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Young Children's Rights

Gary B. Melton, PhD

Clemson University, USA

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The field of children's rights has long been fraught with both controversy and confusion. The conundrum arises from the fact that even self-described child advocates typically fail to reach consensus about the scope of children's rights.[1,2] Some are child-savers committed to societal engagement in children's protection. Typically, they focus on children's vulnerability and dependency, and they often set a low threshold for state intervention in the lives of children and families, whether for protection of their interests or assurance of the requisites for healthy development. They commonly believe that children's best interests demand their protection from themselves, not just from environments that are inadequate or even harmful. Such an approach is likely to be applied with particular vigour in regard to young children, who may be presumed to be vulnerable to even brief disruptions of their care or safety.[3,4]

By contrast, so-called kiddie libbers place primary emphasis on protection of children's autonomy and privacy. Kiddie libbers are usually most concerned with the interests of older children and adolescents, for whom they are especially salient.[1] Moreover, kiddie libbers are prone to see even young children as generally competent, often self-directed actors – provided that adults do not get in their way. For example, some believe that toddlers should be able to determine when their diaper is to be changed.[5,6] Showing respect for children in more far-reaching ways, some child care programs (e.g., those associated with the models prevalent in the Nordic countries and Reggio Emilia, Italy) apply developmentally-relevant democratic principles to their operation

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(e.g., respect for diversity; support for curiosity, uncertainty and subjectivity.[7,8]) Such matters may rise to problems of rights when care is administered in a program that is managed, financed or regulated by government.

The Enactment and Implementation of the Convention on the Rights of the Child

Notwithstanding the continuing disagreements within the field, the long-standing fractionation and related conceptual incoherence of the child advocacy movement were substantially reduced– and the movement's influence was substantially increased– with the promulgation of the Convention of the Rights of the Child (CRC).[9] After a 10-year drafting period, the CRC was unanimously adopted by the UN General Assembly, subsequently signed by all national governments (an action that signals an intent to work toward ratification and that pledges not to adopt measures contrary to the treaty), and then adopted as a matter of law through ratification, accession or succession by all but two consensually recognized nation-states (Somalia and the United States). Optional protocols to the CRC on children in armed conflict and on sexual exploitation of children[10] have also been widely ratified (respectively, by 139 and 142 nations). The United States but not Somalia, which has no widely recognized sovereign government, has ratified the Optional Protocols.

Hence, the Convention of the Rights of the Child was adopted far more quickly and broadly than any previous human rights treaty. Accordingly, every member of the United Nations except Somalia reports to the UN Committee on the Rights of the Child, an international panel of experts elected by the states parties to oversee the implementation of the CRC. Although the Committee does not have the authority to receive complaints from private parties, an additional Optional Protocol that would enable such consideration is currently under consideration.[11,12]

Of course, the CRC did not eliminate ideological differences among child advocates. However, it did greatly attenuate them by bridging protective and liberationist impulses through a focus on dignity, a word that appears eight times in the CRC.[13] For example, if children are to be taken seriously as people, they should have the opportunity to be heard in the context of community life. Not only should they have access to a forum (freedom of assembly; freedom of expression), but they also should have opportunities for media that provide them with information needed to form their opinions, education that enables them to articulate their views, and protection that prevents them from harm when others disagree with their own opinions or their parents' positions. Especially for young people, the whole package is necessary if children are to be

treated as productive members of the community. It means being treated as people who are "somebody." Indeed, it means having relationships with parents and other important adults who also are "somebody"– models for the child who themselves have the respect and social support of the community and who thereby demonstrate and teach that people can make a difference.

Put into a more psychological framework, belonging to a community can be understood as a two-way process:

It is about a child's needs and rights being recognized and met, being protected and provided for, and feeling cared for, respected and included. It is also about having opportunities to express personal agency and creativity, feeling able to contribute, love and care for others, to take on responsibilities and fulfil roles, to identify with personal and community activities, and to share in collective celebrations.[14 (p.3)]

Such recognition is fundamental to the child's personality, as the term is used in international human rights law.[15] The child's right to personality is meaningful from the moment of birth. Thus, for example, the CRC requires states parties to register children at birth, ensure that they have a name and nationality, and protect and support the family relationships that ensure their survival and healthy development. In effect, the CRC requires the development of national and international structures and processes to ensure that children are noticed and cared for, both individually and collectively, as people worthy of respect. Such recognition serves ultimately as the foundation for children's development of a sense of identity[14] and their participation as productive citizens contributing to the well-being of the community and enjoying its concern for them as human beings.[8]

That such philosophical coherence can be found in the CRC is truly remarkable, because it represents, in effect, the least common denominator.[16] The working group that drafted the CRC consisted of representatives of interested national governments, international agencies (e.g., UNICEF), and a coalition of international non-governmental organizations. For language to remain in the draft of the CRC, it had to be accepted by group consensus. Hence, every participant effectively had veto power.

Ironically, the coherence that emerged resulted from both the Cold War and the new world order that succeeded it.[a] Accordingly, in the early years of the drafting process, the West (especially the U.S. during the Reagan and Bush administrations) adamantly demanded recognition of civil and political rights for children (e.g., free expression)– a stance that now, in a double irony,

draws conservative opposition to efforts to achieve U.S. ratification. At the same time, the East (especially the former Soviet Union) equally adamantly demanded inclusion of social, cultural and economic rights (entitlements to care and protection). Toward the end of the drafting process, with the end of the Cold War, there was openness to a fresh approach that would integrate the heretofore warring philosophies. The result was a commitment to democratic values grounded in global recognition of the fundamental concerns of people, especially those in historically disadvantaged groups.

It is noteworthy that the drafting group was convened and chaired by then-Communist Poland in observance of the International Year of the Child in 1979. By the time that the CRC was enacted by the U.N. General Assembly in 1989, a new staunchly anti-Communist regime was emerging in Poland.

In that context, more than the initial working group could have imagined, the CRC elevated children's rights on political agendas around the world.[17] The CRC is the embodiment of "a striking [and new] worldwide consensus...that children are indeed persons, that they are entitled a fortiori to respect and protection, and that nation-states should ensure the fulfillment of such rights with the force of law."[13(p.66)]

Of course, the near-universality of the CRC's adoption does not mean that its practical significance is on the same scale. Even among the most rights-oriented countries, egregious practices sometimes persist. For example, more than 4,000 British preschoolers (aged 5 and under) are suspended each year for misbehaviour.[5,18] Much more pervasively, settings for children often do not provide means of listening to them respectfully.[15,19,20,21] Too often, guided participation[19,22] of young children gives way to the sheer assertion of the physical power of adult authorities, with the result that hundreds of millions of young children are subjected to violence each year.[17] The very survival of many young children is still in question, especially but by no means exclusively in cases of national emergencies[17] (see Save the Children,[23] discussing the use of child-centered spaces to ensure the development of places, both literally and figuratively, for children in their communities during times of disaster).

General Comment No. 7

Ambivalence in the acceptance and implementation of the CRC has been particularly pronounced in regard to young children. In effect, the question of children's status as people is most

unsettled in regard to young children. As an effort to reduce this perceived ambiguity, the U.N. Committee[24,25] issued a 20-page General Comment (GC-7) on Implementing Child Rights in Early Childhood. (In U.N.-speak, a general comment is an advisory opinion rendered by an authoritative body about the meaning of a provision in an international treaty.)

Doek and colleagues identified four ideas of "special significance"[26(p. 33)] that were embedded in GC-7. First, the U.N. Committee[24,25] unequivocally held that even "the very youngest children" must be "respected as persons in their own right". [26(p. 3)] Drawing on contemporary developmental theory and research that indicate that infants are not merely passive recipients of sensory stimuli, the U.N. Committee grounded its moral assertion on the empirical premise that young children are "active members of families, communities and societies, with their own concerns, interests and points of view".[26(p. 3)]

Second, as Doek and colleagues pointed out,the U.N. Committee[24,25] drew attention to "the fact that the young child has the ability to communicate views". [26(p. 33)] In Doek et al.'s words,[26] the Committee emphasized that pre-verbal children "use gestures and facial expressions, laughter and tears to express messages about their interests and wishes, to share their joy and excitement and to communicate their fears and worries".[26(p. 33)]

At least implicitly, by drawing this conclusion, the Committee made clear that the right to participate applies even to very young children. The CRC requires states parties to assure that any "child who is capable of forming his or her own views [has] the right to express those views freely" (art. 12, § 1, emphasis added).[9] The standard for competence in this instance is quite low– simply an ability to express a preference.[27,28]

Applying to "all matters affecting the child" (art. 12, § 1),[9] the scope of this right is broad indeed. For example, it appears to apply to all clinicians in government-managed pediatric health care or to teachers in government-financed child care centers. In effect, professionals in early childhood programs and their assistants have an obligation to have some level of conversation with any child whom they are serving– to form the rudiments of a partnership, not simply an authority relationship.

This principle does not mean that young children's views about matters affecting them, whether large (their custody in divorce) or small (the scheduling of naptime today), will be dispositive. To the contrary, the CRC specifies that "the views of the child…[shall be] given due weight in

accordance with the age and maturity of the child" (art. 12, § 1).[9] Note, however, that the moderating factors of "age and maturity" apply to the question of how a child's views shall be considered, not whether they shall be heard. Hence, Article 12, as suggested by its plain language and as interpreted by the U.N. Committee, does presume a revolution in the everyday practices of work with (not on) children.

In that regard, the third central idea in the U. N. Committee's[24,25] analysis was that young children need nearly constant "support, communication, shared understanding and guidance" provided within a broad array of programs for their care, education, play and protection.[26(p.33)] Such assistance cannot occur "if the children do not receive sufficient attention from caring persons, if their physical needs are not met, if their cognitive capacities are not challenged, if their emotional security is not ensured, or if they are not integrated within a network of social relationships..., the more so if their rights are violated through humiliation, abuse or exploitation." [26(p.33)] To such ends, the U.N. Committee[24,25] emphasized the need for public investment in services for young children, not just school-aged children, and in related data collection, research and training for parents and professionals involved in young children's care and education. As one senior aid worker summarized, "We need to shift the perception of early childhood care and development from being viewed as a luxury item".[29(p. 154)]

Fourth, the U.N. Committee[24,25] recognized that such resources would probably not be raised and effectively administered without "a framework of policies, laws, programmes and other measures,"[26(p. 34)] including independent monitoring and special plans of action.[24,25(p. 3)] For example, implementation of children's right to participate in decisions affecting them might occur if professional licensing standards reflected a norm of conversations with child-clients.[19] Thus, a Child Participation Policy Act might directly state the links of the specific policy to the CRC[9] and the values that it represents, and it might provide multiple ways in which the authority and resources of the government would be used to facilitate the implementation of the policy. Similarly, a national or state (provincial) policy on child care might address how the CRC[9] would be used to guide not only the availability of child care but also the means by which it is provided.[30] For example, parents' wealth or ethnicity should not affect their children's access to child care, and affirmative efforts should be made to engage parents in their children's care.

With numerous provisions clearly targeted toward, or relevant to, early childhood,[31] the CRC[9] itself can indeed serve as the framework on which particular policies (e.g., encouragement of safe, healthy and developmental play) can be built. A transformation of thought and action at the

level contemplated by the drafters of the CRC[9] will not occur without a carefully articulated, multi-faceted, multi-sector policy. Such a transformation must also rest on moral passion, behavioural commitment, and empirical knowledge – the recognition of young children as people, the investment of money and energy in the fulfillment of that vision, and the creation of knowledge needed to effect such change.

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Note:

[a] In international bodies, to connote equality of status, delegates typically sit in the alphabetical order of their country names (usually in English; sometimes rotating between English and French). I once heard Michael Longford, who was the United Kingdom's representative during much of the drafting process, talk with some bemusement about the experience of perennially sitting between the delegates of the Union of Soviet Socialist Republics and the United States of America.