symbolic valence that children hold for the global community. While still a Salesian priest, Aristide founded the orphanage Lafanmi Selavi, an organisation with what journalist Amy Wilentz called "political underpinnings." She writes that "he blamed the condition of the children on the state itself, and portrayed Lafanmi Selavi as one of the very few projects in Haiti that sought to raise the consciousness of the people it was intended to help."²² For Aristide, then, children and politics have long gone together. By the time that Aristide had endured an interrupted Presidency, exile in the U.S., and reinstallation with U.N. intervention, his audience was no longer the Haitian state, but the global community. Shortly before his campaign for reelection was due to launch into high gear, Aristide published Eyes of the Heart, a book in which his work with children figured strongly.²³ Published in English, the book was in no small part a kind of transnational campaign tool. Arguably, his ability to govern was as enmeshed with global forces as it was with the Haitian electorate.

It would be far too cynical to argue that Aristide's choice to highlight children and childhood is only about gaining sympathy and advantage; that said, with the fundamental commitment to children established, Aristide has cannily used children as an instrument

of internationally situated statecraft. Restaveks are especially powerful figures because they are a prime example of children without childhood. The restavek practice seems wildly, viciously archaic because it is both a form of forced bondage and of child exploitation. Anti- modern, anti- progressive and anti- democratic (despite their persistence in many locations), when these forms of exploitation come together in the restavek, a powerful case can be made for Haiti's need for change. This may be precisely the point, and it is no accident that Aristide has connected the persistence of restavek with Haiti's marginalisation in global flows of capital. In announcing its efforts to eradicate restaveks in conjunction with making arguments that Haiti should be readmitted to the global community, the government of Haiti asserts its commitment to modernity and democracy.

Democracy in Haiti has long been a sticky issue. There are well documented forms of indigenous communitarian practice, but Haiti is far better known for a heartbreakingly long string of despots. Dictators, self-proclaimed kings and a tradition of kleptocracy has left Haiti with a reputation for being preternaturally resistant to democratic governance. Restaveks, a vulnerable and brutally exploited population, starkly highlight foundational problems in Haitian society that make achieving democracy so difficult. But Aristide's government explicitly ties the internal problem of restaveks to external, global forces as well. Legislative reforms proposed in 2003 aimed to prohibit "all forms of trafficking in children for the purposes of prostitution, pornography, armed conflicts and organ donations."²⁴ It is unclear how pressing the need is to prohibit these other forms of trafficking—a recent UNICEF study of trafficking of children between the Dominican Republic and Haiti estimated that 2,000-2,500 Haitian

children a year traverse the border.²⁵ In comparison to the internal traffic of restaveks, transnational trafficking, at least to the Dominican Republic, is a much smaller problem, considering that these numbers also included children crossing the border with their parents or to join family. The move by the Haitian government to connect international trafficking to the restavek problem pointedly juxtaposes the localised practice of restavek with the globalised processes of trafficking in children and body parts. Haiti's internal traffic in child labor is counterbalanced with external demands to consume children sexually or medically, an equation that points a moral finger outward.²⁶

Aristide's championing of the most outcaste of poor children is no longer a critique of the Haitian state as it was when he sought to become its leader. Now, his critique is meant to be read abroad, and is aimed at those whose fiscal decisions hold his country hostage. Like Gandhi's insistence that India could not become a true and proper democracy until it did away with caste prejudice, Aristide's solidarity with throwaway children provokes difficult questions about the foundations upon which Haitian democracy must be built.²⁷ Can a society that enslaves children truly enter the modern era? In arguing for childhood Aristide and his government self-consciously demonstrate the modern progressiveness of their vision; they argue for childhood specifically to impress their progressiveness upon observers, and upon their nation. Forwarded in tandem with arguments in favor of Haiti's re-entrance into the global economy, efforts to reform the restavek system speaks to the power of global childhood.

It is key, then that restaveks are children out of bounds. Within Haiti, the state attempts to mobilise the figure of restaveks to expose the ways in which Haitian society remains undemocratic and anti-modern. Beyond Haiti, these same restaveks are used by

the state in an argument that globalisation itself creates the inequality and misery that restaveks embody; thus the ultimate blame for Haiti's democratic problem lies at the feet of the global community. Key to the argument of the Haitian state is the appeal to globalised notions of universal childhood. In asserting that Haiti, too, embraces these notions, the Haitian state argues it is ready to join the fold. Meanwhile, despite legislation and activism, neither restavek numbers nor their lives have changed much, if at all.

Children out of bounds with the INS

On 11 April, 2000, two-year-old Phanupong Khaisri arrived from Thailand at Los Angeles International Airport. The man and woman with whom he traveled were detained because they held fake passports. They were not his parents; Phanupong, also called Got, was a "decoy" or "prop" intended to make the adults seem like a happily married couple who had taken their child with them on vacation. The Indonesian man was smuggling the Chinese woman into a slave labour ring operating in the United States. Both adults were deported nearly immediately, but Got was malnourished, scrawny, and visibly ill. He could not travel back to Thailand without medical care, and, as it was discovered later, he was also HIV positive. Authorities learned his mother was a "drug-addicted prostitute" who had herself been sold into trade at age 12 by her mother. The boy's father had committed suicide when Got was 8 months old after learning he himself was HIV positive. Got had been used this way more than once in similar schemes. His mother wasn't sure, but she thought it was maybe the third time she'd sent, lent, or rented him on such a journey. Even as Got's paternal grandparents pressed for

the boy's return to Thailand, planning to adopt him, a request for asylum in the U.S. was submitted on his behalf by the Coalition to Abolish Slavery and Trafficking.²⁸

Got's case, while not typical, is emblematic of a growing number of similar cases faced by the Immigration and Naturalization Service (INS). Since the creation of the Homeland Security Office, the arm of the State dealing with unaccompanied minors is the Bureau of Immigration and Customs Enforcement (BICE). The U.S. and much of Europe are destinations for refugees and immigrants, and face particular problems in dealing with children, who are a growing proportion of refugees and asylum-seekers. Chief among these problems is that most of the regulations and protocols are normed for adults, a point noted by INS administrator Stuart Anderson in testimony before the U.S. Senate. This testimony noted emphatically that juveniles have different needs than adults and in particular that they impose "special obligations" on the government because of their vulnerability.²⁹ These comments indicate an implicit acknowledgement of a developmental view of childhood, but in determining child status, the state is most pressed to decide only whether or not an individual has passed the 18-year benchmark.

Recent estimates are that each year 48,000 unaccompanied children enter the U.S. from Central America and Mexico alone; in 2001 the INS detained 2,401 Central American children and Mexico states that the INS detained 12,019 children.³⁰ (Most of these detainees are probably in middle childhood, and not as young as Got.) Some are guided or brought in by traffickers, often hired by the children's parents to reunite the family. Many of these kids, however, travel alone to find their parents—especially mothers—who may have left years ago to work in the United States, sending money

home for school fees, food and clothes they would be unable to buy if they had stayed home.

In May of 2001 The Los Angeles Times reported that:

The INS last month rejected [the asylum] application, saying Got is not protected under asylum law because he was not harmed due to his race, religion, nationality, political opinion, or membership in a particular social group.

The INS ruling acknowledged that Got was endangered because he is a child, but held that was an “overly broad” social group that could not be protected, INS documents show.³¹

In a striking decision that contravenes one of the most basic assumptions about childhood—namely that childhood is most fundamentally a protected state—the INS determined that children are an “overly broad” social group and cannot be protected by asylum law. Even more striking is the INS admission that Got was endangered because he was a child. The INS recognition that children can and do suffer child-specific exploitation was not enough to convince them that these situations could rise to the level of asylum-worthy: the INS was not ready to begin treating children as an independent class. The justification that children are an “overly broad social group” is deeply unsatisfying. The problems plaguing the INS in regard to unaccompanied minors point to very practical reasons why granting children protection under asylum law was not feasible. Underlying these problems is a general recognition of children but a near complete lack of specificity in terms of policy and procedure regarding the INS position on children’s particular needs, abilities and rights.

Throughout Got’s case, what really stands out is the degree to which the INS simply did not know what to do. What this decision seems to embody is the internal confusion about unaccompanied minors that has of late bedeviled the U.S. no end. With

a set of immigration and asylum policies designed to meet the needs of adults, the U.S. has developed a system in which asylum-seekers are assumed to be adults who are volitional, individual, and capable of self-representation. When children do seek asylum, policies further assume that they apply as members of families, not independently: children do not apply for asylum on their own behalf, their families do it for them. It is obvious here how deeply embedded dominant notions of childhood are. Even in the face of tens of thousands of independently immigrating children, INS policy implicitly defines children as part of families; independently moving children are children out of bounds. The INS decision not to protect children as a class seems more clear here. Because policies assume children to be part of families, a separate recognition of children's independent claims to asylum is not needed – even with the recognition that some children suffer specifically as children.

These assumptions created difficulties at every stage and in nearly every aspect of Got's case. The asylum petition, made on Got's behalf by the Coalition to Abolish Slavery and Trafficking, was irregular precisely because it was made neither by the person requesting asylum nor a family member. In the initial proceedings, the central question for the INS and the judge was figuring out whether an organisation such as the Coalition could properly file for asylum on behalf of a child. The situation was further complicated because the boy had grandparents in his homeland who wanted to adopt him. Who had what rights? In the initial months weeks following his arrival in the U.S., the INS was Got's legal custodian. Got first spent a week in the hospital to receive medical care and then a week in a hotel room "in the custody of INS agents."³² He was then placed in the home of a Thai-speaking social worker. A month after his arrival in the US

the both the INS and Thai governments were arguing for the boy's return to Thailand, despite the probability that he would be placed in an orphanage while waiting to be adopted by his own grandparents. The grandparents preferred to come to the U.S. to be reunited with their grandson. This wish may have been fueled by the INS plan which was to send the now three-year-old on the flight to Thailand without any companion at all, although a flight attendant was to be directed to keep an eye on him.

Got's treatment is a confusion of attempts to respond to him specifically as a child, and attempts to respond to him neutrally—neutral treatment being, de facto, treatment as an adult. No doubt, faced with being responsible for the well being of a seriously ill toddler, the INS had few palatable options. At the same time, the decision to place him in a hotel room under the custody of agents is problematic, at best. If the point was to treat him like a child, then those agents should have been specially trained and qualified (and they probably should have been social workers). If the point was to treat him like anybody else, the intimacy and lack of security makes a hotel room seem an inappropriate choice for holding facility. More important, given that the INS was Got's legal guardian, and given that the INS was actively seeking to deport him, serious conflicts of interest are evident. The plan to send him to Thailand unaccompanied—a plan which as far as I know violates every airline's policies regarding minors traveling alone—seems to be an attempt in the direction of treating Got like any other deportee. On the day Got was to be deported, the judge in his case called an unscheduled hearing that began at the same hour the boy's plane was to depart. During this hearing, he granted temporary guardianship to Chutima Vucharatavintara, the social worker with

whom Got had been living for several months.³³ At this writing, Got's case remains undecided.

The formidable and growing number of children entering the country unaccompanied, or seeking asylum, is forcing BICE to devise child-appropriate policies regarding everything from where to house detainees, to how to determine whether a given individual is a child. Got was lucky—probably because he was so young and probably because his case had garnered so much publicity: some children end up being placed in prison facilities because there is nowhere else to keep them. Because children may face threats from adult detainees, they are often placed in isolation, a solution that is as much an additional punishment to the children as it is a measure to keep them safe. When and under what circumstances can a minor be housed in an adult facility? At what age is a child too young to be housed in such a facility at all? The government is barred from using funds to provide legal representation for persons involved in the immigration process. Without a provision for providing children counsel in the asylum or immigration proceedings, and with BICE acting as the legal guardian of the very children it may be attempting to deport, the agency faces a powerful conflict of interest. Whose job is it to act in the best interests of the child? Can a minor represent him or herself in administrative proceedings? At what age? Can a minor request asylum on his or her own behalf?

In attempting to work through these dilemmas, the INS and later BICE, as arms of the state, have been faced with sometimes conflicting tasks. On the one hand, agencies must mobilise definitions of childhood to determine what kinds of treatment are appropriate for children of different ages. On the other hand, BICE may use those same

definitions in order to determine that a given individual is not, in fact, a minor, or a child. Embedded assumptions about children have left BICE structurally unprepared to respond to the specific problems posed by unaccompanied minors. The problems faced by immigration agencies in the U.S. were so dramatic that in 2001 Senator Dianne Feinstein introduced legislation requiring redrafting of regulations regarding treatment of minors by the INS. This legislation included a requirement that children be granted counsel and a guardian *ad litem*.³⁴ The events of 9/11 and the subsequent government reorganisation meant that the legislation, though enacted, quickly became defunct. Some of the recommendations were incorporated into the newly formed BICE agency. Attempts are continuing to address the issue, including a bill—H.R. 2137-- with the provision that unaccompanied alien minor children should be transferred to the Office of Refugee Resettlement “no later than 72 hours after the time of the alien’s apprehension and shall be released from custody and placed into the community with a qualified relative or caretaker within 15 days of such apprehension.”³⁵ Spelling out policies and gaining institutional clarity on how BICE intends to deal with children will surely help. But as the next case will show, such clarity is tricky and poses as many problems as it seems to solve.

Setting the Childhood Boundary

In October of 2002, over 200 Haitians were spotted in a nearly-sinking wooden boat in Biscayne Bay, Florida. As the coast guard attempted to round them up, many managed to make it to shore, some dashing desperately headlong across a busy highway. All of this was captured nationwide by the media. Most of those found by the newly-

named Bureau of Immigration and Customs Enforcement were placed in detention pending asylum hearings. Unaccompanied minors, toddlers and pregnant women were released to stay with family and friends. Although he had family to take him in, Ernesto Joseph was not released. Saying he was 17 when he arrived, he did admit he was not exactly sure of his birth date. The Bureau of Immigration and Customs Enforcement used dental analysis to determine his age. Based on that analysis, the Bureau stated Joseph's age definitively as 19 and transferred him to an adult detention center.³⁶

In Got's case, the INS was faced with the problem of how to appropriately deal with a young child. At the opposite end of childhood, BICE needed to establish Joseph's chronological age to determine whether he was legally a minor. Because Joseph was undocumented, BICE used dental examination to establish Joseph's age. Such examinations are policy in cases like this.³⁷

Legal definitions of the child—those younger than 18 years—require agencies like BICE to determine the chronological age of individuals when other forms of proof, such as birth certificates, are not available. Technologies of childhood have established several streams of measuring child development. Cognitive development, emotional development, physiological development are all understood to proceed along a general progression. Different systems are not necessarily one in synch with the other: one can be physically mature and cognitively “delayed.” Chronological age, of all the measures, is the most arbitrary way to determine whether a person is a child. As one manifestation of E.P. Thompson's “clock time,” chronological age is naturalised rather than natural.³⁸ Chronological age is also the only measure that does not assess capabilities. The laws BICE must implement utilise the 18 year marker and yet, that is precisely the problem.

The arbitrary benchmark of 18 years results in using biological measures in order to establish chronological age. Much like the anthropometrists of old who determined race on the basis of scientifically derived measurements, BICE uses biological measures to reinforce an arbitrary and social designation. In drawing the boundaries of childhood, BICE reproduces the mistakes of scientific racism.

Exact chronological age cannot be discovered using dental analysis or any of the other common methods for assessing development. Determining chronological age at the upper end of legal childhood is particularly difficult because, the primary marker is the eruption of the third molars or “wisdom teeth.”³⁹ In a detailed review of the use of third molar development to determine chronological age, Mincer, et al. note that there are few other reliable biological markers at this time of life, but also emphasise that “third molars are in many respects the most variable teeth in the dentition.”⁴⁰ Data provided by Mincer et al. show the limits of dental analysis in attempting to assess the chronological age of a given individual. The most accurate method they suggest is one based on a visual evaluation of dental x-rays using an 8-point scale graded A-H. Based on data collected on a sample of over 800 white individuals, this method can predict that a person with the greatest degree of tooth development (“H” on the scale) will be at least 18 years of age a maximum of 92.2 percent of the time with a rate as low as 85.3 percent. When development of the third molars is assessed as “G,” the next designation down the scale, the probability of the individual being at least 18 drops to anything ranging from 46.8 percent to 69.8 percent.⁴¹ One wonders, then, how chronological age can be assessed as definitively 18 or above unless the dental development is an “H.” Even then, anywhere from 7.8 percent to 14.7 percent of persons in this category will be younger than 18. If

the third molars are rated as “G,” fixing chronological age at 18 is basically guesswork, with anywhere from over half to nearly a third of individuals in this category being younger than 18. The authors recognise that in many instances dental examination must be used because circumstances require it. Nevertheless, their endorsement of the method is markedly tepid:

In overview, the formative stage of the third molar can be the only quantitative biologic variable available for estimating the age of a person in his late teens or early twenties. Although the considerable variability of the third molar detracts from precise age estimates, it can be suggestive in the absence of better information.⁴²

The material presented by Mincer et al. shows that dental analysis can only suggest an age range. Furthermore, the norming data has all been produced from samples that are (not surprisingly) usually middle class whites; strictly speaking, standards based on such a population cannot accurately be applied to those of different racial, ethnic or national backgrounds. In particular, since good nutrition often speeds up development, while poor nutrition delays it,⁴³ these age estimations may be too high when applied to persons with significantly poorer nutrition. Scientifically speaking, averages cannot be applied to individuals; if the “normal” expected range for third molar eruption in youth is from 18 years to 22 years, which does not mean that there are no individuals who have had their molars erupt at 16 years.⁴⁴ Some people are missing their third molars altogether. A claim that it was likely Joseph was somewhere between ages x and y would be scientifically accurate. But such inexact results are problematic in the context of legal apparatuses needing specifics. The need to fix age is extra-biological, as it were,

arbitrary, and purely social. Similarly, the need to fix race is extra-biological, arbitrary and purely social. Both forms of defining difference turn to biology in order to make claims about the realness of the boundary being drawn, and in both cases, these claims are faulty.

Given these shortcomings, the reliance on dental analysis bears strong resemblance to anthropometrics. The tawdry history of this branch of anthropology, with its close ties to eugenics and an obsession with measuring every conceivable part and portion of the human body in order to determine race, is one that the discipline has yet to live down.⁴⁵ It is here, in the precise juxtaposition between defining a person's status and scientifically demonstrating that the person falls within a given category that childhood/children are being most profoundly racialised. The biological indicators by which skeletal age can be estimated are not tied to chronological age. The BICE reliance on dental techniques is more than reminiscent of basic racial ideologies, which—erroneously—make skin color and facial features primary race markers. BICE is not alone in wrestling with this dilemma. As undocumented children show up in the U.S. and around the world in growing numbers, the pressures to identify them, and especially to figure out whether they are minors or not, multiply in proportion.⁴⁶ In fact, the pressing need to decisively determine whether particular people are legally children or not is a problem that has emerged only recently despite the 19th-century features of the solution.

Conclusion

The INS argument that the child is an “overly broad” social group that cannot be protected flies in the face of documented and child-specific oppressions and violence that

appear to be escalating, rather than diminishing world wide. The 300,000 *restaveks* in Haiti are only a small example of child-specific and structurally supported violence against children. The recruitment and use of child soldiers is purposefully child-oriented; sex trafficking in children is also precisely founded on peoples' status as children. It flies in the face of logic that we are presented with these forms of child-specific exploitation, only to be told that the objects of this violence are out of bounds.

In choosing to focus on Haiti's *restaveks*, Got and Ernesto Joseph, my aim has been to explore some of the ways that states have become entangled in the complexities of childhood. The same is true for transnational entities: the World Bank has recently launched an initiative aimed at youth, and in its 2003 Annual Report, UNICEF for the first time strongly featured participatory material and incorporated children's voices.⁴⁷ States must construct working definitions of childhood in order to deal with the children who are presenting themselves at their borders or being born and living within their territories. For Haiti, this task is complicated by having their children stand, emblematically, for the moral and economic health of the nation. The cases of Got and Ernesto Joseph show that the ways in which childhood is mobilised in the face of mobile children is inconsistent and contradictory. These inconsistencies and contradictions highlight the ideological nature of childhood, despite the conceit that childhood itself is based upon biological, scientific facts.

Like other forms of social inequality, childhood might best be understood as a social fact rather than a scientific reality. It is the social fact of children and childhood, particularly in a post-fordist, globalising world that is probably more important to understand than the biological essence of what children are. I do not mean to suggest

that all the scientific knowledge generated about children's physical, emotional and intellectual development is unimportant. However, if we reduce our understandings of children to dominant discourse, which is rationalised, medicalised and developmental, we are in a situation roughly parallel to reducing race to questions only of science and genetics.⁴⁸ Ernesto Joseph's case is only one example of this reductive principle at work.

Current dilemmas of children-out-of-bounds indicate globalisation is provoking a growing transgression of childhood. Which is more problematic, the transgression of childhood or the very notion of childhood itself? Whatever the answer, childhood, as we know it, is on the verge of ending. It has been since the beginning.

Endnotes

1. I am grateful for the keen questions of Lawrence Grossberg and the ongoing encouragement of Anne Allison in bringing this paper into being. Francesca Castaldi and Jeff Tobin read, commented and critiqued. In Haiti, Sharon Bean and Florencia Pierre have been my guides; Jean Robert Cadet has taught me much about restaveks.
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Their American Dreams, New York: Basic Books, 1993. My own work has substantially critiqued the ways black children have been constructed as pathological in contemporary U.S. culture E Chin, 'Ethnically Correct Dolls: Toying with the Race Industry,' **American Anthropologist** 101 (2), 1999, pp 305-21; E Chin, **Purchasing Power: Black Kids and American Consumer Culture**, Minneapolis: University of Minnesota Press, 2001.

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40. HH Mincer, EF Harris, HE Berryman, 'The A.B.F.O. Study of Third Molar Development and Its Use as an Estimator of Chronological Age,' **Journal of Forensic Sciences** 38 (2), 1993, pp 379-90.

41. This range is due to the different probability rates for third molars from the maxilla (upper jaw) or mandible (lower jaw) and for different rates for males and females.

42. Ibid., p. 387.

43. These delays are particularly true for bone formation, which can be temporarily arrested by certain kinds of stress including illness and malnutrition.

44. Given the recent resistance of Republicans in government to statistical leveling of census data, instead insisting on actual counts, I find the acceptance of the far more problematic statistical averaging required in dental analysis ironic at best.

45. This reputation persists despite the fact that some of the most important and influential anthropometric work, notably that of Franz Boas, was intended to discredit racial theories. See F Boas, **Changes in Bodily Form of Descendants of Immigrants**, New York: Columbia University Press, 1912.

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