

## **Bill Rolston**

### **PROTECTION VERSUS AGENCY: CHILDREN'S RIGHTS IN CONTEMPORARY SOCIETY**

#### 1. Social construction of childhood

During my university studies in Sociology in the early 1970s, I came across a book which had a profound impression on me. It was written in 1962 by a French author called Philippe Aries and was called *Centuries of Childhood*. His argument, in a nutshell, was that childhood is a social construction. Of course childhood exists chronologically everywhere and in every era, but his argument was that what was more important to consider is how it is interpreted culturally. And that cultural interpretation is not universal. He argues that, beginning in the nineteenth century, children in the West were redefined as precious and in need of protection from whatever evils were inflicted on them by the state, the family and adults in general. This notion has countless legal, policy and political repercussions. eg. the emergence of modern educational arrangements whereby children are removed from both the domestic and public spheres to be cared for and socialized separately. That caring and socialization became preeminently women's work, a development which had profound repercussions in terms of narrowing women's roles.

This changing view of children came to be codified in law and policy. Thus employing young children to climb inside chimneys to clean them was no longer regarded as acceptable. In fact, the whole area of children and employment was, along with the development of mass education, the most noticeable change in how children were treated.

These changes affected international humanitarian law and human rights law too. Take humanitarian law: the Geneva Conventions of 1949 and their two later Additional Protocols laid out rules for the protection of children during war. For example, the Fourth Geneva Convention urges those parties involved in conflict to "take all necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources." Article 4(3) of the 1977 Additional Protocol II states that "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.

In relation to human rights law identical developments can be seen, the most obvious example being the International Convention on the Rights of the Child (CRC) 1989. It recognizes that there are two ways in which conflict can affect children: as combatants and as victims. There is a consequent societal duty to protect children from recruitment and victimisation. The issue of recruitment came on the agenda even more forcefully with the Machel Report in 1996. A subsequent Optional Protocol to the Convention on the Rights of the Child spelled out the goal of prohibiting the recruitment of children for service in regular or irregular armies.

2. This restructuring of the lives of men, women and children led to another process, the demand for emancipation. The first battlefield was in relation to class, where workers demanded, and established, a number of crucial principles: about the length of the working day, about fair wages, about the right to join trade unions, and so on. Due to this struggle, workers' rights are now built into the fabric of most developed societies. The next battlefield was in relation to gender, where women demanded the right to vote, the right to work outside the home for the same pay and in the same conditions as men, the right to go through life without being victims of male violence, and so

on. While inequality between women and men is still common in many aspects of society, this struggle has meant that women's rights are now strongly underwritten by the state.

These achievements of workers and women were hard won, and there is a sense in which the struggle is never-ending. In neoliberal times the gains of workers are often under threat and old battles have to be fought all over again about pay and conditions of employment. For women the struggle is likewise still unfinished. While the principle of equal pay - if not the reality - is widely agreed, the issue which is still highly problematic is that of violence against women, in wartime and in peacetime. For example, it is only relatively recently that the laws of many countries have agreed that rape can occur within marriage. And there is still undoubtedly a frightening amount of violence against women in domestic situations.

3. In relation to children, it is possible to point to progress as regards emancipation, but it is also true that there is still much work to be done. As I said earlier, the initial focus was on the vulnerability of children and therefore their need for protection. But another focus began to emerge, that of seeing children, like workers and like women, as rights holders and agents in their own right. Just as the CRC encapsulates protectionism it is also significant in another way in that it represents the high point, to date, of a focus on the emerging capacity of children and young people, with an emphasis on agency and a goal of encouraging their participation in society. The ideals of the CRC are obvious throughout; for example, Articles 12 through 15 state that children have the right to freedom of thought, of expression, of association and of information.

The CRC might have been stronger, but like all such international agreements, it represents a trade-off, a compromise, in this case resulting from recognition that it had to incorporate the wide range of positions globally and not simply the position of the most economically advanced countries.

4. There are thus obvious problems with the UNCRC; one of the most significant is the contradiction which exists between agency and protection. Throughout the Convention there is a tension between seeing children as vulnerable and in need of protection - a consequence of the construction of childhood in an industrial age as described by Aries - and an even more recent construction, the view that children are rights holders in their own right, capable of agency and self-determination. The Convention does not solve this tension. It is clear that in the Convention there is a reluctance to make either agency or protection absolute. Take the issue of children's employment; in the Convention it is not child labour *per se* which is condemned, but the 'worst forms of child labour'. This is a de facto acknowledgement that there are situations where children's work is essential to the local economy, especially in family-based subsistence economies. On the other hand, one absolute which emerged early on was the protection of children in war, which finally culminated in policies about child soldiers. Later I will return to this point to consider whether that should be an absolute or whether it should be seen, like the question of children's employment, in a more nuanced sense.

It needs to be emphasised that in practice many cultures have a much easier time having a strong relativist position as regards children's agency; children are not seen as fully capable agents in most aspects of life. They are seen as 'human becomings' rather than 'human beings'. In this scenario, protection wins out; the state, the family and other agencies are there to decide and act 'in the best

interests of the child', a position based on the presumption that children are incapable of recognising those interests for themselves.

5. The UNCRC does not agree. It recognised the contradiction between agency and protection and sought to solve it by stressing a presumption of capacity. This is spelt out in precise detail in General Comment no. 12, paragraphs 20-21, from 2009. It is worth quoting these paragraphs in full.

20. States parties shall assure the right to be heard to every child “capable of forming his or her own views”. This phrase should not be seen as a limitation, but rather as an obligation for States parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible. This means that States parties cannot begin with the assumption that a child is incapable of expressing her or his own views. On the contrary, States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.

21. The Committee emphasizes that article 12 imposes no age limit on the right of the child to express her or his views, and discourages States parties from introducing age limits either in law or in practice which would restrict the child’s right to be heard in all matters affecting her or him.

These are incredibly radical paragraphs. Taken seriously, they ensure that protection cannot become an excuse to curtail agency. The presumption is that the child is capable rather than incapable and it is the task of the state, on a case by case basis, to prove incapacity rather than the burden being on the child to prove capacity. The emphasis is on children's widespread participation in society.

6. However, agency as aspiration and agency in practice are two entirely different matters. Let's look at a few examples.

There are contradictions in terms of law and policy when it comes to children's agency. Most societies have a view that there is an age of criminal responsibility, when the young person is capable of judging right from wrong and therefore open to prosecution and punishment for choosing to do wrong. In most cases, however, that conclusion of rationality and the ability to judge is not equally conferred on the behaviour of young people with the result that they are judged old enough to be sanctioned by the criminal justice system but not old enough to vote or to be sexually active. The first is justified in terms of capacity, while the others are denied in terms of lack of capacity.

Second, take the case of physical punishment. 194 countries have ratified the CRC; 40 have gone further and established a total ban on physical punishment of children. In this sense they have followed logic apparent elsewhere in society in the last century and more whereby physical violence against other groups - most notably women - was eventually sanctioned. Yet this benefit is not given to children, not even in the majority of societies which endorse the rights of the child laid out in international convention. Compare this to the case of women where it is no longer permitted to physically abuse one's partner. In many respects, children's rights have been the poor cousin of

legal protection; in many countries they can be physically beaten in the name of 'reasonable chastisement'.

There are many excuses given not to follow the example of the 40 nations and protect children fully from physical punishment. One is that it does no harm, that in fact it can be highly effective in terms of controlling children's behaviour and educating them about the demands and responsibilities of social living. There is copious evidence that it does harm; children who are hit have more behaviour problems, especially with aggression, more emotional and mental health problems, especially depression, and the impact of physical punishment may extend into their adult life in the form of violence towards partners and family members, anti-social behaviour and ongoing mental health issues. Children die as a result of punishment, or are psychologically scarred. In fact, there is widespread evidence from research that there is a strong correlation between physical punishment and child abuse. As one author, Michael Freeman, puts it: 'Correction escalates by stages into abuse.' He goes even further and concludes that violence against children in the family is at the root of violence in society: ... [w]e live, as we always have done, in a violent society, of which the family is a true microcosm ...the family is a real cradle of violence ... as conditions of childhood and experiences of family violence socialise into a "culture of violence". The problem is that the law and culture place too much emphasis on parents' rights rather than on children's rights.

Another argument is that children are not competent to decide on many aspects of their lives. Yet the evidence overall is that even young children can express preferences across a wide range of issues and are highly competent - technically, cognitively, socially and morally - on many of those issues. The paradox is that the young person under 18 cannot vote, no matter the level of their competency, whereas the person of 18 or more can vote, no matter the level of their incompetency.

7. Overall it is clear that society has not fully embraced the CRC. The scope of the convention is narrower than it might have been. Enforcement procedures are weak. Rhetoric and symbolism are often seen as sufficient. The social construction of children still a work in progress.

8. I want to turn, finally, to one other aspect of agency and competency. It is a difficult one to approach in many ways, and relates to the protection of children from involvement in violence. The epitome of this is the sustained campaign internationally against the recruitment of child soldiers by both regular and irregular armed groups.

Involvement of children and young people in violent conflict has become perhaps the one area where there is widespread consensus. In the choice between agency and participation, the international community in this case has come down firmly on the side of protection. Yet, I would like to argue that the issue is more complex than may first appear. For a start, there is contemporary evidence that coercion is not the sole explanation of children's participation in war, even if it is undeniably the main reason in the most notorious instances, such as that of the Lord's Resistance Army in Uganda. For example, former child soldiers in Mozambique, Eritrea and Tigray, especially females, point to their experience in rebel forces as having been empowering. In short, introducing notions of agency allows for the conclusion that children may on occasion join conflicts for rational reasons: out of poverty and deprivation, to defend their family, as part of a community of resistance to oppression and injustice, or simply because in many parts of the world, "the least dangerous place to be in a war today is in the military." In this sense, children's experience of recruitment may not be much different from that of adults.

Six years ago I published a book called *Children of the Revolution*, which was based on interviews with people, adults now, who were raised in situations where one or more parent was a member of an illegal organisation in Northern Ireland. Some of these organisations, in particular the IRA, were anti-state, while others, such as the UVF and UDA, were pro-state organisations.

Some of those I interviewed reported having nervous breakdowns and others acknowledged that they struggled for years to come to terms with what had happened. Remarkably, however, these cases are not the majority; most interviewees seemed not to have suffered long-term or lasting trauma. In part, this seems to be due to the fact that they had no alternative against which to measure their experience. A son of a UVF man said: 'It was normal ... because you didn't know any different. I can't say that I found it stressful.' The daughter of an IRA man, used to seeing periodically the dramatic television footage of her father's funeral, which was attacked by a loyalist who killed three of the mourners, says, 'For a long time I thought everyone who died got a funeral on television.' Robert, a UVF ex-prisoner like his father before him, remembers the family home being raided, but concludes that 'It was part of life in those days. We weren't the only family; it was happening throughout Northern Ireland.' A daughter of a IRA mother is equally stoic: 'I remember British soldiers coming into the house, doing raids. They're not horrific memories; I don't think that they have traumatised me in any way. I don't remember being scared.' This woman is in fact adamant that her childhood was a happy one, despite the conflict raging on the streets around her. Arguably there could be an element of nostalgia softening the harder edges of traumatic memory. At the same time, it is clear that she and many of the others interviewed were not passive victims, but survivors who reveal remarkable resilience.

How can this be explained? Allan Feldman accuses standard Psychology of a Western colonial bias that fails to understand what he calls the experience of 'the child of colour and colonialism.'

For those in the West, the child divorced from the domestic sphere, acting adult-like in the public sphere, indexes profound disorder in the relations between public and private domains. For the child bearing arms, or fleeing and dying in demonstrations, or incompletely demobilised after the war, evokes social liminality, a rent in the historical fabric that no social order can encompass.

He continues:

While from an American and Western European perspective, youth activism appeared as the abandonment of childhood, within the neo-colonial South Africa context the massive mobilisation of youth can be characterised as the emergence and rediscovery of childhood as a distinctive and separate moral and ethical category in modern South Africa.

The Western model of the child—which, in the words of the Preamble to the Convention on the Rights of the Child expects the child to “grow up in a family environment, in an atmosphere of happiness, love and understanding”—becomes the standard against which other societies are judged and are so often found lacking. Ignoring the structural factors such as underdevelopment, imperialism, patriarchy and inequality that make the Western ideal a distant luxury for many societies, especially in the global South, the Western view pathologizes any and all alternative views.

A small amount of international research reveals children who seem to have coped. Adolescent Iraqi and Somali refugees have been found to be more resilient than might have been expected because of their strong ties to their culture and community.<sup>1</sup> Palestinian children who, during the first Intifada of 1987 to 1993, 'glorified war, expressed unfailing support for their national cause, and were ready to join the fight suffered less from anxiety and insecurity, depression, and feelings of failure . . . than did the children with weak ideological commitment.'<sup>2</sup> Resistance to Israeli military domination thus encourages 'active and courageous coping modes' and 'discourages passive and helpless responses' to hardship.<sup>3</sup> Consequently the Intifada became a 'process that turned Palestinians from victims to masters of their destiny,' children included. Children 'viewed themselves as freedom fighters and this ideological commitment functioned as a protective factor and source of resilience.'<sup>4</sup>

Similar conclusions can be drawn about South Africa. In the 1980s the leadership of the ANC, who lived outside the country, called on those in the country to make the Apartheid state ungovernable. The people who responded most enthusiastically to this call were children and young people. They boycotted education, marched on the streets, engaged in street fighting with the police and became in their own view 'frontline soldiers'. They frequently paid for this involvement through injury, death or imprisonment. But all the evidence, including that based on their own accounts of those days, reveal that they remained psychologically balanced. In fact, they note that it was only after the ending of Apartheid that they suffered emotionally and psychologically. Their motto had been 'Liberation before education'. Their understanding was that they would get education, training and jobs when liberation came, but instead they ended up destitute – unemployed, middle-aged, living in townships where unemployment is rife.

This approach is open to misunderstanding on at least three counts. First, great care must be taken not to over-generalize. Remarkably little empirical research has been done on the processes whereby in some circumstances children cope with traumatic experience, and in other situations they do not. As such, it is important not to assume that all children will be resilient in the face of all violent conflict, nor, worse, to presume that it doesn't matter what adult society inflicts on kids, they will always bounce back.

Second, such research would need to tell us more about the possibilities of resilience in a range of violent conflicts. Behaviour that might be considered virtuous, such as rebellion against a dictator or a colonial power, would be viewed differently from involvement in genocide, for example. For children, no less than for adults, these two scenarios undoubtedly carry different psychological significance and consequences.

Third, it is important to emphasize unreservedly that frequently children *are* traumatised by war and political violence; that they *should* have the fundamental human rights of safety, equality, economic

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<sup>1</sup>Tracey Maegusuku-Hewett, David Dunkerley, Jonathan Scourfield and Nina Smalley, *Refugee Children in Wales: Coping and Adaptation in the Face of Adversity*, 21 CHILDREN & SOCIETY 309 (2007).

<sup>2</sup>Raija-Leena Punamäki, *Can Ideological Commitment Protect Children's Psychosocial Well-Being in Situations of Political Violence?*, 67 CHILD DEV 55, 66 (1996).

<sup>3</sup>Raija-Leena Punamäki and R. Suleiman, *Predictors and effectiveness of coping with political violence among Palestinian children*, 29 BRIT J SOC PSYCHOL 67, 75 (1990).

<sup>4</sup>Samir Qouta, Raija-Leena Punamäki and Eyad El Sarraj, *The Impact of the Peace Treaty on Psychological Well-Being: a Follow-up Study of Palestinian Children*, 19 CHILD ABUSE NEGLECT 1197, 1198 and 1205 (1995).

parity and a meaningful life; and that they *should not* have to cope with the experience of violence, political or otherwise.

But in as far as some children exposed to civil unrest and war do manage to cope, hegemonic notions of normality and abnormality must be called into question. Within the Western construct, the scenario is clear: children experiencing repression or living through freedom struggle represent an affront to the ideal of the notion of the innocence and preciousness of childhood. In as far as such cultural definitions prevail in a society, they are accepted not just by adults but also by children. Where this is the dominant cultural conclusion in a society, children in that society also accept that they should not have to suffer such distortions and the experience of doing so is a potential source of stress to them. In other words, expectations of stress are in part socially determined.

The converse is true as well: in a situation where an opposite social construction exists, then resistance and its consequences are not necessarily regarded as abnormal, not even by children. In short, coping depends on the sociopolitical context which makes it possible for people—including children—to believe that it is possible to cope. I will end with the words of one woman who grew up in South Africa during the days of mass resistance.

Living the struggle as a child meant taking on roles and responsibilities as many children all over the world do for different reasons. We are taught to think about childhood as a time of innocence and freedom, but really it was about growing up. In some ways I felt more of a child at 14 than I did when I was 7 years old. The struggle gave me a sense of purpose. It taught me that every second of our lives matters and has meaning. That's as valuable as my memories of climbing trees.<sup>5</sup>

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<sup>5</sup> As quoted in *KNOCKING ON: MOTHERS AND DAUGHTERS IN STRUGGLE IN SOUTH AFRICA* 13 (Shirley Gunn and Sinazo Krwala, S. eds., 2008).