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Review of *What's Wrong with Children's Rights*. Martin Guggenheim. Reviewed by Dorinda N. Noble.

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If the reader has the time to labor through the details, and can ignore the lack of proofreading, this is a worthwhile and gripping story. It may well change the image of the detached and apolitical psychoanalyst that many of us inherited.

Leslie Leighninger
Arizona State University

Martin Guggenheim, *What's Wrong with Children's Rights*.
Cambridge, MA: Harvard University Press, 2005. \$27.95
hardcover.

According to the latest United States census, roughly one-quarter of the nation's population is below 17 years of age. This substantial number of persons, one might expect, would have "rights". Thus, Guggenheim's book title, *What's Wrong with Children's Rights*, is intriguing. From all sorts of bully pulpits, preachers, politicians, and pundits discuss the nature and extent of children's rights in cases of abortion, adoption, education, nutrition, health care, use of car safety seats, exposure to military recruitment presentations, bullying, zero tolerance for weapons in school, family and dating violence...the list is almost endless. Guggenheim, in his highly thought-provoking book, takes issue with the notion that a child's "rights" necessarily coincide with the child's "interests".

As Guggenheim suggests, for instance, if society focused on a child's interests, society would eliminate cigarettes, pollution, and war—all of which are dangerous to children. Children are not the only members of society, however, and social life involves give-and-take between different groups. Guggenheim points out that, though the sanctity of "parents" and "children" is pronounced in American society, neither word is mentioned in the U.S. Constitution. Nonetheless, policies regarding how adults parent children draw heavily on constitutional precepts, and the Supreme Court has acknowledged that "the interests of parents in the care, custody, and control of the children" is one of the most highly valued liberty interests of the Court. The book, which is well-written but challenging, is a revealing overview of legal decisions affecting parent-child-state

relationships, and it is illustrated by his many examples (taken straight from the newspaper) of knotty family problems.

Guggenheim discusses major Supreme Court decisions which have shaped current ideas of children's rights: *Meyer v. Nebraska* of 1923 which buttressed parents' liberty interests as protected by the Due Process Clauses of the 14th and 15th Amendments, and *Pierce v. Society of Sisters* of 1925, which dictated that the State cannot "standardize" its children through mandatory curriculum; *Buck v. Bell* of 1927 (which dealt with compulsory sterilization to prevent transmitting "imbecility"); *Skinner v. Oklahoma* (1942), which dealt with sterilization of felons; *Griswold v. Connecticut* (1965), concerning distribution of contraceptives; and *Stanley v. Illinois* of 1972, relating to custody rights of an unmarried father. These and other cases set an outer limit of acceptable parental behavior. Guggenheim maintains that creating these parental rights and duties allows children to reciprocally share the rights of their parents, and may more properly be termed issues of "family autonomy" rather than of "rights".

After reviewing the history and nature of children's and parents' rights in the United States, Guggenheim applies his thinking to such issues as custody, visitation, foster care, termination of parental rights, and the adolescent's rights to abortion. Throughout, Guggenheim voices concerns that some children's activists have led society astray by championing the cause of children's rights apart from the rights of parents. He urges those who deal with children to examine how they make decisions on behalf of children. He dismisses the widely-accepted idea that a court-appointed adult charged with speaking for the child actually represents the child's best interests. Rather, the court-appointed adult can only voice his/her assessment of the situation from an adult perspective; no one can really speak for the child. Consequently, Guggenheim's argument goes, society should assume the adult responsibility to make decisions that take into account all parties.

His treatment of the Michigan case of Baby Jessica is an example. Baby Jessica, placed for adoption at birth in 1991, was the subject of a protracted custody dispute between adoptive and biological parents. The biological parents ultimately prevailed, with news magazines carrying the heart-rending

picture of a wailing 3-year-old being removed from the only parents she had known to live with her biological parents, strangers to her. Guggenheim's contention in his examination of this case is that child advocates should look at this kind of case, not for the ultimate outcome, but for the ways we reach consensus on what the correct answer should be. One way to minimize the pain of cases such as Baby Jessica's, Guggenheim asserts, is to minimize the time it takes to resolve the case through the legal system. The body of law on the matter of unmarried fathers leads us to believe, if the unmarried father financially supports his progeny and strives to create a relationship with his children, the state's response is more positive than to the father who does not support or relate to the child. The Supreme Court has established that fathers should not lose their rights without due process of law. Guggenheim contends that Jessica's birth father's case met the rule of law, and that had the legal system allowed him true due process, the case could have been resolved long before Jessica celebrated her third birthday.

Throughout this book, Guggenheim returns to his theme: adults should advance children's rights by treating children like children, and by accepting adult obligations to care for and mold children. Ultimately, Guggenheim seems to say that there is no such creature as children's rights apart from parents' rights; children have no obligations apart from parental obligations. Parents sometimes voice the adage that "If my kids are OK, I'm OK". Guggenheim might give that phrase a twist by having children say, "If my parents are OK, I'm OK". In the final analysis, both statements are accurate.

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Jan Gregoire Coombs, *The Rise and Fall of HMOs: An American Health Care Revolution*. Madison, WI: University of Wisconsin Press, 2005. \$35.00 hardcover.

This insightful book covers in depth the historical development of Health Maintenance Organizations (HMOs) while