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Geraldine Van Bueren, *The International Law on the Rights of the Child*

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Abstract

Simply stated, the international children's rights movement asks individual governments to take children's interests seriously when enacting laws for them. In order to enact policies that take children's interests seriously, all laws must be evaluated and examined from the child's point of view. An examination of the current international children's rights movement from the child's point of view, however, reveals considerable schisms between international principles and the state of the world's children. Professor Van Bueren directly examines the complex issues involved in defining and understanding children's rights. Her analysis of formal international law relating to the rights of the child is invaluable and would stand on its own. The text, however, does more than meticulously detail the rights of children in international law as enshrined in U.N. documents. Van Bueren also explores how other international fora and different countries are struggling with children's rights, both in theory and in practice.

The *International Law on the Rights of the Child* is a text of mammoth proportions, containing fourteen well researched chapters. The first three chapters are devoted to examining the international children's movement¹ and defining the place of children in international law, both in terms of legal definitions of children² and in terms of children's rights and their relation to the rights of other family members.³ The middle chapters explore children's substantive rights.⁴ The last chapter documents organizations and treaty implementing bodies that have taken it upon themselves to ensure children's rights.

GERALDINE VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD

*Reviewed by Roger J.R. Levesque**

A great deal of ambition and optimism characterizes the current international children's rights movement. The sentiments are well justified; nothing short of a revolution is taking place. A prominent sign of this revolution is the almost universal ratification of the United Nations Convention on the Rights of the Child.¹ This Convention recognizes and seeks to ensure a series of substantive and procedural rights, making it the most comprehensive United Nations human rights treaty in force.² In addition to enumerating the entire range of civil, political, economic, psychological, social, and cultural rights of children, the Convention proposes a series of important, perhaps even radical, guiding principles. When nations design and implement policies affecting children and their families, they now must consider the children's best interests,³ take into account individual children's evolving capacities,⁴ and respect and ensure the inherent dignity of all children.⁵

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1. Convention on the Rights of the Child, Nov. 20, 1989, U.N. GAOR, 44th Sess., Supp. No. 49, at 1, U.N. Doc. A/RES/44/25 (1989), 1992 Gr. Brit. T.S. No. 44 (Cm. 1976) [hereinafter UNCRC].

2. No other international human rights document reaches the comprehensiveness of the United Nations Convention on the Rights of the Child. For a compilation of all major U.N. international treaties, see HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS, U.N. Doc. ST/HR/1/Rev. 5, U.N. Sale No. E.94.XIV.1 (Vol. I) (1994).

3. The best interests standard affects other children's rights. See, e.g., UNCRC, *supra* note 1, arts. 9, 21, 37, U.N. Doc. A/RES/44/25, at 6, 10-11, 17, 1992 Gr. Brit. T.S. No. 44, at 5, 8, 12. For a thorough examination of this standard, see THE BEST INTERESTS OF THE CHILD: RECONCILING CULTURE AND HUMAN RIGHTS (Philip Alston ed., 1994).

4. This is perhaps the most radical aspect of international children's rights. Although it is explicitly stated in Article 12, its focus on allowing children to participate in decisions that affect them effects most rights enumerated in the Convention. UNCRC, *supra* note 1, art. 12, U.N. Doc. A/RES/44/25, at 8, 1992 Gr. Brit. T.S. No. 44, at 6.

5. This standard, of course, is a fundamental aspect of human rights law: the promotion of human dignity; UNCRC, *supra* note 1, 2nd pblr para. See Roger J.R. Levesque, *Sexual Use, Abuse and Exploitation of Children: Challenges in Implementing Children's Human Rights*, 60 BROOK. L. REV. 959, 997 (1994) [hereinafter *Implementing Children's*

These developments are truly remarkable and momentous. They essentially make one demand. Simply stated, the international children's rights movement asks individual governments to take children's interests seriously when enacting laws for them. In order to enact policies that take children's interests seriously, all laws must be evaluated and examined from the child's point of view.⁶

An examination of the current international children's rights movement from the child's point of view, however, reveals considerable schisms between international principles and the state of the world's children.⁷ Indeed, in several instances, children are in much greater peril than they were before the children's rights movement blossomed.⁸ The gap between rhetoric and reality illustrates the need to move beyond examining broad legal mandates and lofty principles. This discrepancy forces each nation to examine their existing laws and to focus their energies on implementing children's rights in a manner that truly protects children's interests.

If the proper standard to evaluate the international children's rights movement is the extent to which it encourages countries to take children's interests seriously and the extent to which it provides an adequate guide for reform, then a text examining international law should be evaluated by a similar stan-

Human Rights]. "If consensus exists among nations, it is that the official doctrine underlying the international law of human rights is in principle universal and is based on human dignity." *Id.* See generally Gary B. Melton, *Socialization in the Global Community: Respect for the Dignity of Children*, 46 AM. PSYCHOLOGIST 66 (1991).

6. This task is much more difficult than it may appear. Indeed, taking children's interests seriously often means enacting somewhat "radical" policies. See generally Roger J.R. Levesque, *Prosecuting Sex Crimes Against Children: Time For "Outrageous" Proposals?*, 20 L. & PSYCHOL. REV. (forthcoming Spring 1995) (proposing that current child protection system is doomed to continued failure because of its inability to approach child protection "from the child's point of view"); Roger J.R. Levesque, *The Peculiar Place of Adolescents in the HIV-AIDS Epidemic: Unusual Progress & Usual Inadequacies in "Adolescent Jurisprudence"*, 27 LOY. U. CHI. L. J. (forthcoming 1996) (attributing failure to address dramatic increase in adolescent HIV-AIDS cases to inability to respect adolescents' needs and ensure that adolescents' perspectives are taken into account when decisions are being made on their behalf).

7. See UNICEF, *The State of the World's Children* (1994). "The State of the World's Children" is the title used by UNICEF's yearly report of progress in ensuring children's rights. *Id.*

8. See *Implementing Children's Human Rights*, *supra* note 5, at 959-60 (citing examples which indicate that despite initial optimism, there are signs that children's rights are not being taken seriously).

dard. More specifically, a text examining children's rights in international law should detail existing international principles, should document the disparity between current law and international standards, should address needed reforms, and should never lose sight of the reality of children's situations. While there are several texts examining children's rights,⁹ only Professor Van Bueren's *The International Law on the Rights of the Child*¹⁰ has attempted this complex task. Given the challenges facing such an endeavor, Professor Van Bueren's text is simply exceptional.

Professor Van Bueren directly examines the complex issues involved in defining and understanding children's rights. Her analysis of formal international law relating to the rights of the child is invaluable and would stand on its own. The text, however, does more than meticulously detail the rights of children in international law as enshrined in U.N. documents. Van Bueren also explores how other international fora and different countries are struggling with children's rights, both in theory and in practice. Those interested in international children's rights as they are applied in different countries will welcome the elusive citations. This research is useful for exploring critical principles and themes as well as future trends and obstacles in children's rights. These citations also indicate the immense progress in recognizing children's rights.

The International Law on the Rights of the Child is a text of mammoth proportions, containing fourteen well researched chapters. The first three chapters are devoted to examining the international children's movement¹¹ and defining the place of children in international law, both in terms of legal definitions of children¹² and in terms of children's rights and their relation

9. See generally JO BOYDEN & PAT HOLDREN, CHILDREN OF THE CITIES (1991); THE IDEOLOGIES OF CHILDREN'S RIGHTS (Michael D.A. Freeman & Philip E. Veerman eds., 1992); PHILIP E. VEERMAN, THE RIGHTS OF THE CHILD AND THE CHANGING IMAGE OF CHILDHOOD (1991); CHILDREN, RIGHTS AND THE LAW (Philip Alston et al. eds., 1992); THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE TO THE "TRAVAUX PREPARATOIRES" (Sharon Detrick et al. eds., 1992); OLGA NIEUWENHUY, CHILDREN'S LIFEWORLDS: GENDER, WELFARE AND LABOUR IN THE DEVELOPING WORLD (1994); GUY GOODWIN-GILL & ILENE COHN, CHILD SOLDIERS: THE ROLE OF CHILDREN IN ARMED CONFLICTS (1994).

10. GERALDINE VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD (1995).

11. *Id.* at 1-116.

12. *Id.* at 32-66.

to the rights of other family members.¹³ The middle chapters explore children's substantive rights.¹⁴ The last chapter documents organizations and treaty implementing bodies that have taken it upon themselves to ensure children's rights.¹⁵

Although all of the chapters are highly informative, several deserve highlighting. The discussion of juvenile justice¹⁶ is especially outstanding. Professor Van Bueren does more than detail the rights of juveniles under the Convention. She also examines how the rights are embodied in other international instruments, particularly guidelines detailing the international community's approach to juvenile crime. In addition, she details existing conflicts between international instruments and state practices, and emphasizes the need for reform.¹⁷

The discussion of the status of a child within the family is also exceptionally thorough. It attests to the breadth of international law as well as the need to examine its implementation.¹⁸ For example, the rights of children are examined in several cases, ranging from adoption in India¹⁹ to cases before the European Commission of Human Rights²⁰ and the European Court of Human Rights.²¹ In addition, the analyses introduce us to important international agreements addressing children's rights, including: the African Charter on the Rights and Welfare of the Child,²² separate Hague Conventions dealing with child abduction²³ and adoption,²⁴ the European Convention on the Adoption of Children,²⁵ the European Convention on Human

13. *Id.* at 67-116.

14. *Id.* at 117-377. These substantive rights include: preservation of their identity; freedom of expression, thought, conscience, and religion; protection from exploitation and arbitrary judicial intervention, and; the right to education and survival. *Id.*

15. *Id.* at 378-422.

16. *Id.* at 169-231.

17. *Id.* at 199.

18. *Id.* at 67-116.

19. *See id.* at 96 (reviewing *Lakshmi Kant Pandey v. Union of India* (Supreme Court of India)).

20. *See id.* at 73-75 (detailing *Nielsen v. Denmark*, Series A, No. 144, App. No. 10292/84, 11 Eur. H.R. Rep. 175 (1988) and *Hendriks v. The Netherlands*, App. No. 8427/78, 5 Eur. H.R. Rep. 223 (1982) (Commission report)).

21. *See id.* at 79 (describing *Hoffman v. Austria*, Series A, No. 255-C, App. No. 12875/87, 17 Eur. H.R. Rep. 293 (1993)).

22. *Id.* at 78.

23. *Id.* at 90-93.

24. *Id.* at 99-100.

25. *Id.* at 98-99.

Rights,²⁶ and the International Covenant on Civil and Political Rights.²⁷

The International Law on the Rights of the Child, however, is much more than an outstanding resource and thorough examination of children's rights. The text urges one to imagine a world in which children's interests come first. Envisioning such a world is rather difficult and the obstacles to implementing policies to reach that end are staggering. Primary among these obstacles are the need for tremendous resources, the need to recognize positive rights, the need for adequate research to guide implementation efforts, and the general societal will to consider reforms.²⁸ In addition, there is the need to combat deep societal prejudices against children and the need to resist projecting adult feelings, thoughts, and attitudes onto childhood.²⁹ A world in which children's interests are the primary concern is difficult to envision. It often results in a perilous and controversial path,³⁰ yet it is the path that the international children's rights movement urges all nations to take.

Regrettably, there is one serious charge which can be levied against Van Bueren's otherwise impressive text. While the text describes the laws that will set the stage for the future of children's rights, it fails to directly address the nature of the "postmodern world."³¹

26. *Id.* at 75-86.

27. *Id.* at 75-77.

28. In wealthier countries, the foster care system serves as a prime example of the difficulties blocking appropriate child welfare reform efforts. See generally Roger J.R. Levesque, *The Failures of Foster Care Reform: Revolutionizing the Most Radical Blueprint*, 6 MD. J. CONTEMP. LEGAL ISSUES 1 (1994) [hereinafter *Failures of Foster Care Reform*]. In poorer countries, child sexual exploitation highlights the failure of social development programs. *Implementing Children's Human Rights*, *supra* note 5, at 978-87.

29. For a brief, yet insightful, analysis of prejudice against children, see Jack C. Westman, *Juvenile Agism: Unrecognized Prejudice and Discrimination Against the Young*, 21 CHILD PSYCHOL. & HUM. DEV. 237 (1991).

30. See *supra* note 6 and accompanying text (examining two controversial areas dealing with children's welfare).

31. The intellectual roots and current manifestations of postmodernism are complex and dependant on the contexts in which it is applied, ranging from social criticism, to architecture, to social science, to the law. Despite differences, postmodernism stands for a general distrust of grand theories, universal truths, totalizing discourses, and all-encompassing ideologies. In terms of children's rights, postmodernism challenges universal rights and, just as important, the universal implementation of rights. The movement also urges us to move beyond the necessity of bestowing rights on particular individuals or groups (either child, parent, or community) and challenges us to question whether the notion of "rights" is a useful way to achieve intended goals.

The emergence of the postmodern children's rights movement has coincided with somewhat radical challenges to all aspects of existence and established worldviews.³² This common emergence should not be seen as a mere coincidence. To a large extent, it is precisely because of postmodern criticisms of prevailing worldviews and entrenched social institutions that the children's rights movement has gained so much momentum.³³ Yet, Professor Van Bueren's text generally lacks a healthy criticism of law itself. For example, the text fails to question the ability of legal mandates to ensure children's rights,³⁴ to analyze some possible gaps in international children's rights,³⁵ to address internal conflicts facing the children's rights movement,³⁶

32. See Roger J.R. Levesque, *The Internationalization of Children's Human Rights: Too Radical for American Adolescents?*, 9 CONN. J. INT'L L. 237, 237-38 (1994) [hereinafter *Children's Human Rights*] (detailing birth of children's right movement as coinciding with emergence of "new world order").

33. Although this change has been awkwardly characterized as a shift to a postmodern view of the world, exactly what the "postmodern" view of the world is has been a subject of debate and criticism. If anything, debate and criticism are the hallmarks of the postmodern world. See generally Jorge Larrain, *The Postmodern Critique of Ideology*, 42 SOC. REV. 219 (1994). For general discussions of the "postmodern" world, see STEVEN CONNOR, *POSTMODERNIST CULTURE* (1989); DAVID HARVEY, *THE ORIGIN OF POSTMODERNITY* (1989).

34. History is replete with laws enacted for children's interests that backfire and fail to take into account changing social conditions. See, e.g., *Failures of Foster Care Reform*, *supra* note 28, at 13-22 (detailing failure of well-designed legislative scheme).

35. In this regard, it is important to note that the notion of evolving capacities seemingly does not trouble Professor Van Bueren. VAN BUEREN, *supra* note 10, at 3-5. She argues, for example, that "denying that children are capable of exercising entire categories of rights is too simplistic." *Id.* at 5. Professor Van Bueren's claim that children can participate to the extent of their abilities seems on target. Unfortunately, there is no discussion of what such participation would do to the notion of "rights;" she does not discuss the possible ramifications of taking an "evolving capacities" approach. For example, Article 12 focuses on giving weight to a child's views, consistent with that child's age and maturity. UNCRC, *supra* note 1, art. 12, U.N. Doc. A/RES/44/25, at 8, 1992 Gr. Brit. T.S. No. 44, at 6. This focus on evolving capacities could be troublesome. For example, does it follow that if they do not have "capacity" their views and voices will be ignored? The possibility of a positive answer is not far-fetched. A leading commentator of children's procedural rights has argued that "this would seem to indicate that a teenager's views would be of greater weight than those of an infant This approach seems to give less attention to the younger child." Leonard P. Edwards & Inger J. Sagatun, *Who Speaks for the Child?*, 2 U. CHI. L. SCH. ROUNDTABLE 67, 72 (1995); see generally Elizabeth S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 L. & HUM. BEHAV. 221 (1995) (discussing notion of capacity as empirical and legal issue and emphasizing need to expand narrow approaches to determining capacity).

36. Indeed, there are at least five distinguishable children's rights movements. Roger J.R. Levesque, *International Children's Rights Grow Up: Implications for American Jurisprudence and Domestic Policy*, 24 CAL. W. INT'L L. J. 193, 193 n.3 (1994) (detailing five

and to predict further developments in children's rights.³⁷

If postmodern theorists have taught us anything, it is that we need to question and criticize that which seems most self-evident. Those concerned with children's rights would therefore benefit from listening closely to emerging critiques of those laws. This critical posture remains of utmost significance; the children's rights movement is replete with instances in which children's situations were worsened in the name of their rights.³⁸

In addition to heeding the lessons of postmodernists, a look at children's current life circumstances should be revealing. It should be clear by now, despite continued commentaries to the contrary, that legal rules cannot by themselves spur societal re-

children's rights approaches that are currently being advocated and noting that international movement arguably adds sixth voice). Partly because of the different approaches, conflicts between who, or what, is to ensure children's rights has yet to be clearly articulated. These different approaches center around disputes about the proper role of the international community, nation states, local communities, families, parents, and, neither last nor least, children in ensuring that children's rights are taken seriously. The most controversial approach is one which seeks to ensure children's right to self-determination and participation in decisions affecting them. See, e.g., George W. Bohrnstedt et al., *Adult Perspectives on Children's Autonomy*, 45 PUB. OPINION Q. 443, 444-60 (1981) (examining children's right to autonomy in areas of: education, privacy, appearance, religion, economics, sexual conduct, access to media, political participation and public responsibility, and social participation, and concluding that diversity, pluralism and heterogeneity permeated their results).

37. Professor Van Bueren notes, for example, that a backlash against children's rights seems imminent. VAN BUEREN, *supra* note 10, at 25. Yet, she fails to assist the effort to combat the backlash. Professor Van Bueren simply ends her discussion of the right of the child to freedom of thought, conscience, and religion by noting that "the family is likely to become a major testing ground for the success or failure of international human rights law in the next century." *Id.* at 163. Despite a comprehensive analysis of current law and recognizing its centrality to children's human rights, Professor Van Bueren fails to discuss how child, parent, and state conflicts might be resolved.

In all fairness, however, given that her discussion is one of the first to examine these children's issue from an international perspective, this criticism is somewhat undue. Even commentators writing about more established children's rights have failed to explore adequately disagreements and concerns. "Kiddy libbers," for example, aim to liberate children from the hold of parent's and state's powers. Their general claim is that children's autonomy should be dictated by their "evolving capacities." See Martha L. Minow, *The Role of Families in Medical Decisions*, 1991 UTAH L. REV. 1 (1991) (advocating for allowance of capable minors to make abortion decisions without parental or judicial intervention). Such analyses, however, run counter to deeply held societal perceptions. Although this is not to propose that kiddy libbers are theoretically off-track, the extent to which they will succeed necessarily turns on their ability to address prevailing perceptions.

38. *Children's Human Rights*, *supra* note 31, at 286 n.243 (listing examples of child welfare reforms that need to be undone).

form.³⁹ If children themselves are to be taken seriously, there must be more than legal reform. Societal reform must be coupled with a massive infusion of public resources.⁴⁰

These limitations of *The International Law on the Rights of the Child*, however, are excusable. Instead of championing a single approach to children's rights, Professor Van Bueren seeks to present a balanced, thorough examination of current international law and representative states' practices. As such, her book serves as a powerful presentation of the international community's new approach to children and families. The text is an exceptional documentary of a momentous shift in international law, which has finally recognized the legal personhood of children.⁴¹ The text reveals how the international community is taking this shift seriously, through an increasing willingness to support, and if necessary, intervene in the everyday lives of peoples of all nations.⁴² These are incredible developments. *The International Law on the Rights of the Child* clarifies this new approach to international law while detailing the areas that will need to be contested if children's rights are to be implemented and taken seriously.

39. For example, courts have limited power to combat strong community sentiments and foster social change. See generally GERALD N. ROSENBERG, *HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991).

40. This is not to say that Professor Van Bueren fails to recognize the need for political will. Unfortunately, the recognition comes in the last paragraph of her text. VAN BUEREN, *supra* note 10, at 413. This is where another discussion should begin.

41. This recognition goes beyond granting children procedural rights. International law now actually recognizes that children have a right to an identity. VAN BUEREN, *supra* note 10, at 117-27 (discussing this new right in international law).

42. *Id.* at 106. International law is no longer law between nations, international law now, for example, aims to intervene in family life. *Id.* (noting reconceptualization of areas of legitimate international legal protection for individual family members). "International law provides the global community with the power to intrude and impose internationally recognized human rights standards." *Implementing Children's Human Rights*, *supra* note 5, at 998. But that is only the first step.

