

# Children's human rights<sup>1</sup>

forthcoming in Jesse Tomalty and Kerri Woods (eds.) *Routledge Handbook of Philosophy of Human Rights*

Anca Gheaus, Central European University

## **Introduction**

If someone were to starve a child to death, almost everybody would agree that the human rights of that child have been violated. When it comes to meeting their survival needs, children's human rights are like adults'. But if a child is coercively prevented from doing many of the important things that adults want to, and can legally, do – such as entering paid employment, or sexual relationships with willing others, or participating in politics – this doesn't raise worries about violations of that child's human rights, unlike in the case of adults. Further, if a child was left without any kind of custodian and were left to her own devices to live in the streets, or if nobody were willing to make a life and death medical decision on behalf of that child, most of us would agree that the human rights of the child had been violated. More generally, children's human rights seem to diverge from adults' when it comes to the former having, and the latter lacking, a claim to have others take charge of one's wellbeing. To take another example, if a child was allowed to grow up illiterate, this would be deemed a grave violation of that child's right, but if an adult was allowed to lead their lives without engaging in any educational activities, that would not raise a similar concern. Finally, if a child lacked any amount of free, unstructured time – for instance, because she were to spend all her waking time training her musical skills – people today would be quite divided on whether or not this child's human rights had been violated, but the same people would not think that an adults' life lacking unstructured time necessarily involves such a violation.

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<sup>1</sup> I am grateful to participants in the Philosophy of Human Rights workshop that took place in Bergen, in April 2023 for helpful discussions about this paper, and to Brian Hutler, Gopal Sreenivasan, Jesse Tomalty and Kerri Woods for written comments on an earlier draft.

What can explain these differences between the ways in which we identify adults' and children's human rights? It is, at least at first glance, puzzling that the human rights of children are different from those of adults, because human rights are meant to be universal. The puzzle can be dispelled by identifying what unites children's and adults' rights as human rights. Here I seek to answer the question of children's human rights – that is, rights they have merely in virtue of being human and of being children – by exploring how children's interests are different from adults', and how respect for children's and adults' moral status yields different practical requirements. If human rights protect interests, then children have many, but not all, of the human rights of adults, and, in addition, have some human rights that adults lack. I discuss the way in which children's human rights, as I conceive of them here are, or fail to be, reflected in the law; as an illustration, I use the most important legal document listing children's rights, namely the 1990 United Nations *Convention on the Rights of the Child* (henceforth *CRC*).

One of my basic presuppositions is that the foundations of human rights are moral rights, henceforth referred to as “rights”. This is an influential view, but for a challenge to it, see Gopal Sreenivasan's chapter in this volume. The chapter's question, then, is what are the general rights that children hold *qua* children. Another basic assumption is that, for a person to have a right there must exist some duty-bearer who has a correlative duty corresponding to that right as Stephanie Collins in this volume elaborates.

“Children”, in this chapter, refers to young human beings, who are biologically, intellectually and emotionally immature. I assume, conventionally, that these different kinds of immaturity map onto each other fairly well, albeit in ways that vary, to some extent, across societies. In most societies today human beings are supposed to become fully mature sometime between age 18 and 21, and the *CRC* specifies that childhood ends at 18; this may be an imprecise threshold, but good enough as a proxy for the moment when people actually become mature in these respects, i.e., become adults. Human rights are usually discussed as the rights that adults have just in virtue of being human beings or, perhaps, human persons – a complication I leave to one side in this chapter. (But see

chapters by Alasdair Cochrane and Suzy Killmister in this volume.) Yet, I shall argue, the condition of childhood is normatively relevant in the sense of bearing on the possibility of having human rights, and on their content. The core of the view presented in this chapter is that childhood is normatively relevant in two different ways: as the first stage of life, and as a stage of life characterised by certain capacities. Partly because they are new to the world, children lack some rights to control their lives that adults have, and have rights that adults lack. But during childhood we also tend to have different morally relevant capacities than we have during adulthood. This distinction makes a difference to the content of our rights during the different stages of life.

Another complication that I leave to one side here is that childhood itself has several stages that are different from each other in morally relevant ways; for simplicity, I talk of children as if they displayed the same typical capacities during all stages of childhood (unless I explicitly specify this is not the case); but, of course, this is nothing more than an abstraction.

The next section delves deeper into the questions of what is a child, and of the normative relevance of childhood. The third section discusses the very possibility that children have rights. People in liberal democracies today take the existence of children's rights for granted, but this has been historically denied (Archard 2015), and remains philosophically controversial. The fourth section is a taxonomy of children's rights, based on the assumption that, amongst their rights-protected interests are those in the cultivation of their autonomous agency, in freedoms to exercise agency commensurate with their already developed autonomy, and in having their moral status as potentially, and often partially already, autonomous agents reflected in the distribution of authority over them. The discussion is illustrated with instances of rights recognised by the *CRC* in light of that taxonomy. I conclude by drawing attention to some of the most controversial human rights of children.

## **The normative relevance of childhood**

The traditional philosophical view about children is that they are unfinished adults (Matthews and Mullin 2023). Obviously, there is some truth in this although, as I will claim below, they are a lot more than that, as I argued elsewhere (Gheaus 2015b). Even the definition of childhood that I used above – aptly I think – which presents childhood as a state of immaturity, suggests that much. Importantly for the present purposes, most children’s rational powers are underdeveloped relative to typical adults’: children are less able than adults to engage in practical reasoning, to foresee and appreciate the relevance of the long-term consequences of their own choices, and to control (the expression of) their emotions. Based on these features, some contemporary philosophers continue to see childhood as a predicament (Schapiro 1999), and some go as far as claiming that these features make childhood bad for children (Hannan 2008.)

Childhood’s most normatively relevant feature, on this account, is their potential to develop into fully rational beings – to acquire, in due course, both moral autonomy – that is, an understanding of moral principles and of the claims that oneself and others have as persons – and personal autonomy – that is, the capacity to self-direct their lives in light of their own ideas about what is good for them. Their potential to become fully autonomous is a plausible ground for children’s human rights to those things they need in order to realise this potential, including all the conditions needed for their survival, development and moral education. Contemporary, if not past, philosophers often stress that autonomy is acquired gradually, and that it commands respect even before it is fully developed (Mullin 2007; Bou-Habib and Olsaretti 2015; and Clayton forthcoming); thus, children can have human rights to the respect of their degree of acquired autonomy. Finally, some philosophers who see children as mere unfinished adults go as far as thinking that in virtue of their future autonomy children have the same rights as adults have against certain kinds of interferences from others, namely attempts to intentionally, and non-rationally shape their ethical, religious and metaphysical values (Clayton 2006; Clayton forthcoming). This is a negative view of childhood, as a deficient state, the normative relevance of which is primarily developmental. The *CRC* seems to reflect this

deficiency view of childhood, at least in the way in which it specifies the overarching aims that are protected by the honouring of children's rights. It says, for instance, that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding" and that "the child should be fully prepared to live an individual life in society" (*CRC*, Preamble), without giving any hint that childhood may be a valuable stage of life in itself, and that children's rights also protect wellbeing during childhood irrespective of its developmental value.

Another, more optimistic, view about children is available, accepts the above, negative, characterisation of childhood and its normative implications, while at the same time denying that children are nothing more than adults in the making. On this account, childhood affords access to some weighty and distinctive goods, that is, goods that play an important role in the wellbeing of human beings, and that can be exclusively experienced during childhood, or else to which children have privileged access. Different philosophers identify various lists of such goods, including spontaneously trusting parent-child relationships, sexual innocence, a sense of being carefree, a propensity to engage in fantasy play, a sense of time as limitless, and several valuable capacities, including a sense of awe and capacities to learn and engage in artistic and philosophical exploration (MacLeod 2010; Brighouse and Swift 2014; Brennan 2014; Gheaus 2015b; Ferracioli 2020). The first items on this list are sometimes claimed to be good for children but not for adults, although this is disputed (Gheaus 2015a; Hannan 2018). Others, namely the valuable capacities of children, can be and sometimes are possessed by adults as well, and it is obviously good for one to possess them at any age. But findings from fields as diverse as neurobiology and developmental biology, philosophy with children, and art history suggest that the capacities are heightened during childhood; some go as far as arguing that the best age in one's life to engage in philosophical or artistic pursuits in particular is pre-puberty, unless one becomes a professional philosopher or artist (Matthews 2008; Gopnik 2009; Gheaus 2015b; Fineberg 2018). Assume that the state of childhood affords those who occupy it access to distinct sources of great value, and that enjoying such value does not distract

from one's pursuit of moral and personal autonomy – or that the distraction is more than compensated for by the enjoyment of the value. This, too, will have an immediate bearing on children's rights, at least in the form of granting them claims not to be impeded in accessing such value but, more likely, in the form of claims to facilitated access to it.

Whether one takes the less or the more optimistic view, it is important to note that childhood has two aspects that are normatively important, including for thinking about children's rights: a temporal and a biological aspect. First, childhood is a phase of life: the first one. This is relevant to children's rights because they are new to the world, and therefore inexperienced, which can help to explain why they don't yet have the same rights as adults have to make their own choices, including choices about how to direct their lives. Merely by dint of having just arrived into the world, they lack the knowledge, ability to imagine the future, and have not yet had the time needed to decide on their own values. The temporal aspect of childhood also justifies the weight of their right to be protected, as much as possible, from certain kinds of choices made by others for them – for instance, irreversible choices about their bodies that can be postponed without harming the child. Second, childhood is a state of immaturity of body and mind. This, too, as we have seen, can explain why children lack adult-like authority to make their own choices – their reasoning faculties, emotional regulation, and self-control are insufficient for full autonomy. Children's rights to the conditions under which they can enjoy the distinctive goods of childhood, if any, can be explained either by the temporal, or by the biological aspect of childhood (or by both) depending on what exactly gives children access to these goods. For instance, a sense of awe and of time as limitless is most likely enabled by being new to the world, while children's learning and creative capacities are more likely to be largely a factor of their still very plastic brains, i.e., a function of the biological aspect of childhood.

In reality these two different aspects of childhood always coincide, yet they are analytically distinct. One can imagine – albeit not easily when it comes to details – that people started life in a biological state that in fact corresponds to chronological old age in the world as we know it, and

developed into organisms increasingly like the biological states that correspond to younger chronological age in the world as we know it. Assume that people's minds took a similar trajectory, a 'reverse' unfolding of their intellectual and emotional capacities over time accompanying the 'reverse' physical development. In fiction, this is illustrated by the case of Benjamin Button (Fitzgerald 1922), in whose story the relationship between the temporal and the biological aspects of childhood as we know it is fully reversed. Although such a degree of divergence is bound to remain within the realm of imagination, the analytical distinction is important. Scholars can disagree about the precise level of development of children's rational and agential capacities; and perhaps it is possible and, some will think, also desirable to speed up this development (Schapiro 1999; Hannan 2018; Clayton forthcoming). But even if we were to discover that children have rational and agential capacities comparable to adults', as far as rights are concerned, much earlier than we now assume is the case, or even if we were to "help" children to grow up at a much faster speed than it is now the case, it would still remain true that children are newcomers to the world. This fact, that is as such independent from children's biologically determined capacities, seems enough to justify some of the rights that children have and adults lack, rights that concern the limitation of the authoritative choices that children are permitted to make and their interests in protection from harm and help with the guidance of their lives. My conjecture is that, should people pop into existence biologically fully-developed and in full possession of rational powers, they would have different rights than actually existing adults. Being entirely new to the world means that one lacks both the information and the experience necessary for engaging in deliberation and decision-making. We would, no doubt, owe them the required information and opportunities to exercise their judgement in relatively risk-free ways. But acquiring information and skill takes time. Such adults would therefore be entitled to protection from their own misinformed and misjudged decisions.

## **Can children have human rights?**

Talk of children's (human) rights can be puzzling in two ways. The first is superficial, hence easily dispelled, yet worth mentioning because it draws attention to an interesting fact. Human rights are held just in virtue of the fact that one is a human being, hence they are universal. Children's rights, I said, encompass some rights that adults lack, i.e., that are special to children. But this, of course, does not make such rights any less universal. Children and adults are not different individuals, but the same individuals at different stages of their lives. This last observation may cast some light on the universality of human rights. It is true that all human beings go through childhood, and in this sense children's human rights are universal: but, tragically, it is false that all human beings reach adulthood. In this sense (too), childhood is a more basic feature of human life than adulthood. But if adults have a sub-set of human rights that children lack – as they surely do – then rights in this sub-set are not universal: there are some human beings who are rights holders but who never have these rights – namely, children who never reach adulthood. If so, the only truly universal human rights are children's rights, which makes even more surprising the relative absence of their discussion in scholarly work and their lack of salience in politics compared to that of adults' human rights.

It is easy to make sense of the little consideration given to children's human rights by examining the second source of puzzlement that they are likely to evoke. One might think that adults have human rights that children lack, and that this fact doesn't detract from the universality of adults' human rights, simply because children do not, and cannot, have human rights. Indeed, historically philosophers did not think that children are rights holders, and this view, as I explain below, is still a contender. Moreover, historically, children have been denied legal claims (Archard 2015). Today, by contrast, most people believe that children are rights holders. Further, children have (ever-expanding) legal rights, some of which are inscribed in internationally ratified legal codes. What made these historical changes possible? Either the predominant views about children have changed, or the predominant views about rights have changed – or, more probably, both. Changes



in how we think about children have been partly sketched in the previous section: they include the acknowledgement of children's early acquisition of partial or local autonomy, of their superior learning abilities, including the active role they play in learning, of their creative abilities, but also of their moral abilities, not discussed above (Gheaus 2015b). Together, these changes can vindicate two beliefs that are wide-spread in contemporary societies: that children have full moral status in the sense that their interests are as worthy of moral consideration as the similar interests of adults<sup>2</sup>; and that children are entitled to make more choices than they were believed to be entitled to in the past.

At the same time, views about the nature of rights have also changed. A currently prominent accounts of rights, the interest theory, easily yields the conclusion that children are rights holders. Yet, the interest theory of rights is only one of two dominant, mutually incompatible, ways of making sense of what rights are. There is agreement that rights are, broadly speaking, moral protections of the right holder; but there is disagreement as to what exactly they protect.

On a rival view, called the will, or choice, theory, rights protect the right holder's choices. To have a right, on this account, is to have (some) control over the corresponding duty – that is, to have the normative power to waive that duty, or to require its performance. According to this theory of rights, individuals can be rights holders only if they are capable of the kind of agency necessary for exercising choices over the corresponding duty. The view directly excludes very young children as rights-holders, because they lack the requisite agency – that is, it excludes them for conceptual reasons. And, for substantive reasons, it may also exclude older children, who have the requisite agency but who lack the necessary level of autonomy to make authoritative choices about the duties corresponding to their rights. We do not think, for instance, that a ten year old has the moral power to waive the duty to be given physical security, food, or medical care. In general, the will theory of rights faces the objection that it cannot make sense of inalienable, unwaivable duties (Sreenivasan 2005). When it comes to children, this objection has special bite, since they are believed not to be able to waive a wider range of entitlements than adults (consider, for instance, a right not to starve.)

Some defenders of this very influential theory of rights accept its implications about children, or at

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<sup>2</sup> I don't mean to underplay the difficulties of explaining the full moral status of very young children. For a promising attempt, see Jaworska (2007).

least infants, and are happy to bite the bullet. For instance, Carl Wellman writes that “if moral agency really is necessary for the possession of rights, as I have argued, and if infants lack agency, as scientific psychology and everyday observation attest, then infants, at least, cannot be moral right-holders.” (Wellman, 1995, 113). Others try to accommodate children’s rights into the view by noting that some adults, for instance parents, can represent children’s rights; but such accommodation seems unpromising<sup>3</sup>.

Yet other philosophers think that the will theory of rights’ failure to account for children’s rights is a decisive reason to abandon it (MacCormick 1982). The alternative, interest theory, understands rights as protecting a certain class of interests of the rights-holders, namely those that are morally weighty enough to generate correlative duties. In the words of one of its most prominent proponents, “Y has a claim-right against X that X phi just in case, other things equal, an aspect of Y’s wellbeing is a sufficient reason for holding X under a duty to phi” (Raz 1986, 166). It is easy to see why this view can explain children’s rights, both for conceptual and for substantive reasons: at all ages, children have weighty interests, which the next section explores in more detail.

Some contemporary accounts of rights seek to transcend the division between the will and the interest theory by proposing hybrid views. On such views, having a right means to either control the correlative duty or else to be unable to waive it because such inability is in the interest of the right-holder (Sreenivasan 2005), and the right-holder did not, or could not, consent to the waiving of the duty (Vallentyne 2007). Hybrid theories like these, too, can accommodate children’s rights on account of children’s interests and their lack of normative powers to waive the duties correlative to their rights. The rest of this chapter assumes that children’s rights protect children’s interests on either a pure interest account or a hybrid account.

Before moving on to examine different kinds of rights-protected interests that children have (and the expression of children’s rights in law) it is important to note another feature of children’s normative situation that bears directly – and positively – on the possibility of their human rights. Many of children’s interests are such that their satisfaction requires the necessary involvement of

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3 This is Joel Feinberg’s solution, which has been convincingly criticised by Wellman (1995).

other parties in the forms of providing children with various goods. In such cases, correlative duties cannot be mere duties of non-interference, as it is the case with many of adults' rights (as well as with some of children's rights.) Rather, the duty-bearers are obliged to actively do things for children. When it comes to adults' rights that require active provision of goods or services, a general difficulty of defending the existence of rights lies with the identification of the duty-bearer. Indeed, an influential criticism of human rights discourses notes that many of the postulated rights lack identifiable duty-bearers from which the right can be claimed, making talk of rights empty at best, and pernicious at worst (O'Neill 2000). But in the case of most children, this is a lesser difficulty. Children are brought into the world without consenting, or even being available for consent, by their procreators; if a human existence entails significant risk of great harm (as it surely does) and if non-existence is not a harm itself (as it probably isn't), then procreators incur significant duties concerning the wellbeing of their procreates. (Or, at least, those who procreate voluntarily. The ways in which different obstacles to voluntariness in procreation bear on procreators' duties is a topic in need of philosophical investigation.) Therefore, they are natural bearers of duties correlative to many of children's rights. A complementary identification of duty-bearers points to the people who willingly become the children's custodians<sup>4</sup>. That is to say that, even in the absence of institutions that can distribute any collective duties that correspond to children's rights, it is possible to identify bearers of duties that correspond to at least some of the conventionally accepted rights of children: namely, the children's procreators and/or those who assume the social role of raising them. The case for the existence of children's positive rights seems easier to make, in this respect, than the case for similar rights in the case of adults. Admittedly, there can be situations in which no individual has a duty to parent a particular child, because her procreators are unable to do so and/or because no adult willingly undertakes the role of custodian. For such isolated cases it is possible that the claimability problem is no easier to address than it is in the case of adults. Even in these cases, however, one may think that children's extreme vulnerability, and their likeability, makes meeting their interest in having a parent akin to cases of easy rescue. (That is, in contrast with the meeting of

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<sup>4</sup> Who, on the voluntarist account of parental duties includes all custodians (Brake 2010). For a defence of procreators' duties along the lines sketched here see Shiffrin (1999).

some very weighty interests of adults, which would not qualify as easy rescue cases – for instance, the interest of a severely disabled adult in having a custodian.)

### **A taxonomy of children's rights**

If children's rights protect their weighty interests, one needs to know what are children's weighty interests in order to find out which rights they have. Here it is important to draw attention to one category of powerful, rights-protected interests that people of all ages can have: interests concerning autonomous agency, which are to be distinguished from general wellbeing rights. Because children's autonomous agency is merely potential at the beginning of their life, and then for a long time is still developing, singling out agency interests is useful for explaining how children's rights differ from adults'. I refer to rights that protect children's interests in the development and exercise of their autonomous agency, and in the distribution of authority over them, as "agency rights". Identifying such a class of children's rights is familiar from the work of Debra Satz (2010) and Harry Brighouse and Adam Swift (2014). The latter distinguish between rights that protect a person's interests in "anything that contributes to her well-being or flourishing" and those in "having her dignity respected – in being treated in ways that reflect her moral status as an agent, as a being with the capacity for judgment and choice, even where that respect does *not* make her life go better" (2014: 52). Brighouse and Swift call the second kind of rights "agency rights," and I adopt the terminology. This distinction between well-being and agency rights is somewhat puzzling, since one may think that *all* interests protect some aspect of wellbeing, or flourishing. Here I assume that agency rights protect one aspect of individuals' wellbeing, even while their exercise may come into conflict with the protection or promotion of other aspects of their wellbeing. I use a capacious sense of "agency rights": First, because they also include rights that children, and perhaps children alone, have to the *development* as well as the exercise of their agency and of the rational powers that are constitutive of autonomy; these are rights that children have even before being proper agents. Further, as I argue below, children have agency rights that include a particular form of respect,

namely rights concerning the exercise of authority over them. Thus, children's agency rights protect more than their interests in acquiring and exercising autonomous agency; children's interests in being respected *qua* potentially fully autonomous agents and, in most cases, *qua* already partially autonomous ones, impose requirements on the distribution of adults' power to partly govern children's life.

It is common to distinguish between rights held by both children and adults, rights held only by children, and rights held only by adults. Joel Feinberg (1980) influentially coined the term for the first group as A-C rights, for the second as C-rights and for the third as A-rights. I will use his classification in what follows. Many rights protecting general wellbeing are, quite likely, of the A-C type: for instance, rights to life, subsistence, shelter, security, health care, bodily integrity, freedom from violence, cruelty, wrongful discrimination<sup>5</sup> and political persecution, and rights to form associations with others<sup>6</sup>. Indeed, the *CRC* protects all these rights. So are, at least in part, rights to free thought and speech, and the rights to have one's voice heard in matters that concern one's interests (Brighouse 2003; Archard and Uniake 2021). In the *CRC*, all these rights are protected by Articles 12, 13 and 14. Article 12, and its interpretation, are particularly disputed; they state that a child "who is capable of forming his or her own views" has "the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." It is unclear how giving due weight to the child's view sits with adults' right to paternalise the child, i.e. to override the child's views and stated will (Archard and Uniake 2021).

It is tempting to assume that children's rights protect general wellbeing, while adults' rights protect both generally wellbeing and, more specifically, agency. In fact, I argue, the picture is more complicated, and acknowledging children's full moral status – in the sense specified above – entails the acknowledgement of a variety of agency rights.

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<sup>5</sup> But some deny that we have interests in not being subject to wrongful discrimination. See Saladin Meckled-Garcia in this volume.

<sup>6</sup> For rights to form associations, or so-called human social rights, see the work of Kimberly Brownlee, in particular Brownlee (2020.) In the case of children, an important question concerns the degree of control that parents have over the way in which the child is exercising this right. A child-centred account denies parental rights to restrict associations that are voluntary and beneficial to the child, for instance with other caring adults (Gheaus 2018).

Let us first look more closely at children's rights protecting general wellbeing. Alongside those that are of the A-C type, like the above, there are also general wellbeing C-rights. First and foremost, perhaps, children have the right to have a custodian, that is, to an agent in charge of the child's life. There is a general presumption that this agent is, by default, the child's procreator(s), as reflected in the Article 7 in the *CRC*. Adults lack the right to a custodian – indeed, competent adults presumably have a right *not* to have one. The right is most plausibly held, in the first instance, against the procreator, on the basis of the liability that the latter incurs by bringing into existence a human being whose life is bound to go very badly in the absence of a custodian (Olsaretti 2017). The right protects children's wellbeing to the extent to which custodians have the duty to ensure that their charges' lives go well during childhood and that their charges' developmental needs are met to a sufficient extent to give them adequate prospects for future wellbeing (Brighouse and Swift 2014). Other general wellbeing protecting C-rights are likely to include entitlements to what is necessary for children's future flourishing: for instance to education, broadly understood. These rights are partly justified by appeal to the child's interest in preparation for leading a good adult life: in acquiring the emotional, intellectual and bodily abilities necessary to fully function in adult society. It is easy to see how, between them, C-rights and A-C rights protecting general wellbeing cover economic, social and cultural rights. These rights, and especially the social and cultural ones, are sometimes presented as conditional on the child having reasonable prospects of becoming an adult, namely when they are justified by appeal to the interests of the future adult. Indeed, the *CRC* seems to suggest that grounds of children's rights lies in their life prospects as future adults, when it states, in Article 29, that “the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential” and “(d) The preparation of the child for responsible life in a free society” with no mention of the value of education for wellbeing during childhood.

Depending on one's view of childhood, and its role in giving us access to wellbeing over the course of our lives, children may also have general wellbeing rights to some of the distinctive goods

of childhood mentioned above; if so, they have such rights independently from how likely they are to reach adulthood. The rights in question presumably include children's entitlements to unstructured time and play, to remaining care-free (though decreasingly so as they age), and to opportunities to learn and exercise creativity above and beyond what is necessary for the educational purposes, and for the sake of exercising one's epistemic, artistic and philosophical abilities. Article 31 of the *CRC* recognises "the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts." This of course can be read as merely protecting children's developmental interests – especially if the "appropriate to the age" qualification is meant to indicate the educational value of play, and given reasonable interpretation of other parts of the *CRC*, as mentioned above; but it could also be interpreted as protecting more, namely interests in flourishing during childhood whether or not this also yields developmental goods.

A particularly contentious C-right that protects general wellbeing and is grounded in children's interests in both a good childhood and the prospect of a good adulthood is the putative right to be loved (Liao 2015). The right, if it really exists, is a particularly interesting case as far as rights go. On the one hand, many believe that parental love is essential to children's wellbeing *qua* children as well as to their development, which generates a strong presumption in favour of the existence of the right. On the other hand, it is unclear that there can be correlative duties to love, at least understood as duties to provide more than the conditions under which love is likely to flourish.

Moving on to agency rights, in my view they protect not only the exercise of the rights holder's agency, but also the authoritative treatment by others when not (yet) fully autonomous. This includes how the exercise of power over the rights holders in situations in which they cannot give consent<sup>7</sup>: for instance, while unconscious or during childhood. In such situations, their rational power, or potential for rational powers, ought to be reflected in their treatment.

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<sup>7</sup> As well as in situations in which they cannot participate to the project of common governing through full political involvement. The fact that children are denied full participation in politics may be relevant to the distribution of powers over them. I leave this complication aside for the purposes of this chapter.

Agency rights therefore constrain, for starters, the distribution and content of others' rights to exercise control over the right holder. In cases where the right-holder has the power of consent, others can gain legitimate control over the former only with the right-holder's consent. When the right-holder lacks the power of consent, her agency rights require that control over her can only be exercised for her sake. This entails that, in the process of controlling the right-holder, her own interests may not be set back in order to advance the interest of another right-holder in exercising power – the worry being that, otherwise, that the former is used as a means to the latter. This principle is generally accepted when it comes to adults, and, in liberal societies, it is widely observed. For instance, the choice of fiduciaries for adults is made with the aim of protecting the best interests of those in need of a fiduciary. The principle also has several direct implications for children. First, it indicates that children's right to have a custodian must be discharged by granting custody to the adult, or adults, who, from all those who have expressed an interest to raise the child would make the best parent for that child (Vallentyne 2003; Gheaus 2021). The interest of the would-be custodian in exercising authority over the child could not as such count towards granting custody (or, at most, it could be a tie-breaker), because the child's respect-protecting rights rule out imposing a setback in a child's wellbeing for the sake of allowing an adult to pursue their own flourishing by becoming that child's parent. This view goes against the current consensus in philosophical literature (Clayton 2006; MacLeod 2015; Brighouse and Swift 2014; Shields 2016; Fowler 2020) and to some legal practice, for instance in the US, of prioritising the interests of procreators over those of the child in allocating custody (as detailed, and defended, in Richards 2010). It also seems to go against the *CRC*, although this is open to interpretation. On the one hand, Article 7 states a child's right to "be cared for by his or her parents" where the only plausible interpretation of "parent" is "procreator.". On the other hand, Article 9 says that separation from procreative parents is permissible when it is in the best interest of the child (as judged by competent authorities and subject to judicial review). Article 20, too, implies that a child may, or perhaps should, be removed from her family when this is in her best interest. It is then an open question whether the same



standard, i.e. the child's best interest, should be guiding the initial allocation of custody, and, if not, why not.

Further, the principle entails that people who exercise authority over children – first and foremost parents, but also educators, medical doctors and so on – must do so in ways that serve the interests of the child (and that are in line with third parties' rights). Moreover, those invested with authority may not compromise the interests of the child in order to advance their own the interests for instance by promoting a certain religion by enrolling their child into it, or by having a certain kind of child – that is, a child with particular features that are not morally required, such as a certain kind of body, or temperament, or morally optional dispositions. As applied to educators or medical doctors for instance, this conclusion doesn't seem controversial: yet, in the case of parents it, too, goes against the conventional way of seeing the latter's rights as potentially in conflict with the rights of children. (For detailed criticism of this typical approach see Dwyer 2021). In other words, and against the current consensus, children's agency rights require that the powers of parents (and other adults) over them must be justified in a child-centred manner, which in turn implies that children have rights against, for instance, having their minds and bodies intentionally shaped by adults in ways that don't serve children's own interests (Clayton 2006; Brighthouse and Swift 2014). Importantly, amongst the child's interests may be an interest to be free from intentional shaping, i.e., an interest in independence (Swift 2020; Clayton forthcoming). The *CRC* does not explicitly protect this class of rights; since their violation depends in many cases on parents' mental states – i.e., on their intention to shape their child in a particular way, and on their beliefs about the interest of the child – such violations would indeed be very difficult, often impossible, to identify. This feature makes this class of rights hard to protect by the law. However, in proclaiming children's right to, for instance, a religion, the *CRC* seems to fail to recognise their moral right to be free from intentional shaping.

Children's agency rights discussed so far are the more contentious C-rights. An additional, and generally acknowledged C-right that protects respect for children's potential autonomous

agency is the right to the development of their rational and moral powers: that is, to the means they need in order to become fully autonomous in due course. (The right of this type in adults might be a right to the preservation of one's moral powers; while the right to autonomy preservation is closely connected in its rationale to the right to develop autonomy, I take them to be genuinely different rights, making the former an A-C right and the latter a C right.) Preventing individuals who have the potential to become fully autonomous from acquiring autonomy, and arguably even failing to help such individuals to acquire autonomy when the costs of doing so are not excessive, offends against the respect owed to them *qua* potentially autonomous beings. Rights to a custodian, and to education, are therefore in part justified as protecting children's agency interests – while, obviously, they are also in part justified for reasons having to do with many other aspects of children's wellbeing.)

Finally, a very central category of A-C rights that protect agency are rights in having one's autonomy respected insofar it is already developed. One example is children's right to be reasoned with, to the extent to which the child is already responsive to reason, rather than be manipulated or physically coerced. Another, even more prominent, example is children's right to be free to make those choices for which they can already be held morally responsible in virtue of the stage of their already acquired rational and moral development (Bou-Habib and Olsaretti 2015). Since children's autonomy develops gradually, the area of such choices is itself gradually expanding up to the point at which the child has become fully adult, and thus in possession of the entire set of adult rights to control one's life. The debates about children's rights to decide what to wear, whom to make friends with, what kinds of pastimes to adopt, and about the proper age for granting children rights to participate in politics (including in authoritative ways, such as voting), to start sexual relationships or to enter contracts on the labour market are debates about A-C respect protecting rights.

As several of the above examples show, some A-C rights have different functions for children and for adults. Both adults and children have the right to, for example, food, health, bodily integrity

and intellectual autonomy; but the corresponding duties, the distribution of positive and negative duties, and the duty-bearers differ significantly in the cases of children and adults<sup>8</sup>.

## **Conclusions**

To take stock, children's human rights, understood as a subset of human rights, are moral rights that children have only because they are young human beings. Both because they are new to the world, and because they only develop the autonomy-relevant capacities in a gradual and slow fashion, children have fewer rights to control their lives than adults, but they also enjoy rights to protection and assistance that adults lack. Children's rights protect both their interests *qua* children and *qua* future adults, that is, what they require to become autonomous adults. If these interests are not identical, it may sometimes be difficult to adjudicate the correct balance between catering to those interests that must be protected for the life of individuals to go well during childhood and to those interests that must be protected for the life of the future adult to go well. For instance, do children have rights to play, leisure and creative endeavours even when engaging in such activities entails an opportunity cost for the future, adult individual? To the extent to which we move away from the traditional conception of childhood, this becomes a real conundrum; the fact that any answer to it may unavoidably require perfectionist assumptions about the good life adds a further layer of difficulty.

Because they have the potential for autonomy, children also have the right to be provided by adults with what is necessary for them to become autonomous in due course. In addition, they have rights that protect their already developed autonomy.

More contentiously, in virtue of their potential for fully autonomous agency, children have rights that the distribution and content of authority over them be determined in a child-centred fashion. Indeed, some of the most contentious of children's rights are those that concern the exercise of power over them as well as those that concern their own access to political power. I end by flagging these issues, which are likely to attract more philosophical interest in the future. Already

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<sup>8</sup> I am grateful to Brian Hutler for making this generalization salient to me.

mentioned is the contentious right of the child to the best available parent. Downstream from this may be a right that children have against monopolies of power over them, which, put in positively, may entail a right to multiple sources of caregiving, as I argue in Gheaus (2018). Other child-centred views about children's rights, such as those by Clayton (2006) and by Brighouse and Swift (2014) might be read in a similar key, as entailing that many of the decisions about children's wellbeing that are currently within the parents' discretion should in fact be made by other parties, i.e. professionals.. Concerning the exercise of power over children, the fully child-centred position recognises a right that children have against *any* intentional shaping of the child's views about metaphysical matters or about morally permissible ways of leading their lives (Clayton 2006; Clayton forthcoming; Swift 2020), while of course recognising their right to a moral education, i.e., to instruction about people's rights and duties. Finally, the question of children's access to political power, and especially to the vote, and of the appropriate age for child enfranchisement is pressing both philosophically and as a politically.

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