

INTERNATIONAL REGULATION OF CHILDREN'S RIGHTS

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Contents

1. Introduction
2. The Historical Context of Human Rights
 - 2.1 The Basis of Rights
 - 2.2 Tensions between Different Concepts of Rights
 - 2.3 Moral or Natural Rights
3. Rights for Children
 - 3.1 League of Nations Declaration of Children's Rights 1924
 - 3.2 The United Nations Declaration of the Rights of the Child
 - 3.3 Freedom Rights and Child Liberationists
 - 3.4 Child Development Theory and Children's Rights
4. The United Nations Convention on the Rights of the Child
 - 4.1 Widespread Commitment to the Convention
 - 4.2 Autonomy Rights in the Convention.
 - 4.3 Family Rights in the Convention
5. Objections to the Convention
 - 5.1 Claim that the Convention imposes Western Values
 - 5.2 The Claim that the Convention Overestimates Children's Competence
 - 5.3 The Convention Undermines Parents' Rights
6. Future Prospects for International Regulation of Children's Rights
 - 6.1 The Effect of Globalization
 - 6.2 Economic Factors Affecting the Future of Children's Rights
 - 6.3 Implementation of the Convention
 - 6.4 Future Changes to Children's Rights
 - 6.5 The Limits of International Regulation
- Bibliography
- Biographical Sketch

Summary

Discussions of human rights in the eighteenth and nineteenth centuries restricted rights to adult human beings who were able to claim rights. The twentieth century saw an increased interest in children's rights and in the international interest in these rights. Two of the many reasons for this increased interest were improved communications leading to more extensive information about the living conditions and experiences of children, and more widespread understanding of and interest in child development. The first international statement of children's rights was from the League of Nations in 1924, followed in 1959 by the United Nations Declaration of the Rights of the Child. Both of these statements, coming after major international conflicts emphasized the need of the child for protection, and thus pointed to the differences between children and adults.

The United Nations Convention on the Rights of the Child of the late twentieth century recognizes that children should have some of the same rights or freedoms as adults. But giving some adult rights to children remains controversial, and although this Convention is the most widely ratified of all human rights treaties, many countries attached reservations to their ratifications. In spite of these reservations the Convention has affected legal and administrative decision-making about children in many countries. The process of realizing the Convention rights in the domestic laws of the member states of the United Nations is set to continue in the twenty-first century. With further globalization of communications and business the role of international law and international institutions in establishing children's rights will doubtless continue to expand.

1. Introduction

The notion of children's rights is controversial. Some of this controversy is related to the nature of rights themselves, but disagreement about the capabilities of children, and conflict about the roles of families and the state also play a part. The twentieth century has seen an increasing interest in children's rights and a desire to regulate these rights on an international level. A number of factors contribute to this increasing interest, a greater knowledge of child development, interest in human rights following the horrors of war, and improved communication leading to wider dissemination of information regarding the living conditions and experiences of children worldwide. It is anticipated that with further globalization the role of international law and international institutions in establishing children's rights will expand.

2. The Historical Context of Human Rights

2.1 The Basis of Rights

Lawyers and philosophers have been discussing rights for at least the last three hundred years, and the central concept behind these discussions has a much longer history, namely the concept that there are understood rules about how human beings should be treated because of their basic nature. In different centuries and various cultures these have been seen as part of a divine law or a natural law. What is new in the twentieth century is the international recognition of human rights. The horrifying events of both World Wars brought the concept of rights to more public notice and gave impetus to the idea of regulating human rights internationally.

2.2 Tensions between Different Concepts of Rights

There is a tension between different understandings of rights. When the French Declaration of the Rights of Man and the Citizen and the United States Bill of Rights were drawn up in the eighteenth century, the idea of rights was of freedoms, and particularly freedoms against the power of the state. Freedom of thought, freedom of religion, freedom of expression and freedom of association were central. Elaborating this idea of freedom, the nineteenth century philosopher, J.S. Mill in his famous book *On Liberty* proclaimed that people should be free to do what they want as long as they do not harm others. Mill added, however, that his remarks applied only to the mature,

thus effectively denying that children had rights, or at least rights of this kind.

Other nineteenth century theorists, particularly Karl Marx and socialist writers, challenged the value of this understanding of rights, pointing out that these freedoms were of little use to those who were lacking basic food and shelter. Gradually over the nineteenth and twentieth century social and economic rights were added to the traditional political freedoms which had dominated earlier statements of rights. Connected with this change was the idea that governments had to be involved in providing these social and economic rights. Whereas earlier views of rights had been largely freedoms of the citizen against the powers of government, twentieth century views of rights saw governments as essential in ensuring citizens were provided with economic and social necessities. A more interventionist view of the state was often the corollary, a view of the state which would not be accepted by those who see rights primarily in terms of freedoms. However, in general parlance a broader view of the nature of rights has become accepted in the twentieth century. In this broader view rights include civil, political, economic and social rights; they include those rights which allow the exercise of autonomy as well as those which require governments or other bodies to protect the citizen or provide goods or opportunities, in other words both autonomy or freedom rights and welfare rights.

While there is an important distinction to be made between freedom rights and welfare rights, this is not always a sharp distinction. Even a property right, a paradigm case of a freedom right, is not simply a right conferring freedom, for it also involves, when it is threatened, the right that police take action to support it. In other words, it can also require action by others, and does not simply refer to the rightholder's freedom. It would also be a mistake to see the distinction between these two kinds of rights as meaning that the welfare rightholder is necessarily passive and dependent in comparison with the freedom rightholder who has autonomy and control, for one can claim and vigilantly defend welfare rights, just as one can claim and defend freedom rights.

2.3 Moral or Natural Rights

Another important distinction in the rights discourse is that between those rights which exist in positive law and those which are called moral or natural rights. Some philosophers, such as Jeremy Bentham, have denied that rights other than positive rights can exist. Bentham (1791) famously went so far as to describe talk of natural rights as "nonsense on stilts". But such rights do play a central role in our moral vocabulary. In fact many important rights, such as the right to free speech, the right not to be tortured, the right to freedom of association and so on, are most often appealed to precisely in situations where laws exist which restrict rather than support these basic rights. The real difficulty lies not in recognizing what is being talked about when moral rights are claimed, but in justifying moral rights. As far as legal rights are concerned we can point to the positive law as support for the existence of particular legal rights, but for moral rights there is no such tangible support. Eighteenth century rights theorists often thought of a natural law or divine law as bearing the same relationship to moral rights as the positive law did to legal rights. Today appeal to natural law is less fashionable. However there are compelling moral norms, grounded in trenchant arguments, which support the existence of many moral claims or rights.

3. Rights for Children

3.1 League of Nations Declaration of Children's Rights 1924

The concept of rights has certain tensions inherent in it and its application in the case of children brings more tensions and complications. Nevertheless it is an important part of the moral and legal vocabulary and as such has been involved in the achievement of some progress for some vulnerable groups. The first international declaration of children's rights occurred in 1924 with the Declaration of the Rights of the Child promulgated by the League of Nations. This Declaration is primarily concerned with the child receiving the material and spiritual necessities for its well-being and development. Many of the provisions are similar to later declarations of children's rights. The provisions cover protection of children from poverty, hunger and exploitation. One provision, that which states that the "delinquent child must be reclaimed", is very much the product of the time, reflecting the "child saving" attitudes of the day.

As a statement of rights the 1924 Declaration is unusual. It is not directed at governments, but rather more generally at all adults who should recognize children's needs. The declaration does not allow children to make claims; instead it exhorts all adults to recognize their duty to children. For these reasons the statements in this declaration are far removed from the political rights of the earlier rights theorists, but are close to the category of welfare rights.

3.2 The United Nations Declaration of the Rights of the Child

The League of Nations, while achieving a declaration of children's rights, did not obtain agreement on a statement of human rights generally. The United Nations achieved this in the Universal Declaration of Human Rights in 1948. This document applied to all humans, including children, though the extent to which children could actually claim these rights was limited. However it was recognized that children had special needs and a separate Declaration of the Rights of the child was adopted in 1959.

This Declaration has many similarities to the earlier declaration covering children's need for protection, adequate nutrition, housing and medical services. But it also includes added rights to education and to recreation. An influential addition is the reference to the "best interests of the child" as the guiding consideration. An important difference from the earlier document is that this Declaration is directed at governments. However there is still no reference to freedom or autonomy rights; and in one aspect, namely employment, the 1959 Declaration is more protective than the earlier Declaration. Principle 9 of the 1959 Declaration states, *The child shall not be admitted to employment before an appropriate minimum age*. The 1924 principle 4 states, *The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation*. The issue of the employment of children is mentioned in several declarations of children's rights and remains a vexed issue.

If we understand rights as powers or freedoms to act, the 1959 United Nations Declaration actually removed these rights or freedoms from children. While stressing protection and the provision of medical care and so on, the Declaration nevertheless

deprived children of some important rights which adults have, namely the right to work, the right to live away from home and the right to refuse an education. It was not a document aimed at increasing the autonomy of children, but rather at protecting them.

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Biographical Sketch

Margaret M. Coady is Senior Lecturer at the University of Melbourne, and Coordinator of Graduate Studies in the Early Childhood Studies Unit at that university. She has held positions as Visiting Research Scholar at the Center for Human Values, Princeton University, the Rockefeller Research Center at Bellagio, Italy and the Joseph and Rose Kennedy Institute of Ethics at Georgetown University. Her research interests are in professional ethics, in rights of children and in state regulation of families. She has read papers on these topics at a number of universities in the U.S., England, China and Singapore, and has published on these subjects in international journals. Her co-edited book is entitled *Codes of Ethics for the Professions*.