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Introduction

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Introduction

A critical approach to children’s rights

Didier Reynaert, Ellen Desmet, Sara Lembrechts and Wouter Vandenhole

Over the last few decades, children’s rights have assumed a central position in a wide variety of disciplines and policies. More than 25 years after the adoption of the UN Convention on the Rights of the Child (CRC) in 1989, it is time to take stock of the achievements and challenges.

The volume consists of two parts, a disciplinary and a thematic one. Taken together, both parts seek to further children’s rights realization, not by downplaying key challenges, but by addressing them. The first part provides an insight into various (inter)disciplinary approaches to children’s rights, with contributions from law, history, social policy, educational sciences, childhood studies, sociology, social work, anthropology, geography, gender studies and citizenship studies. The second part takes a thematic entry point, disentangling a selection of children’s rights issues that are of particular relevance from a global perspective. Here, participation, education, health, juvenile justice, alternative care, violence, female genital mutilation, child labour and working children, migration, poverty, indigenous children and natural resource exploitation are addressed. A detailed introduction to each chapter is offered in the final section of this introduction.

This dual entry point of disciplinary approaches and thematic analyses helps to deepen the understanding of children’s rights. Both parts mutually enrich and reinforce each other: they are interconnected and complementary. The common thread ensuring coherence throughout the two parts and their respective chapters is the critical approach that is adopted. This critical approach, aspects of which are elaborated on hereinafter and revisited and consolidated in the conclusion, will help children’s rights scholarship to mature into critical children’s rights studies (see concluding Chapter 23), and to take a distance from children’s rights activism when needed.

The Handbook takes issue with the observation that ‘something seems to be going on’ in children’s rights scholarship. Several scholars have recently proposed new conceptualizations of children’s rights that reflect a shift from a top-down understanding towards a bottom-up approach of children’s rights, in parallel with a similar evolution in general human rights scholarship (Merry, 2010; De Feyter, 2007, 2011; de Gaay Fortman, 2011). Reflections on children’s rights in terms of ‘children’s rights from below’ (Liebel, 2012), ‘living rights’ (Hanson and Nieuwenhuys, 2013), ‘localizing children’s rights’ (Vandenhole, 2012) or a ‘lifeworld approach in children’s rights’ (Reynaert et al., 2011) are all grounded in a bottom-up approach.
to children’s rights. What unites these perspectives is their ‘contextual orientation’ that criticizes dominant paradigms in children’s rights research. These dominant paradigms understand children’s rights as an objective set of goals applicable for any context, and take the CRC as the key point of reference. Not only is such an approach blind to the social, economic and historical contexts in which children grow up, it also does not sufficiently take account of the diversity of interpretations and meanings that children’s rights can have. Nevertheless, the context-oriented approaches raise new questions and dilemmas, while simultaneously re-challenging ‘old’ ones. How far can a context-specific interpretation of the CRC go without violating children’s rights? How can different interpretations of children’s rights coexist, and how do they relate to more ‘traditional’ ideas of social justice and human dignity? And in what sense can the CRC be considered as an instrument for social change to address imbalanced power-relations, both locally and globally?

In what follows, we address four analytical puzzles that are at the core of this Handbook: definitions and understandings of children, childhood and children’s rights; a context-specific approach; disciplinary interactions; and an approach of critique. Next, we briefly introduce each chapter by summarizing its key contents and by flagging how it engages with the analytical puzzles developed below.

1. Understanding children’s rights

There are no universally accepted definitions of the concepts of children, childhood and children’s rights. In what follows, we explain how these notions have been defined by the editors for the purposes of this volume.

1.1. Children

The notion of ‘children’ is used to refer to a particular group in society, which is distinguished on the basis of its age. Who is considered a ‘child’ is not a given; it varies with social, economic and cultural circumstances. Article 1 of the CRC states: ‘For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.’ The provision explains how the term ‘child’ is to be understood for the purposes of that treaty. It does not state that every person below 18 years equals a child as such. This is nonetheless how the concept of ‘children’ has become commonly defined, namely as all persons below eighteen, leading to an invisibility and even ‘infantilisation of adolescents’ (Abramson, 1996, p. 397; Cantwell, 2011).¹ It therefore seems more appropriate to talk about ‘children and young people’ when referring to the persons who come within the scope of the CRC. The application of the CRC to ‘young people’ or adolescents is moreover challenging. The text of the CRC is not always adapted to the needs and interest of adolescents, and there has been a lack of attention in the implementation of the CRC to this age group as well (Desmet, 2012).

Both the beginning and the end of childhood are contested terrain. Regarding the beginning of childhood, there is a debate on the extent to which children’s rights are or should be applicable to the unborn child (Joseph, 2009; Cornock and Montgomery, 2011). As concerns the end of childhood, neuroimaging research has found that the brain is only fully developed

¹ Moreover, the concept of age is in this way reduced to ‘chronological age’, not paying attention to other and broader conceptions of age, such as ‘social age’ (Clark–Kazak, 2009). For practical and implementation purposes, however, an age limit seems defendable.
at the age of 25 (Johnson, Blum and Giedd, 2009). Although neuroscientists warn against drawing causal conclusions on the relation between neuromaturational processes and real-world behaviour (Johnson, Blum and Giedd, 2009, p. 216), this finding of longer brain immaturity has led to claims to extend the protection of children’s rights to the age group of 18– to 25-year-olds (Veerman, 2010). Moreover, the societal context seems characterized by two opposite evolutions: on the one hand, the transition to adulthood is being further postponed, often until far above the age of 18 (Elchardus and Roggemans, 2010); on the other, the age at which one ventures into certain domains is decreasing. For instance, the confrontation with multiple sources of information occurs at an ever lower age, among others through internet and social media (Boonaert and Siongers, 2010).

Within the age group of 0–18, discussions on capacity and (the necessity to establish) age limits abound. When is a child ‘capable of forming his or her own views’, so that her or his views are to be given due weight ‘in accordance with the age and maturity of the child’ (Art. 12 CRC)? The answer to this question is of crucial importance – at least in mainstream thinking – for the participation of children in matters affecting them, such as divorce proceedings or alternative care settings. Another example concerns the minimum age of criminal responsibility (Cipriani, 2009). The recognition of ‘children’ as fully-fledged persons, as promoted by the children’s rights movement, may be – unduly – used as an argument in favour of (further) lowering the minimum age of criminal responsibility.

1.2. Child images and childhood

The observation that defining the notion of ‘the child’ or ‘children’ is not so straightforward builds on the understanding that the way we look at children is determined by the social and cultural context and practices in which children grow up. Because different social and cultural contexts coexist, both within as well as across societies, different understandings are possible on what ‘the child’ is. This idea is captured in the notion of ‘child image’. ‘Child image’ refers to the way we look at children, i.e. the often implicit assumptions such as biological or psychological traits that co-design the way we deal with children.

For instance, the most dominant impact on the way we perceive children comes from developmental psychology. The ‘invention’ in the seventeenth century – at least in the global North – of different developmental phases in childhood linked to ‘sensitive periods’ in a person’s lifetime, is a way to look at children that is still prominently present in child rearing today. In this view, children are considered as objects in need of protection because of their vulnerability. What characterizes them is their position of ‘adults in waiting’ or their ‘not yet’ status, i.e. ‘not-yet-fully-developed’. In terms of children’s rights, the focus then is on protection rights of children. Another child image, which has been common in many societies around the world but only gained ground more recently in the global North, is that of the ‘autonomous child’ (Reynaert et al., 2009). It considers children as active agents and autonomous and independent human beings. The interdisciplinary field of childhood studies has contributed to developing this new child image by recognizing the social and political significance of children’s meaning making and ideas. The key thought of this paradigm is the recognition that children are competent human beings. The children’s rights movement carried out these ideas in practice and policy by advocating for the recognition of the participation rights of children.

‘Childhood’ refers to the historical and socio-cultural structuring of children and child images in our society. A key characteristic of this structuring is the separation of children from adults based on child-specific traits such as biological and psychological determinants. This structuring has been labelled the ‘youth moratorium’ or the ‘institutionalized youth land’
The notion of ‘youth land’ or ‘youth moratorium’ refers to the institutionalization of childhood into ‘... preparatory arenas that implement a principle of integration by means of separation’. (Honig, 2008, p. 201). It can be considered as the result of a historical process in which children are gradually separated from the adult world with the aim to prepare them for adult life (Reynaert and Roose, 2014).

With the rise of the children’s rights movement and the academic field of childhood studies, questions were raised in relation to an exaggerated institutional paternalism when dealing with children. This stemmed from the critique that children are not merely ‘passive receivers of society’s messages’ (James and James, 2012). Children’s actions and processes of appropriation were recognized to equally contribute to transforming the historical and socio-cultural structuring of childhood in our society (James, 2009). The institutionalized youth land was contested and both the social and legal position of children were challenged. Children, it was said, are not only the future generation; childhood should likewise be considered as an actual part of current society (James and James, 2004). The cover of this Handbook, picturing a girl ‘inflating the globe’, represents such an image of children as agents, who give meaning and co-shape the world.

Important to notice is the fact that throughout time, different child images and different social constructions of childhood, coexist. ‘Old’ child images are not fully replaced by new ones. They continue to exist as part of society’s view on childhood. As James and Prout (1997) argue, the way we look at children and childhood is anchored in the past and reshaped in the present. Likewise, until today, the institutionalized youth land remains the horizon against which childhood in the Western world is shaped, although the ‘nature’ of this youth land has changed over time (Reynaert and Roose, 2014).

This coexistence of different child images and constructions of childhood creates confusion and tensions. Different societal actors may emphasize different characteristics of the same social phenomena, often resulting in the paradox of the ‘child in danger’ versus the ‘dangerous child’. In the public sphere for instance, no age group has so much expertise about social media as children and young people have. These so-called ‘digital natives’ are characterized by the integration of digital technology in their daily lives. However, popular discourses on social media and children often focus on phenomena such as cyberbullying or cyberstalking, portraying children as dangerous. At the same time, however, these discourses point at the harms the internet can cause to young people, resulting in the development of new technologies to protect children. Similar observations can be made in relation to the presence of children in the public sphere. Children can participate in public life, as long as they behave. Initiatives such as a curfew or mosquitos are meant to protect society against the anti-social behaviour of ‘dangerous’ children. At the same time, public participation of children is limited due to the risks that go along with, for instance, traffic. Here, children are considered to be ‘in danger’, resulting in ‘child-friendly’ public spaces where children can play and meet. However, these places are often isolated from the broader public life, resulting in a further ‘islandization’ of childhood. These diverging views on childhood are all entrenched in the CRC, with the recognition of both protection as well as participation rights.

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2 ‘Mosquitos’ are devices that produce a very unpleasant buzzing sound with such a high ultrasonic frequency that only young people can hear it. It has been used in the Netherlands and the UK to ‘chase’ loitering youths away from public places.
1.3. Children’s rights

The CRC (1989) is the key legal instrument on children’s rights. This Convention and its three optional protocols codify the human rights of children in international, legally binding instruments. With almost all states in the world being parties to the treaty, the CRC offers a set of minimum standards on children’s rights for which states can be held accountable. Guided by what has gradually come to be seen as the four underlying general principles – i.e. of (i) non-discrimination, (ii) best interests of the child, (iii) right to life, survival and development, and (iv) participation (Committee on the Rights of the Child, 2003, § 12) – the CRC grants children protection, provision and participation rights. For the first time, civil and political as well as economic, social and cultural rights were put together in a human rights treaty. Holistically addressing children as fully-fledged persons, these rights are inextricably related, with no intrinsic hierarchy between them (KeKi, 2012, pp. 11–12).

Even though the CRC is an essential component in the legal embedding of the rights of children in the wider human rights framework, this Handbook does not confine children’s rights to that Convention. From a legal perspective, it is important to acknowledge that children’s rights are also enshrined in other international human rights instruments at the universal, regional and domestic level. But more importantly, in our understanding children’s rights include the wider societal context in which rights are given meaning. The reality of children’s rights is much richer than a legal instrument and its implementation. Children’s rights are not only about rules, but also about structures, relationships and processes (Morrow and Pells, 2012).

1.4. Children’s rights as human rights

For the purposes of this Handbook, children’s rights are understood as fundamental claims for the realization of social justice and human dignity for children. Children’s rights are fundamental: not all norms relating to or relevant for children (e.g. on social security or education) can or should be characterized as ‘children’s rights’. Just like human rights more generally, children’s rights originate from the quest for human dignity and social justice. However, the concrete meaning of these notions will be different for different people. For some, human dignity is about maximum agency and self-determination. For others, it is about protection of core values, in particular of vulnerable groups, and if necessary even against their own will. Also, children’s rights are not synonyms or code for human dignity: they carry more specific meaning, and while they cannot and should not be equated with legally recognized rights, they do quite often have a degree of legal back-up.

The CRC can be seen as the historic culmination point of a long struggle for recognition of children as fully-fledged human beings – as subjects of rights (Verhellen, 2004, pp. 17–20), fully in line with similar struggles for recognition of humanity of women, people with disabilities, migrant workers, or elderly people. The legal codification of children’s rights at the global level in the CRC is considered to be one of the nine core human rights treaties, which confirms the human rights nature of children’s rights. The drafting history of the CRC is telling about the extent to which children’s rights are politically and legally part of the human rights framework (Alston, 1994, p. 6). The submission of a draft convention on children’s rights

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3 Only the United States of America and South Sudan have not ratified the CRC.
4 In 2012, an initiative was taken to start the codification of the rights of the older persons.
by Poland (a socialist state at the time) to the UN Commission on Human Rights in 1978, was meant to make clear that human rights initiatives were not a monopoly of Western states, and in particular of the then president of the United States Jimmy Carter (Lopatka, 2007, p. xxxviii). Because of ideological obstruction from the Western camp, progress on the CRC initially depended on progress on the Convention against Torture, which was of importance to some Western states (Cantwell, 1992, p. 23). When in a later stage the United States gave up their obstruction and sought to insert civil and political rights, they were less motivated by a desire to accord civil and political rights to children, but rather concerned how they could make the CRC less appealing for Poland and its allies (Lopatka, 2007, p. xxxviii).

However, the relationship between human rights in general and children’s rights in particular is also ridden with tension, and confusion about the nature of children’s rights is often rampant. This had led to a growing apart of human rights and children’s rights, conceptually and in practice. Tension between children’s rights and other human rights often originates from human rights competition with other so-called vulnerable groups, such as women or adult migrants, for children tend to be considered more vulnerable, and are therefore believed to deserve better or privileged treatment. More generally, tensions may arise between children’s rights and the human rights of adults, the latter quite often being their parents. This tension is particularly apparent with regard to placement into care of children, where their best interests tend to trump the right to protection of family life.

Conceptually, children’s rights have grown apart from human rights. This has sometimes led to conceptual impoverishment on both sides. For example, the dominant categorization among children’s rights proponents and CRC commentators is the three Ps: rights to protection, provision and participation. This categorization may have been of considerable importance to explain in a couple of words what the CRC is about. The downsides of this categorization should not be overlooked, though. First, it departs from the main categorization that human rights actors are familiar with, i.e. that of civil and political rights on the one hand, and economic, social and cultural rights on the other. Second and more importantly, the term ‘provision rights’, which refers to e.g. rights to education, health and social security, tends to confirm the outdated misunderstanding or misrepresentation that economic and social rights are exclusively about provision. It has meanwhile been widely accepted that the obligations relating to economic, social and cultural rights (ESC rights) are to be understood as obligations to respect, to protect and to fulfil, and that the latter obligation consists of sub-obligations to facilitate, to promote and to provide. Only the sub-obligation to fulfil–provide requires considerable mobilization of resources. So, while in general human rights law the understanding of ESC rights has matured over more than two decades of conceptual scholarship and practice, the children’s rights community tends to gloss over these developments, thereby conceptually weakening children’s rights, and potentially, human rights more generally. On the other hand, general human rights scholarship and practice may benefit from conceptual developments in children’s rights – one could think of the notion of best interests, the emphasis on participation, or the use of general principles.

In practice too, children’s rights and human rights movements have more often than not taken separate paths. Typically, the human rights movement does not engage very strongly with children from a children’s rights perspective, and vice versa. Although a division of labour is inevitable and to be welcomed in principle, what seems to happen in reality is that children’s

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5 This is not to say that that categorization is beyond criticism, or even preferable. The point we want to make is that children’s rights use categorizations of rights that are different from those used in the broader human rights community.
rights organizations frequently have no sense of belonging to the broader human rights community: they tend to be oblivious of the human rights of other groups, and seem to be sometimes willing to push through children’s rights even at the expense of the human rights of others (probably more often than not simply unaware about the human rights effects for other individuals or groups).

In sum, children’s rights are part and parcel of human rights. Whereas they do not simply coincide with general human rights, they do share a common origin in human dignity, and should be conceptually analysed in conformity with general human rights whenever possible. In practice as well, children’s rights should be part of the larger human rights agenda.6

2. A context-specific approach

In recent years, human rights research has increasingly addressed the interaction ‘between the global and the local’ (Goodale and Merry, 2007). Global initiatives shape local contexts, but local evolutions equally lie at the basis of and feed into global developments. Moreover, ‘[t]he local appropriates and transforms the global for its own needs’ (Merry, 2000, p. 129). The attention paid to the interaction between the global and the local is also of key importance to children’s rights scholarship, since children are not a homogeneous group. There is a large diversity within children, who moreover grow up in contexts that may be socially, culturally, politically, economically and geographically very different (Reynolds, Nieuwenhuys and Hanson, 2006). Children’s rights should take this variety of contexts into account, leaving space for a context-specific approach.7 This means that children’s rights, depending on the context, may be interpreted and realized in a different, ‘localized’ way (De Feyter, 2007, 2011; Vandenhole, 2012). Such context-sensitivity also (partly) meets the objection that the formulation and implementation of children’s rights has been too Western or Eurocentric (Nieuwenhuys, 1998). Contextualization does not imply, however, that individual preferences can trump societal norms ‘just like that’. Neither can it be equated to a relativistic approach; nor does it indicate an ‘anything goes’-attitude.

The thematic contributions of this book are situated within this interaction between the global and the local. They address issues that take on a global dimension, but pay attention to local appropriation and transformation as well as to changes coming from below. The weight given to global and local perspectives differs between the various chapters. Whereas, for instance, the contributions on migration and child poverty pay more heed to dynamics at the global level, the ones on alternative care, female genital mutilation and natural resource exploitation point to the importance of a localized approach.

3. At the crossroads of disciplines

The relationship between reality and academic research seems characterized by a perpetual ambivalence. The living realities of children and young people cannot be compartmentalized

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6 As has been pointed out above, saying that children’s rights are a fundamental part of human rights is not to say that the specific historical development and characteristics of the human rights of children are denied or rejected.

7 The terms ‘contextualization’, ‘context-sensitive approach’ and ‘context-specific approach’ are used interchangeably.
to neatly fit academic disciplines and university structures (Brewer, 1999). Disciplines imply a particular ‘way of looking’, comparable to viewing a research object each time through differently coloured glasses. A comprehensive understanding of children’s rights thus implies combining various disciplinary perspectives. At the same time, increased disciplinary specialization has considerably deepened our understanding of particular aspects of (the rights of) children and young people. Through specialization in disciplines, knowledge has been advanced in a way that would probably not have been possible otherwise. This duality – the need to combine disciplines to arrive at a holistic understanding, on the one hand, and the value of specialized knowledge building, on the other – has sparked an intensive debate on how disciplines (should) relate to and interact with each other.

This debate is characterized by the three notions of multi-, inter- and transdisciplinarity. Although there are no universally accepted definitions of these concepts, and these prefixes may be interpreted differently by different researchers, a certain consensus seems to be emerging to understand these concepts as referring to different degrees of engagement between disciplines along a continuum. Multidisciplinarity is then understood as referring to ‘the juxtaposition of disciplines’, without real interaction (Klein, 1990, p. 56), thus in an ‘additive’ way (Mitchell, Chapter 10, referring to Choi and Pak, 2006; see also Vick, 2004, p. 165). Interdisciplinary research implies ‘the appropriate combination of knowledge from many different specialities – especially as a means to shed new light on an actual problem’ (Brewer, 1999, p. 328). It involves ‘integrating and organizing traditional forms of knowledge, skills and experience in a new and original fashion’ (Banakar and Travers, 2005, p. 6); the key adjective being ‘interactive’ (Mitchell, Chapter 10, referring to Choi and Pak, 2006). Klein (1990) distinguishes four basic types of ‘interdisciplinary interaction’: (i) borrowing, where analytic tools, methods or concepts from another discipline are used; (ii) the interaction between disciplines with the aim of solving a specific problem ‘with no intention of achieving a conceptual unification of knowledge’; (iii) the ‘increased consistency of subject matters and methods’, leading to an ‘overlapping area’ between two disciplines; and (iv) the development of a new interdisciplinary. A transdisciplinary approach goes even further: here, disciplines become irrelevant to the larger framework (Klein, 1990, p. 66); they are ‘integrated to the point beyond demarcations’ (Dalrymple and Miller, 2006, p. 30), and result in a ‘holistic’ approach (Mitchell, Chapter 10, referring to Choi and Pak, 2006).

The overall approach of this Handbook is largely a multidisciplinary one. Each chapter of the first part reviews the main features of a certain disciplinary or sometimes interdisciplinary perspective on children’s rights and critically evaluates the state of the art of this (inter)discipline in relation to children’s rights. Also in the second, thematic part of this Handbook, various authors predominantly write from a particular disciplinary viewpoint. However, within the confines of each chapter, there is often an engagement with other (inter)disciplinary perspectives, particularly when assessing the merits and drawbacks of a particular (disciplinary) approach to children’s rights. Within these chapters, there is thus a greater or lesser degree of ‘interdisciplinary interaction’ (Klein, 1990). This makes the overall qualification of this Handbook a mixed one, somewhere on the continuum between multi- and interdisciplinarity, with some peaks in either direction.

The first part of this volume offers a rich analysis of how children’s rights are understood and researched from a variety of disciplinary windows. Some of these approaches are

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8 But see, e.g. Hanson, Volonakis and Al-Rozzi, Chapter 18, for a more sustained interdisciplinary approach.

9 See, e.g. Mitchell on transdisciplinarity, Chapter 10.
'traditional' mono-disciplinary ones, such as law, sociology, social work, anthropology and geography. Others, namely childhood studies, gender studies and citizenship studies, are by their nature interdisciplinary, as they resulted from a sustained interaction between various disciplinary perspectives, which led to the establishment and development of a distinct and independent (inter)discipline. Arguably, children’s rights may or could also be a topic of interest in many other disciplines, such as criminology, media studies, medical sciences, philosophy and psychology – to only name a few. The disciplines included in this Handbook were selected on the basis of their track record regarding children’s rights, namely whether the discipline has engaged with children’s rights in a systematic way, which has led to a certain degree of theory formation. So, while not exhaustive, the diversity of disciplinary perspectives that have been included ensures sufficient breadth and depth.

For the disciplines incorporated in this edited volume too, the degree and nature of the interaction with children’s rights varies. Both historically and in the present day, legal scholars have been particularly active in the domain of children’s rights. Although logical to a certain extent (given the intimate relation between children’s rights and law), the predominance of legal children’s rights research entails the risk that children’s rights are narrowed down to or enclosed within children’s rights law (see further Vandenhole, Chapter 2). Therefore, this Handbook purposively pays equal attention to other disciplinary perspectives. The proportionally larger involvement of legal scholarship with children’s rights generally speaking is reflected in the disciplinary backgrounds of the editors (the majority of them are lawyers) and the authors of the thematic part of this Handbook. Nevertheless, although a number of thematic chapters have a legal entry point, in keeping with the critical ambitions of this Handbook, they provide a broader analysis of children’s rights than what can usually be found in traditional legal scholarship, as they adopt as a minimum a contextual approach and incorporate insights from other disciplines.

4. An approach of critique

A distinctive starting point for this book is its critical perspective on children’s rights. In the societal as well as academic discussion of children’s rights, it often seems as if children’s rights are first and foremost considered as a solution for social problems. From this point of view, the primary question is how children’s rights can be used to overcome difficulties in children’s lives. For example, the adoption of a law prohibiting corporal punishment – a long-standing demand of the children’s rights movement – is considered to be a comprehensive answer to deal with violence within the family. Likewise, pupil councils in schools are assumed to enhance the participation of children at school. The solution for social problems is thus sought in the development or strengthening of the legal position of minors or in the creation of well-defined educational methods. No matter how sincere these initiatives are, they ignore a concern that should precede them, i.e. which social problems become visible when looking at children’s lives from a children’s rights perspective and how these social problems are defined. This question requires an ethical stance rather than a technical position, and that is what a critical perspective on children’s rights is about.

A ‘critical perspective’ on children’s rights can (probably) be understood in different ways. It is therefore important to distinguish ‘critique’, as the main activity in a critical perspective,
from ‘criticism’ (Evans, 2005). The latter refers to ‘judging something’, either positively or negatively, e.g. it is bad to use violence when trying to achieve an educational goal or it is good to involve children in shaping school policy. Regardless of how appropriate these evaluations are, they often leave out a thicker analysis of the problem at stake. This is where ‘critique’ comes in, which should be understood as an on-going exercise of questioning assumptions, knowledge and acts as well as the associated norms and values that shape the social, educational or legal practices that rely on the children’s rights framework. These assumptions mostly remain implicit within these practices. Critical reflection (critique) renders these implicit assumptions explicit. In the case of a legal ban on corporal punishment, critique can show for instance that a particular group of children and parents may be singled out by that legal ban, i.e. children (and their parents) growing up in difficult circumstances such as poverty. This insight gives the debate on corporal punishment and children’s rights a different twist, as the focus shifts from the ‘problematic’ behaviour of parents (who slap their children) to the difficult living conditions in which these parents raise their children. In a similar manner, a critical perspective on pupils’ councils can shift attention to the question as to who participates in these forums and who does not. It can show that these kinds of participation structures are more suitable for a certain group of children, i.e. those raised in a household where negotiation and verbal competencies are highly valued. This finding compels us to think about what participation really means in a school context and how it can be conceived differently than in a merely formal way.

What is at stake in these examples, and thus in a critical perspective on children’s rights, are at least two distinctive issues. The first issue is the deliberative character of children’s rights practices. Critique makes implicit knowledge underlying children’s rights practices explicit and therefore subject of debate. A critical approach of children’s rights means that we do not consider the basic assumptions underlying children’s rights as ‘truths’, i.e. objective knowledge that must be understood in a univocal way. On the contrary, it means that our understanding of children’s rights is essentially an interactive process between all stakeholders involved: children, parents, adults, civil society, the government etc. Throughout this dialectic process, we attempt to understand and interpret the lifeworlds of children by using the framework of children’s rights as a ‘sensitizing concept’, a frame of reference that appeals to fundamental principles of human dignity. Different interpretations of these lifeworlds can coexist, together with different ideas on what children’s rights are and how human dignity can be understood and realized (Reynaert et al., 2012).

Moreover, the lifeworlds of children cannot be considered apart from the broader societal order in which ideas are embedded that co-construct these lifeworlds. For instance, the way we understand childhood, how rights are comprehended and function in our current societies, ideas on agency and responsibility, etc., all these and other presumptions are not unique to the particular lifeworld of children. They are part of the structure of society itself and constructed through social, educational and legal practices. Unravelling these presumptions and trying to understand them is key to a critical perspective on children’s rights. At the same time, being aware of how norms and values influence the way we construct children’s rights allows us to reconceptualize the way we deal with and experience children, and it opens up the possibility for changing our practices.

The latter shows the second issue at stake in a critical perspective, i.e. the transformative character of a critical perspective. A critical perspective creates space for alternative ideas on children’s rights. The awareness that children’s rights are shaped in a particular way and governed by certain logics that are human-made, eliminates an essentialist understanding of children’s rights, i.e. an understanding of children’s rights as determinate, unchangeable entities
with consistent characteristics. A critical perspective on the other hand has an emancipatory objective: it considers children’s rights as a framework for social action and a lever to change societal conditions towards greater respect for the human dignity of children.

The authors that have contributed to this volume all engage with the critical approach, albeit to different degrees. Some clearly were more familiar and/or feel more comfortable with such an approach, whereas for others this was their first exposure or they may be more sceptical/reluctant to adopt a critical approach in all its dimensions. What unites all contributions though, is the dissatisfaction with dogmatic children’s rights activism and the desire to move beyond the intellectual poverty of children’s rights research that focuses exclusively on the implementation gap as the one and only challenge for children’s rights.

In the concluding chapter, we further flesh out the approach of critique to children’s rights, and try to deepen our understanding of its diagnostic, deliberative and emancipatory dimension.

5. Towards a field of children’s rights studies

To unsettle dominant discourses, patterns, interpretations and representations and to discuss, analyse and reflect upon children’s rights-based practices using social imagination are fundamental components of a critical perspective on children’s rights. However, as Alanen (2011) properly observes: (academic) debate today on children’s rights lacks critique. Children’s rights indeed are barely a ‘contested terrain’. There is hardly a tradition in the (academic) field of children’s rights that critically analyses children’s rights without at the same time forsaking the framework of children’s rights (Reynaert et al., 2012), some exceptions notwithstanding (see e.g. Holland and Scourfield, 2004; Kjorholt, 2002; Pupavac, 2001; Quennerstedt, 2010; Such and Walker, 2005; Hanson and Nieuwenhuys, 2013). Much more insight is needed in the underlying norms, values and logics that shape children’s rights practices today and the way in which these are understood.

Exactly in the mission of making these norms, values and logics explicit, lies the fundamental goal of what can be considered as a ‘new’ academic field of ‘children’s rights studies’. The knowledge that this academic field should produce can make a fundamental contribution to obtaining insights in children’s rights-based practices and can give ground for further dialogue on these practices, with the aim to change these practices in the direction of a greater respect for the human dignity of children. Hence, it is only by making these underlying processes explicit, that they become ‘arguable’. When these norms, values and logics remain unknown, and research and practice in the field of children’s rights lock themselves up in their own beliefs, the children’s rights framework tends to be an ideology rather than a socio-political frame of reference (Reynaert et al., 2012). In the conclusion, we will tentatively set a research agenda for this field of critical children’s rights studies.

6. Introduction to the structure and chapters of the book

This edited volume consists of two parts. The first part offers a multiplicity of disciplinary perspectives. The second covers a wide range of themes at the intersection of the local and the global. This is done from a critical perspective, by zooming in on tensions and the potential and limits of children’s rights. Each author has been invited to offer the state-of-the-art, to reference key literature, to engage with the ideas in the draft introduction, and to end with questions for discussion and debate. The latter is meant to increase the practicality of this Handbook. At the end, the editors draw extensive conclusions on the approach adopted in this Handbook, and on the way forward to a field of critical children’s rights studies.
Authors were not expected, and do not, toe the same doctrinal line. A clear-cut example is the way in which the agency-vulnerability, protection-participation dichotomy is addressed: whereas some authors overtly subscribe to a vulnerability paradigm (e.g. Lenzer, Chapter 16), others lean towards the agency paradigm (e.g. Tisdall, Chapter 11, but she warns for reification). So the critical approach is really more a matter of perspective on children’s rights, than a uniform straitjacket on substantive issues.

We have deliberately invited scholars who come from different traditions, regional or professional backgrounds and schools of thought, so as to expose readers to the diversity of the thinking. Some contributions are therefore more grounded in theoretical work, while others are more practice-based. Some contributions have a stronger emphasis on a technical analysis within their discipline, while others include more of a meta-reflection on their discipline. Some have an explicit emancipatory or activist agenda, whereas others less explicitly pursue a certain agenda. All these categorizations are characterized by fluid demarcations, though. Moreover, a contribution that draws on practice is not necessarily activist; it can be ‘critical’, whereas an academic piece that remains purely technical may miss a critical dimension.

6.1. Part 1 – Disciplinary perspectives

Wouter Vandenhole opens this Handbook with a chapter on Children’s rights from a legal perspective: Children’s rights law. Seeking to familiarize the reader with the global and regional legal frameworks on children’s rights, the chapter starts with a description of key legal instruments, monitoring bodies and procedures on the supra-national level. Second, legal reasoning on children’s rights is introduced, drawing primarily on the codification of children’s human rights in the CRC. Third, case law, mainly by the European Court of Human Rights, makes the legal reasoning concrete for three substantive themes (juvenile justice, family matters and education). In a fourth and final part, the author questions to what extent children’s rights law – and standard setting through legislation and litigation in particular – can contribute to social change. Being cautious not to overestimate the transformative potential of a legal approach to children’s rights, Vandenhole concludes with a plea for critical legal scholarship to increase insight in the complex ways in which children’s rights law and social realities interact.

In doing so, Vandenhole offers a number of building blocks for a critical approach to children’s rights. As the legal discipline has appropriated a substantial part of children’s rights scholarship, highlighting some of the challenges inherent to a legal perspective is vital to keeping the children’s rights debate alive, both within this discipline and beyond. In addition, the chapter puts to discussion a common assumption (among lawyers and others) that relevant standards exist for each children’s rights issue, that the meaning of these standards is clear and that these standards are able to satisfactorily address every issue at stake. The author not only asks the fundamental question whether these standards indeed suffice, but also pleas for legal scholarship to engage more systematically with legally defining and re-defining the meaning of children’s rights (law) beyond the implementation of these standards.

The chapter by Eugeen Verhellen, The Convention on the Rights of the Child: Reflections from a historical, social policy and educational perspective, explores children’s rights from the perspective of the CRC. It starts by explaining where the growing interest in children’s rights debate alive, both within this discipline and beyond. In addition, the chapter puts to discussion a common assumption (among lawyers and others) that relevant standards exist for each children’s rights issue, that the meaning of these standards is clear and that these standards are able to satisfactorily address every issue at stake. The author not only asks the fundamental question whether these standards indeed suffice, but also pleas for legal scholarship to engage more systematically with legally defining and re-defining the meaning of children’s rights (law) beyond the implementation of these standards.

The chapter by Eugeen Verhellen, The Convention on the Rights of the Child: Reflections from a historical, social policy and educational perspective, explores children’s rights from the perspective of the CRC. It starts by explaining where the growing interest in children’s rights originated. Verhellen locates the onset of children’s rights at the intersection of two macro-social developments. The first one concerns a changing child-image recognizing children as subjects instead of objects; the second one is about the development of a global human rights project since World War II. Verhellen considers the CRC as a framework to structure the debate on children’s rights. He gives an overview of the main characteristics of the Convention and exam-
ines the consequences of the adoption of the CRC for social policy. In his conclusion, Verhellen makes a case for considering the CRC as a geopolitical social contract.

Verhellen’s chapter points at important difficulties and tensions for states and other actors to implement the CRC in social policy. One of the tensions he highlights is how to deal with the simultaneous importance of both dependence and autonomy for children. Verhellen takes a nuanced stance in relation to participation rights by emphasizing the ‘pragmatic trend’ in children’s rights: i.e. to assume that children are competent unless it can be proven that they are not. This would help to ensure that children can acquire a prominent place in society.

The chapter by Bruno Vanobbergen, *Children’s rights and childhood studies: From living apart together towards a happy marriage*, examines the relationship between children’s rights and childhood studies. First, the main themes of the paradigm of the childhood studies are critically analysed. Vanobbergen looks at both childhood as a structural form and at children’s agency, and this from different schools within childhood studies, with a particular focus on representatives of the sociology of childhood. In the second part of his contribution, Vanobbergen translates the insights from childhood studies to the field of children’s rights with the ambition to deepen children’s rights as a concept. The main line of argumentation in this part is informed by a critique on the attempt to try to fit children into an adult-based political construction. As an alternative, Vanobbergen makes a case for the recognition of the uniqueness of children, arguing that only then will children obtain a fully-fledged place as a social citizen in our societies.

The contribution of Vanobbergen to the field of children’s rights is important in several ways. First, he brings together two fields – childhood studies and children’s rights – that are very closely related but nevertheless often separated. From the perspective of children’s rights, this exercise is extremely valuable because the theoretical substantiation in the field of childhood studies is much more elaborated than in the field of children’s rights. Second, Vanobbergen’s contribution critically engages in the discussion on the ‘adultification’ of children’s rights. For Vanobbergen, children’s rights should not be considered in an adultocentric way, i.e. understanding children’s rights in the same way as the rights granted to adults. As an alternative, he argues in favour of recognizing the difference between children and adults. Childhood studies can contribute to the development of such a perspective in children’s rights.

In her chapter, *The sociology of childhood and children’s rights*, Berry Mayall outlines the key ideas that have been developed in the sociology of childhood. On the one hand, sociologists have been developing structural approaches to childhood, considering children as members of society and childhood as a social category in society. On the other hand, sociology was concerned with relational processes, focusing on the way childhood and adulthood relate at both macro and micro levels, and how each level of these relational processes affects the other. Mayall further elaborates these ideas in relation to children’s rights and analyses why there is a need for a separate category of children’s rights. Subsequently, she examines some recent sociological studies in order to provide a critical look at the assumptions, norms and values that shape practices based on the idea that children have rights. In the conclusion, the author points out the necessity for sociology to think about local understandings of what childhood is, and how childhood relates to adulthood, within socio-economic and political contexts.

It is exactly this latter insight that offers a significant potential for critical engagement with children’s rights from a sociological perspective. Mayall shows how attention to the large-scale is essential to understanding childhoods and whether and how children’s rights are respected. Through the case of the ambiguous consequences of globalization on childhood and children’s rights, Mayall argues that competing ideas about childhood can exist and be debated both in
local and international contexts. This also holds for the discussion on responsibility, where local understandings of children’s rights are linked to interdependent family relations across generations and to the idea of community.

In their chapter on *Children’s rights from a social work perspective: Towards a lifeworld orientation*, Didier Reynaert and Rudi Roose reflect on ways in which social work can contribute to a deliberative critical dialogue on the interpretation of children’s rights principles. First, the fragmented identity of social work is explained, both as a human rights profession and as an academic discipline. Using examples from Western Europe that transcend the particular social work terrains, the chapter continues with a critical discussion on the implications for social work of, on the one hand, a shifting image of childhood, and, on the other, the institutionalization of childhood into separate ‘youth lands’. The authors submit that in both of these tendencies, the complex interplay between the child’s social, economic, political, cultural and historical context and his or her personal meaning-making have been largely overlooked. In response, the authors suggest a ‘lifeworld orientation’ as a way in which power relations could be changed in order to achieve greater respect for the human dignity of children.

This chapter contributes to a critical field of children’s rights studies by questioning a number of fundamental assumptions. First of all, a contextualized lifeworld orientation focuses on the way ‘rights are made, constructed and shaped through numerous social practices’ (Grunwald and Thiersch, 2009, p. 108). As such, it clearly challenges the dominant children’s rights paradigm in which children’s rights are seen as solutions to social problems, to be implemented and imposed from above. Second, the authors draw the attention to the pitfalls of uncritically taking over the children’s rights movement’s new image of the autonomous child. Dominant interpretations of autonomy, which overlook interdependency between individuals, underestimate differences between children and overestimate the ability of legal instruments to change social realities, are questioned. The authors finish their analysis by pointing out a number of limitations of the discipline of social work for researching children’s rights. As such, they contribute not only to the critical reflection on children’s rights as part of the ethical foundations of the social work profession, but also to the increasing recognition of social work as an academic discipline in its own right.

The chapter *Anthropologists, ethnographers and children’s rights: Critiques, resistance and powers* by Geraldine André reviews anthropological and ethnographic approaches to children’s rights, paying special attention to the relations between anthropology and children’s rights since the adoption of the CRC. André starts her analysis with what she calls ‘a strange paradox’. On the one hand, she highlights anthropologists’ resistance against and critique of global children’s rights law, and the CRC in particular, in the wake of cultural relativism. On the other hand, she notes how the CRC inspired a renewed interest in children’s rights amongst anthropologists, and how this interest transformed both the anthropological theory and methodology so as to better grasp children’s experiences. Here, the author distinguishes between bottom-up anthropological approaches that study children’s rights from below, and anthropological perspectives that conceptualize children’s rights as (linked to) structures of power, including global capitalism and child protection, that affect children’s rights, lifeworlds and subjectivities.

André’s analysis highlights a number of tensions that go beyond the children’s rights debate in anthropology, carrying strong ties with other disciplines including legal sciences, sociology, psychology and educational science. Moreover, the anthropological discipline in general – and this chapter in particular – not only presents an excellent opportunity to raise critical questions on the dominant children’s rights discourses, but also to make explicit how childhood images, children and young people’s capacity for action, as well as the constraints, social structures and power relations they face in exercising this capacity, vary throughout societies.
Stuart Aitken’s contribution on Children’s rights: A critical geographic perspective introduces the relationship between children’s rights, space and place. The chapter starts off with the question why space matters for children’s rights. Afterwards, Aitken draws on Marxist- and feminist-inspired geographical scholarship to point out adults’ and children’s collective right to be part of the politics that shape, create, produce and reproduce space between the local and the global. Reproduction remains an important theme further on, when children’s rights in the variegated contexts of global space or heterotopias are discussed. Finally, Aitken considers critiques of the CRC, specifically with relation to children’s rights in place and rights to space in a globalized world.

Aitken begins and concludes his chapter with two examples – one from Slovenia and one from Chile – in which he illustrates his fourfold starting point for a critical geographic perspective on children’s rights. In particular, he argues that childhood is a geographically diverse phenomenon; that children’s rights and societal wholes are geographically variable; that children have the potential to interrogate the core of geo-economic restructuring and neo-liberal statehood; and that understanding the ways in which young people interact with space is crucial for understanding children’s rights. As such, he contests universal children’s rights and global discourses that fix individual categories of existence and identity (e.g. in terms of the object/subject dualism inherent in the CRC), in favour of an interpretation of rights that takes into account spatial variability, personal flexibility and the role of children in co-creating their rights.

In Children’s rights from a gender studies perspective: Gender, intersectionality and the ethics of care, Katrien De Graeve reviews a selection of literature and discussions that have emerged at the interface of gender and childhood studies. Using the feminist concepts of ‘intersectionality’ and ‘ethics of care’, she explores what a gender studies perspective can contribute to the theory and practice of a contextualized, bottom-up approach to children and their rights. Her two-fold analysis shows how both concepts can provide theoretical tools for enriching the analysis of children’s experiences and rights, not only by providing insight into the contexts and relations in which children are embedded, but also by highlighting the plurality of their identity, as well as the vectors of power and subordination that operate in their lives.

Starting from the assumption that sex and gender profoundly shape and limit children’s experiences, De Graeve holds up a critical mirror to those children’s rights paradigms, discourses and policies that start from a universal understanding of childhood. Against the backdrop of a gender-sensitive, intersectional approach, her analysis invites a re-balancing of priorities in policy and research. In particular, she suggests counteracting the interlocking inequalities, adult-dominance, gender-bias and other forms of discrimination, with the ultimate aim of revaluing difference (e.g. in terms of age, gender and other axes of social signification) and interdependency (e.g. in meaningful (care) relations) alongside and in relation to individual rights. At the same time, the chapter takes an honest self-critical look at her own discipline, being blind neither to a number of challenges that remain for the integration of intersectional theory and ethics of care within the children’s rights framework, nor to the prevailing critiques on the feminist concepts used.

Richard Mitchell’s chapter on Children’s rights and citizenship studies: Re-theorising child citizenship through transdisciplinary from the local to the global problematizes previous theoretical notions of how children’s citizenship rights are constituted and applied: citizenship can no longer be analysed within the binaries of state or statelessness, citizenship or rights. He proposes a re-theorizing of child citizenship, i.e. one that is being crafted on human rights principles rather than on nation-states. Second, he argues that a transdisciplinary re-theorizing of adult-centric citizenship concepts through application of the CRC opens up new opportunities from local to global scales.
Mitchell engages with some of the key elements of the critical approach adopted in this Handbook. He considers researching, teaching and engaging with children neither as a uni-disciplinary nor a uni-directional knowledge exchange, but as a co-constructed and reflexive experience of citizenship for both adults and young people alike. He also pleads for a problem-centred rather than a disciplined-centred approach, which he calls transdisciplinary. His account of children’s rights though remains firmly within the confines of children’s rights law, and more in particular of the CRC.

6.2. Part 2 – Selected themes at the intersection of the global and the local

Part 2 discusses a number of key themes within children’s rights scholarship, offering a representative, but certainly not exhaustive review. These themes are situated at the crossroads of the local and the global.

Kay Tisdall’s chapter on Children and young people’s participation: A critical consideration of Article 12 deals with a widely discussed topic in children’s rights, i.e. that of child participation. The chapter first explores definitions and typologies of children and young people’s participation, in light of the CRC and the children’s rights literature. Next, Tisdall analyses two Scottish cases of children and young people’s participation. The first case discusses children’s participation from an individual perspective in the context of family law proceedings. The second case considers children and young people’s participation collectively, in school councils. In the final section, the author evaluates the limitations as well as the potential of the concept and practices of participation.

Tisdall makes a strong case for considering practices of participation as discursive and ambiguous practices. In critically analysing the current debate, she points out some important tensions and discussions in relation to children and young people’s participation. One is the pitfall of participation becoming an instrumental practice, integrating children and young people into the existing dominant order, rather than supporting transformative agendas. A second tension concerns the observation that practices of participation tend to separate out children from adults, reifying distinctions between childhood and adulthood rather than mainstreaming children and young people’s participation. To overcome some of these problems, Tisdall holds a strong plea for recognizing children and young people’s informal ways of participation in their ‘everyday’ lives rather than seeking to drag them into adult, invited spaces.

In Education and children’s rights, Ann Quennerstedt examines the relationship between education and children’s rights from an educational perspective. Starting from the distinction between the right to education and rights in education, she identifies three aspects of the relation between children’s rights and education to accommodate increased complexity: access to education, content of education and relations in education. Analysing the right to education in terms of access and content, she discusses in particular the tension between children’s and parents’ rights, educational segregation and the rights of non-citizen children to education. Looking at rights in education from the perspective of content and relations, she points to the importance of educational processes (such as experience-based learning and participation) next to topics, and seeks to understand the resistance in education to children’s rights-oriented change.

Reflecting on the state of research on children’s rights issues in educational sciences, Quennerstedt argues that more research is needed on the meaning of the right to education, the significance of educational content (topics and processes) and the significance of relations in education for learning. She also pleads for more theory-driven and Convention-critical research. Finally, children’s rights research should be more grounded in the particular
knowledge interest of a certain discipline. This implies a shift in perspective: from a children’s rights perspective on education to an educational perspective on children’s rights.

Ursula Kilkelly zooms in on Health and children’s rights. She outlines the right of the child to health by analysing key CRC provisions as well as the interpretative work of the Committee on the Rights of the Child. Second, the chapter considers some of the silences in the legal children’s rights framework, in particular on consent, sexual health, and health promotion. A section on children’s rights in healthcare in practice pays attention to the right of the child to participate in healthcare decision-making, which is considered ‘a key barometer of child’s rights compliant healthcare’ (Kilkelly, Chapter 13, p. 217). Key issues include the preference for age rather than maturity, the lack of access to information, and relational attitudes of health professionals. Participation in policy making, service design and delivery has equally proven challenging.

Kilkelly sees a major challenge in the approach of children in health care as a homogenous group, while they are not: they differ in age and levels of maturity but also in socio-economic background. She criticizes the legal instruments and interpretative work on children’s rights, i.e. the CRC and the Committee, on their silence with regard to dilemmas and controversies like consent, sexual health and health promotion. Implicitly, Kilkelly seems to favour a multidisciplinary approach, as her own empirical work on participation also reflects. She remains more reluctant, however, to engage with the approach of critique, in particular in its deliberative dimension.

The chapter by Ton Liefaard, Juvenile justice from an international children’s rights perspective, deals with the complex area of juvenile justice. Mainly from a legal perspective, Liefaard raises the question to what extent children’s rights provide authoritative guidance on how to approach the (legal) position of children in conflict with the law. Three key issues in juvenile justice are elaborated. The first one is about the question whether a specific and specialized justice system for children in conflict with the law is required. The second issue concerns the right to a fair trial for children, and the broader and more recent notion of child-friendly justice. Finally, Liefaard deals with the issue of alternative sentences, extreme sentences and deprivation of liberty.

In his chapter, Liefaard shows the difficulty of implementing (inter)national human rights standards applicable to children in conflict with the law and the administration of juvenile justice in practice. This is caused by the complexity of this particular area and its inherent tensions, ambiguities and controversies. One such important tension relates to the often conflicting objectives of juvenile justice. A juvenile justice system aims at protecting society against violent and dangerous offenders and at the same time makes special re-educating interventions in trying to reintegrate child offenders in society. On top of that, cases of juvenile offences are highly sensitive in public media and often result in moral panic and a call for being tough on crime. The author acknowledges this complexity of juvenile justice and offers a nuanced insight into how the framework of children’s rights can be used as authoritative guidance.

In his contribution The human rights of children in the context of formal alternative care, Nigel Cantwell analyses children’s rights in relation to children who are not looked after by their parents, or who are at risk of being so. After a historical overview of children’s rights instruments addressing (the prevention of) formal alternative care, he discusses the principles of necessity and suitability, to which placements in formal alternative care settings must conform today. Three key areas are explored more in depth. First, Cantwell points to (the increasing recognition of) the importance of informal kinship care in avoiding formal alternative care, and the difficulties in pinpointing state obligations in that respect. Second, he analyses the limits of formal family–based alternative care, among others because of entrenched societal resistance.
towards taking up ‘stranger children’ in one’s family. Third, challenges surrounding (strategies for) deinstitutionalization are disentangled, again paying explicit attention to the different ways in which these institutions have been set up across the globe.

Providing a nuanced account, Cantwell deeply engages with a critical approach. He particularly emphasizes the crucial importance of a context-specific interpretation and application of children’s rights in relation to alternative care, given the highly diverse ways in which societies have informally responded to children without parental care, the large variety in formal alternative care systems, and the multiple child images underlying these approaches. He also demonstrates how considerations other than purely children’s rights questions (such as financial considerations) may influence how alternative care is provided – and he argues that they should therefore be taken into account. Finally, he adopts an attitude of critique towards children’s rights, regretting the tendency towards ‘human rights inflation’ and dismissing the ‘right to a family’ language employed against institutional care. A ‘purist’ view of children’s rights may moreover generate simplistic representations, that may be directed towards the wrong actors or imply assumptions that are not supported by reality.

The main focus of Gertrud Lenzer’s chapter on Violence against children is the emergence of the concept of violence against children, its history, and related topics. In Lenzer’s view, the comprehensive notion of violence against children represents a paradigm shift in the discussion of children’s rights, in that it focuses on the protection of children. She then looks in particular into corporal punishment as a major form of violence against children. These more conceptual sections are followed by a case study of the prevalence of violence against children in the United States. In a second part, Lenzer vehemently rejects the bottom-up approach to children’s rights in the context of violence against children: ‘No matter how desirable it would be for children to participate in their own liberation, the hard social, economic and legal realities are an iron cage that makes such participation impossible.’ (Lenzer, Chapter 16, p. 289). In her view, this ‘down- or out-sourcing of adult responsibilities to the children themselves’ would make children an unprotected social class (Lenzer, Chapter 16, p. 289). This argument is corroborated by biological findings from the neurosciences and epigenetic research about the health and social effects of child maltreatment both for the life course of children and trans-generationally.

Lenzer emphatically pleads for an interdisciplinary approach in the field of children’s studies, which should be guided by the CRC. She also puts such an approach into practice, by drawing on empirical work to demonstrate the scope of violence against children in the US, and the impact of maltreatment on children. While she subscribes to the emancipatory agenda and seems to use the concept of violence against children also as a diagnostic device to show the amplitude and devastating impact of maltreatment and the like, she categorically rejects openness to diversity in meaning-giving and interpretation. To the contrary, she warns that a liberationist approach is harmful to children, as it renders them de facto unprotected.

In the chapter Female Genital Mutilation in Europe from a children’s rights perspective, Els Leye and Annemarie Middelburg analyse how the practice of female genital mutilation (FGM) can be qualified as a violation of general human rights law as well as children’s rights law, and review the state duties flowing from the international legal framework. A case study evaluates how European Union Member States have tackled FGM. Among others, the authors warn against overestimating the importance of prosecutions when evaluating the implementation of a law: an absence of legal cases may indicate the effectiveness of prevention strategies. They conclude that tackling FGM requires a comprehensive, multidisciplinary and context-specific approach: protecting children and young women, prosecuting those responsible, providing psychological, health-related and other services and establishing partnerships between all stakeholders.
Leye and Middelburg flag various challenges and tensions in dealing with FGM. For instance, professionals working with girls at risk must seek an appropriate balance between prevention (which implies collaboration with the family) and prosecution (which may jeopardize an otherwise well-functioning family). A tension also emerges between mandatory medical screening and freedom rights. Moreover, the chapter raises the question of how to deal with cultural arguments. Finally, health professionals who favour harm reduction strategies – through medically performing a ‘light’ form of FGM – above a ban are criticized for adopting only a health perspective while ignoring the human rights dimension.

Karl Hanson, Diana Volonakis and Mohammed Al-Rozzi discuss the multi-faceted dimensions of child labour in their chapter on Child labour, working children and children’s rights. They critically engage with dominant perspectives on child labour upheld by the majority of actors, i.e. that child labour is in violation of children’s rights. They challenge the dominant abolitionist approach of child work, and contrast it with the recognition of working children’s right to work in dignity. After a historical and anthropological account, they discuss the notions of ‘child labour’, ‘child work’, ‘child employment’ and ‘working children’ and their underlying conceptions. The authors then move on to identify four different stances in reaction to child labour: ‘laissez-faire’, ‘abolitionism’, ‘regulation’ and ‘empowerment’.

In this chapter, a critical and emancipatory perspective is taken on working children. The authors take an empowerment approach to working children, to which the views of children are central. They reject an abolitionist approach as the ‘sole path towards social justice’ (Hanson, Volonakis and Al-Rozzi, Chapter 18, p. 326), in light also of a contextual analysis of the phenomenon. Hanson, Volonakis and Al-Rozzi build on a variety of disciplinary entry points to working children in order to analyse the underlying socio-economic issues.

In his contribution The human rights of children in the context of international migration, Pablo Ceriani Cernadas explains what we empirically know about children in migration, identifying categories of children affected by migration and reflecting on some of the root causes of migration. He then moves into an analysis of legal standards; he mainly develops a de lege ferenda argument, i.e. how children’s rights law should be applied to migration of children. As regards migration control policies, the principles of non-deportation and non-detention of child migrants are discussed, as well as the due process of law guarantees that should apply when repatriation or deportation measures are envisaged. Other issues reviewed include parents’ detention and deportation, the right to a family life, social rights and the duties of countries of origin. The chapter acknowledges that diverging legal interpretations of human rights norms may result in either a protective or restrictive impact on rights, depending on the kind of interpretation that is given. The strong reliance on the general principles as developed by the Committee on the Rights of the Child seems to suggest that more concrete standards and norms are lacking or that they are unsatisfactory.

At first sight, the chapter may come across as a more traditional implementation gap analysis. However, it pictures a rather radical shift in migration policies and in the way children’s rights should govern them, in order for children’s rights to realize the transformative potential they may have. At least implicitly, an argument is made for drastic changes in migration control policies, including regularization procedures. Ceriani submits that children can never be held responsible for irregular migration; parents’ legal status should be determined by the interests and rights of their children. He concludes that introducing a childrights-based approach in migration policies would (and should) lead to a paradigm shift.

Francine Mestrum discusses Child poverty in the context of global social development. Whereas she welcomes specific actions against child poverty, she argues that these should be framed within a broader context that looks beyond poverty and beyond age-determined groups. She
analyses the poverty creating economic policies under inequality globalization, and discusses
the semantic confusion around ‘poverty’ and the ideology of poverty. She welcomes the recent
attention paid to social protection instead of poverty reduction as an approach more in line
with the alter-globalization that she adheres to.

Mestrum explicitly pleads for a contextualization of child poverty and children’s rights within
general poverty and human rights. She also urges to take into account the societal context in
which children are living. Mestrum points out the political and ideological dimensions of the
(child) poverty debate, and argues that ‘empowering people in a disempowering political context
can only lead to frustration’ (Mestrum, Chapter 20, p. 362). Whereas she does not challenge
children’s rights law, she does plead for sufficient attention to be paid also to collective rights.

In her chapter Indigenous children’s rights: Opportunities in appropriation and transformation,
Natasha Blanchet-Cohen demonstrates how indigenous peoples have addressed the chal-
lenges of implementing the CRC, by interpreting and giving new meaning to its provisions.
This process of ‘appropriation and transformation’ is illustrated in three areas: defining the
concept of indigenous; grasping the meaning and implications of the right to ‘enjoy his or her
own culture’, and identifying duty-bearers. Other examples are drawn from the fields of educa-
tion and child protection. The author concludes that the CRC holds real potential for
improving indigenous children’s lives – and as such can realize its emancipatory objective – if
indigenous children and communities gain ownership of the Convention and are actively
involved in its implementation.

In contrast to the general ‘growing apart’ of human rights and children’s rights mentioned
earlier in this introduction, Blanchet-Cohen notes a positive spill-over from human rights of
indigenous peoples to children’s rights of indigenous peoples. She also emphasizes the impor-
tance of a contextual approach: indigenous understandings of ‘best interests’ may differ from
dominant conceptions, and children’s participation in indigenous communities is often more
indirect than what is envisaged by the CRC. Adopting a critical perspective, she invites chil-
dren’s rights to embrace tensions instead of ignoring them.

Ellen Desmet and José Aylwin explore in their chapter Natural resource exploitation and
children’s rights the relevance of children’s rights (law) in the context of natural resource
exploitation, with a focus on Latin America. They discuss the experiences of children and
young people with natural resource industries, review relevant human and children’s rights legal
standards and zoom in on two fields of tension, i.e. child-specificity and incorporating insights
from other disciplines. Similar to Mestrum with regard to poverty, Desmet and Aylwin argue
that whereas child-specific approaches may be beneficial, a more general take on the matter is
needed. They also point out how the incorporation of insights from other disciplines in legal
analysis may have empowering or disempowering effects, depending on how these insights are
used. The chapter ends with three future-oriented themes: the need for effective remedies and
change at the domestic level, the importance of an intercultural and context-specific approach,
and the proposal to shift focus in future research towards a more inclusive approach on how we
engage with – rather than exploit – natural resources.

Desmet and Aylwin engage with all aspects of a critical approach. They conclude that the
image of a vulnerable child is predominant, although recognition of children’s and young
people’s agency is on the increase. They highlight the ambivalence of a separate ‘domain’ of
children’s rights in analysing a transversal issue like resource exploitation, and argue that the
current legal conceptualization of children’s and human rights runs up against its limits. They
equally emphasize the need to understand children’s rights in a holistic, intercultural and
context-specific way, and draw on insights from other disciplines, in particular anthropology.
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References


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