

Chapter 2

The History of Children's Rights

Historical Perspective

The discourse on children's rights is relatively new, even within the modern human rights discussion. Not long ago it seemed absurd to talk about children's rights; the concept of children's rights gained widespread support only in the last few decades. Not only are children's rights relatively new ideas, but the very concepts of childhood and the child are relatively recent achievements (Hart 1991). Today, children's rights are a serious social issue (Chirsholm cited in Alaimo 2002).

Like the concept of childhood, the history of children's rights has been shaped by changing economic, social, cultural and political circumstances (Alaimo 2002). It is common to address three periods in the evolution of the concepts of children's rights—the pre-industrial period, the industrial period and from the mid-20th century to the present.

The Pre-industrial Period

Prior to the 16th century there appears to have been no conception of childhood as a unique or distinct period of life. Most children beyond six years of age were considered to be small adults and were not separated from adults as a class (Aries 1962; Hart 1991). Children were considered legally and socially as the property of their parents; they were not seen as human beings with their own status and rights (Hart 1991).

Even up to the first quarter of the 19th century children were mostly still viewed as the personal property or extensions of their parents with few or no legal rights whatsoever (Stier 1978). Parents, mainly fathers, were given unlimited power and control over them and were allowed to treat them as they wished; corporal punishment was almost universal and was accepted as appropriate.

During the early period of modernization infant and child mortality was very common—one of four children died before their first birthday, making child mortality the most common cause of death (Hart 1991). Many historians argue that this high mortality was one of the causes for the emotional distance of parents from their children. They claim that parents suppressed the ability to feel empathy for their children to avoid emotional attachment to a baby with a low chance of survival (Aries 1960; deMause 1974). Adults were not expected to have close relationships to children and could be cruel and distrustful towards them. Many children were unwanted and negative parent-child relationships led to serious abuse and neglect (deMause 1974; Hart 1991; Stone 1977). Children had more duties towards their parents and society than they had rights (Alaimo 2002). They were characterized by a lack of identity and were considered expendable (Hart 1991). The poor status of children in society created a situation, in which they were neglected, abused and sold as slaves and were invisible in the eyes of society.

Child labor was a widespread phenomenon in the pre-industrial period and children were a significant part of the economic system all over the world (Hart 1991). Until and during the 19th century children over six years old were perceived as young adults and were therefore required to contribute to society according to their abilities. From about the age of 7 they began a slow initiation into the world of work, a world inhabited by both adults and children. Children as young as four and five could already be working in the factories, and at least some of the child laborers did not work with their families (Alaimo 2002). The concepts of education, schools, protection against hazards and special rights were rare or non-existent (Hart 1991).

The Industrial Period (the 19th Century up to the Mid-20th Century)

The technological and socioeconomic changes of the early 20th century resulted in a change in the conceptualization of childhood. Children were considered to be endangered by conditions of immigration, industrialization and urbanization in ways that would create undesirable behavior and threaten society (Hart 1991). This brought about a new agenda in regard to children's status and led to the emergence of the idea of protecting children and providing them rights.

The main development in children's rights arose in connection with industrial child labor (Alaimo 2002). Child labor began to be perceived as a social problem due to the fact that children were now recognized as a vulnerable group all over the Western world. They were working under hazardous conditions and were at risk, not only physical and life threatening risk, but also of moral damage (Hart 1991). Factory work was physically exhausting for children as young as seven years old, who worked sixteen hours a day in a damp, poorly ventilated workplace and corporal punishment was common. Foremen used harsh method to keep exhausted children awake. In addition, working in a factory, unlike at the family farm or craft

shop, exposed the children to large numbers of strangers who might molest and corrupt them (Alaimo 2002).

The child labor reform movement, based on the view of child laborers as defenseless victims of industrialization, launched an eventually successful campaign to regulate and ultimately eliminate industrial child labor. The 19th century movement against child labor and in favor of child schooling was a significant shift in thinking, helping to bring about a key transformation in the conception of childhood and in the formulation of children's rights. The child labor reform movement opened a public discussion about the social meaning of childhood, specifically opening the door to the radical reform that perhaps children should not work at all and that they have the right to different childhood—one of physical, moral, intellectual and social development (Alaimo 2002).

Schooling became an alternative model of social existence for children, when the protection rights—laws against industrial child labor—were joined to provision rights—entitlement to education (Alaimo 2002). Life in cities brought crime, poor conditions of hygiene that led to the spreading of diseases, and the development of social alienation. Schools were considered a way of isolating children from all of these issues. It was further feared that working children would become adults lacking necessary education and who would be intellectually and morally hampered (Archard 1993).

Laws controlling child labor and the introduction of universal education in the 19th century recognized the need for children's protection and acknowledged that they had rights. As school gradually took the place of work, and regular schooling became compulsory (around 1900 in Europe), the attitudes toward the place and role of children also changed. Childhood could last longer and children could be seen as more dependent (Hill and Aldgate 1996).

The 19th century is considered the "child-saving" era. Particularly in the half-century from 1870 to 1920 the rights of children in relation to parents, employers and others expanded in the form of rights to protection and services that presupposed a vision of childhood as a distinctive phase under the patronage of the state (Alaimo 2002). Gradually, children began to be perceived as a separate class and not as property. The perception that children have no more than economic value began to change and be replaced by the concept that children are a unique group that society has the responsibility to maintain and protect from various dangers to which this group is exposed (Hart 1991).

Another change in this period is the protection of children from abuse and neglect by their parents. Parental neglect and abuse were subjected to intense scrutiny and challenged, not only by private philanthropies, but increasingly by government authorities. The state also increasingly challenged parental authority and autonomy in child rearing. In 1889 both France and Great Britain passed laws against child endangerment, including that caused by their parents (Alaimo 2002). The state with its professionals became the guarantor of children's rights. The child's right to protection led to the child's rights to provision of various sorts, with the state responsible for providing services. Health, care, acceptable housing,

playgrounds, together with freedom from work and access to public schooling emerged as elements of children's rights (Alaimo 2002).

The 20th century became the period when legislation concerning children was introduced in many countries. This was frequently introduced in connection with child labor and education, but also to acknowledge a public responsibility toward orphans and other destitute children. By the end of the 19th century, life for most children was more than just a mere struggle for survival. Hence, the 20th century was characterized by concern and efforts to establish and formulate children's right to nurturance. After centuries of being dismissed, ignored, manipulated and looked upon as "objects", children were finally granted legal recognition as "persons" (Cohen 2002).

However, despite the worldwide recognition of children's rights, this approval of children's rights was based on the view of children either as passive, weak, and vulnerable creatures, and therefore in need of protection, or as unruly and threatening and therefore in need of control (Hallett and Prout 2003). Children were perceived as "becoming human" and were not yet recognized as full human beings with freedoms (Alaimo 2002).

Society was mostly concerned with children's protection and provision rights. Much attention was paid to children's physical survival and basic needs, focusing often on threats to children's survival. Such social perceptions spurred programs to save children's lives or supply their basic needs. Infant and child mortality, school enrollment and dropout rates, immunizations, and childhood disease are examples of areas in which these programs arose (Archard 1993; Brandon et al. 1998). Safeguarding and protecting children gave rise to a dependent childhood, highly regulated by adult guardians and characterized by children's loss of autonomous action. While these policies were important for saving children, they deprived children of the rights of self-determination.

Society adopted the concept of "saving children" and this idea continued to grow well into the 20th century. This concept became even more meaningful as children began to be perceived as the resources of the future. Society understood that, in their adulthood, today's children will determine the future of the world. Thus, not only are adults responsible for saving and protecting the child from a variety of hazards, but they are also required to take care of the positive aspects of the child's life for the sake of future generations. These ideas and changes created the new perception of a "person in the making" (Ben-Arieh et al. 2014).

It was only in the second half of the 20th century that the child's existing status, rather than the potential person, received concrete support. The emerging person status of children provided justification for rights to protection and for the first time also for self-determination.

Liberalism and Romanticism

Changes in the status of children cannot be attributed solely to the social and economic changes in the 19th century. Some streams of philosophical thinking

emerging in the 17th and the 18th century also contributed to generating the notion of children's rights. From the 17th–19th century numerous Enlightenment thinkers focused on childhood education and how children learn. Indeed, the 18th century showed the emergence of a pronounced sensitivity to childhood, with a clear articulation of childhood as a distinct stage of life with its own ethos and in need of its own institutions. The Enlightenment's attention to the development of the individual child was an important milestone leading to the 20th century concept of the rights of the child (Ladd 2002).

John Locke (1632–1704), the founding philosopher of English liberalism, published his famous book *“Some Thoughts Concerning Education”* in 1663. This had a significant influence on how children were conceptualized in the 17th century. One of his core ideas was that the child is born a “blank slate” without innate ideas and that all knowledge comes from experience. Based on this idea, he argued that education is a powerful tool to shape the child. This was a groundbreaking way of thinking and it contributed to the idea and to the importance of children's right to education. Locke appeared to recognize the individuality of each child, arguing that parents and educators need to treat children as rational creatures. He rejected corporal punishment as inappropriate to the raising of a wise and good child.

Locke's thinking marks an important shift in the conceptualization of childhood in the West (Alaimo 2002). In spite of this great contribution, we should bear in mind that Locke's viewpoint was limited; he was primarily concerned with the adult in the future and not with the child in the present.

Another important philosopher on the path to children's rights was Jean-Jacques Rousseau (1712–1778), who, particularly in *“Emile”* (1762), associated children with nature and natural goodness. He implied that children have a right to a happy childhood, characterized by freedom and closeness to nature and saw childhood as an innocent, carefree and happy period of life. Reacting to Lock's assertion that the child is a rational creature, Rousseau stressed that children should be children before they are adults and that childhood has its own methods of seeing, thinking and feeling. He was genuinely concerned with the process of growing up.

Rousseau's ideas, which are considered pre-romantic, were later endorsed by the Romantic Movement, which took up this theme of children's original innocence. The Romantics proclaimed childhood as the best part of life and attributed qualities of purity and innocence to the child. The British Romantic poets, such as Wordsworth and Coleridge, saw children as innocents gradually corrupted by society (Cunningham 1995). Ironically, this idealization of childhood coincided with the emergence of the first industrial societies which encouraged the exploitation of children. Nevertheless, the Romantic conception of childhood, derived from Rousseau, greatly contributed to the nation of children's rights (Alaimo 2002).

The Middle of the 20th Century to the Present

Throughout the first half of the 20th century the concept of children's rights still embodied the idea of a child's right to protection against harm and access to certain basic entitlements, such as schooling and health care. A noticeable change in the thinking on children's rights occurred in the second half of the 20th century, with a shift from issues dealing solely with children's protection or nurturance rights to those dealing with children's right to self-determination or self-expression. Increasing awareness of children's rights to participation (Ruck and Horn 2008) have led to a global move toward giving children and adolescents a greater degree of autonomy in the decisions affecting their own lives and development (Cherny and Shing 2008). This new approach is based on the assertion that children are not property of their parents or the state, but are legal persons entitled to many of the same rights as adults (Peterson-Badali et al. 2004; Peterson-Badali and Ruck 2008). Worldwide focus shifted to struggles over how to develop a framework that would allow active child participation in civil society (Cohen 2002).

In a landmark decision for children (in re Gault 1967) the U.S. Supreme Court noted that, "...neither the Fourteenth Amendment nor the Bill of Rights is for adults alone" (p. 13). Two years later the court noted that "children are 'persons' under the Constitution (Tinker v. des Moines Independent Community School District 1969), and almost a decade later, the Supreme Court stated, "Constitutional rights do not mature and come into being magically only when one attains the state defined age of majority" (Planned Parenthood v. Danforth 1976, p. 5204). Thus, after centuries of being dismissed, ignored, manipulated, and looked upon as "objects", children were finally granted legal recognition as "persons".

Today the status of children (globally and in the Western world) is better than ever, their rights are detailed and implemented by governments in various countries, allowing children a childhood that is protected and separated from the adult world. Note that most of the rights are still related to child protection; children are still not fully accepted as active participants in their own lives.

The various rights and limited freedoms given to children clearly do not exactly correspond to the myriad of rights given to adults (Hart 1991). Even if children are considered 'equal', they may still not receive the attention or the respect for their dignity and integrity which are accorded to adults. Hitting a child is legal in most countries, while hitting an adult may lead the offender to prison. Working conditions for adults are secured by law—not so for children. Even in schools, where the children vastly outnumber the adults, there are rarely rules applying to the "working conditions" of the pupils. As a general rule, when children do have legalized rights, these are indirect, in the sense that others (most often the parents/guardians) have rights on behalf of the child, and even explicit rights are conditional or controlled by others.

International Treaties and Conventions on the Rights of the Child

In the aftermath of the First World War the protection-provision view of children's rights expanded into the international arena. In 1924, Eglantyne Jebb, founder of Save the Children International, persuaded the League of Nations to adopt **the Declaration of Geneva on Children's Rights**. This declaration is short, containing only 5 statements but these provide a concise list of what society "owed the child" and established the notion that children should have certain types of "rights". They were not rights to "do" or to "act" independently as individuals. Instead they were rights to "receive" in the form of things that should be done for the child.

The Second World War brought a new wave of interest in children's well-being. In 1959 the United Nations General Assembly accepted the **Declaration of the Rights of the Child**, asserting that each child has a right to a "happy childhood". This declaration is also still characterized by the provision-protection view of children's rights based on the assumption of childhood dependency and vulnerability. Its language reflects the then prevailing concept of children as "objects" in need of "services"; in other words, it did not mention or support the child's individual rights to participation (Cohen 2002).

In 1979 the UN designated the International Year of the Child to celebrate the twentieth anniversary of the 1959 declaration. As part of the celebration writing a new treaty for children's rights was proposed. Although drafting was begun that year, the convention was not completed until ten years later in 1989. The UN General Assembly adopted the **Convention on the Rights of the Child (CRC)** on November 1989. The text is reprinted in Appendix.

The CRC was adopted unanimously. In spite of possible negative reactions, a large majority of the nations of the world have now ratified the CRC, signifying that they subscribe to and will defend the rights of the child (Hart 1991). Outlining children's political, civil, social, and economic rights (Ruck and Horn 2008), the CRC is the most comprehensive international convention, and addresses a full range of rights for children (Ben-Arieh 2005). It particularly emphasizes children's rights in relation to decision-making processes that concern their lives (Kirk 2007; Melton 2005; Munro et al. 2005).

The CRC has been a record breaker in every sense of the word. Cohen (2002) noted its unique aspects: first, on the day of its signing ceremony in 1990, the Convention was signed by the greatest number of signatories to ever sign a human rights convention. Second, the convention went into force faster than any previous human rights treaty. Third, it achieved universal ratification by 1997, making it the most ratified of all human rights treaties. Finally, it is the only human rights treaty to combine civil/political, economic, social, cultural and humanitarian rights in a single instrument.

The CRC affirms not only the child's right to protection from harm and abuse, but also the right to childhood, to develop into an autonomous adult, and to have a voice in matters affecting and concerning the individual child (Alaimo 2002).

The CRC highlights that the child is a human being with the right to be respected as a unique individual with his/her own perspective and personal intentions by fellow human beings and also by the state, its institutions and other organizations (Krappmann 2010).

Typologies of Children's Rights

Because there are so many substantive articles covering so many types of rights, there have been numerous efforts over the years to cluster the articles and categorize them (Cohen 2002). Contemporary literature on children's rights identifies several categories and typologies of children's rights. One of the most popular children's right typologies discusses four categories or principles derived from the 54 articles of the CRC: non-discrimination; the best interests of the child; the right to life, survival and development; and participation rights.

The right to life, survival and development—children have the inherent right to live, and the state has an obligation to ensure the child's survival and development. This group of rights deals with rights to health, education, social security, as well as the right to a standard of living. It also includes the right to be protected from abuse, neglect and any form of exploitation;

Non-discrimination rights—This principle asserts the state's obligation to protect children from any form of discrimination and to take positive action to promote their rights, meaning that all rights apply to all children without exception;

The best interests of the child—according to this principle all actions concerning the child should take full account of his/her best interests;

Participation rights—Nearly a quarter of the substantive articles deal with participation and self-determination rights, assuring access to information, freedom of movement, association, belief and expression, privacy, liberty and development toward independence.

Another popular typology found in the contemporary literature of children's rights is known as the “**three Ps**”: Protection, Provision and Participation rights (Lansdown 1994; Troope 1996).

Provision rights—The CRC includes articles outlining young people's right to the adequate provision of services and resources to enable children to develop their abilities (Ruck and Horn 2008). The CRC calls for fullest provision, which refers to rights to necessary goods, services and resources, including standard care, health, care review when looked after, the right to an adequate standard of living, to education and childcare, to cultural life and to the arts, and to know about the CRC;

Protection rights—This category includes the right to be protected from neglect, abuse, exploitation, violence, cruel and degrading treatment, discrimination, invasion of privacy, exploitation and hazardous work, armed conflict, invasive research and ecological changes.

Participation rights—This principle, as noted above, refers to the right of children to be respected as active members of and contributors to the family, community, and society from their first years (Alderson 2008).

Another accepted typology is **nurturance rights versus self-determination rights**. The nurturance orientation entails the provision and protection by society of rights that are beneficial to children (e.g., right to education). In contrast, the self-determination orientation focuses on children's right to have some measure of control over their own lives (e.g., the right to choose their own religion) (Horn and Ruck 2008).

The nurturance orientation is based on the paternalistic assumption that society or the state ascertains what is in the best interest of the child. In contrast, the self-determination orientation is based on the child's decision of what is or is not in the child's own best interest or within its own personal prerogative (Rogers and Wrightsman 1978; Walker et al. 1999). This distinction underscores some of the tensions inherent in children's rights. For example, if adults take responsibility for protecting children, does this not potentially limit the children's freedom? (Alaimo 2002). Provision and protection rights enjoy wide support, but participation rights are more controversial.

More marginal approaches to children's rights relating to the two orientations are the **protective approach** and the **liberal approach**. The protective approach is based on the assumption that children require care and need to be protected from abuse and exploitation. That is, this approach is based on views of children as innocent and immature and is often regarded as a paternalistic model. By alleging that children are not rational, not capable of making their own decisions, liable to make mistakes and vulnerable, it justifies adult control and interference in children's lives (Archard 1993; Barnes 2009; Clifton and Hodgson 1997). The protectionist model denies children any voice in their lives and deprives them of their self-determination and participation rights (Barnes 2009).

The liberal approach to children's rights challenges the protectionist perspective, advocating an extreme position on children's rights. In line with other marginalized or minority groups championed in the 1970s, such as women and black people, children are regarded as an oppressed group. Farson (1974) and Holt (1975) advocated that children should have the same rights, privileges and responsibilities as adults if they so wish. This includes the right to vote, to live away from home and to manage their own education at whatever age. They argued that the segregated world of children and adults is discriminatory.

Exercise Box 2

1. Choose a book or a movie recounting children's lives during a historical period (e.g., a classic, like Charles Dickens' books, or a more modern work). Analyze the concept and status of the child that emerges from the work you have chosen, and discuss the rights that are given or withdrawn from children.

2. Look for an article in current newspapers dealing with the case of a child or children. Analyze the concept and status of the child that emerges from it, and discuss the rights that are given or withdrawn from children in the article.
3. Read the Convention of the Rights of the Child (Appendix). Choose three rights from the Convention: (1) The right that, in your opinion, is the most important for children's lives and well-being. Explain your choice. (2) A right that is most frequently withdrawn from children in your county. Support your answer with data and other sources. (3) A right that, in your opinion, is missing from the CRC. Explain your answer.
4. The Convention has four core principles. Please note an example for a violation of a right in regard to each principle that is relevant to your country. Please explain your answer and demonstrate your claims.

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