

## Human Rights in Light of Childhood

John Wall

Departments of Philosophy and Religion and Childhood Studies, Rutgers University

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### Abstract

This essay argues that children's rights will adequately transform societies only when the very concept of "human rights" is reimagined in light of childhood. In this case, human rights would be understood as grounded, not in modernist ideas of autonomy, liberty, entitlement, or even agency, but in a postmodern circle of responsibility to one another. This "childist" interpretation of rights is constructed by examining various forms of child-centered ethical theory in Western history; their impacts on major human rights theories of the Enlightenment and today; alternative visions implied in twentieth century international children's rights agreements; new theoretical groundings arising out of postmodern ethics; and the possibility of human rights as truly including all humanity.

### Keywords

childhood; children's rights; human rights; responsibility; humanity; otherness; postmodernity

The language of "human rights" has increasingly been applied to children over the past century through national laws and international agreements such as the United Nations 1989 Convention on the Rights of the Child. The notion of children's rights has wrought a historical sea change in how children are perceived and treated as members and participants in societies. At the same time, despite many gains, actual children around the world during this period have remained frustratingly marginalized, whether through poverty, ill health, lack of education, gender discrimination, child soldiering, or any number of other indicators of social well-being.

This essay argues that the gap between children's rights ideals and realities does not result entirely from a lack of practical resources and implementation. Nor, as some claim, is it that rights language is not appropriate for addressing children's social issues. The deeper problem lies in how to understand "human rights" as such.<sup>1</sup> Despite the fact that children under 18 constitute a third of all humanity, human rights continue to be ethically grounded in the experiences and perspectives of adults. Children will remain second class citizens until the very idea of human rights is creatively rethought in light of childhood. Such a fundamental

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<sup>1</sup> I use the term "human rights" in the "moral" rather than "legal" sense, referring to rights that *should* be held by human beings whether or not they are actually instituted in national or international law.

shift in human rights theory would be similar to the movement in “third wave” feminism from seeking the same rights as men to rewriting human rights discourse itself in terms of gender, power, embodiment, and relationality. But for children the transformation would have to be different and even more radical. Under what I have elsewhere called a new “childism” (Wall, 2006, 2007) – or thinking in light of childhood – human rights should account for the full diversity of human age. Specifically, as the following pages argue, human rights need to be regrounded, not in autonomy, liberty, entitlement, or even agency, but in a postmodern circle of responsibility to one another.

### **Child-Centered Ethics in History**

Reshaping ethical ideas in light of childhood has a rich though largely forgotten philosophical and religious history. In the West, to which I limit myself here, this “childist” history has profoundly influenced both ethical understanding in general and conceptions of human rights in particular. However, like in historical thought about other marginalized groups like women, racial minorities, and the poor, efforts to humanize children in society have inevitably also dehumanized them in some way. Allow me to distinguish three major forms of child-centered ethics that have persisted alongside one another throughout time and continue to shape our assumptions about children today, for both good and ill.

The first such childist ethics may be called “top-down.” The lesson from children here is that human life starts out in a state of animal-like disorder and unruliness, so that the fundamental task of societies is to impose on raw human nature some higher moral order. Unless humanity is bounded and civilized from above, as it were – whether through God, reason, tradition, or some other greater power – human relations will persist in a state of nasty and brutish war. Left in a childlike state, social relations would resemble something like the chaotic violence in William Golding’s *Lord of the Flies*.

The most influential proponent of such a view is the fifth century B.C.E. Greek philosopher Plato, who devotes major portions of his two treatises on social ethics, the *Republic* and the *Laws*, to how much a good society depends on the disciplining and education of its children. “Of all wild young things,” he says, “a boy is the most difficult to handle. Just because he more than any other has a fount of intelligence in him which has not yet ‘run clear,’ he is the craftiest, most mischievous, and unrueliest of brutes” (1961, p. 1379). The goal of politics is the same as the goal of philosophy: to lead humanity toward higher rational principles. Ideally, societies would be run by philosopher-kings and moral education would be weaned off the use of poets like Homer who dabble in mere fantasy and wish-fulfillment. Childhood shows that the natural barbarism, tyranny, and fickleness of human nature needs to be elevated toward civilization and justice.

Similar kinds of top-down thinking can also be found in some of the key ethical statements of the sacred texts of Judaism, Christianity, and Islam. The Genesis 2-3 story of Adam and Eve has often been read to suggest that human beings enter historical life utterly fallen and corrupt, so that they require higher divine commands and punishments if they are to recover a modicum of peace and righteousness. The ten commandments of Moses at Mount Sinai place children in a situation of obedience: “Honour your father and your mother” (Exodus 20:12) just as humanity itself should honour God. In the first century C.E. Christian New Testament, Paul (clearly influenced by Plato) claims that to be righteous one must “put an end to childish ways” (1 Corinthians 13:11) in order to overcome slavery to the flesh through the grace and freedom of the spirit. And in the seventh century C.E. Muslim Qur’an, children are sometimes referred to as “temptations” or “trials” (8:28, 18:46, 57:20, and 64:15) reminding parents to submit themselves to Allah.

In the Middle Ages, the great North African Christian theologian Augustine similarly draws on neoplatonism to argue that infancy is the first proof of his famous doctrine of humanity’s “original sin.” “In your [God’s] sight no man is free from sin, not even a child who has lived only one day on earth” (1961, p. 27). The historian David F. Wright (1987, p. 51) has argued that Augustine’s theology of original sin was developed initially as a defence of infant baptism, and not the other way around. The Latin *in-nocens* for Augustine does not mean goodness but rather “non-harming” or “inability to harm”: “If babies are innocent, it is not for lack of will to do harm, but for lack of strength” (1961, p. 28). Similarly, sixteenth century Protestant Reformers such as John Calvin argue that at birth humanity’s “whole nature is a seed of sin” (1960, 4.15.10) so that social justice can be brought about only by turning human nature toward God’s higher will.

Such approaches, which we will find persist today, have proven morally ambiguous. On the one hand, they do have the merit of taking children very seriously as fellow struggling moral beings. Children are not shunted off into an ethereal sphere of pure moral goodness, but treated as complex and increasingly responsible social persons. On the other hand, children are dehumanized by being viewed as requiring humanization and civilization by wiser adults. Indeed, humanity itself is viewed as needing to overcome its own natural state in the world by aspiring to something greater than itself.

But throughout Western history one finds, at the same time, a second and largely opposite “bottom-up” story of what is learned about moral life from children. Here, children are thought to demonstrate humanity’s original ontological goodness, purity, and moral wisdom, so that humanity’s naturally inborn talents and gifts should be nurtured and encouraged instead of repressed. A child-like innocence, freedom, and simplicity needs constantly to be reinfused into human society to save it from its own greed, tyranny, and violence.

For example, the Bible's sixth century B.C.E. creation story in Genesis 1 (written five hundred years after Genesis 2-3 above) proclaims humankind to have been created "in the image of God" and hence, however much fallen, *primordially* innocent and good. Children, the object of the Bible's first command to "be fruitful and multiply," remind society of its original goodness and purpose. Similarly, in the New Testament gospels, Jesus – himself said to have been God's incarnation as an infant – declares to his disciples: "Unless you change and become like children, you will never enter the kingdom of heaven. Whoever becomes humble like this child is the greatest in the kingdom of heaven. Whoever welcomes one such child in my name welcomes me" (Matthew 18:3-5; see also Mark 9:33-37 and Luke 9:46-48; and Gundry-Volf, 2001). Children in such passages point toward an initial righteousness in the depths of the human soul that can liberate a broken world.

Such a view persists in early Christian theologians such as Clement of Alexandria, Origen, Cyprian, and John Chrysostom, who view children as the greatest exemplars of divine righteousness and simplicity. Clement, for example, claims in his *Paedagogus* that adults should "imitate" children, just as they should imitate Christ, by being "unyoked to vice, not broken in by wickedness; but simple, and bounding joyously to the Father alone," "gentle, and therefore more tender, delicate, and simple, guileless, and destitute of hypocrisy, straightforward and upright in mind" (1994, pp. 213-16; see also Bakke, 2005). Four hundred years later, the Muslim prophet Muhammed claims that, because they are models of righteousness, dead infants go straight to heaven: "My son died while still suckling. He has a wet nurse in Paradise" (1998, p. 136). The fifteenth century female mystic Julian of Norwich argues that adults and society should become more childlike by accepting "our tender Mother, Jesus" (1966, pp. 147-153) as infants naturally take to the nurturing breast. The early nineteenth century founder of modern Protestantism, Friedrich Schleiermacher, declares children "the pure revelation of the divine" in their unsullied inborn "gift" for wisdom, joy, and love (1990, pp. 36, 39, and 45; 1991).

This second kind of childism is also, however, morally ambiguous. On the one hand, it pays children a great deal of respect to see them as the origins of all that is humanly good. Adults should strive to become more like children rather than just the other way around. But on the other hand, such a view easily subjects children to over-sentimentalization. As has been learned regarding women and racial minorities, putting a subset of humanity up on a pure and ethereal pedestal is another way to dehumanize and exclude them. If children are the very origin and means of a good society, then society itself can owe them very little.

Finally, there is still a third historical form of ethics in light of children that could be called "developmental." What children reveal, on this view, is neither humanity's unruliness nor its purity but rather its neutral or blank potential

to grow increasingly in moral reason over time. Childhood reminds us that individuals and whole societies can move along a path of gradually unfolding moral progress.

Plato's student Aristotle, for example, sees children as not so much irrational as *pre*-rational. Children are just as much "political animals" (*zoon politikon*) as anyone else, since they too participate in and depend upon life in common with others. But unlike adults, they do so in a less developed and rational way (1947b, p. 598). This means, for Aristotle, that children cannot yet be said to possess what he calls moral "virtues" or "excellences," such as practical wisdom, a sense of justice, or even the capacity for genuine happiness. And like women, on Aristotle's view, who are similarly less than fully rational, children have correspondingly lesser rights to social goods and participation. But children nevertheless prove by their at least *developing* capabilities, starting at birth, that there can be an increase in social justice and rationality over time (1947a, p. 361).

A similar notion is found in the twelfth century Sufi mystic abu Hamid al-Ghazali, who combines Aristotelianism with Islam to argue that children are not unruly brutes but, rather, "soft like the soft clay in which any seed can grow," or like "a precious uncut jewel devoid of any form of carving, which will accept being cut into any shape" (1993, p. 64). Humanity turns out good or evil solely by its moral education, which passes through three "stages": from helping others in want, to treating others as equals, and then to placing the needs of others above one's own (1993, pp. 101-2). The medieval Jewish thinker Moses Maimonides likewise claims in his *Guide for the Perplexed* that moral wisdom grows gradually over the lifecycle from birth as "man's intellect increase[s] in strength and light; his knowledge becomes purer, and he is happy with his knowledge" (1904, pp. 552-53). The thirteenth century Christian theologian Thomas Aquinas, a foundational figure for modern Catholicism, adapts Aristotle into an ethics of "natural law" oriented toward the unfolding realization of the common good. Under the right conditions, children and then adults grow in distinct moral stages: from concern for oneself alone to increasingly broader forms of agapic love for others (1948, II-II, Q. 10, a. 12, and III, Supplement, Q. 43, a. 2; Traina, 2001). Likewise, the fifteenth century theologian Christine de Pizan sees in childhood the beginnings of humanity's increasing potential for social virtue (2003, p. 42).

Developmentalism also has its specific strengths and weaknesses. On the one hand, it places children on a shared moral continuum with adults instead of either subordinating or sentimentalizing them. It adds a note of realism that connects childhood to adulthood by observably definable phases. On the other hand, childhood is thereby chiefly viewed through the lens of what children *are not yet*, namely developed adults. The focus on lifecycle progress toward moral reason or virtue can obscure children's own distinctive moral voices and agency. The effort to humanize children in this third way can dehumanize them as not yet *full* social citizens.

## Children in Modern Human Rights Theory

This complex history of ethics in light of childhood directly impacts modern ethical theory and, in particular, modern human rights theory. We can see this by examining the three most prominent Enlightenment architects of human rights ethics: John Locke, Jean-Jacques Rousseau, and Immanuel Kant. Each of these social thinkers writes extensively about children. And each's conception of childhood profoundly influences how they think about human rights. The differences among them – differences still being debated today – arise in part from their respectively developmental, bottom-up, and top-down tendencies. And these differences help to explain why, in the end, each denies that human rights properly belong to children.

Thus Locke, the English seventeenth century social philosopher, often thought to be the first systematic human rights theorist, views human rights through a chiefly developmental lens. His argument in *Two Treatises on Government* is that humanity's "natural rights," as he calls them, stem from the duty that each individual owes to its Maker to further its own "self-preservation" (1823, pp. 107-8, 116-17, 146-47, and 159-61). Rights are socially agreed upon means for preserving each self's "property" in society, that is, their life, liberty, and estate (the model for the United States' Declaration of Independence's "life, liberty, and the pursuit of happiness"). Individuals are owed the basic means for their own self-improvement against the intrusions of others and society.

As Locke's equally influential writings on children show, he ascribes rights to humanity on the basis of its developing rational potential. In *Some Thoughts concerning Education*, he claims that children are "white pages" or "wax" (not blank slates, as often thought) ready to be written upon or molded with the skills and discoveries of Enlightened reason. Children are born neither pure nor unruly but, rather, "nine parts of ten are what they are, good or evil, useful or not, by their education" (1989, p. 83). Society's interest in children is not to civilize or to imitate them but to cultivate each child's ability to "submit to his own reason, when he is of an age to make use of it" (1989, pp. 105 and 138-39). Furthermore, in his *Essay concerning Human Understanding*, Locke formulates an empiricist theory of moral and scientific reason as progressing in developmental stages: from infant (even fetal) understanding by concrete experience alone, to the capability for the "association" of experiences into higher order ideas, and finally to the mature ability to submit these sensory ideas to abstract theoretical "reflection" (1975, I.I.27, II.I.6-8 and 20-22, and II.IX.5).

The result is that, for Locke, children demonstrate humanity's universal *potential* for holding social rights, but they are not yet rational enough to hold social rights themselves. By natural law, children have the same interest in self-preservation as anyone else; indeed, given their relative social weakness, even more. But they lack sufficiently developed reason to pursue their self-preservation

without doing themselves and others harm (1823, pp. 126–33, 138, and 179–80). It is precisely because children too deserve preservation that they cannot yet be handed over its liberties and rights. In fact, children should not be their own “property” but be the “temporary property” of their parents, who are best able to ensure their well-being for them (1823, pp. 127 and 132–33). The paradox here can be explained by the fact that, for Locke, rights are grounded in a *developed* capability for social reason available only to adults (indeed only landowning men), so that children are excluded from them by necessity.

The French eighteenth century philosopher Rousseau agrees with Locke in many respects, but interprets both human rights and childhood from a more bottom-up perspective. Rights, for him, exist less to secure self-preservation than to enable free persons to express collectively their true “general will” (1947, I.6, and II.1). Against the tyranny of the will of the few, rights open up social discourse and power to the equal inclusion of all. This view informs the more egalitarian and fraternal ideals of the French Revolution, as in the first article of its Declaration of the Rights of Man and of the Citizen: “Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.” Human rights are not just protections against others but also means for equal social participation.

Rousseau too is deeply interested in childhood. In his influential treatise *Emile, or On Education*, he criticizes Locke’s developmentalism for “always seeking the man in the child without thinking of what he is before being a man” (1979, p. 34). In Rousseau’s view, a good society is one that resists the corruptions of social ambition and power by encouraging the kind of natural freedoms and instincts that each of us already possesses from birth. Thus the *Emile* begins: “Everything is good as it leaves the hands of the Author of things; everything degenerates in the hands of man” (1979, p. 37). Children are not pre-rational creatures so much as the original models of unperverted human freedom and goodness. They exhibit what Rousseau calls a pure “self-love” or “self-esteem” (*amour de soi*), which is the basis of a truly general will, whereas adults degrade self-love into mere “pride” (*amour-propre*) or desiring esteem from others (1979, pp. 67, 92).

The consequence for human rights is again, however, paradoxical. For children as models of natural human freedom must for that reason, on Rousseau’s view, be carefully sheltered from the larger corruptions and avarice of the public sphere. Children need to be nurtured for as long as possible in the private sanctity of the home, where their God-given natural goodness may be strengthened by reason to eventually stand up to the world (1947, I.2 and I.4). And so children are again excluded from social rights, this time because, for the sake of a better society, they need to be secluded until adulthood in the private sphere.

Finally, the late eighteenth century German philosopher Kant provides still a third grounding for human rights, and, as his writings on childhood show, this

time in a more top-down fashion. On Kant's view, rights are based on the human capability for rational "autonomy" or self-legislation. Human beings are on one level just like animals in being driven by heteronomous wants, instincts, and desires. But on another level they are unlike animals in being able to regulate their desires according to higher moral law. Each human being is owed rights because each is ultimately not just a desiring creature but also a rationally autonomous moral end in themselves. "He who violates the rights of men intends to make use of the person of others merely as means, without considering that, as rational beings, they must always be esteemed at the same time as ends" (1990, p. 47). Rights confer on rational individuals their true human "dignity" (1974).

It is not often noted that Kant too writes significantly on ethical questions of childhood, most extensively in his very last published but little known work titled *Education*. Here, he adopts the strikingly top-down perspective that the purpose of children's education is to overcome their natural irrational animality, their total subjection to immediate desire and want. A sound education awakens within each child his or her higher and opposed capability for intellectual and moral auto-nomy. "The greatest and most difficult problem to which man can devote himself is the problem of education," he says, or "changing animal nature into human nature" (1960, pp. 11 and 6 respectively). Children are not bringers of instinctual wisdom or even mere white pages, but rather, in the first instance, the playthings of impulse and need. They therefore require "discipline" and "culturation" (*Bildung*) if they are to grow up to practise a higher order moral reason and duty.

And so Kant, too, does not believe that children are owed social rights, but for a still further reason. On the one hand, children do belong to the universal human community in the sense that they deserve to be treated as *objects* of dignity and respect for having a rational faculty within them. Kant insists that despite lacking real autonomy, children are still ends in themselves. "Hence parents cannot regard their child as, in a manner, a thing of their own making; for a being endowed with freedom cannot be so regarded" (1974, para. 28). On the other hand, only adults can be *subjects* of human rights because only they are in principle capable of using their free will and reason to legislate over their desires. Thus, Kant insists on "the right of the parents to the management and training of the child, so long as it is itself incapable of making proper use of its body as an organism, and of its mind as an understanding" (1974, para. 29). Children are not property, as in Locke, nor sequestered into the private sphere of the home, as in Rousseau. But neither are they yet autonomous rights-bearing citizens.

The very architecture of modern human rights theory is therefore constructed around adults. It is utterly adult-centric. The chairs and tables are too high, the faucets out of reach, for children. In all three major justifications for why human beings should have social rights, children end up lacking what Hannah Arendt calls "the right to have rights." What is shared in common in these ethics of



modernity is the presumption that human rights belong to rational individuals. But because of deep Western historical assumptions about children, rational individuality is interpreted as something that children only either develop into, are nurtured toward from the bottom up, or gain through top-down discipline. While such assumptions have historically also excluded other groups from human rights like women and minorities, unlike for these groups they arguably exclude children by ironclad necessity.

### **The Situation Today**

The result of this history for today can be seen in the great disjuncture suggested at the start of this paper between human rights theory on the one hand and the aspirations of children's rights advocates and practitioners on the other. In fact, human rights philosophers of the twentieth century, when if anything the concept of rights has taken on new life, hardly mention children at all. One of the most widely read texts on human rights theory in recent years, for example, Jack Donnelly's *Universal Human Rights in Theory and Practice*, using a largely Kantian model of "individual autonomy," devotes exactly half a page, out of close to 300 pages, to the rights specifically of children (2003, pp. 149-50). It is more or less simply assumed that when we talk about rights we are talking about "men and women." But in national and international debates about human rights *practices* – such as around poverty, health care, discrimination, and violence – children are frequently at the centre of concern. Indeed, the 1924 Declaration of the Rights of the Child is the very first human rights declaration adopted by an international body. And the 1989 Convention on the Rights of the Child is humanity's most widely ratified legal agreement ever.

This disjuncture between theory and practice reflects in large part a failure in human rights ethics to transcend its adult-centered historical and modernistic roots. Consider, for example, the prominent discussion of human rights theory in Anglo-American analytic philosophy, where the major dispute is between "will theorists" and "interest theorists."

Will theorists such as H.L.A. Hart, Alan Gewirth, John Rawls, and Donnelly argue, chiefly using Kant but also Locke, that human rights exist to preserve social liberty or autonomy. Hart argues that all particular legal rights are based on one fundamental moral right: "the equal right of all men to be free" (1955, p. 175). This, however, he fully acknowledges, and without finding it controversial, belongs only to "any adult human being capable of choice" (1955, p. 175). Or, according to Rawls, the first and most important principle of social justice is that "each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others" (1999, p. 53). A rights-holder, on this view, is anyone who has the capacity to

relativize their own personal interests (behind a “veil of ignorance”) to a larger objective impartially. While Rawls does not exclude children explicitly, he bases rights on the kinds of “equal basic liberties” that adults are more likely to be able to hold.

Like for Kant, will theorists like these can certainly include children as human rights *objects*. Children too can be granted, on this perspective, a basic set of rights to be treated with dignity and respect. Whether or not they can be given liberties themselves, they can be protected from abuse by the liberties by others. But ultimately, so long as human rights are grounded in individual autonomy, they will tend to obscure children as human rights *subjects*. For on the whole it will remain implausible to grant children, and more so the younger the child, the same level of public liberties as may be granted to fully mature adults.

Interest theorists, in contrast, argue that human rights are grounded, not in autonomy, but in the furthering of basic human interests, goods, or needs. John Finnis, for example, uses Thomas Aquinas’ ethics of natural law to argue that human rights advance “basic forms of human good” (1980). The seven most fundamental such rights or interests are to life, the acquisition of knowledge, play, aesthetic expression, sociability, practical reasonableness, and religion. A similar rights logic underlies Martha Nussbaum’s Aristotelian grounding of rights in the “functional capabilities” needed for a truly “human” life (1999, pp. 40–41). She identifies ten such basic rights that are largely similar to those in Finnis.

Interest theory is arguably more open to children’s rights than is will theory because it is easier to picture children as possessing basic human needs. Even a newborn claims as a public good its own life, play, and sociability. But interest theory retains the essential ambiguity of the Aristotelian and Thomistic history of thought about children above, shared also in large part by Locke. That is, it views rights as means to human development, in this case the development of goods and interests. For children in particular, this tends to mean that rights are oriented around what it takes to grow up to become healthy and useful adults. In Finnis, for example, the rights to the acquisition of knowledge and practical reasonableness are rights to what adults presumably have to a fuller degree. (The possible exception here is the right to play, though play has often historically been interpreted in terms of its usefulness for children’s maturation, for example in Locke). In Nussbaum, the “functional capabilities” to which humanity is to have rights are generally going to be defined by adults, indeed by those adults who hold greater social power. While women, for example, can at least in principle affect how societies prioritize their interests, on the whole children cannot, or at least less so the younger the child.

There is, however, a third view of human rights, originating outside this analytic tradition, that addresses these problems in part. This is the “civil rights” approach of figures such as Dorothy Day, Mohandas Gandhi, Simone de Beauvoir, Martin Luther King, Jr., and Gustavo Gutiérrez. Here, human rights are grounded

in the rather more Marxist desire to liberate social groups from economic, racial, gender, and other systematic oppressions. The basic human right here is less to individual freedom or the realization of interests as to collective inclusion in social processes, to a public voice and agency. This tradition marks a fundamental advance beyond the rational individualism of modernity (and analytic philosophy). On the one hand, it shares with the bottom-up thinking of figures like Rousseau a desire to overcome social corruptions through a fully inclusive general will. But, more radically, it recognizes how even the general will is subject to systematic societal distortion, so that human rights are advanced only through grassroots movements in which the oppressed gain social and cultural power.

Such a view has proven more useful for children's rights advocates than those above because it recognizes children as constituting a distinctively marginalized group. Some in the childhood studies movement rightly argue that children just as much as other oppressed "minorities" have a right to their own voice and agency. But this kind of bottom-up approach still suffers from some of the ambiguities of its history. Although children are capable of significantly greater social participation than is generally assumed, they should not be expected to bring about their own social liberation for themselves. The younger the child, the more, on the whole, will she rely for gaining civil rights on others who are precisely not children but adults. Unlike women and adult minorities, children will remain forever without social power so long as they have to fight for social power for themselves. Age genuinely affects one's ability to take political action, express public views, organize grassroots movements, hold positions of influence like university chairs, and press for new political platforms. Often unacknowledged in such bottom-up movements for children is how much they are initiated and carried out by adults.

### **Listening to International Children's Rights Agreements**

Actual international children's rights declarations and conventions of the past century provide an opportunity to move beyond such entrenched historical assumptions about human rights to fresh new ground. For upon close examination, they can be seen as blending together elements of all three kinds of top-down, bottom-up, and developmental ethical bases. This ethical complexity has grown only slowly as children's rights documents have been refined and expanded over the past several decades. But this evolution reflects the fact that it is in practical international movements and declarations that humanity has struggled most energetically and fully in recent times to imagine what a more child-centered world might look like. The international stage of human rights agreements has opened up what Paul Gordon Lauren has called "visions seen of a world of possibilities" (2003, p. 1). While these children's rights efforts do not articulate

a theoretical ethical grounding, they do help us begin to see how it might be more complexly constructed.

The first international children's rights agreement, the League of Nations 1924 Geneva Declaration of the Rights of the Child, contains only five rights, and these are all centred on what have been called "provision" rights: rights to receive national and international aid. They are premised on what the Declaration calls the "duty" that "mankind owes to the Child." This duty includes children's rights to the means for normal development, nutrition and health, priority of aid in distress, the means to an eventual livelihood, and to be brought up in the consciousness of owing service to others. There is also a sub-theme of what are known as "protection" rights: rights against harm or violence. That is, two of the above rights also call, secondarily, for children's shelter and non-exploitation. But the overall provision-based approach of the 1924 Declaration means, in historical terms, that it rests on chiefly developmental grounds. Society owes children the necessary means for growing up to become healthy and productive members of the world. In modern philosophical terms, children are owed what is in their own best "interest." They are to be provided what are often called "positive rights" that further their good and welfare (Woodhouse, 2004, pp. 229-43).

The United Nations subsequent 1959 Declaration of the Rights of the Child contains similar provision rights, and even adds more wide-ranging ones such as to "a name and a nationality," "wherever possible, grow[ing] up in the care and under the responsibility of parents," and "the benefits of social security." But its now ten children's rights shift to place significantly greater (though not equal) emphasis on explicit rights to protection. Protection rights are "negative" in character in that they do not provide aid *for* children but guard children *against* violence and harm. This shift reflects the founding charter of the United Nations itself, the 1948 Universal Declaration of Human Rights, an almost entirely negative or protective rights document that was created in response to the great horrors of World War II. The shift in children's rights is likewise a shift toward an increased sense of humanity's vulnerability to disorder, violence, and exploitation.

Thus, the first right in the 1959 Declaration is to protection against racial, sexual, religious, political, national, birth, and other kinds of discrimination. Other such rights are against "all forms of neglect, cruelty, and exploitation," separation from parents, trafficking, and employment. These could be called top-down rights in the sense that they impose Kantian-like principles of universal order that guard against violations of individual dignity. They are also close to what will theorists call freedoms against harm from others. But the effect overall is a more complex intersection of rights which, as in 1924, continue to provide for children's positive interests, but now in a way framed by children's basic negative protections.

Thirty years later, the United Nations 1989 Convention on the Rights of the Child (hereafter CRC) is even more complex still, and in two major respects.

First, it contains all the rights of the previous international agreements, but adds to these at least as many rights again.<sup>2</sup> There are now 40 distinct children's rights, and each is spelled out in much greater detail. Approximately 16 of these 40 rights (depending on how they are counted) could be said to reiterate rights from the previous Declarations. Even here, though, in most cases, the rights are further extended: the right to non-discrimination, for example, now also referring to disability and birth status. A further 18 rights or so are *new* rights but of the same provision and protection kinds. New provision rights include, for example, to an official government "identity" (article 8) and to an "adequate standard of living" when parents cannot provide it (article 27). New protection rights include those against sexual abuse (article 34), "torture or other cruel, inhuman, or degrading treatment or punishment" (article 37), and drafting into armed conflict (article 38).

These additions in the CRC continue the historical trend toward increasing protections, so that provision and protection rights are now roughly equal in number (about 18 and 16 respectively). This shift can be read as a still deeper recognition of the extent of children's social vulnerability. It also indicates a fuller inclusion of children in the public domain as persons just as deserving as adults of the protections offered by states.

But second, and even more significantly, the 1989 CRC adds an entirely new category of children's rights, namely "participation" rights. These are rights to act and be heard in society for oneself. The six such rights in the CRC are as follows: to be heard (article 12), to freedom of expression (13), to freedom of thought, conscience, and religion (14), to freedom of association and assembly (15), to privacy (16), and to access to appropriate information and mass media (17). Participation rights are a further species of negative rights – active negative rights, if you will – much like in the predominantly late twentieth century civil rights movement described above. They do not provide aid or protect from harm but enable public agency. They grow historically out of the bottom-up ethical tradition of viewing individuals as essentially just and good, thus requiring the means to overcome society's distortions and corruptions through a strengthened natural will. Participation rights aim for Rousseau's "general will" of a society created as much as possible from the ground up. No previous international agreement had ever contained rights of this kind for children.

It is largely these participation rights that are opposed by groups in the United States who successfully fought to make it one of the two nations in the world not to ratify the CRC. (The other is Somalia, which has no functioning government).

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<sup>2</sup> The following discussion is based on the classification of CRC rights made by the United Nations Children's Fund (UNICEF), which can be found at [http://www.unicef.org/crc/index\\_30177.html](http://www.unicef.org/crc/index_30177.html). (The one right curiously left out in 1989, incidentally, is the child's provision right, present in both previous agreements, to be "brought up in the consciousness that its talents must be devoted to the service of fellow men").

These opponents take the traditional Lockean and Kantian view – also held by will theorists and to a lesser extent some interest theorists – that children cannot hold public liberties without doing themselves and others harm. Some also fear that children's freedoms will conflict with the freedoms of parents to raise their children as they see fit, much as in Locke's view that children are not their own but rather their parents' "property" broadly understood.

But such criticisms miss the larger historical context of children's participation rights that sees children in a bottom-up way as bringing valuable gifts and experiences to society. In Rousseau, such rights are denied to children because of their need first to gain the rational strength for socially effective action. But such a limitation is no longer appropriate in light of clear social scientific evidence from the field of childhood studies about the many ways children can and do in fact contribute actively to public life (see, for example, James and Prout, 1990; Mouritsen and Qvortrup, 2002; and Pufall and Unsworth, 2004). And it is no longer necessary in a world where, unlike in Rousseau's eighteenth century France, the problem is not children's too great immersion in adult commerce and culture but rather their increasing isolation in the private sphere. Children are profoundly affected *by* public forces like markets and mass media, but they largely lack a public voice with which to respond *to* them on their own terms. Furthermore, as we have seen, the Romantic vision of secluding children within the home is just as ethically dehumanizing for children today as it once was for women.

The larger conclusion we can draw from these evolving children's rights agreements culminating in the CRC is more complex than asserting children's rights to social participation, important though these are. The larger conclusion is that children's rights cannot finally be reduced to any one kind of right alone, nor justified by any single tradition of human rights theory or childist ethics. Rather, children show that human rights ethics can and should involve a robust combination of all three traditional groundings. Children will suffer in one form or another so long as their developmental, top-down, and bottom-up rights are not intertwined with one another. It would be a mistake to leave out any one dimension, a mistake made by both the CRC's critics (as above) and those defenders who interpret the CRC from a chiefly participatory point of view. Instead, children's rights should be understood as pressing for a new conception of human rights as such.

### **The Circle of Responsibility**

This fuller complexity of human rights in light of children requires us to move beyond premodernity and modernity into some of the helpful new theoretical perspectives of what might loosely be termed "postmodernity." Postmodern ethicists generally do not speak in terms of "human rights" because rights language

has been so closely associated with modernity's morally autonomous individual. But, the deeper history of childism on which human rights theory is based opens up wider possible visions of the human. And the twentieth century's international children's rights agreements offer more multidimensional interpretations of human rights beyond their bases in modernity per se. So the language of human rights is at least open, especially in light of childhood, to creative new ethical conceptualization.

The notion I wish to borrow from postmodern ethical theory – arguably its most important ethical idea – is that of moral responsibility to “the other.” From a modernistic point of view, “the other” can only mean the marginal and the dispossessed, those who are “othered” by being robbed of freedom and agency. But from the point of view of postmodernism (or at least post-structuralism), it refers to persons in their irreducible diversity or difference. Societies are networks of interdependent human relations responsible to each other in their endless otherness. Though children may not be as autonomous or free as adults, they are just as “other” in this sense as anyone else, just as singular, diverse, and plural. Societies conceived of as webs of otherness will be able to include the full range of bottom-up, top-down, and developmental forms of human rights at once. For these can be organized, or so I will argue, around a full circle of responsibility to each human other.

This ethics of otherness, like the United Nations, grew out of World War II, but it draws somewhat more radical conclusions. Its greatest proponent is the Jewish French philosopher Emmanuel Levinas, who was a survivor of the Holocaust and thereby arguably provides an even more “internal” view of the needed ethical response. Levinas claims that the modernistic characterization of human beings as autonomous rational agents proves unable to resist human violence. It is too easily manipulated by those in power to justify imposing their own version of social “rationality” on those who do not fit within it. The “rational” can be interpreted as the Arian, the male, the white, the European, the economically successful, and so on – including, of course, the adult. Nazism and later Stalinism and Maoism advance “totalizing” visions of a better world that label “the other” as irrational, weak, and therefore less than fully human. This kind of silent marginalization can be addressed only by what Levinas calls the “face to face” of responding to each other precisely in their disruptive and irreducible otherness. Ethical “responsibility” is a call for “response”: not to freedom and power but to “the strangeness of the other, his irreducibility to the I, to my thoughts and my possessions” (1969, p. 43). Only by encountering the shock of otherness can selves and societies open themselves up in hospitality to the genuine complexity and fullness of humanity.

On the whole, ethicists of otherness like Levinas and his followers do not deeply consider childhood. Levinas himself did in fact run a Jewish school in Paris after the war and wrote at least one essay on children's education in what he

calls “Hebraic humanism” (1963, pp. 267-320). But a too strong conception of otherness can end up subjecting children to a kind of marginalization of its own. It can obscure the important sense in which children need not only to shock and disrupt us, to *not* be done violence as others, but also to receive active care and support. Postmodernists who follow Levinas tend to emphasize the negative side of moral life (just as does the 1959 Declaration above), speaking, for example, of responsibility as “a passivity more passive than all passivity” or a “being taken hostage” (Levinas, 1981, p. 15), or something “that disrupts me, that is visited upon me, that knocks me out of orbit” (Caputo, 1993, p. 8). But children show that responsibility is both negative and positive at once, both a passive listening and opening oneself up and an active giving and engagement. In terms of the above language of rights, children need not just protection and participation but also deliberate provision.

It is for this kind of reason that my own and others’ work in postmodern ethics has pressed the ethics of otherness in what I call a “circular” direction. The other initiates the ethical relation through its irreducible and diverse otherness, but selves and societies are also called upon to make others their own active responses. “Responsibility” includes a never-ending cycle of both passive responsiveness and active responding. Paul Ricoeur has called this to-and-fro of self and other a “hermeneutical circle.” For him, the ethical aim is not *no* self but a *new* self ever more accountable to “the exception on behalf of others” (1992, p. 269). Richard Kearney similarly describes the ethical aim as “a narrative identity woven from its own histories and those of others” (2003, p. 188). My own way of putting it is to say that selves and societies are required to respond to otherness with their own decentring “moral creativity” (2005, pp. 103-36). Each self is born into an already constructed circle of human relations which, however, he or she should also continually reconstruct in response to the diverse centers of meaning of each other.

Children, from this point of view, are fully members of the human moral circle. In fact, they turn out to be its sharpest representatives. For on the one hand, children start out life constructed by vast networks of interpersonal, social, and historical relations which they are at once passively shaped by and actively begin to shape for themselves. They should be welcomed into these larger worlds in their greatest possible otherness. On the other hand, children are also increasingly responsible to the otherness of others around them, and from the day they are born. Starting in the narrower circles of relations to family, friends, and other close others, children are called upon to reconstruct their own already constructed lives in increasingly other-responsive ways. This aim of self-transforming responsibility to others is the same from birth to death. The difference in childhood is a matter of degree rather than kind: how far toward others it can be expected to extend based on experience with others in the world.



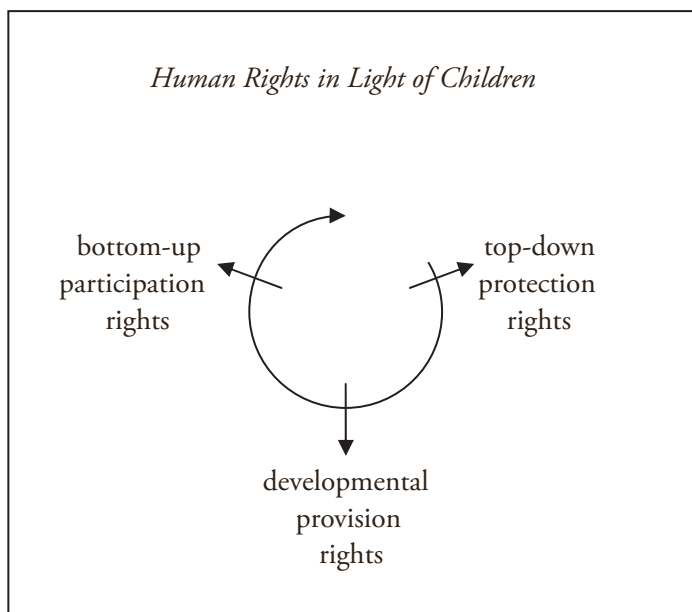
Such an approach replaces the implicitly adult-centred ethics of rational individuality in modernity with a child-inclusive ethics of other-responsive interdependency. And it does so without reverting to equally adult-centred premodern ethics of hierarchical community. There is no more profound and complex circle of social responsibility than that which extends itself to each and every child. And there is no greater model than in children themselves of the possibility for expanding and decentring in responsibility to others over time. But all selves, child and adult both, are simultaneously owed responsibility *by* others and obliged *to* others to provide them their own singular response. This dynamic and increasingly inclusive ethical circle lies at the heart of what it means for us to treat each other with full humanity.

### **The Circle of Human Rights**

On such a basis, human rights may be imagined as more than mere expressions of individual liberties or entitlements. They are markers of responsibility to each other. Each human right is a social construction aimed at reconstructing the circle of society in a more fully expansive way. There are an infinite possible number of “other” centres of society to be included, because otherness is irreducible to common life as such. But human rights function to stretch out or distend social relations in ways that make them more rather than less responsive to the genuine diversity of humanity. They function to expand the circle or horizons of society.

The 1989 CRC helps us imagine what such a circle of human rights might look like in concrete and practical terms. For although it is confined to children’s rights specifically, it shows how the three kinds of rights explored above depend on a fundamentally dynamic relation of human beings to one another. From this angle, the CRC can be read as not just an application of human rights to children but a model for beginning to imagine human rights in a more humanly inclusive way.

This circle of human rights can be pictured as shown below. From this perspective, different kinds of human rights are integrally bound up with one another. Take, for example, participation rights: bottom-up rights to be heard and have an effect on one’s surroundings and society. From a childist point of view, these are not just expressions of individual freedoms. On the one hand, they are profoundly dependent on top-down social protections. Freedom of expression, for example, cannot realize itself in a meaningful sense if it is undermined by discrimination, abuses of power, or actual or threatened violence. Freedom is vulnerable and depends on larger protections against exclusion. On the other hand, participation rights also inherently rely on positive developmental provisions. Freedom of assembly, for example, increases insofar as citizens are educated, healthy, have



a basic standard of living, and can rely on a level of social security. Such connections are especially evident for children but no less necessary for adults. To participate with one's own "other" voice in society is to join a larger active-passive circle of social relations. Adults may be *less* dependent on social protections and provisions than children, but they are still dependent on them fundamentally. Otherness actively shapes social relations only insofar as it is protected and provided support.

Or take protection rights: top-down rights against violence and harm. From one side, protection rights depend on provisions of aid and support. Non-discrimination, non-abuse, and non-exploitation all require that threatened groups can access provisions or goods such as health care, social services, knowledge of rights, and family and community support. From the other side, protection rights also rest on fundamental rights to participation. Women's rights against domestic violence, for example, only came about after women won rights to vote, work, and be heard. Societal protections need to be constantly defined and reshaped by "others" having their own public voices and agency. Such is only more so the case for children. As those with the very least experience and power, their voices against exploitation and harm need to be welcomed and supported the most energetically.

Finally, provision rights too are more complex than often thought. They are not merely hand-outs of positive aid. From a modern individualistic point of view, such provisions can be interpreted only as generous gifts from the rest of society, or at most long-term investments of society's own self-interest. But from a childist point of view, they are part of what is required for expanding the circle

of interdependent human relations – in this case, by developing its members' social capabilities. On the one hand, provision rights rely on a robust regime of top-down social protections. Health care, education, and social security, for example, are effective social investments only if they are provided without discrimination, abuse, or exploitation. On the other hand, provision rights also depend on social participation. How societies increase the good of its members should be shaped and interpreted, not just by the few, but by the free expression, association, and cultural agency of the widest possible diversity of others. Only by responding to genuine human otherness does social investment expand rather than contract the well-being of society as a whole.

Human rights ultimately derive their meaning and purpose from their capacity to expand the diversity and inclusiveness of human relations. Human beings are irreducibly other to one another and form just and strong societies when this diversity is given expression in common. Top-down, developmental, and bottom-up rights are really different sides of a holistic and dynamic human rights circle. At the centre of this circle lies the fundamental ethical duty or responsibility of selves and societies to respond as fully as possible to human otherness. Rights are realizations of social responsibilities. They proclaim each and every human other as deserving society's inclusive response. Because others are ultimately irreducible to the social whole as such, human rights have the dynamic rather than static function of expanding rather than merely maintaining social relations. They strive for society's centripetal inclusion of the widest possible humanity. Over history, this has been human rights' greatest achievement, as it has gradually expanded the construction of society from kings to landowners, majorities to minorities, men to women, and now adults to children. The purpose of human rights is to help us live interdependently as plural others in common.

Such a conception of human rights can at last fully include children. So long as rights are grounded in free, equal, or autonomous individuality, children will be pressed to the outer edges of the social circle. Protections will be granted according to what is convenient for those in power, provisions allotted as reluctant hand-outs, and participation defined by adult capabilities. But if rights are grounded in the responsibility to construct ever more other-inclusive societies, then children should be their most important subjects. For it is children who, on the one hand, are most likely to be marginalized and unheard, and it is children again who, on the other hand, need the greatest social response. A human rights regime based on responsibility to otherness would find in children its clearest reason for being, its greatest opportunity for humanity.

## **Conclusion**

If the promise of the children's rights movement of the past century has yet to be realized, it is in large part because our very understanding of "human rights"

remains distinctly adult-centred. Children are a third of all humanity, yet their experiences and perspectives have not profoundly shaped how human rights are understood. What children and humanity need is something like a shift from “second-wave” to “third-wave” childism, from modernism to postmodernism, from seeing children as requiring the same rights as adults to seeing children as transforming what is meant by human rights as such. Only in this way will children finally be able to take their place as fully social citizens.

This vision of human rights should emphasize responsibility to the other. It should ground and justify the construction of human rights on the obligation to expand the circle of human relations. Societies humanize themselves not just by freedom, equality, or rationality, but most importantly by welcoming others in their fullest possible diversity, difference, and otherness. As children teach us, human rights serve their greatest purpose when they extend us toward our own ever more complex and expansive humanity.

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