

Children’s Participation in Divorce Proceedings—An Arendtian Critique

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Abstract

The essay proposes that children should not participate in custody proceedings because they lack a place in the public world, a concept which was developed by Arendt and which I elaborate on the basis of her writings. Arendt’s concepts of place in the world and of childhood are correlated, polar ethical concepts. ‘Place in the world’ as described by Arendt combines commitment to worldbuilding as a collaborative enterprise, relations of mutual-recognition among equal co-builders of the public world, an inviolable place in public and private realms, and self-disclosure through the staging of public appearances. We should recognize children as rightful participants in divorce proceedings when we are ready to treat them as occupants of place in the world, split between public and private realms and corresponding public and private voices. Recent practices of children’s participation undermine the intimate realm of childhood as well as the public world.

Keywords: *Hannah Arendt; Place in the World; Divorce; Children’s Participation*

I. Introduction

Following the promulgation of the *Convention on the Rights of the Child*,¹ a growing number of legal systems adopted procedures for children’s participation in legal proceedings. In the following discussion, I challenge children’s participation on the basis of Hannah Arendt’s concept of place in the world. In “Reflections on Little Rock” and “The Crisis in Education,” Arendt suggests a view of childhood according to which children do not have a place in the public world.² I will outline an account of ‘place in the world’ and argue that children should not participate in legal proceedings because they lack such a place. The

1. 20 November 1989, 27531 UNTS 1577 [*Convention*]. Article 12 of the *Convention* states: “1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

2. See Hannah Arendt, “Reflections on Little Rock” (1959) 6:1 *Dissent* 45 [Arendt, “Reflections on Little Rock”]; Hannah Arendt, “The Crisis in Education” in *Between Past and Future* (Penguin, 2006) 170 [Arendt, “Crisis in Education”].

argument does not deny that children have important rights. It focuses on the right of children to participate as right-bearing agents in a set of legal proceedings: disputes over custody, access rights, and relocation.³

Children's wishes about custody, access, and relocation can be heard in a variety of ways. The essay looks at procedures that allow children to express their wishes directly before judges in court or in camera. The argument can be stretched to cover a few adjacent procedures. In several systems, children can express their preferences to a child attorney or to another official appointed by the court.⁴ In most cases, children are informed that they are addressing an authoritative instance who will decide custody or access arrangements. They know that they are addressing an authority located outside the family whose decision will be binding on their parents. Archard and Skivenes have pointed out that the *Convention* requires the creation of procedures that ensure that the child's *genuine view* is heard.⁵ The different procedures in question purport to facilitate the expression of children's clear and genuine wishes about the outcome of the legal dispute. In such procedures, I will suggest in the following section, children's wishes are treated as authoritative: once certified as genuine they form independent reasons for action—inconclusive, unexclusive, and often weak, but distinct from other reasons for action, such as children's welfare. The procedures based on Article 12 differ from procedures in which children are assessed by a mental health professional and are not invited to provide the court, directly or indirectly (through a proxy appointed by the court), with their express wishes concerning the outcome.

Most of the arguments for and against children's participation are based on developmental and other psychological considerations.⁶ My point of departure will be Arendt's ethical view of childhood. While fragmentary, Arendt's is a broad view of childhood that is correlated to her conception of the public world. Arendt offers her readers accounts of childhood and of the public world as schemes of ethical self-understanding that shed light on diverse aspects of private and public life.⁷ According to Arendt, place in the world comprises a public mask, mutual recognition among co-builders of the public world, commitment to worldbuilding and to collaboration with equals in the construction of a common world, a relation to self as disclosed in action and speech, and a set

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3. Arendt's ideas against children's civic, as opposed to legal, participation have been discussed in the literature. See Sharon Jessop, "Children's Participation: An Arendtian criticism" (2011) 43:9 *Educational Philosophy & Theory* 979.
 4. On the variety of existing procedures, see Charlotte Mol, "Children's Representation in Family Law Proceedings: A Comparative Evaluation in Light of Article 12 of the United Nations *Convention on the Rights of the Child*" (2019) 27:1 *Intl J Child Rts* 66; Rachel Birnbaum, Nicholas Bala & John-Paul Boyd, "The Canadian Experience with Views of the Child Reports: A Valuable Addition to the Toolbox?" (2016) 30:2 *Intl JL Pol'y & Fam* 158.
 5. See David Archard & Marit Skivenes, "Balancing a Child's Best Interests and a Child's Views" (2009) 17:1 *Intl J Child Rts* 1.
 6. See for example Ian Butler et al, "Children's involvement in their parents' divorce: Implications for practice" (2002) 16:2 *Children & Society* 89.
 7. On Ariès' thesis and changing conceptions of childhood, see David Archard, *Children: Rights and Childhood* (Routledge, 2015) at 23-28.

of spatial rights (and corresponding responsibilities), such as the right to an inviolable place in the public world and in the private realm, freedom of movement including the right to navigate between the different spheres of life, and the right to exclude others from one's private domain. According to the proposed reading of Arendt's view of childhood, children should not be treated as occupants of place in the public world until we consider them sufficiently ripe to realize the diverse dimensions of place in the world—institutional, legal, ethical, recognitional, and performative dimensions. Children should not be expected to appropriate a public voice, nor to speak in the world without a mask as they do in the realm of the family. In reality, children are often subjected to these contradictory expectations.

In the following section, I briefly consider the kind of significance accorded to children's wishes in procedures derived from Article 12. Children's choices are, in my view, seen in this legal context as choices that count in their own right, even when little weight is given to them. Section III looks at Arendt's concept of the public world. It revolves around Arendt's account of appearance: her observations on the various ruptures between the inner world and public appearance, and on our limited authorship of our public actions and appearances. Section IV introduces the concept of place in the world, while Section V argues that children lack such a place. Section VI considers more concretely some of the bearings of children's participation on the fabric of private and public realms.

II. Children's Right to Participate as Recognition of Place in the Public World

Before outlining Arendt's conceptions of the public world and of place in the world, I would like to briefly mention arguments that have been advanced in support of children's participation. Consideration of these arguments clarifies the import of the present line of argument. The right of children to participate in proceedings concerning their future may be based on the view that children possess some authority over their lives. Rejecting this view, Brighouse draws the following distinction between two interpretations of children's express wishes as 'authoritative' or 'consultative':

Someone's view is treated as authoritative if their statement of the view is taken *wholly to define their legitimate input*. . . . [T]o regard a view as consultative is to treat the person who expresses it as having a right to express her own view of her own interests, but not to treat that expression *as sufficient grounds for action*, even if only her interests are at stake.⁸

Brighouse seems correct in rejecting the interpretation of the child's views as authoritative, if authoritative means unchallengeable in respect to the child's interests and exhaustive of the child's input to decision making. As Brighouse

8. Harry Brighouse, "How Should Children Be Heard?" (2003) 45:3 Ariz L Rev 691 at 692-93 [emphasis added].

points out, children's choices may be too costly in terms of their welfare, an indisputable observation. The law rarely treats children's choices as authoritative in Brighthouse's sense. (I leave aside the question of whether the law treats adults' choices as authoritative in that sense.) However, the law can still consider children's choices as important in their own right, rather than as means to discover children's best interests, and therefore as authoritative in a sense weaker than Brighthouse's. In order to be authoritative, children's express choices need not "wholly . . . define their legitimate input" and need not always provide "sufficient grounds for action." Children's choices are authoritative in that they form distinct reasons for action.

Brighthouse favors the interpretation of children's views as consultative rather than authoritative. According to Brighthouse, the child serves as one source of information about their best interests. The child is far from being a perfect informant and therefore their position is merely an advice. Brighthouse's reading does not accord independent weight to the express wishes of the child. Archard and Skivenes reject Brighthouse's consultative model. They stress, among other considerations, that the *Convention* insists that the right to express views is accorded to any child capable of forming opinions. It is a *right of children*. It does not depend on the usefulness of children's views for the investigation of their welfare. It can be noted, in addition, that the calls for expansion of children's participation were hardly based on the inadequacy of existing fact-finding procedures.

Archard and Skivenes opt for an interpretation that rests on the inherent value of participation:

[T]he right of children who can form opinions to express them is not just the right to be consulted where this means an entitlement to have those views guide adults as to what is for the best; nor is it a right to try to show that they are mature enough to be self-determining agents. It is a basic right of individuals who have their own views (who are capable of forming them) to express those views. It is a right of all individuals to be involved in a process whereby their own future is determined even if their view of that future has no weight in any final determination of matters; and even if they cannot hope to persuade others of their ability to make their own decisions. Thus an interpretation of the child's opinion as either authoritative or consultative does not capture all the reasons for hearing the child.⁹

In my view, the rationale underlying Article 12 has to do with children's authority, not only with their right to participate, as Archard and Skivenes propose. When it is asserted that children should have a say in proceedings that concern their future, it is meant that they have authority over their lives, however weak and defeasible. But this is not crucial for my argument. I will argue that children's right to voice their wishes before a public instance is offensive to them and to the public world, even if their choices are not treated as authoritative. The right to participate recognizes children as co-builders of the world, entitled to take part in its affairs. The procedures described in the introduction treat children as

9. Archard & Skivenes, *supra* note 5 at 19-20.

occupying a place in the world, in ways that undermine valuable aspects of childhood and of public life. I use the language of offense to convey the intuition that children's participation, whether psychologically 'harmful' or 'injurious' or not, violates a familiar and appealing ethical interpretation of childhood.

III. Arendt's Account of the Public World

Before outlining Arendt's notion of place in the world, it would be useful to introduce a few aspects of the public world as conceived by her. In Arendt's account, plurality, objectivity, and permanence count among the basic features of the public world.¹⁰ They distinguish the public world from otherworldly spheres of life, such as the family and the religious community. Plurality, which Arendt characterizes as a combination of equality and individual uniqueness, is manifest in the self-disclosure of individuals whom the world "relates and separates."¹¹ Objectivity, according to Arendt, results from the permanence of the objects that relate and separate us in public, and from confrontations between rival perspectives on these objects. The objectivity of the objects, facts, and boundaries that make up the public world sets the stage for the performative self-disclosure of individuals, which unfolds between the objectivity of the public world and the subjectivity of the inner world.

Worldliness

For Arendt, inhabiting a world is closely related to the idea of artifice. The public world is continually fabricated by the joint efforts of its inhabitants. It is not governed by laws of nature. Its sense of realness depends on cooperation between its inhabitants in the production of objectivity, permanence, and plurality. Loss of human company deprives the world of realness and objectivity. Loneliness (especially under totalitarianism), large-scale political lying, the romantic cult of sentiment, devotion to otherworldly spiritual or intellectual pursuits or to the satisfaction of bodily needs—all these count among the forms of world denial discussed by Arendt. Arendt famously contrasted world and life. She argued that worldmaking can be undertaken when the material necessities of life have been satisfied. In extreme circumstances, worldmaking requires self-sacrifice in order to ensure the survival of the public world. Love of world, Arendt notes, is in conflict with the love of life because the construction and preservation of public worlds exact sacrifice.¹² The purpose of the *political* gathering of individuals is

10. Christopher Long proposed a threefold characterization of Arendt's public world in terms of betweenness, permanence, and plurality. See Christopher P Long, "A Fissure in the Distinction: Hannah Arendt, the family and the public/private dichotomy" (1998) 24:5 *Philosophy & Social Criticism* 85.

11. Hannah Arendt, *The Human Condition* (University of Chicago Press, 1958) at 52.

12. On courage and sacrifice, see *ibid* at 37, 186-87. On love of world in Arendt, see Ronald Beiner, "Love and Worldliness: Hannah Arendt's Reading of Saint Augustine" in Larry May & Jerome Kohn, eds, *Hannah Arendt: Twenty Years Later* (MIT Press, 1997) 269; Shin Chiba, "Hannah Arendt on Love and the Political: Love, Friendship, and Citizenship"

not the protection of life, as Hobbes asserted, but the construction of a common world.

Interpersonal proximity and distance

If individuals live too far from each other, a common world cannot emerge between them. Proximity has not become redundant in my view by developments of technological means of transportation and communication. Worldbuilding requires that geographical proximity should be accompanied by sociability: when social bonds dissolve and individuals are confined to their private spaces, a shared world cannot come into being. In *The Origins of Totalitarianism*, Arendt argued that totalitarianism destroyed the public world by dissolving social bonds.¹³ The disintegration of social bonds brings about the formation of a single collective body, and it is paradoxically as organs of this body that individuals find themselves in utmost loneliness, deprived of place in the world and a worldly sense of reality.¹⁴

The public world depends on distances as it does on proximity. The world brings together individuals but also sets them apart.¹⁵ Arendt assigns the double function of relating and separating individuals to objects in the world and to the world itself. “To live together in the world means essentially that a world of things is between those who have it in common, as a table is located between those who sit around it; the world, like every in-between, relates and separates men at the same time.”¹⁶ Objects invested with cultural significance which outlive their makers mediate relations among the living as well as relations between the generations. Arendt emphasizes this in her various treatments of the notions of permanence, culture, and tradition. Alongside objects, Arendt always emphasizes the role of boundaries in the constitution of the public world: interpersonal boundaries, boundaries between spheres of life, and the external boundaries of the city that enclose a space of law and freedom. Like objects, boundaries separate and connect at the same time. Arendt repeatedly describes the legal and architectural work of setting boundaries as the foundation of public worlds.¹⁷

(1995) 57:3 *The Review of Politics* 505. Commentators have challenged Arendt’s claim that necessities of life should be sharply distinguished from efforts of worldbuilding. Society’s organization of life and fabrication of worlds seem to be governed by the same social principles. Another set of questions concerns Arendt’s assertion that worldliness involves willingness to sacrifice life. It seems that for Arendt a commitment to the world without willingness for self-sacrifice falls short of love of world.

13. See Hannah Arendt, *The Origins of Totalitarianism* (Harcourt, 1958).

14. On loneliness as loss of reality under totalitarianism, see *ibid* at 475-76.

15. Erving Goffman described a set of “supportive” and “remedial” rituals that uphold interpersonal boundaries in public space. Erving Goffman, *Relations in Public: Microstudies of the Public Order* (Harper & Collins, 1972) at 158.

16. Arendt, *supra* note 11 at 52.

17. See for example *ibid* at 63-64, 194, 197. On respect as friendship with distance, see *ibid* at 243.

Plurality and appearance

Arendt describes plurality as the attainment of individual uniqueness among equals.¹⁸ The fact of interpersonal separation, Arendt writes, calls for the formation of unique individuals.¹⁹ Arendtian plurality comprises pre-political elements of human givenness, such as genealogy and bodily constitution, alongside artificial attributes fashioned in the course of appearance before others.²⁰ Appearance before others purports to disclose uniqueness and at the same time confirm the shared commitment to worldbuilding. When individuals gather, the reality of the self and the world is confirmed.²¹ Assurance in the reality of the world diminishes when a gathering disbands and the space of appearance dissolves.²² Appearance is not meant to expose the performer in the ways in which the self is exposed in the family, or before God, or before fellow worshippers in a religious community. In the public world individuals put on a legal mask (*persona*) which consists of a bundle of legal rights and responsibilities.²³ The legal mask is supplemented by more personal, individualized masks that we fashion while appearing in public. Sincerity is out of place in the public world. It brings about the corruption of public and inner life and undermines the dignity of humans as co-builders of the space of appearance.²⁴

Another point underlined by Arendt is that appearances cannot fully obey the sovereign intentions of their authors. Things we wish to expose resist exposure and remain hidden while others we wish to conceal reveal themselves. Arendt's more radical point is that the disclosed self is unknown to anyone before its disclosure (and remains partly so after disclosure). Appearances reveal things that the performer "can neither recognize nor control."²⁵ The presence of spectators

18. *Ibid* at 175.

19. *Ibid* at 176.

20. Arendt's neglect of the role of the body in the public display of plurality is in tension with some of her own descriptions of the space of appearance. See Linda M G Zerilli, "The Arendtian Body" in Bonnie Honig, ed, *Feminist Interpretations of Hannah Arendt* (Pennsylvania State University Press, 1995) 167 at 181.

21. Arendt writes: "for without a space of appearance and without trusting in action and speech as a mode of being together, neither the reality of one's self, of one's own identity, nor the reality of the surrounding world can be established beyond doubt." Arendt, *supra* note 11 at 208.

22. *Ibid* at 199.

23. As Arendt describes the destruction of rights following the tearing away of masks, the revolutionaries "tor[e] away the mask of the *persona* as well, so that the Reign of Terror eventually spelled the exact opposite of true liberation and true equality; it equalized because it left all inhabitants equally without the protecting mask of a legal personality." Hannah Arendt, *On Revolution* (Penguin, 1990) at 107.

24. Arendt notes that the tearing away of masks is characteristic of crises, defined as breakdowns of the common world. See Hannah Arendt, "What is Freedom?" in *Between Past and Future* (Penguin Books, 2006) at 142 [Arendt, "What is Freedom?"]. On boundary situations—Jaspers' term that inspired Arendt's thinking on crisis—and the ability "to live with myself," see Hannah Arendt, *The Life of the Mind* (Harcourt, 1978) at 191 [Arendt, *Life of the Mind*]. Arendt's suspicions about sincerity were inspired by Machiavelli's warnings against the mutual intrusion of religion and politics. On Machiavelli see *infra* note 38 and accompanying text, *infra* note 53 and accompanying text.

25. Hannah Arendt, "Karl Jaspers: *A Laudatio*" in Hannah Arendt, *Men in Dark Times* (Harcourt, 1968) 71 at 74 [Arendt, "*A Laudatio*"].

triggers and shapes the performer's self-disclosure 'behind the back' of the performer. Arendt's distrust of interiority and her association of reality with appearance bear on the dynamics of appearance. First, the self is disclosed not only to others but also to itself through its masked public appearance. Second, Arendt notes that the disclosed self is not fully perceived by the actor in the course of action and appearance. Individuals have limited knowledge of who they are before and after their self-disclosure in public. Moreover, performers do not have a better view of who they are than spectators. The performer's *who*—for Arendt, the most idiosyncratic, spontaneous, and uncontrollable aspect of a personality—is more fully accessible to spectators.²⁶ Third, the disclosed self does not only bypass the consciousness of the actor. The meaning of actions and appearances in the space of appearance is partly determined by the interpretation of the spectators and by the world that lies between actors and spectators. The world is not only the setting of the spectacles of unique selves, but also their co-author.²⁷ For Arendt, the limited control of performers and actors over the meanings and repercussions of their actions is a sign of freedom.²⁸

While each of the ruptures between the inner world and external appearance invoked by Arendt calls for a separate study, in the confines of the present discussion I only note the general contours of her account of appearance. An important feature of the space of appearance implicit in Arendt's account is mutuality. The public mode of relatedness and of appearance before others presumes mutuality. It has to be adopted by actors and spectators in relation to each other. The inhabitants of the space of appearance are at the same time actors and spectators. They affirm the reality of the world for each other and disclose their uniqueness before each other. Performers and observers do not have to switch roles. They are always already actors and spectators, observing while being observed.²⁹ The mutuality and interdependence between co-builders of the public world imply that whenever one of them transgresses the norms of publicness—for example, by

26. See *ibid* at 71, 73; Arendt, *supra* note 11 at 179-80.

27. In "What is Freedom?" Arendt rejects the view that the meaning of an action can be fully determined, or grasped, by performers. (Arendt employs the terms action and performance alternately in this essay.) "Action, to be free, must be free from motive on one side, from its intended goal as a predictable effect on the other." Arendt, "What is Freedom?", *supra* note 24 at 150. Elsewhere Arendt adds that the rich diversity of human performances and characters stands in stark contrast to the sameness and dullness of psychological motivations, and therefore psychology cannot explain action. Arendt describes action as a continuity that accumulates different meanings as it encounters multiple individual perspectives and shifting circumstances. Arendt refers to the *principle* of an action as its objective aim. The principle cannot be reduced to the original aim of an action or to any individual interpretation of it. It is gradually disclosed as the action makes its way in the world. "The aim of action varies and depends upon the changing circumstances of the world" (*ibid*). The principle does "not operate from within the self" of the actor, but rather endows the action with meaning "from without" (*ibid*). On action's "haphazardness" see also Arendt, *Between Past and Future*, *supra* note 24 at 82ff.

28. On self-fashioning as dictated by power relations, see Stephen Greenblatt, *Renaissance Self-Fashioning: From More to Shakespeare* (University of Chicago Press, 1980).

29. Bernasconi discusses the prohibition on blacks to look whites in the eyes. As Bernasconi argues, not looking made blacks themselves invisible. See Robert Bernasconi, "The Invisibility of Racial Minorities in the Public Realm of Appearances" in Kevin Thompson & Lester Embree, eds, *Phenomenology of the Political* (Kluwer, 2000) 169.

imposing excessive intimacy on bystanders—the fabric of publicness is impaired. Transgressions undermine the joint fabrication of publicness (and encourage others to disregard norms of publicness) by enacting in the midst of the public sphere non-public forms of interaction and by breaking the contract of worldbuilding.

Objectivity: plurality and permanence

In Arendt's account of the public world, objectivity is closely linked to plurality, permanence and equality. Objectivity is produced through confrontations between different points of views on objects and the endurance of these objects in time. When plurality dissolves the sense of objectivity is lost. Homogeneous communities that live in isolation from the rest of society illustrate this phenomenon. Different forms of segregation of communities assemble individuals who view the world from the same perspective. Members of such groups project onto reality a single outlook unchallenged by encounters with other perspectives. The outcome, in Arendt's terms, is loss of reality and loss of world.

In her tribute to Jaspers, Arendt notes that not everything that appears in public is objective. The disclosed 'who' cannot be objectified. Like the 'who', the realm of political action in general unfolds between objectivity and subjectivity.³⁰ While Arendt's theory of the public world focuses on politics rather than law, the legal system and in particular court proceedings play an important role in entrenching objectivity. The publicness of court proceedings, the confrontation between rival points of view in the legal process, and the intergenerational transmission of legal materials within the legal system consolidate objectivity for the public world at large. While the legal system can be seen as embodying the transcendent, collective point of view of a 'generalized other' who guarantees objectivity, Arendt's account of objectivity highlights the horizontal confrontation between equal and unique points of view on reality. Equality safeguards the objectivity of the public world by validating the multiplicity of rival perspectives. It secures a place in the world for a variety of points of view and allows for the emergence of a common world between them. While enhancing objectivity, equality also presumes objectivity, because objectivity subjects all points of view to the impartial authority of reality.³¹ Similarly, equality is both *a product of and a condition for* worldbuilding. Worldbuilding, according to Arendt, *presumes* equality—it is the collaborative effort of equals who have gathered in order to build a world—and at the same time worldbuilding *produces* equality as a feature of the artificial world.³²

Another condition for objectivity and publicness in general is the presence of objects that outlive their creators and overcome the transience of human

30. See Arendt, "A Laudatio", *supra* note 25 at 71, 73.

31. On equality and objectivity, see Bernard Williams, *Truth and Truthfulness: An Essay in Genealogy* (Princeton University Press, 2002) ch 9.

32. As Arendt states, "Our political life rests on the assumption that we can produce equality through organization, because man can act in and change and build a common world, together with his equals and only with his equals." Arendt, *supra* note 13 at 301.

existence. These objects—monuments, laws, constitutions, borders, roads, but also domestic objects used in everyday life—are invested with cultural significance. For Arendt, the capacity of objects to outlive their creators and enact intergenerational continuity—their resistance to the passage of time—condition the realness and objectivity of the world. In order to signify permanence, these objects are often denied practical utility and presumed to be eternal.³³ Works of art exemplify the contribution to worldbuilding of objects that are represented as devoid of utility and immortal.³⁴

Separation between worldly and otherworldly spheres of life

While Arendt's account of the domestic sphere, as presented in *The Human Condition*, is largely based on Greek notions of the *household* and cannot be regarded as a valid description of the family today, it remains useful as an 'ideal type' characterization of the division of labor between different spheres.³⁵ In Arendt's account, the domestic sphere and the religious community lie outside the public world. Horizontally, religion and family are characterized in terms of interpersonal communion.³⁶ The family does not allow for multiplicity of perspectives: "Being seen and being heard by others derive their significance from the fact that everybody sees and hears from a different position. This is the meaning of public life, compared to which even the richest and most satisfying family life can offer only the prolongation or multiplication of one's own position."³⁷ Therefore private affairs, confined to the otherworldly realms of the family and the community, cannot claim the objective status of public affairs. Vertically, otherworldly spheres are characterized by strict relations of authority that are sanctioned by tradition. Arendt accounts for the horizontal communion and vertical authority in the domestic realm by reference to pre-political, natural needs and necessities.

Otherworldly spheres are further characterized by modes of self-exposure and transparency that cannot be tolerated in the public realm. Arendt endorses a distinction she attributes to Machiavelli between a political realm of artificial appearances and the church as a hidden realm of total transparency before God.³⁸ Goodness

33. Arendt describes the domestication of nature through the creation of a world of enduring objects that are devoid of practical function: "The man-made world of things, the human artifice erected by *homo faber*, becomes a home for mortal men, whose stability will endure and outlast the ever-changing movement of their lives and actions, only inasmuch as it transcends both the sheer functionalism of things produced for consumption and the sheer utility of objects produced for use." Arendt, *supra* note 11 at 173.

34. *Ibid* at 167.

35. On the relation between the domestic and public spheres according to Arendt, see Long, *supra* note 10; Lior Barshack, "The Holy Family and the Law" (2004) 18:2 Intl JL Pol'y & Fam 214.

36. Arendt writes: "The unpolitical, non-public character of the Christian community was early defined in the demand that it should form a *corpus*, a 'body,' whose members were to be related to each other like brothers of the same family." Arendt, *supra* note 11 at 53.

37. *Ibid* at 57.

38. On Machiavelli, see *ibid* at 77-78; Arendt, *Between Past and Future*, *supra* note 2 at 136ff; Arendt, *supra* note 23 at 101-104.

and charity in interpersonal relations, like faith, must be concealed from the public eye because they cannot survive the piercing daylight of the public realm.³⁹ Arendt often uses the metaphor of light and darkness to distinguish between public and private domains. Modes of experience and interaction that are located in the private domain cannot endure the light of the public world.⁴⁰ The fabric of publicness too is impaired by the public exposure of faith and emotion. When individuals behave in public as if they were family members, they endanger the public world. This is observable, for example, in mass society and collective panicking.⁴¹ As we shall see (Section VI), these insights shed light on the consequences of children's participation.

IV. Place in the World

The legal implications of Arendt's account of the public world are often linked to her idea of having a place in the world. The claim that children have a right to participate in legal proceedings that concern their future recognizes them as having a place in the world. In the present section, I outline an Arendtian understanding of 'place in the world'. The account combines legal rights, ethical relations of mutual recognition and shared commitment to worldliness, and a performative dimension of self-disclosure in the space of appearance. Some of the conditions for place in the world depend on society (legal status and rights) while others on individual commitments to worldbuilding, mutual-recognition, and self-disclosure. Sections V and VI look more closely at children's place in the world.

Place in the world as the right to belong to a political community ('right to have rights')

The right to have rights, as introduced in *The Origins of Totalitarianism*, is "a right to belong to some kind of organized community."⁴² It forms part of place in the world because it allows the conferral of other rights, such as a *legal* right to membership and the ensuing rights to move, observe, and act freely in the public world. The right to have rights captures the spatial connotations of place in the world. Arendt elucidates the idea of the right to have rights in spatial terms: the uprooted populations of Europe, deprived of a right to have rights, were placeless populations. The right to have rights anchors the abstract subject of rights in space and time. Because it is realized through membership in a political community, it links members to past and future generations of their community.

39. On the hiddenness of goodness, see Arendt, *supra* note 11 at 77; Arendt, *supra* note 23 at 101, 104.

40. See Arendt, *supra* note 11 at 71-73.

41. "[U]nder conditions of mass society or mass hysteria . . . we see all people suddenly behave as though they were members of one family." *Ibid* at 58.

42. Arendt, *supra* note 13 at 297.

Place in the world as an inviolable place in public and private realms, and an accompanying perspective on the shared world

Conceived in Arendtian terms, place in the world maintains and enhances plurality. The existence of the public world depends on the plurality of individual perspectives, much as plurality and uniqueness depend on the world that lies between, connects, and separates individuals. Arendt refers in different contexts to spatial rights, such as the right to move and appear freely in a politically demarcated public world, the right to exclude others from one's private place, and the right to pass freely between the different worldly and otherworldly spheres.⁴³ While Arendt did not work out a 'system' of rights, these spatial rights seem to be fairly basic elements of the public world as she conceived it. Alongside other rights, such as the rights to marriage and parenthood which Arendt affirmed in "Reflections on Little Rock," they sustain the plurality of distinct spatial (and ideological) perspectives.

In "What is Freedom?" Arendt suggests that freedom originates in the legal space of the rule of law and in established arenas of the public world. Arendt writes: "Before it became an attribute of thought or a quality of the will, freedom was understood to be the free man's status, which enabled him to move, to get away from home, to go out into the world and meet other people in deed and word."⁴⁴ Recognized 'spatial' rights, such as the rights to freedom of movement, appearance and assembly, give shape to the products of the mind that are destined to be displayed in public. Individuals become capable of forming opinions by being politically recognized as having opinions that count. Without such recognition we may have only thoughtless and formless 'moods' inadequate for public display.⁴⁵ Like opinions, character and personality require a public arena in which they can be exhibited. In the most extreme cases of denial of place in the world, such as the conditions of Terror in the French Revolution or total terror under totalitarian regimes, individuals are emptied of psychological constitution.⁴⁶ Arendt noted also that slaves do not have distinct characters because they are deprived of status.⁴⁷ Arendt consistently

43. On freedom of movement, see Arendt, *Men in Dark Times*, *supra* note 25 at 9. In different contexts, Arendt insisted that freedom of movement is possible only within spatial boundaries. See for example *ibid* at 465-66; Arendt, *supra* note 23 at 275.

44. Arendt, "What is Freedom?", *supra* note 24 at 147. As Arendt describes the space of the rule of law, "the space between men as it is hedged in by laws is the living space of freedom." Arendt, *supra* note 13 at 466.

45. Arendt writes: "Opinions are formed in a process of open discussion and public debate, and where no opportunity for the forming of opinions exists, there may be moods—moods of the masses and moods of individuals, the latter no less fickle and unreliable than the former—but no opinion." Arendt, *supra* note 23 at 268. "Opinions will rise wherever men communicate freely with one another and have the right to make their views public" (*ibid* at 227).

46. See Arendt, *supra* note 13 at 441. On character as artifice, see Arendt, *Life of the Mind*, *supra* note 24 at 195.

47. See Arendt, *supra* note 11 at 50. However, a few years earlier, Arendt asserted that slaves possess personality and character (*ibid* at 297).

opposed the tendency to regard the inner world as prior to, and independent of, established public freedoms.⁴⁸

Public freedoms presuppose, according to Arendt, a non-public, yet publicly representable, place outside the world.⁴⁹ Place in the world combines a rightful place in the public world from which we observe others and appear before them with a right to a hidden, private place from which others are excluded. Destruction of the latter, private sphere (as a result of tragedy or betrayal, for example) often leads to a total experience of placelessness. Arendt describes the right to exclude others from one's private sphere as a condition for worldly, public existence:

What prevented the *polis* from violating the private lives of its citizens and made it hold sacred the boundaries surrounding each property was not respect for private property as we understand it, but the fact that without owning a house a man could not participate in the affairs of the world because he had no location in it which was properly his own.⁵⁰

In order to act with others in the public world we must be allowed to exclude them from our private domain. While in the public world individuals renounce sovereignty over the meaning and import of their actions in order to act in concert, in the realms of labor and work they exercise control over the activities of themselves and of those subject to their authority. By wielding sovereignty over the private domain, for example, by excluding strangers from it, individuals exercise a public right to a non-public space. But in the hiddenness of the domestic sphere, the public voice is replaced by an intimate, publicly unrepresentable voice. It is a voice that emanates from the texture of shared-life in the domestic sphere, in the same way that public voices are anchored in public rights and freedoms.⁵¹

Place in the world as performance

For Arendt, the human person “needs to appear in public in order to achieve full reality.”⁵² Appearing, like recognition, is mutual. In the public world we serve as

48. Arendt's critique in *On Revolution* of the turn to the inner world in the French Revolution develops her own critique of abstraction in *The Origins of Totalitarianism*, and echoes Hegel's analysis of Terror as the culmination of European groundlessness. On groundlessness, see Terry Pinkard, *Hegel's Phenomenology: The Sociality of Reason* (Cambridge University Press, 1994) at 166, 185.

49. Arendt describes the public significance of the demarcation of the private sphere: “Not the interior of this realm, which remains hidden and of no public significance, but its exterior appearance is important for the city as well, and it appears in the realm of the city through the boundaries between one household and the other.” Arendt, *supra* note 11 at 63.

50. *Ibid* at 29-30.

51. Arendt sometimes failed to emphasize the public dimension of rights to private life. See Arendt, “Public Rights and Private Interests” in M Mooney & F Stuber, eds, *Small Comforts for Hard Times: Humanists on Public Policy* (Columbia University Press, 1977) 103. I invoke here the notion of the unrepresentable even though it is unlikely that Arendt would have employed it in this context. On the concept of shared life, see Sara Brill, *Aristotle on the Concept of Shared Life* (Oxford University Press, 2020).

52. Arendt, Arendt, “*A Laudatio*”, *supra* note 25 at 72.

each other's spectators. Actors do not intend fully to disclose what and who they are. Arendt endorses Machiavelli's vindication of insincerity in the public realm,⁵³ and cites Merleau-Ponty's statement that any act of exposure is always an act of concealment.⁵⁴ It is impossible to expose everything in public even if we wish to do so. Whatever may be the intentions of performers about what to disclose, their actual performances do not obey these intentions. Furthermore, intentional self-exposure is impossible insofar as individuals learn who they are through the mediation of their public performances. Such performances, according to Arendt, reveal things that performers "can neither recognize nor control," and are often perceived more fully and accurately by spectators than by performers engaging in self-disclosure. The various ruptures between the inner world and public appearance, as obstacles to sincerity, challenge widespread ideas about children's participation in the public world.

The gulf between the darkness of the inner world and the disclosed aspects of *what* and *who* we are partly corresponds to the legal divide between the private domain and the public world. The right to an exclusive, sheltered place publicly represents inner experiences that according to Arendt are doomed to remain as hidden as our inner organs.⁵⁵ Public freedoms, by contrast, set the stage for the activities and achievements that seek public display. The claim that intimate, non-public voices, like public voices, are *constituted* by rights is not made by Arendt, consistent as it may be with *some* of her views. It is tangential to the present discussion which primarily concerns the construction of public voices.

Place in the world as mutual recognition and collaboration with equals in worldbuilding

In *The Origins of Totalitarianism*, Arendt associates the right to have rights with another aspect of place in the world, namely, recognition: "To be uprooted means to have no place in the world, recognized and guaranteed by others."⁵⁶

53. In *On Revolution*, Arendt explains that the public world operates by means of disguise: "We may now understand why even Machiavelli's counsel, 'Appear as you may wish to be', has little if any bearing upon the problem of hypocrisy. . . . For Machiavelli, the one-who-is and the one-who-appears remain separated, albeit not in the Socratic sense of the two-in-one of conscience and consciousness, but in the sense that the one-who-is can appear in his true being only before God; if he tries to appear before men in the sphere of worldly appearances, he has already corrupted his being. If, on the scene which is the world, he appears in the disguise of virtue, he is no hypocrite and does not corrupt the world, because his integrity remains safe before the watchful eye of an omnipresent God, while the virtues he displays have their meaningfulness not in hiding but only in being displayed in public." Arendt, *supra* note 23 at 104.

54. As Arendt writes, "not only do appearances never reveal what lies beneath them of their own accord but also, generally speaking, they never just reveal; they also conceal—'No thing, no side of a thing, shows itself except by actively hiding the others.'" Arendt, *Life of the Mind*, *supra* note 24 at 25, citing from Maurice Merleau-Ponty, *Signs* (Northwestern University Press, 1964) at 20. Arendt suggests in this context the theme of mutuality in the space of appearance.

55. Arendt draws an analogy between the inner organs of the body and inner psychic life. She contrasts both with the plurality manifest in the space of appearance. See Arendt, *Life of the Mind*, *supra* note 24 at 34-35.

56. Arendt, *supra* note 13 at 475.

Here, Arendt describes place in the world as a state of being recognized as an equal co-builder of the world. The right to have rights and ensuing legal rights have a recognitional aspect. The different dimensions of place in the world (legal, recognitional, ethical, performative) are interwoven. Place in the world bestows upon individuals recognition as participants in the affairs of the world and encourages them to appear, witness, judge, and act. It also imposes responsibilities for the world. Arendt writes: "respect for human dignity implies the recognition of my fellow-men or our fellow-nations as subjects, as builders of worlds or cobuilders of a common world."⁵⁷ Notwithstanding the invocation of human dignity, place in the world has a contractual dimension. Arguably, individuals recognize each other as equal co-builders of the world because they depend on each other in the construction of public worlds. The contract of worldbuilding is not a meeting of minds that precedes the actual activities of worldbuilding. It seems to be formed and renewed 'in-between' individuals through their participation in collaborative everyday practices. Children are not parties to this contract because they are not endowed with a public *persona* that can be enacted in the course of worldbuilding activities. Underlying the contract of worldbuilding and its constant performance and renewal is the shared ethical commitment to worldliness, the commitment to the objectivity and permanence of the public world.

Arendt left open the question of which rights have to be granted in order to recognize someone as an equal co-builder of the world. She refrained from elaborating a system of rights.⁵⁸ The rights to appear and move freely in public, to see and be seen, to have a place outside the public world from which others are excluded, and to cross the line between private and public spaces, were already mentioned as characteristic of place in the world. They make us co-builders of the common world, in some elementary sense of worldbuilding. The more confrontational rights to opinion and action were also considered by Arendt as components of place in the world.⁵⁹ However, recognition may be a matter of degree, and sometimes those deprived of almost all rights can still be recognized as co-builders of the world. Arendt noted in relation to several excluded populations that they had a place in world, however miserable and insecure, despite being excluded from civic life. Such was the case of slaves in antiquity and of political criminals under totalitarianism.⁶⁰ This seems to imply that much less than rights to active citizenship can count as recognition of place in the world. If we take

57. *Ibid* at 458.

58. On Arendt and rights discourse, see Samuel Moyn, "Rights" in Stephanie DeGooyer et al, *The Right to Have Rights* (Verso, 2018) 59.

59. Arendt sometimes described the rights to action and opinion as the core of one's place in the world: "The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective. . . . [N]ot of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion." Arendt, *supra* note 13 at 296.

60. While the world of uprooted refugees was destroyed, the status of slaves and incarcerated criminals was according to Arendt slightly better. They were not entirely expelled from the human world and retained some elements of status. She writes, for example, on political criminals: "They at least know why they are in a concentration camp and therefore have kept a remnant of their juridical person." *Ibid* at 449. On slaves see *supra* note 47 and accompanying text.

seriously the examples of prisoners and slaves, the most basic spatial rights in private and public realms do not count as necessary conditions for place in the world. But even according to relaxed standards of recognition, which find recognition in almost all social relations, certain groups remain unrecognized. In classical antiquity, exile and oblivion were considered denials of place in the world. Arendt referred to refugees and, in different contexts, to those confined to the privacy of the household as placeless. She suggested in “The Crisis in Education” and elsewhere that childhood should remain within the confines of the private domain.⁶¹

V. The Worlds of Judges and Children

Place in the world is characterized by certain relations to self, other, and others, and also to other generations and to objects invested with cultural significance. In Arendt’s account, these forms of relatedness contrast with the immediacy, sensuality, merger, and coercion that define the sphere of domestic life. Place in the world is based on cooperation with equals in the building of a common world. It combines mutual recognition, shared commitment to worldbuilding, rights and responsibilities in private and public realms, and self-disclosure through appearance in public. The core of place in the world is captured by two contrasts that partly overlap: the contrast between a public character and an elusive inwardness, and the contrast between public freedoms and rightful participation in a hidden and exclusive private domain.

Children and judges are placed worlds apart. Children are born outside the public world and await there their “second birth” into the public world.⁶² The expectation of sincerity from children suggests that their otherworldly inner voice is sought and that they are exempted from wearing a public mask. The reluctance to allot children a place in the world, to subject them to the division between private and public voices and domains, does not presuppose that the inner world of children forms a harmonious whole. The great theorists of childhood of the last century, from Freud and Klein to Lacan and Winnicott, have all argued—each in a different way—that the human child is radically divided. The divisions described by Arendt do not coincide with those described by Lacan or Winnicott. The analogy between Arendt’s public persona and the Lacanian subject of the symbolic order, or Winnicott’s false self, is limited.⁶³ Arendt was interested in the divisions between worldly and otherworldly realms and between the respective forms of relatedness within them. She grappled with the private/public divide and with its legal ramifications. While Arendt’s work was more psychologically (and sociologically) informed than she was willing to admit, the divisions that are central to my Arendtian argument—between

61. See Arendt, “Crisis in Education”, *supra* note 2.

62. Arendt, *supra* note 11 at 176.

63. For a different view, see Frederick M Dolan, “Political Action and the Unconscious: Arendt and Lacan on Decentering the Subject” (1995) 23:2 *Political Theory* 330.

public and private domains, rights, freedoms, and voices—are not predominantly psychological. They do not overlap with the divisions discovered by the founders of psychoanalysis. There is a sense in which children are *whole* however internally decentered they may be.

Children do not have rights to public freedoms and to self-determination in private

Children do not enjoy the spatial rights described by Arendt, such as the right to enter at will into the public world and rights to move and appear freely within it. Their parents are entitled and sometimes obliged to hold them in public. Their passages from private to public realms can be checked. Parents also monitor their children's interaction with third parties in the public sphere. This parental power is one of the crucial components of parental authority. Parents generally favor a gradual exposure and initiation of their children to the public world, through mediating institutions such as the school, music lessons, and organized activities.⁶⁴ Unlike adults, children do not 'share' the public world with the living and with past and future generations. They do not form part of the company of the living and of the generations, the world-mediated sociability that keeps the public world alive. Boundaries and objects in the public world do not 'relate and separate' children as they do among adults.

Furthermore, children do not possess a private place that is "properly their own," which according to Arendt is a condition for participation in the affairs of the world.⁶⁵ They do not possess a space of sovereign self-determination, and rights to exclude others from it and to navigate freely between and across the different realms. While Arendt rejected the idea of a single body and substance in the public realm, she accepted it to some extent in the realm of the family.⁶⁶ Children are barely separable from the family as a single substance. They are engulfed by the texture of shared life in the sphere of labor and family intimacy. Such a view is not incompatible with children's rights. As organs of the collective body of the family, children rightfully inhabit the domestic domain and have their needs satisfied in the context of shared life. Their otherworldly voice is nestled in the texture of shared life in which they rightfully participate.

Children do not occupy individuated viewpoints

According to Arendt, the family does not allow a multiplicity of perspectives. Children do not occupy individuated perspectives from which the public world can be observed and evaluated. This is not, in the present context, a developmental claim, but one that concerns the construction of the public world through the

64. On the exposure of children to the public world, see Gill Valentine, *Public Space and the Culture of Childhood* (Ashgate, 2004).

65. Arendt, *supra* note 11 at 30.

66. *Ibid* at 53.

normative distribution of places in the world. Freedom in matters of worldview is associated by Arendt with rights to participate in the affairs of the world and to govern one's private domain. Because children lack these rights, they are not represented as exercising ethical and ideological self-determination.⁶⁷ Furthermore, the moral authority of parents over children is a principle of *the public world*, which keeps children outside the world. Children do not decide which beliefs and worldviews to absorb and profess as part of their education and their religious and social life. Arendt asserts, in "Reflections on Little Rock," parents' right to exercise control over the moral education of their children. The educational authority of parents over children conditions plurality and the transmission of the public world from generation to generation.⁶⁸

Children do not undertake a commitment to worldliness and responsibility for the world; they do not stage a public character and do not participate in the relations of mutual recognition among worldbuilders

Children are largely expected to be uncommitted to the requirements and rewards of publicness. They dwell comfortably outside the objectivity of public space and public time. According to such a view of childhood, which is ethically compelling even if there are elements of fiction in it, children generally refrain from partaking in the work of worldbuilding unless forced to do so. They are generally not expected to make efforts or sacrifice for the world's survival. Children do not partake in the relations of mutual-recognition and cooperation between co-builders of the world, and do not bear responsibility for the world.⁶⁹ They do not participate in the practices of worldbuilding within which shared commitments to worldbuilding are communicated and realized. (Seen from an Arendtian perspective, mutual commitments to worldbuilding are embedded in, and somehow preceded by, actual collaborative practices.) Children lack the public mask necessary for participation in such practices, and are not expected to embrace the burdens and promises of worldliness in the first place.

VI. The Disintegration of Intimacy and Publicness

When children participate in judicial proceedings, they are expected to be inside and outside the public world. They are introduced to an institutional environment in which adults stage public characters. At the same time, they are expected to speak in the otherworldly voice heard until now in the confines of the family. The discrepant voices are entangled, the unmasked voice of children's intimate life

67. Arendt writes in "Reflections on Little Rock": "The conflict . . . between family prejudice and school demands [] abolishes at one stroke both the teachers' and the parents' authority, replacing it with the rule of public opinion among children who have neither the ability nor the right to establish a public opinion of their own." Arendt, "Reflections on Little Rock", *supra* note 2 at 56.

68. See Arendt, "Crisis in Education", *supra* note 2 at 185-86.

69. On responsibility for world, see Hannah Arendt, *Responsibility and Judgment* (Schocken, 2003) at 45.

and the unfamiliar tone of their public voice. Each voice may express somewhat different preferences about custody or access or relocation, because each reflects a different position of the child vis-à-vis others and the world. The passage from the private to the public realm may also be transformative when it is premature. It can modify preferences. Moods and opinions become indistinguishable, and their content can change as well.

Children's participation impairs the private sphere

The effects of treating children as if they have a place in the world can be described in terms of distortion of the division of labor between different spheres of life, rather than in terms of psychological harms. Children's participation in divorce proceedings facilitates the engulfment of the family by the political group. Arendt noted that totalitarian regimes claim control over the totality of individual existence by subordinating the family (as well as other spheres) to the state.⁷⁰ Parental authority is one of the legal and social buffers that keep the political group outside the domestic domain. In traditional and liberal societies alike, the control exercised by society over children is mediated by the authority of parents. In her two articles on education, "The Crisis in Education" and "Reflections on Little Rock," Arendt noted that the power of children's peer group increases as a result of the weakening of parental authority.⁷¹ Participation in divorce proceedings subjects children to the unfettered power of the community when their parents are least capable of mediating this power. Rather than enhancing children's autonomy, participation often replaces children's symbiotic relation to the family with a symbiotic relation to the community. It nationalizes children and places the group in the authoritative position of parents.

The collapse of the protective walls of the family exposes children's intimate voice to the piercing daylight of the public realm. Unlike adults, children do not have public masks to protect them from exposure. Children's non-public voice is in danger of being corrupted (Arendt often used this term) and falsified when exposed in public.⁷² The domestic texture of shared life dissolves together with the boundaries that surrounded it. Arendt pointed out in different contexts that emotions and emotional relations are destroyed by being exposed to the broad daylight of the public realm. The "merciless glare of the public realm" dilutes and falsifies emotion.⁷³ "The heart knows . . . that what was straight when it

70. "Such loyalty can be expected only from the completely isolated human being who, without any other social ties to family, friends, comrades, or even mere acquaintances, derives his sense of having a place in the world only from his belonging to a movement, his membership in the party." Arendt, *supra* note 13 at 323-24.

71. Arendt writes: "To the extent that parents and teachers fail him as authorities, the child will conform more strongly to his own group, and under certain conditions the peer group will become his supreme authority." Arendt, "Reflections on Little Rock", *supra* note 2 at 56. See also Arendt, "Crisis in Education", *supra* note 2 at 186-87.

72. See for example Arendt, *supra* note 23 at 104.

73. Arendt, "Crisis in Education", *supra* note 2 at 183.

was hidden must appear crooked when it is displayed.”⁷⁴ Love, goodness, and other interpersonal experiences cannot survive the disintegration of the protective hiddenness of the domestic realm.⁷⁵ These considerations justify rights to privacy of children as well as adults, but they have a special bearing on children’s participation in the public world.

The argument is often made that parental authority and doctrines of family privacy should keep the state outside of the domestic realm only as long as the family is intact. Once the family fails to preserve its integrity and falls apart, the state has to interfere with its affairs. For many years, and still today, this argument justified the use of the most invasive measures as part of standard divorce proceedings. It is based on a dichotomous contrast between the whole family and its broken apart pieces. The strong interests of individuals—parents and children—and of society in the independence and hiddenness of parent-child relations—e.g., the social interest in securing pluralism through diversity of forms of family life and of styles of parenting—do not evaporate when divorce takes place. They remain as important as they were before the disintegration of the family. They may call for stronger protection of family privacy during and after divorce. Divorce proceedings should normally allow only minimal infractions of parental authority and of parents’ ability to keep the community away from their children.

Children’s participation impairs the fabric of the public world

Because there are relations of interdependence between private and public realms, the predicament of the private sphere bears on the public world. While the disintegration of the domestic domain seems to render the public world stronger, in fact, it undermines publicness. The public realm depends on the private sphere in various ways. The satisfaction of bodily and emotional needs in the hiddenness of the private sphere allows individuals to engage in collaborative worldbuilding and self-disclosure in public. Plurality in the public world depends on the diversity of beliefs, traditions, commitments, and characters that originate in the private sphere and continue to be cultivated therein. The multiplicity and diversity of spheres, as such, prevent the formation of an all-embracing collective body which Arendt considered destructive of the public world.

The attempt to elicit children’s sincere voice in public also undermines the public world directly, not only through its adverse effect on the private sphere.

74. Arendt, *supra* note 23 at 97.

75. As Arendt writes on love, “love, in distinction from friendship, is killed, or rather extinguished, the moment it is displayed in public. . . . Because of its inherent worldlessness, love can only become false and perverted when it is used for political purposes such as the change or salvation of the world.” Arendt, *supra* note 11 at 51. Arendt remarks on gestures of goodness: “Good works, because they must be forgotten instantly, can never become part of the world; they come and go, leaving no trace. They truly are not of this world” (*ibid* at 76).

Arendt noted in several contexts that the treatment of affairs of the heart as objective facts brings about loss of world.⁷⁶ Public representations of shades of emotion, intimate relations, and religious feelings of particular individuals ignore their otherworldliness. They force objectivity on matters that are by their nature removed from the public world—a child's reported wishes, for example—in a way that collapses the distinction between the objective and the subjective. Arendt remarks that when a personal story is told in public without being “transformed, deprivatized and deindividualized,” the result is loss of “assurance of the reality of the world and men.”⁷⁷ By contrast, when an intimate affair is transposed and described in a work of fiction, it becomes ascertainable (within the realm of fiction), representable, and judgeable.

Like intrusive public representations of the emotions of specified individuals, excessive public manifestations of one's own emotions—Arendt speaks, for example, of manifestations of love, goodness, and charity—are destructive of the public realm (as they are of the unveiled emotions).⁷⁸ They undermine the sense of objectivity and realness of the public world. Because children do not have place in the world, when they are called to participate in legal proceedings they embody in the midst of the public world the subjectivity, subordination to needs, and the interpersonal immediacy and merger that characterize the sphere of intimacy and labor. In Arendt's terms, they enact moods in a way that erodes the objectivity of the common world. The relations of *mutuality* and interdependence between actors suggest that children's lack of public persona also strips adult participants of their public masks and undermines the power of adults to build a public world.

The assault on objectivity is aggravated in the case of children's participation in court proceedings by the fact that it is the state itself, considered by Hobbes and Hegel as guarantor of objectivity, rather than private bodies and the media, that conflates the objective and the subjective, handles otherworldly affairs as objective, and represents the unrepresentable.⁷⁹ Moreover, among the different

76. The world is also destroyed by the treatment of objective facts as subjective. Arendt describes how historical facts, for example, become the subject of ideological manipulation in a way that collapses the foundations and stability of the public world, our sense of its realness, and the divide between past, present, and future. See Arendt, *supra* note 13 at 9; Arendt, *Between Past and Future*, *supra* note 2 at 252-54.

77. Arendt, *supra* note 11 at 50.

78. *Ibid* at 76.

79. When children are asked to testify in court in cases that do not concern themselves—as eyewitnesses to a crime or an accident, for example—they seem to take part in worldbuilding. Testifying in or out of court counts among the most basic worldbuilding practices. However, I would argue that testimonies of this kind—compared to children's participation according to Article 12—are tolerated because they are less antithetical to the fabric of publicness. They do not establish that children have in our society a place in the public world. Children's testimonies always generate an unease that cannot be fully explained by reference to their limited cognitive capacities. It stems from children's lack of place in the world. In certain contexts, the law admits children's testimonies on the basis of paramount considerations of utility or justice. Holly Brewer has shown that historically children's capacity to testify (or lack thereof) reflected their overall civic status. See Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (University of North Carolina Press, 2005).

branches of power, the courts are entrusted with a special responsibility for the institution and preservation of objectivity. Courts embody objectivity regularly by staging confrontations between different perspectives on reality and by transmitting legal materials from past to future generations and celebrating the continuity of legal traditions.⁸⁰ Compromising objectivity in court seems particularly inimical to the fabric of publicness.

VII. Conclusion

I have outlined one among several arguments against children's participation in divorce proceedings that can be constructed on the basis of Arendt's ideas. An alternative argument can be based on Arendt's account of authority, especially parental authority, and its roles in worldbuilding. Yet another line of argument, focusing on children's psychological needs, can depart from Arendt's observations on the importance of hiddenness and shelter for children's "vital growth."⁸¹ I have presented an approach that revolves around Arendt's concept of place in the world. It may appeal to readers of Arendt who are intrigued by her conception of place in the world, and does not require thorough endorsement of her views on life and world, labor, and action. Arendt's account of the public world offers a distinct perspective on various dilemmas in family law, one that highlights their implications for the public world, their repercussions beyond the realm of the family. I believe that some of those who object to children's participation in divorce proceedings are concerned about its world-destructive, apocalyptic effects. The reliance of family courts on mental health professionals in divorce proceedings provides another example of the threats posed by family courts to the fabric of publicness.⁸²

While the notion of place in the world is not entirely unrelated to psychological considerations, it extends far beyond them. It offers an ethical interpretation of the varied dimensions of worldbuilding—legal, spatial, recognitional, and performative. An Arendtian conception of place in the world entails, in my view, that children should participate as right-bearers in divorce proceedings when they appropriate and enact the various public and private aspects of place in the world, including commitment to worldbuilding, an artificial public voice, and corresponding, underlying rights and freedoms. Each society can specify a different age for the acquisition of place in the world, but the principal aspects of place in the world have to be considered in any society as largely attainable by

80. On the legal fabrication of objectivity, see Clifford Ando & William P Sullivan, eds, *The Discovery of the Fact* (University of Michigan Press, 2020).

81. Arendt, "Crisis in Education", *supra* note 2 at 188.

82. I elaborate this claim in another piece (in progress). See also Lior Barshack, "Human Dignity in the Family Court: Constitutional Critique of Custody Evaluations" (2019) 12:1 Haifa Law Review 71.

the specified age. Current practices of children's participation in divorce proceedings undermine the sphere of intimacy as well as the public world because they fail to recognize the structure of place in the world.

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