

University of New South Wales Law Research Series

**ILLUSION OF INCLUSION: CHALLENGING
UNIVERSALIST CONCEPTIONS IN
INTERNATIONAL CHILDREN'S RIGHTS LAW**

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Forthcoming (2018) *Australian Journal of Human Rights*
[2018] UNSWLRS 72

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Illusion of Inclusion: Challenging Universalist Conceptions in International Children's Rights Law

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Pre-peer review version

*The final version will be published in the Australian Journal of Human Rights
(2018)*

Abstract

The paper examines the nexus between two allegedly contesting objectives of international children's rights law: protection and empowerment. It focuses on child labour movements as a case study to examine this tension. The paper shows that when children's make demands that exceed imaginary boundaries of protection, these demands are ignored, and their voices is dismissed on the bases of immaturity. Therefore, the paper argues that the failure of international children's rights law to acknowledge the ways childhood can unfold in more than one-way results in domination of paternalistic approaches to children's agency. This inherently limits this body of law from achieving its main objective: providing comprehensive rights protection for every child.

Introduction

In November 2017, hundreds of delegates from all over the world attended the IV World Conference on the Sustained Eradication of Child Labour organized by the Government of Argentina, with the support of the International Labour Organisation, and held in Buenos Aires. Representatives of the Movement of Latin American and Caribbean Working Children and Adolescents asked to participate in the conference, but their request was refused by the organisers, due to 'security reasons' concerning minors being at the conference hall.¹ But while the entry of these delegates was denied, the conference venue saw dozens of children and toddlers running around, all of them the children of adults' participants.

¹ The Secretariat of the Movement of Latin American and Caribbean Working Children and Adolescents, *Open Letter: Complaint to the UN Committee on the Rights of the Child*, published 14 November 2017, <https://www.opendemocracy.net/beyondslavery/secretariat-of-movement-of-latin-american-and-caribbean-working-children-and-adolescenc> (last visited 18 April 2018).

This paper seeks to challenge the prevailing narrative of the 1989 UN Convention on the Rights of the Child (the Convention),² which views 'childhood' and 'the child' in universalistic, but nonetheless limited, terms. The Convention is torn between two allegedly contesting objectives: protectionism and liberation.³ On the one hand, the Convention seeks to protect the weak, innocent and naïve child. But on the other, it also asks to give the child a voice and the power to make decisions about her life, while conditioning respect for the child's agency upon adult approval of her capability and capacity (Articles 5 and 12). The tension between these two objectives has been discussed in the literature,⁴ and in this paper I would like to add some new dimensions to this body of scholarship. More specifically, in this paper I analyse these tensions and problematise the Convention's meta-narratives about the ideal experience of childhood that is labour free, along with universalising conceptions of 'childhood' and 'the child'. Taking the child labour movements as a case study, I ask what happens when competent adolescence reject paternalistic restrictions on their autonomy (in the form outlawing most, if not all, forms of child labour), while demanding the continues protection of their Convention's rights (enable children to work legally while protecting their rights in the workplace, as well as their right to education).

The paper utilises what Hanson and Nieuwenhuys identify as the distance between the children's rights normative framework and the social practice of children,⁵ and

² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 ('the Convention' or 'UNCRC').

³ Audrey Osler and Hugh Starkey (1998) 'Children's Rights and Citizenship: Some Implications for the Management of Schools' 6 *International Journal of Children's Rights* 313–333, 313; Eva Brems, 'Children's Rights and Universality' in Jan C.M. Willems (ed) *Development and Autonomy Rights of Children* (Intersentia 2002) 21–45, 26–27.

⁴ See, eg, Alan Prout and Allison James (2015) 'A New Paradigm for the Sociology of Childhood? Provenance, Promise and Problems' in Allison James and Alan Prout (eds), *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*, 3rd ed, Abingdon, Oxon: Routledge, 7–32; Neil MacCormick (1982) *Legal Right and Social Democracy: Essays in Legal and Political Philosophy*, New York: Oxford University Press, 154–166; Michael Freeman (1992) 'Taking Children's Rights More Seriously' 6 *International Journal of Law and the Family* 52–71; Lucinda Ferguson (2013) 'Not Merely Rights for Children but Children's Rights: The Theory Gap and the Assumption of the Importance of Children's Rights' 21 *International Journal of Children's Rights* 177–208.

⁵ Karl Hanson and Olga Nieuwenhuys (2013) 'Introduction' in Karl Hanson and Olga Nieuwenhuys (eds), *Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations*, Cambridge: Cambridge University Press, 3–28, 10.

argues that the working children movements disturb the Convention's universalistic image of the innocent child and care-free childhood. I therefore suggest a conceptual shift in the interpretation of the Convention, where protection and emancipation are not being seen not as contradictory or mutually exclusive, but rather as complementary.

The paper is divided into four parts. The first part presents the Convention's universalist conceptions of 'childhood' and 'the child'. The second part analyses the shortcomings of these conceptions, using the working children's movements as a case study. Then, the third part draws on this case study and suggests that the Convention's narratives of the universal childhood and child leads to a paternalistic interpretation that undermine its main goal, which is to protect the rights of *all* children and respect their human dignity and agency. Finally, the fourth part argues that the tension between paternalism and liberation can be eased by rethinking the Convention's images of childhood and the child. Embracing a more inclusive conception will enable us to interpret and implement the Convention in a way that gives more weight to the agency of children and to their emancipation as a social group. This interpretation will result in more children seeing their rights being protected.

Part I – The Convention's Universalism

The UNCRC aspires to safeguard the same set of rights for every child worldwide. Among these rights, the Convention guarantees the right to non-discrimination (Article 2); the right to life, survival and development (Article 6); the right to education (Articles 28 and 29); and the right to freedom from work that is harmful or exploitative (Article 32). Article 12 further recognises children's unique right to participate in decisions concerning their life, and Article 3 states that a child's best interests should be a primary consideration in any decision concerning that child.

Protectionist interpretations of the Convention embrace an idealistic notion of the child as a vulnerable, but nonetheless rights-holding, person, underpinned by a

universal narrative of childhood.⁶ Reading all provisions of the Convention together suggests that it envisions a universal and homogenous timeline of childhood development that every child is expected to follow, and sets key milestones for this journey towards adulthood. The Convention envisions a child being raised by her two parents (Articles 9, 18 and 20). She should be made familiar with her origins (Articles 7–10 and 30). The child should have the opportunity to develop her personal talent in school (Article 29), to which attendance is compulsory at the primary school level (Article 28), while enjoying some play and leisure time in the afternoon (Article 31). Regardless of her age, the child should not engage in any (exploitative) work (Article 32). She should have the freedom to exercise a range of political rights, such as the right to free speech (Article 13); the right to freedom of thought, conscience and religion (Article 14); and the right to privacy (Article 16).

Children receive unprecedented protection for their right to grow up and become adults, predominantly by Article 6(2) that ensures their right to survival and development. This objective is based on the perception that there is only one way to develop and grow up.⁷ As Lopatka, the chairperson of the Convention's drafting committee, elucidated: 'The physical and mental nature of the child is identical everywhere.'⁸ Special attention is given to situations that have the potential to disturb what John Holt describes as the fictionist notion of 'happy childhood'⁹ – for example, if the child is involved with the criminal justice system (Articles 37 and 40), is a victim of armed conflict (Article 38), or seeks refugee status (Article 22). These events suggest that children in certain situations are more vulnerable than other children, and

⁶ Susan A Wolfson (1992) 'Children's Rights: The Theoretical Underpinning of the "Best Interests of the Child"' in Michael Freeman and Philip Veerman (eds), *The Ideologies of Children's Rights*, Dordrecht: Martinus Nijhoff, 7–27, 22–23.

⁷ Noam Peleg (2013) 'Reconceptualising the Child's Right to Development: Children and the Capability Approach' 21 *International Journal of Children's Rights* 523–542.

⁸ Adam Lopatka (1992) 'The Rights of the Child Are Universal: The Perspective of the UN Convention on the Rights of the Child' in Michael Freeman and Philip Veerman (eds), *The Ideologies of Children's Rights*, Dordrecht: Martinus Nijhoff, 47–52.

⁹ John Holt (1974) *Escape from Childhood*, Middlesex: Penguin Books.

therefore the Convention provides enhanced protection to their well-being in such times of hardship.

Under this view, childhood is a time when a child's welfare should be protected by her parents and by the state in its role as *parens patriae*. According to this approach, children should enjoy a happy and carefree time. As others have eloquently pointed out, this sentimental view,¹⁰ ignores different experiences of childhood,¹¹ and is based on somewhat and draws on Euro-American developmental psychology and Western epistemology of childhood.¹² It assumes an equivalence between child development science and the lived experience of children,¹³ and is linked to the idealised absence of children from the public space – especially the workplace and the political domain.¹⁴ This view ignores the variations to children's living experiences relating to identity, personality, poverty, ethnicity, race, religion, gender, sexuality and social background, as well as the intersections of these elements. It also overlooks the differences in children's physical and mental needs and capacities, suggesting that – irrespective of these factors – all children develop. Physically and emotionally, in the same way. The use of 'age' as a sole benchmark for differentiating between adults and children (Article 1) is therefore problematic, not least because age is a socially constructed concept,¹⁵ and not a good proxy for discerning children's differentiated capacities.¹⁶

¹⁰ Sarada Balagopalan (2014) *Inhabiting 'Childhood': Children, Labour and Schooling in Postcolonial India*, Basingstoke, Hampshire: Palgrave Macmillan.

¹¹ See David F Lancy (2014) *The Anthropology of Childhood: Cherubs, Chattel, Changelings*, 2nd ed, Cambridge: Cambridge University Press; Robert A LeVine and Rebecca S New (eds) (2008) *Anthropology and Child Development: A Cross-Cultural Reader*, Oxford: Wiley-Blackwell 2008; Karen Wells (2009) *Childhood in a Global Perspective*, Cambridge: Polity Press, 1–25.

¹² Hanson and Nieuwenhuys, above n 5.

¹³ Martin Woodhead (1999) 'Reconstructing Developmental Psychology – Some First Steps' 13 *Children & Society* 3–19, 5–6.

¹⁴ Viviana A Zelizer (1985) *Pricing the Priceless Child: The Changing Social Value of Children*, Princeton, New Jersey: Princeton University Press.

¹⁵ Erica Burman (1996) 'Local, Global or Globalized? Child Development and International Child Rights Legislation' 3 *Childhood* 45–66.

¹⁶ Philip Cook (2013) 'Against a Minimum Voting Age' 16 *Critical Review of International Social and Political Philosophy* 439–458.

The UNCRC subjugates the realisation of children's autonomy to the protection of their best interests, future development (Articles 3 and 6(2)), and evolving capacities (Article 5). In that sense, the Convention tries to strike a balance between liberal rights, such as privacy and freedom of speech, and children's perceived interests (as determined by adults) in order to ensure that their childhood will result in their successful transformation into competent adults. In other words, the Convention is torn between liberal ideals of autonomy and freedom, and a paternalistic concern that children – to borrow the term coined by Hafen and Hafen¹⁷ – will be 'abandoned to their rights' in a way that might undermine their future. It recognises, establish and perpetuates the image of the child as vulnerable, and therefore asks to protect it during the risky time of maturation.

Nonetheless, recognising the tension between protectionism and its tendency to become paternalism, and autonomy as the bases for liberal perception of rights, the Convention tries to mitigate these dichotomies by recognising children as rights-holders with equal rights and the capacity to evolve and thus exercise more autonomy. But this growing recognition of autonomy is conditional upon children's level of development, as determined by adults (Article 5).¹⁸ Adults thus reserve the power to determine whether a child is sufficiently competent to enjoy her freedoms and rights, to enable a child to express her opinion, and then to decide how much weight that opinion should have. This also includes the power to silence the child (Article 12). In other words, the Convention's liberating rights are ultimately subjugated to adult approval.

In that sense, under the Convention adults maintain the power to limit children's rights in a way that will probably would be considered illegitimate (or disproportionate) in the context of the rights of adults themselves. Examples to this approach can be found in courts' willingness to limit children's right to life in favour of protecting parents'

¹⁷ Bruce C Hafen and Jonathan O Hafen (1996) 'Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child' 37 *Harvard International Law Journal* 449–491.

¹⁸ See also Articles 4 and 12 of the Convention.

right to religious freedom,¹⁹ or parental autonomy more broadly.²⁰ Similar limitations would not be acceptable when considering the rights of adults. These sorts of limitations result from a paternalistic approach towards children's rights that, according to Feinberg, *inter alia*, prefers compromising children's autonomy in the present in favour of upholding their best interests and their "right to an open future".²¹ One way to ease the inherent tension between rights and paternalism, according to Freeman, is to interpret the best interests principle in a 'liberal paternalistic way' – or, in other words, to give children as much space as possible and limit their freedoms as little as possible. Nolan argues that this interpretation should also take account of children's views, thus realising children's right to participate in the process. The Committee tried to tackle this limitation of the best interests principle not long ago. In General Comment 14 (2013),²² the UN Committee on the Rights of the Child (the Committee) suggests that Articles 3 and 12 have complementary roles and that the former cannot be realised without giving due weight to the latter.²³ Further, the best interests principle should be seen not only as an independent right and a guiding principle of the Convention, but also as a procedural safeguard. This means that any decision about a child's best interests must be based on an assessment of all elements of the child's interests in the specific situation. The process should involve considering the relevant factual circumstances of the particular case, giving them concrete content, and assigning a weight to each in relation to the others. This 'best interests assessment' exercise should be followed by a 'best interests determination', which ascertains the child's best interests on the basis of the best interests assessment.²⁴ These alternatives might give more weight to children's voices, but they

¹⁹ *Re S (A Minor) (Medical Treatment)* [1993] 1 FLR 376; *Re O (A Minor) (Medical Treatment)* [1993] 2 FLR 149.

²⁰ *Re T (A Minor) (Wardship: Medical Treatment)* [1997] 1 WLR 242.

²¹ Joel Feinberg, 'The Child's Right to an Open Future' in William Aiken and Hugh LaFollette (eds), *Whose Child?* (Rowman and Littlefield, New Jersey 1980) 124–153.

²² UN Committee on the Rights of the Child, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*, 29 May 2013, CRC/GC/14.

²³ *Ibid*, [43]–[44].

²⁴ *Ibid*, [46]–[47].

do not address the root cause: the subjugation of children's rights to what adults ultimately determine to be their best interests. This inherent tension in the Convention is not well mediated by the Convention.²⁵

Another universalist dimension to the Convention is that children's human rights are based on supposedly universally accepted moral values.²⁶ Arguably, the fact that the Convention was the most rapidly ratified human rights treaty in history, and its near universal ratification (all country in the world but the United States have signed and ratified it) is indicative of this assumption. However, this support may be due not to the universality of its norms, but rather to the fact that the Convention uses uncontroversial language and codification of a paternalistic approach that does not impugn adult authority. Alston is somewhat sceptic about this argument, suggesting that the UNCRC is not a 'uni-dimensional' treaty that represents a unified children's rights philosophy, but rather is more complex and multidimensional.²⁷ Similarly, it can be argued that universalism does not necessarily mean that the Convention ignores context altogether. As Lopatka further argues, 'the universality of the rights of the child does not mean that those rights should be interpreted and implemented abstracted from their context'²⁸ (thus adding another dimension to his own previously mentioned statement concerning the similarity between children. Thus, he differentiates between the human object – the child – and the legal mechanism and its operation). This argument seems to imply that while human rights are universal, and children are a homogenous group, emphasising external factors such as tradition and culture (but not intrinsic characteristics of the child, such as gender or point of view) does not indicate a departure from universalism. On the contrary. While this interpretation of the Convention might depart from the universal conception of human rights and might embrace cultural relativism, it is silent about the universalistic and

²⁵ Michael Freeman (2010) 'The Human Rights of Children' 63 *Current Legal Problems* 1–44.

²⁶ Lopatka, above n 8, 48, 51.

²⁷ Philip Alston (1994) 'The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights' in Philip Alston (ed), *The Best Interests of the Child: Reconciling Culture and Human Rights*, New York: Oxford University Press, 1–25, 2–3.

²⁸ Lopatka, above n 8, 48.

homogenous model of childhood. The ways in which children's work is treated under the Convention illuminate the shortcomings of these universalist conceptions.

Child Labour: A Challenge to the 'Universal Child' model

Child labour is not a new phenomenon, nor are the efforts of international law to eradicate it. In 2017, the International Labour Organization ('ILO') estimated that 218 million children between the ages of five and 17 years are in employment. Among them, 152 million (70%) are victims of child labour and 73 million (48%) of those children work in hazardous child labour. The gender division is clear: 88 million of those working in child labour are boys (59%) and 64 million are girls (41%). The geographical spread is also interesting, with 72.1 million in child labour in Africa, almost half of the worldwide total; 62.1 million in Asia and the Pacific; 10.7 million in the Americas; 1.2 million in the Arab states; and 5.5 million in Europe and Central Asia.²⁹

Child labour is concentrated primarily in agriculture (71%) – which includes fishing, forestry, livestock herding and aquaculture, and comprises both subsistence and commercial farming – while 17% is in services and 12% is in the industrial sector, including mining. The ILO claims that hazardous child labour is most prevalent among 15–17 year old, but up to 25% (representing 19 million children) of all hazardous child labour is performed by children who are younger than 12 years old.³⁰ While the numbers suggest that more working children can be found beyond the western parts of the northern hemisphere (that is, outside Europe and North America), child labour is not an uncommon phenomenon there – or a new one. During the pre-industrial revolution, boys as young as seven or eight worked in mines or cleaned chimneys, while girls of similar ages carried out domestic work, including cooking

²⁹ International Labour Organization (2017) *Global Estimates of Child Labour: Results and Trends, 2012–2016*, Geneva: International Labour Organization, http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575541.pdf (accessed 20 June 2018).

³⁰ Ibid.

and caring for their younger siblings. From the mid-19th century, child labour shifted to the production lines,³¹ but the rise of modernisation towards the end of the century minimised capitalist demand for manual child labour in the West. Other changes occurred simultaneously, most importantly the rise of political anxiety about child protection that led to calls to abolish 'the worst forms of child labour'. This new objective became a benchmark for measuring the successful implementation of a children's rights framework.³² Thus, articulating the aspiration to abolish child labour using children's rights framework was a reflection of a specific socio-legal changes in Western societies, which happened over a century ago, but became the millstone for holding non-Western societies accountable, where similar changes were still in the making.

Defining Child Labour

A preliminary question that should be answered concerns the definition of 'child labour'. In economically developed countries, a distinction is often drawn between 'child labour' and 'work done by children'. Working in factories is considered child labour that ought to be outlawed, while 'light tasks which society considers acceptable for children, such as newspaper delivery',³³ are legitimate. This distinction is problematic for several reasons,³⁴ not least because it is based on political considerations and moral imperatives that have very little to do with children's living experiences and more to do with prejudices against poor people and middle-class views about childhood – or, more specifically, adolescence. According to this view, performing light tasks, such as delivering newspapers, develops children's sense of responsibility, enables them to earn pocket money, and teaches them to handle their finances. Meanwhile, poor families that send their children to work in factories are

³¹ Jane Humphries (2010) *Childhood and Child Labour in the British Industrial Revolution*, Cambridge: Cambridge University Press.

³² Balagopalan, above n 10, 14.

³³ Jim McKechnie and Sandy Hobbs (1999) 'Child Labour: The View from the North' 6 *Childhood* 89–100, 90.

³⁴ *Ibid*, 91–95.

seen to be harming the children, disrupting their childhood and compromise their future. This distinction enables “the West” to impose its values on societies in which the distinction between child labour and children’s “light jobs” does not exist or is based on different criteria – for example, gender-related activities or location (domestic or ‘public’ labour). Nonetheless, none of these categories sufficiently accounts for children’s own views. From a child’s perspective, delivering newspapers in the suburbs of Sydney or selling goods at a local market in Lima can have the same justification and can serve similar purposes: earning money. One child will engage in this activity because she needs to support herself or her family, and this will be considered as contradictory to the sort of childhood she should have, while another child will use the money she earns to treat herself to something she wants, and this will be considered as an expression of autonomy by the universal-happy child.

Outlawing all forms of child labour fails to capture the ambivalence of urbanisation and parents’ own alienation from manual labour. Recent studies in the United States, for example, have found that middle-class parents in Wisconsin encourage children as young as seven to work in dairy farms – not only because they rely on this labour, but also because they believe that it develops children’s social skills and work experience.³⁵ Conversations with children from Bangladesh, Ethiopia and the Philippines led Woodhead to conclude that work provides children with an income that supports some basic necessities for them and for their families, and also enables them to meet the costs associated with going to school.³⁶ Similar findings came from Belfast³⁷ and Denmark.³⁸ Aufseeser’s study of street merchants in Lima suggests that

³⁵ Lydia Zepeda and Jongsoog Kim (2006) ‘Farm Parents’ Views on Their Children’s Labour on Family Farms: A Focus Group Study of Wisconsin Dairy Farmers’ 23 *Agriculture and Human Values* 109–121. Cf Tendai Charity Nhenga-Chakarisa (2010) ‘Who Does the Law Seek to Protect and From What? The Application of International Law on Child Labour in an African Context’ 10 *African Human Rights Law Journal* 161–196, 186.

³⁶ Martin Woodhead (1999) ‘Combatting Child Labour: Listen to What the Children Say’ 6 *Childhood* 27–49, 43–44.

³⁷ Madeleine Leonard (2004) ‘Children’s Views on Children’s Right to Work: Reflections from Belfast’ 11 *Childhood* 45–61.

³⁸ Lisa Frederiksen (1999) ‘Child and Youth Employment in Denmark: Comments on Children’s Work from Their Own Perspective’ 6 *Childhood* 101–112.

this activity enables children to 'pay for food, school supplies and other basic necessities',³⁹ and to purchase toys and gain access to the internet. It also has social benefits, giving children a chance to mingle with their friends and spend time away from abusive homes.⁴⁰ So, while being a windshield cleaner or a shoe-shiner might not be an ideal occupation for a child, Aufseeser's study demonstrates that it provides children with opportunities to self-realise some of their rights, such as the right to play and leisure, the right to freedom from abuse, and even the right to education. It also appears from this study that children favour education, while work is a necessity or a means to an end.⁴¹ These forms of labour are to be distinguished from slavery too. Slavery, and 'worst forms of child labour' are contested concepts too. Forcing children to slavery or occupation in slave-like conditions is largely under-researched. As Abebe and Bessell argue, there are relatively few comprehensive studies of child slavery and child bondage, let alone sound distinction between such practices and other work that children perform.⁴²

Another distinction that should be drawn is between two interconnected elements: first, the reasons and motivations that lead a child to engage in work, either by choice or by coercion; and second, the nature of the employment and its potential impact on the child's rights (including her best interests).⁴³ Considering these two elements separately, and giving weight to children's positionalities in their lives, will result in a more holistic protection of their rights, which in turn will be interpreted in a less protectionist manner. Further, protecting children's labour rights does not preclude working towards creating the socio-economic conditions that will allow to eradicate

³⁹ Dena Aufseeser (2014) 'Control, Protection and Rights: A Critical Review of Peru's Begging Bill' 22 *International Journal of Children's Rights* 241–267, 248.

⁴⁰ *Ibid.*

⁴¹ Woodhead, above n 36.

⁴² Tatek Abebe and Sharon Bessell. 'Dominant Discourses, Debates and Silences on Child Labour in Africa and Asia' (2011) 32 *Third World Quarterly* 764, 777.

⁴³ Cf John Wall (2017) *Children's Rights: Today's Global Challenge*, London: Rowman & Littlefield, 104–105.

or minimize child labour.⁴⁴ These two objective should not be understood in binary term or be seen as incompatible or mutually exclusive. Instead, there is a need to for recognition of the importance of context in the process of protecting the rights of working children, including their autonomy and development rights., is what reflects a Western bias.

Part II – The Working Children Movements

A number of working children movements that advocate for changes in the social, political and legal treatment of child labour and education have emerged in South American countries – such as Chile, Argentina, Bolivia and Brazil – and in Mexico, as well as in other places around the world, including India at the 1980's. In Africa, for example, such movements from 20 countries have worked together since 1994 under the umbrella of the African Movement of Working Children and Youth to promote their goals together. These movements are led by children and young adults, who are usually not older than 25 years, and members can be as young as eight (for example, in the Peruvian child labour movement).⁴⁵

The movements advocate against the mainstream conception that deems work and education as mutually exclusive.⁴⁶ Instead, they see work as a part of their reality that should be accommodated and mitigated. Although the movements are diverse in terms of their constituency and goals, and while their agendas change over time,⁴⁷ one demand has remained constant in the last 30 years. This is their request to replace legal prohibitions of child labour with flexible laws that facilitate children's ability to study and work in parallel, and that provide protection for their rights in the labour

⁴⁴ CF Christiaan Grootaert and Ravi Kanbur (1995) 'Child Labour: An Economic Perspective' 134 *International Labour Review* 187-203.

⁴⁵ Jessica K Taft (2015) "Adults Talk Too Much": Intergenerational Dialogue and Power in the Peruvian Movement of Working Children' 22 *Childhood* 460–473, 463. See also Manfred Liebel (2012) 'Child-Led Organizations and the Advocacy of Adults: Experiences from Bangladesh and Nicaragua' in Michael Freeman (ed), *Law and Childhood Studies*, Oxford: Oxford University Press, 92–103.

⁴⁶ See, eg, Iman Hashim and Dorte Thorsen (2011) *Child Migration in Africa*, London: Zed Books; Ben White (1999) 'Defining the Intolerable: Child Work, Global Standards and Cultural Relativism' 6 *Childhood* 133–144.

⁴⁷ Taft, above n 45, 463–465.

market. More specifically, the working children movements advocate for lowering the minimum age for work to below the standard of 15 or 16 years of age. This change should enable children who either want or in need to work to do so without breaking employment laws, while allowing them to enjoy the protection of labour law (first and foremost, to be paid at least the minimum wage) and health and safety regulations in the workplace – including both domestic and public situations. The movements also campaign for more robust regulation of children's working conditions and increased enforcement of these laws, especially enforcing payment of the minimum wage and protection from exploitation. A third complementary demand is for changes in education laws. This includes introducing a more flexible school calendar, which corresponds with the labour market in general (for example, running classes in the afternoons, on weekends, or in line with the demands of agricultural, or others seasonal, industries).

In recent years, a number of these movements have achieved successes. For example, the Movement of the Working Children of Bolivia concluded an agreement with the mayor of the capital city, La Paz, which guarantees children the free use of public spaces in the city for their work, thus changing previous practices of harassment by the police or private security guards. On the national level, and with the support of the then Bolivian president, the minimum age for work was lowered to 12, and some amendments to education laws have been made.⁴⁸ In Peru, the working children's movement agreed with the Lima city administration on establishing a working and training project for children who had previously been obliged to survive by begging, stealing or performing sex work on the streets.⁴⁹

The authenticity of the demands made by these movements is further supported by recent studies showing that most working children would prefer to be protected *in* paid work, rather than being protected *from* work.⁵⁰ Nonetheless, working children

⁴⁸ Manfred Liebel (2015) 'Protecting the Rights of Working Children Instead of Banning Child Labour: Bolivia Tries a New Legislative Approach' 23 *International Journal of Children's Rights* 529–547.

⁴⁹ *Ibid.*

⁵⁰ Michael Bourdillon, Deborah Levison, William Myers and Ben White (2010) *Rights and Wrongs of Children's Work*, New Brunswick: Rutgers University Press; Leonard, above n 37.

movements have also seen strong objections, especially from the United Nations Children's Fund ('UNICEF'). It has been argued that the global fight against child slavery and child trafficking must present a united front, and therefore there is no room for compromise. UNICEF further argued that child labour should be banned in all circumstances until a child turns 15 or 16. Even at that age, labour laws should restrict the types of occupation that children can engage in, and should limit their working. Some objections have gone so far as to claim that the children's movements risk undermining the achievements of the child's rights movement since the 1980s.⁵¹ The latter argument can not be more ironic. Here, the main UN agency responsible for protecting children's rights claims that children themselves pose a risk to the children's rights cause. But what UNICEF is actually saying here is that their own paternalistic views as to what is best for children should prevail, and children's voices should be given weight as long as they do not require deconstructing adults' predetermined views.

This protectionist interpretation of the Convention perceives the child as an innocent person who should not be exposed to the hardship of the adult world that labour represents. Instead, a child should devote her time to learning and playing in accordance with Articles 28, 29 and 31 of the Convention. Thus, child labour inherently contradicts the best interests of any child, and outlawing it is a step that promotes children's own well-being.⁵²

A Closer Look at the UNCRC's Position on Child Labour

Article 32(1) respects 'the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development'. Article 32(2) creates a duty on states parties to set a minimum age for employment, to regulate working hours and

⁵¹ Bourdillon et al, *Ibid*.

⁵² Stuart Aitken, Ragnhild Lund and Anne T Kjørholt (2008) *Global Childhoods: Globalization, Development and Young People*, London: Routledge.

conditions of employment, and to effectively enforce market rules, including by penalising violations.

Notably, the language of Article 32 does not ban child work all together. Instead, it asks states parties to regulate the workplace and to protect children from exploitation in order to preclude the possibility that labour will undermine their development.

The drafting history of Article 32 shows that more prescriptive alternatives were considered too. When the draft Convention was first introduced in the late 1970s, there was already a substantial and widely accepted body of international law concerning child labour, namely the ILO Minimum Age Convention, 1973 (No 138).⁵³ That Convention does not set a single minimum age for employment, but rather distinguishes between different types of work, based on their likelihood of being 'hazardous' or interference 'with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development', and the appropriate corresponding minimum age. For example, the minimum age is 18 years with respect to employment 'likely to jeopardise the health, safety or morals' of young persons, but it can be as low as 13 years, or in some cases even 12 years, for 'light work'. The generally advised minimum age is set at 15 years. An interesting distinction drawn by ILO Convention 138 is between countries whose economy and educational facilities are 'insufficiently developed', and therefore the minimum age of employment will be 14, and other countries, where the minimum age will be not less than the age of completion of compulsory schooling, and in any case not less than 15 years. The first draft of the UNCRC did not mention any specific minimum age, leaving this issue to the discretion of states parties.⁵⁴ During the drafting process, a few delegations suggested that the Convention should include either an explicit minimum age, usually 14 or 15 years, or – as the ILO itself suggested time and again – a reference to existing international treaties, namely ILO Convention 138.⁵⁵

⁵³ International Labour Organization, *Minimum Age Convention*, No 138, 26 June 1973.

⁵⁴ Office of the United Nations High Commissioner for Human Rights (2007) *Legislative History of the Convention on the Rights of the Child*, New York and Geneva: United Nations, 693.

⁵⁵ *Ibid*, 697–699.

In that sense, reading Article 32 UNCRC in isolation from the other provisions of the UNCRC, including Articles 12 and 5, suggests that the demands of the child labour movements do not contradict the letter of the law of the Convention. The gap between the demands of the child labour movements and their critics therefore lies outside the text of the Convention and is a result of a protectionist interpretation – which is, I argue, rooted in the Convention's conceptions of 'childhood' and 'the child'.

A systematic review of all comments – including concluding observations and general comments – about child labour by the UN Committee on the Rights of the Child ('the Committee') in the last 20 years (1997–2017) illuminates this point. By and large, the Committee defines child labour as inherently wrong, and therefore asks states parties to 'combat child labour'.⁵⁶ It further asks for tackling the number of working children, and for more robust enforcement of labour laws for children who currently work.⁵⁷ The Committee also requires the elimination of 'the worst forms of child labour',⁵⁸ but does not provide any specific definition for this.

By comparison, the UN Committee on Economic, Social and Cultural Rights said in its review of Bolivia that it 'encourages the State party to redouble its efforts to eliminate child labour, especially in domestic service, taking all appropriate legislative and practical measures to compensate families that stop receiving income from child labour'.⁵⁹ This approach tackles all forms of labour, thus inherently deeming all of them as being hazardous to children. But it also considers the complex realities of child domestic labour, and it does so in a more nuanced way than the Committee. Not only does the Committee on Economic, Social and Cultural Rights make recommendations concerning the family sphere, it also asks states parties to

⁵⁶ See, eg, UN Committee on the Rights of the Child, *Concluding Observations: Panama*, 21 December 2011, CRC/C/PAN/CO/3-4, [61].

⁵⁷ *Ibid.*, [67]; UN Committee on the Rights of the Child, *Concluding Observations: Argentina*, 21 June 2010, CRC/C/ARG/CO/3-4, [67].

⁵⁸ UN Committee on the Rights of the Child, *Concluding Observations: Argentina*, 21 June 2010, CRC/C/ARG/CO/3-4, [73]; UN Committee on the Rights of the Child, *Concluding Observations: India*, 7 July 2014, CRC/C/IND/CO/3-4, [82]; UN Committee on the Rights of the Child, *General Comment No 21 (2017) on children in street situations*, 21 June 2017, CRC/C/GC/21, [59].

⁵⁹ UN Economic and Social Council, *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant*, 8 August 2008, E/C.12/BOL/2, [27].

contend with the financial incentives that families (that is, adults – usually men) receive from child labour. The Committee on the Rights of the Child, although referencing this statement,⁶⁰ did not enforce it and has been reluctant to make such a recommendation explicitly. This is in contrast with its willingness to intervene in the family unit in other contexts, primarily regarding Article 19 and child abuse.⁶¹

The Private / Public Divide

Domestic labour can be as dangerous as other forms of labour, and it can subject children to psychological, physical and sexual abuse. Like other working children, children engaged in domestic labour are vulnerable and are potentially exposed to inhuman treatment in the form of insufficient breaks, denial of food, insufficient sleeping quarters, and a subsequent denial of access to education and healthcare services. In some circumstances, children who work in the domestic context are also deprived of identify when being referred to as ‘the servant’.⁶² These risks of inhuman treatment are contrasted with the real-life experiences of children in Cambodia, for example, who provide accounts of far less abusive relationships.⁶³ In Peru, as another example, young children are often sent to live with their elder relatives in exchange for work. On top of their practical help, the presence of these children is also a comfort to elders and brings joy to their lives. This is viewed to be part of the culture of ‘reciprocity’ – although, from a UNCRC point of view, it might be seen as

⁶⁰ UN Committee on the Rights of the Child, *Concluding Observations: The Plurinational State of Bolivia*, 16 October 2009, CRC/C/BOL/CO/4.

⁶¹ UN Committee on the Rights of the Child, *General Comment No 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13.

⁶² International Labour Organization (International Programme on the Elimination of Child Labour) (2004) *Helping Hands or Shackled Lives? Understanding Child Domestic Labour and Responses to It*, 5, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/kd00098.pdf (accessed 10 November 2017); see also Human Rights Watch (2012) *Lonely Servitude: Child Domestic Labour in Morocco*, <https://www.hrw.org/report/2012/11/15/lonely-servitude/child-domestic-labor-morocco#d433a3> (accessed 10 November 2017).

⁶³ Jenalee Kluttz (2015) ‘Reevaluating the Relationship between Education and Child Labour Using the Capabilities Approach: Policy and Implications for Inequality in Cambodia’ 13 *Theory and Research in Education* 165–179.

exploitation or even neglect.⁶⁴ These two opposing narratives demonstrate that children have different experiences, and what is described as 'child labour' or 'child domestic labour' does not necessarily entail an inherent violation of children's rights. Article 32 refers only to work taking place in the public sphere, ignoring domestic labour. Overlooking the family as the 'private' sphere reflects the liberal underpinning of the Convention, and maintaining it undermines protection for vulnerable members of the family – especially girls. A child-centred approach should reject this dichotomy. If it is labour that compromises children's rights, then it should be regulated irrespective of whether it takes place within the family or in the outside world. Realising the need to close the gap between public and domestic work, the Committee has begun to pay more attention to domestic work in recent years. It asks for special attention to children who engage in domestic labour or who work in the informal sector,⁶⁵ as in these two sites children do not enjoy the (potential) protection of labour laws.

Minimum Age of Employment and Children's Voice(s)

As noted earlier, key demands of the working children movements are lowering the minimum age for employment and introducing complementary steps to protect the rights of children who work. In contrast, the UN Committee on the Rights of the Child encourages states parties to ratify ILO Conventions 138 and 182, and to raise the minimum legal age for employment to at least 14 years.⁶⁶ Recently, the Committee

⁶⁴ Taft, above n 45, 465

⁶⁵ UN Committee on the Rights of the Child, *Concluding Observations: Thailand*, 17 February 2012, CRC/C/THA/CO/3-4, [29], [72]–[75]; UN Committee on the Rights of the Child, *Concluding Observations: Panama*, 21 December 2011, CRC/C/PAN/CO/3-4, [66]; UN Committee on the Rights of the Child, *Concluding Observations: Thailand*, 17 February 2012, CRC/C/THA/CO/3-4, [74]; UN Committee on the Rights of the Child, *Concluding Observations: Argentina*, 21 June 2010, CRC/C/ARG/CO/3-4, [66].

⁶⁶ International Labour Organization, *Minimum Age Convention*, No 138, 26 June 1973; International Labour Organization, *Worst Forms of Child Labour Convention*, No 182, 17 June 1999; UN Committee on the Rights of the Child, *Concluding Observations: Argentina*, 21 June 2010, CRC/C/ARG/CO/3-4, [73]; UN Committee on the Rights of the Child, *Concluding Observations: India*, 7 July 2014, CRC/C/IND/CO/3-4, [82].

raised the bar even higher, suggesting that the age of 15 years is the appropriate minimum age for employment⁶⁷ with one occasion where the age of 17 was mentioned as the appropriate minimum age for employment.⁶⁸

Another way to increase protection for children in this space is to ensure that the minimum age for employment corresponds with the age when compulsory education ends. A gap between the two – for example, when compulsory education ends at the age of 13 and the minimum age for employment begins at 14 – results in children who no longer obliged to attend school and therefore no public authority accounts for their whereabouts, but who are unable work legally. It can result in these children work outside the law in unsupervised and often hazardous conditions, and with no access to remedies.⁶⁹ As Bourdillon et al and Liebel have shown in their studies,⁷⁰ policies of full illegalisation often render children more vulnerable because they are then unable to invoke any rights at work and they can be criminalised for working, as opposed to having sanctions imposed on their adult employers.

General Comment 20 on the rights of adolescents, which was published in 2016, marks a shift in the Committee's approach to the question of child labour.⁷¹ In this General Comment, the Committee departed from its traditional position that rejects all forms of child labour, acknowledging that the 'introduction to appropriate forms of work plays an important developmental role in the lives of millions of adolescents, equipping them with skills, enabling them to contribute to their families' economic

⁶⁷ UN Committee on the Rights of the Child, *Concluding Observations: Panama*, 21 December 2011, CRC/C/PAN/CO/3-4, [66]; UN Committee on the Rights of the Child, *Concluding Observations: Thailand*, 17 February 2012, CRC/C/THA/CO/3-4, [74]; UN Committee on the Rights of the Child, *Concluding Observations: India*, 7 July 2014, CRC/C/IND/CO/3-4, [72].

⁶⁸ UN Committee on the Rights of the Child, *Concluding Observations: Panama*, 21 December 2011, CRC/C/PAN/CO/3-4, [66].

⁶⁹ UN Committee on the Rights of the Child, *Concluding Observations: Peru*, 14 March 2006, CRC/C/PER/CO/3, [64]; UN Committee on the Rights of the Child, *Concluding Observations: Argentina*, 9 October 2002, CRC/C/15/Add.187, [59]; UN Committee on the Rights of the Child, *Concluding Observations: Guatemala*, 25 October 2010, CRC/C/GRD/CO/2, [88].

⁷⁰ Bourdillon et al, above n 50; Manfred Liebel (2004) *A Will of Their Own: Cross-Cultural Perspectives on Working Children*, London: Zed Books.

⁷¹ UN Committee on the Rights of the Child, *General Comment No 20 (2016) on the implementation of the rights of the child during adolescence*, 6 December 2016, CRC/C/GC/20.

well-being, and supporting their access to education'.⁷² States parties are therefore asked to respect the *right* of adolescents who have reached the minimum working age 'to perform light work', while ensuring the fulfilment of related rights, such as the right to education and the right to play and leisure.⁷³ Thus, the Committee establishes a right to work for adolescents, shifting the discussion away from the previous protectionist discourse that focused on protection.⁷⁴ At the same time, the Committee reiterates the working children movements by emphasises the need to protect children from harmful working conditions, and to monitor the working conditions of all children, including those who are involved in domestic labour – especially girls.⁷⁵

But when it comes to the voices of children in this context, the Committee has been surprisingly silent. On only one occasion did the Committee note children's right to participate in developing national programs to eliminate child labour.⁷⁶ Nevertheless, when defining the scope of their inclusion, the Committee only required that children be asked limited questions about how to eliminate child labour. Broader questions about whether child labour should be eliminated at all, or what child labour means, were neglected. Thus, while asking to ensure that children can participate, this recommendation undermines the full value of children's views and constrains their voices to what adults perceive to be relevant. General Comment 20 may indicate a change in the Committee's position on this issue too, as the Committee underscored that engaging adolescents in the identification of potential risks and in the development and implementation of programs to mitigate such risks will lead to more effective protection. Guaranteeing their right to be heard, to challenge violations of

⁷² Ibid, [89].

⁷³ Ibid.

⁷⁴ But see Noguchi, who argues that the Convention does not recognise any 'right to work' of children. Yoshie Noguchi (2010) '20 Years of the Convention on the Rights of the Child and International Action against Child Labour' 18 *International Journal of Children's Rights* 515–534, 523–525.

⁷⁵ Ibid, [86].

⁷⁶ UN Committee on the Rights of the Child, *Concluding Observations: Argentina*, 9 October 2002, CRC/C/15/Add.187, [74].

their rights, and to seek redress enables adolescents to exercise their agency progressively.⁷⁷

Part III – Reconciling the Tension Between Protection and Autonomy

Two questions are at the heart of the dispute between those who seek to ban all forms of child labour and those who advocate for a more nuanced approach. The first question is what is the appropriate age for work, and the second question is what sort of work is appropriate for children? The answers, I argue, should not be bound to binary choices, but rather should be addressed in context and in light of one of the Convention's overall objective, which is to empower children. The context includes not only the child's socio-economic background, but also the intersections of her gender, race, disability, capabilities and civil status, and the effect that a certain form of labour will have on her ability to enjoy her Convention rights.

On the first issue, there is a question as to whether an international treaty can – or should – prescribe a minimum age for work, as the ILO Minimum Age Convention seeks to do. Alternatively, a treaty can adopt a more flexible approach that considers the potential positive and negative aspects of child labour on the rights of the child across varying contexts and its impact on other rights, such as to development and education. This approach is taken by Article 1 of the ILO Minimum Age Convention, Article 3 of the ILO Worst Forms of Child Labour Convention, and Article 32 of the UNCRC. However, as flexible as the definitions are, they are all based on the presumption that child labour is an exception to the rule of childhood. This approach inherently characterises the child as a victim, regardless of circumstances, and subsequently, it nullify the reason to seek children's views on these questions.⁷⁸

⁷⁷ UN Committee on the Rights of the Child, *General Comment No 20 (2016) on the implementation of the rights of the child during adolescence*, 6 December 2016, CRC/C/GC/20, [19].

⁷⁸ Manfred Liebel (2013) 'Do Children Have a Right to Work? Working Children's Movements in the Struggle for Social Justice' in Karl Hanson and Olga Nieuwenhuys (eds), *Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations*. Cambridge: Cambridge University Press, 225–249, 237.

The claim that a child's right to work should be recognised is, as Liebel argues, different from a claim concerning the right to employment. According to Liebel, children should be free to decide 'whether, where, how and for how long they would like to work'. This, he adds, will broaden children's scope for decision-making and strengthen 'their social roles as acting subjects'.⁷⁹ The working children movements ask for an empowering approach to children's lives and a non-linear protection of their rights, in contrast to the modes of protection preferred by adults, which amount to exclusion from the workplace.

Further, education and work are not necessarily mutually exclusive, in practice or in theory, as labour can be seen as constituting different educational tasks.⁸⁰ Therefore, a one-size-fits-all approach that ignores different living contexts of children should be rejected. Further, research indicates that removing children from work can be counterproductive in further marginalising them and depriving them of access to welfare,⁸¹ which is one of the Convention's objectives. Even children who are victims of – and damaged by – work in any form, let alone slavery, are social actors. They can make sense of the world around them, interact and negotiate their living conditions with their family and peers, and make the best out of the opportunities available to them.⁸² Children 'shape their working life as well as being shaped by it'.⁸³

The cases study of the working children movements shows that even when children utilise the Convention's language to make demands that some adults are not comfortable with, especially the creation of a legal framework that facilitates their right to education, while allowing them to work and be protected at work, their voices are generally dismissed. This dismissal is welcomed by the Convention itself: first, children's views can be demoted to little or no weight, as Article 12 permits; second, children's position is rejected on its merit, when determining that it contradicts their

⁷⁹ Ibid, 225–226.

⁸⁰ Hashim and Thorsen, above n 46; Taft, above n 45; Liebel, above n 78; Enoch Tawiah Sackey and Berit Overå Johannsen (2015) 'Earning Identity and Respect through Work: A Study of Children Involved in Fishing and Farming Practices in Cape Coast, Ghana' 22 *Childhood* 447–459.

⁸¹ Bourdillon et al, above n 50.

⁸² Woodhead, above n 36, 19.

⁸³ Ibid, 29.

own best interests. Arguably, the preconception about the ideal childhood provides the space for making these determinations, which ignore the real-life children who run working children movements. True engagement with these children's claims requires more than a blank dismissal. Prima facie, the children within these movements are best placed to understand the intricacies and complexities of their unique situation. This point has recently been recognised by the Committee, which suggested in General Comment 21 that the right to be heard enables children to challenge rights violations and to seek redress, and by doing so to exercise agency progressively in their own protection.⁸⁴

Part IV – Conclusion

The international children's rights project, with the UN Convention on the Rights of the Child as its flagship, seeks to enhance the recognition of children as human rights-holders and to ensure equal protection for their rights. However, the deployment by the children's rights establishment of universalised images of 'the child' and of 'childhood' can undermine this objective. Although this imagery may appear to be benign, it in fact poses great risks of exclusion for children who do not fit into these binary categories. Suddenly, the indivisibility of some children's rights is not respected, and the paternalistic approach, manifested via the best interests principle, silences children's voices in order to contain them within the 'right' model of childhood.

The working children's movements does not glorify child labour, neither this article. But rather, it is children who acknowledges its existence, and the need to engage in it. These children invite us to reconceptualise what childhood is, and to re-think the protection that the Convention should provide for them. While we might envision a world where children enjoy their a "care free" time, this is rarely the case. The working children movements case, therefore, demonstrate that despite an arguable

⁸⁴ UN Committee on the Rights of the Child, *General Comment No 20 (2016) on the implementation of the rights of the child during adolescence*, 6 December 2016, CRC/C/GC/20, [19].

shift towards acknowledging children's agency, promoted by the new sociology of childhood and to some extent embodied in the Convention,⁸⁵ children are, by and large, still seen as passive victims who need protection. Even children who do not see themselves as victims, and who articulate their reasons why they do not do so, cannot escape this designation.

In the context of the workplace and labour, the law is often interpreted in protectionist terms. Slavery is deemed to be illegal and the law further sets standards for minimum wages, maximum working hours per day and per week, and entitlement to paid leave and other benefits. The UNCRC provides protection for children in this context too, but there are some significant differences between the ways in which the law operates on adults and on children.

First, by and large, unlike adults, children do not have the democratic opportunity to participate in creating law. These forms of protection have been imposed on them arbitrarily and without taking their voices into account. In that sense, the working children movements should receive even greater attention.

Second, it is important to note that Article 32 does not outlaw all forms of child labour, but rather only those that can undermine children's development and the realisation of their right to education. Further, Article 32 should not be read in isolation, but rather in conjunction with the other rights that the Convention protects – and especially its four guiding principles (Articles 2, 3, 6 and 12).⁸⁶ Third, some children are left in the margins due to the narrow perspective of the UNCRC, thus undermining its promise to be an inclusive, comprehensive and universal rights protection mechanism. Fourth, the restrictions that the UNCRC imposes on children's ability to engage in work do not necessarily align with the ways in which children themselves would like to be protected. This undermines the key principle of the Convention, which is to let children influence their own childhood and their development into adults.⁸⁷ The working children movements reject not the idea that

⁸⁵ Prout and James, above n 4.

⁸⁶ UN Committee on the Rights of the Child, *General Comment No 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5.

⁸⁷ Peleg, above n 7.

the law should protect children, but rather the paternalistic approach that is associated with this and the restrictions on their Convention rights that are generated by the currently predominant interpretation of Article 32.

Work is part of children's lives across the globe, from Indonesia to Sydney, and from Rio de Janeiro to New York.⁸⁸ The type of work and the experiences of work in the formal and informal sectors vary, but the engagement in paid and unpaid work is in itself similar. By imposing age-restricted boundaries, and paying insufficient attention to protection in the workplace, the Convention and the Committee ignore this reality and seek to establish an imaginary world. Strict categories, such as age and gender, marginalise some children, ignore their status as human beings in the present rather than as future adults, ignore their developmental stage, undermine their agency, and subjugate the protection of their rights to arbitrary categories that adults have invented. International law – especially the Convention and other ILO instruments – can be better utilised to improve the working conditions and the level of protection given to children who engage in work.

The Convention's conceptions of the child and of childhood risk limiting its relevance and utility in circumstances when its protections are most needed. This imagery can be criticised on the theoretical level, but my concern is to harness these critiques in a way that will be relevant to more children – primarily, children who do not fit the Convention's model of 'the child'. Valuing children's autonomy could contribute to a more substantive understanding of how children ought to be treated and could help us to reconceive childhood in a way that aligns with the reality of children's lives.

Claiming that the Convention represents 'Western' ideals misses some important components of identity, social contexts, and their intersectionality. Western societies and Western morality are heterogeneous too, and the Convention and its current interpretation therefore represents only one version of them. Subsequently, it is not only 'non-Western' children who are marginalised by the Convention. Any child who

⁸⁸ For example, a recent study found that 80% of children in New Zealand work for pay before leaving school: N Ruth Gasson et al (2015) 'Young People's Employment: Protection or Participation?' 22 *Childhood* 154–170.

does not fit the ideal model is also excluded. The solution is not necessarily, however, a shift towards localism. As White rightly argues, localism suffers from similar problems – mainly the need to contextualise what ‘local’ is and to decide who gets to define what local values, histories and morals are.⁸⁹ But the discussions about the definition of localism often lack input from children. Thus, using this concept is merely replacing one adult worldview with another.

Listening to children, as Hanson and Nieuwenhuys suggest, can indeed result in a new and broader interpretation of the UNCRC that is more relevant to the daily realities of children around the world.⁹⁰ It seems that the organisers of the 2017 IV World Conference on the Sustained Eradication of Child Labour in Buenos Aires had not ‘security concerns’ but rather stability concerns. Enabling the participation of the working children movements would have destabilised their agenda and their paternalistic approach.

⁸⁹ White, above n 46.

⁹⁰ Hanson and Nieuwenhuys, above n 5.