Childism, Intersectionality and the Rights of the Child

The Myth of a Happy Childhood

Rebecca Adami

First published 2025

ISBN: 978-1-032-63619-1 (hbk)
ISBN: 978-1-032-63862-1 (pbk)
ISBN: 978-1-032-63861-4 (ebk)

Chapter 1

Critical child rights theory

Power, discrimination, and epistemic injustice

DOI: 10.4324/9781032638614-1

The funder of the Open Access version of this chapter is Stockholm University

Routledge
Taylor & Francis Group
LONDON AND NEW YORK

1 Critical child rights theory

Power, discrimination, and epistemic injustice

> If the Prime Minister lived my life for a week, he would find that he is constantly victimized just for being a young person. He would find that instead of walking in to a shopping centre, proud to be a world leader, he would instead be frowned upon by the world as a trouble maker and potential shop lifter. He would find that instead of being able to go where he wants, when he wants, that he is restricted by signs saying 'no more than one child at any time.' At this point he'd think to himself, if that sign said 'no more than one gay at any time' or 'no more than one old person at any time', that it would be against the law.
>
> 17-year-old child[1]

Childism is a practical concept in critical child rights studies (which is an interdisciplinary field of study ranging from philosophy, psychology, law, sociology, anthropology, and education) that productively merges critical perspectives from childhood studies and prejudice studies with human rights studies. Holding an agentic view about children, and noting the importance of children themselves to push questions about their rights, does not need to be placed in opposition to using *childism* and *intersectionality* to elucidate the power structures that maintain discrimination against children and to address how prejudice about children intersects with racism, sexism, and ableism. By revealing uncritical prejudice discourses against children as a heterogeneous group, the limitations placed on children's rights and agency, especially limitations placed on intersectionally disadvantaged children, in the realization of their rights and freedoms become problematized. Concealing how power structures overlap answers the questions about why some children are not heard or taken seriously in their experiences of being disadvantaged by social injustice. 'Children are often perceived to be less credible testifiers than adults' argue Michael Baumtrog and Harmony Peach in 'They can't be believed: Children, intersectionality, and epistemic injustice' (2019). The idea that children are less credible than adults stems from general characterizations of children that place them at an epistemic disadvantage to adults. 'The discrediting of children's

DOI: 10.4324/9781032638614-1

testimonial claims can, however, result in an injustice when it stems from an uncritical age-related identity prejudice' (Baumtrog and Peach 2019, 213).

Another word for uncritical age-related identity prejudice against children is *childism*, used in this work to explore prejudice, discrimination, or antagonism directed against someone who is between 0 and 18 years of age based on the belief that adults are superior. Childism characterizes persons as defined by their lack of adult abilities and as inferior to adults with such abilities. On this basis, children are assigned or denied certain perceived abilities, skills, or character traits. Childism in the form of uncritical prejudice is especially harmful to children with intersectional identities as they suffer from other than age-related identity forms of prejudice that minimize their perceived trustworthiness as testifiers or as knowers. This harm is what Miranda Fricker (2007) calls testimonial injustice, which is a form of epistemic injustice (of not being regarded as knowledgeable or trustworthy and being excluded from knowledge-generating practices). Baumtrog and Peach (2019) relate the notion of testimonial injustice to children's rhetorical credibility. They argue that general characterizations of children 'impact adults' interactions with them as knowers and transmitters of knowledge' (2019, 213). Rhetorical credibility is the extent to which one is regarded as believable by others. The distance between normative credibility (a person's perceived sincerity, honesty, and reliability) and rhetorical credibility (the extent to which one is regarded believable by others) leads to children generally being unjustly denied rhetorical credibility due to prejudice (rhetorical disadvantage) (Baumtrog and Peach 2019, 215). The unjust rhetorical discrediting of children is caused by prejudice. The need for critical child rights theory on power, discrimination, and epistemic injustice is illustrated by the following three myths in legal reasoning that constitute discriminatory hindrances to achieving social justice for children as a heterogenous and marginalized group.

1.1 Power and legislation

> 'What we do is legal, therefore it is not unethical. If it was unethical, it would be illegal.'

This mantra is repeated by the protagonist of the movie *Waffle Street* in its opening scene and is used to help a lawyer at a hedge fund fend off an inner moral crisis. The movie is based on the autobiography by James Adams (2013), with the same title, who went from working on Wall Street to a waffle café in the aftermath of the 2008 financial crisis in the United States. It was not solely the economic crisis that made him leave Wall Street, but primarily his struggle to accept that what he did in his legal profession was *de facto* unethical although not deemed illegal. The inner moral conflict was inflicted by the inherent contradiction in the idea that what is deemed legal in a democratic society should by definition be ethical.

Lawyers, teachers, nurses, policy workers, and social service workers who apply relevant existing laws and regulations in their respective professions will affect the lives of children and will therefore occasionally find themselves faced with inner moral conflicts that cannot easily be solved by the mantra that 'what is legally correct should equally be ethically just.' This is simply because what may be legal in how children are treated may not necessarily in different circumstances be ethical or morally justified (see further Adami, Kaldal, and Aspán 2023). How children are treated in a legal, political, and social context may in fact be unfair, unjust, and immoral.

There are several juridical expectations that clash with the existence of prejudice and discrimination that may have detrimental effects on the rights of the child if not scrutinized. I address three here. The first expectation is that laws are defined by, and correlated to, theories of justice. The second is that people are treated equal in the application of laws. Third is the expectation that just legal frameworks addressing children provide protection of their rights.

'A law that reflects ideas of justice'

Let us begin with the first juridical expectation. In an ideal world, laws would be drafted in democratic states accountable to their citizens and these laws would be guided by values of justice and equality for all persons affected by them. The principles of juridical justice would be met when people attain justice, equality, and fairness through courts, using laws based on philosophical principles of what is 'just.' An expected 'natural' correlation between legal systems and theories of justice and equality, however, neglects the political process behind the devising of legislation and that rights and legal interests are political concerns. Even though courts are in some countries fairly separated from a political legislature, the application of existing laws may also be problematic in terms of the expectation of reflecting social justice.

Courts are supposed to apply existing laws, not determine the extent to which laws correlate to ideas of justice. Even though laws can be related to principles of justice and equality, these are nevertheless applied in more or less prejudiced societies. How do we then ensure neutrality in legal reasoning? Process theory became prominent in legal research in the United States during the 1950s and 1960s and '[t]he primary tenet of this jurisprudential philosophy is that the Supreme Court must follow appropriate institutional procedures when adjudicating cases' (Johnson Jr. 1994, 822). Process theory is influential in countries with common law and civil law systems alike to examine neutral principles to guide judicial decision-making, although its importance in the development of common law might be regarded as greater.

With process theory—based on the idea that the rule of law can be upheld by appropriate decisions by institutional bodies—neither the intent behind the laws (which can be influenced by prejudice and discriminatory ideas) nor the outcome of legal issues (which would then have unjust consequences for

marginalized groups) is the focus of scrutiny to its legal scholars but rather the fairness of the processes in place. As legal theorist Alex Johnson explains in the *Iowa Law Review*, 'In essence, process theorists do not concern themselves with the outcome of a particular judicial dispute or issue. Instead, they are concerned, first and foremost, that the appropriate institutional body make the determination' (Johnson Jr. 1994, 823). A structured legal process would hence create neutrality—subjective aspects are not to interfere in the courtroom. The problem is that process theory seems to be based on the presumption that people are free from prejudice in their professional lives or able to disregard the prejudices they hold against different groups in their professional decisions and judgments or that these do not influence decisions when procedures are supposed to be unbiased. What if such premises would not hold? The expectation of neutrality in the rule of law and its inherent connection to justice applied equally to all members of society has been problematized by a critical body of legal scholars concerned with the social limitations placed on this expectation (see Fredman 2003; Harvey Wingfield 2017; Woodiwiss 2006). Rule of law in a democracy requires a certain trust in the legislature—that individuals carrying the responsibility of legal judgment possess the capacity to look beyond their own interests—but by tracing the legislative history of a country, one could find examples stating the opposite, of the many ways in which interests and rights have been legislated along gendered, racialized, and heteronormative lines.

In 'Combating prejudice and racism: New interventions from a functional analysis of racist language,' Bernard Guerin (2003) explains that the function of prejudice is to rationalize unfair and discriminatory practices. Prejudice functions to justify persistent, historical, and structural inequality between groups of people through legislation, economic distribution, and social policy. He asserts that one of the functions of language is to influence others, to 'justify current social inequalities' (Guerin 2003, 33).

> People argue for stereotypic views of others, present prejudicial and racist propaganda, explain and justify discriminatory practices as based on facts, present views that purport to be their beliefs and present cogent reasons and arguments as to why certain differences are genetic and cannot be changed.
>
> (Guerin 2003, 33)

Stereotypical and prejudicial views would be presented as matter-of-facts in certain instances when expressed by authorities. The structural character of prejudice, and its potentially close ties to power positions in society, however, does not lend it more moral weight. An infamous illustration could be found in the US context and the Dred Scott case (Scott *v.* Sanford, 1857), in which the US Supreme Court ruled that any free person of African descent and whose ancestors were brought to the United States as slaves should not, according to

the American Constitution, be considered a US citizen. The argument given was that African Americans had not been regarded as members of the state in any way at the time that the American Constitution was adopted. As Johnson concludes, 'In that opinion, the Court accepted the inferior status of African-Americans as a baseline from which to begin its analysis' (Johnson Jr. 1994, 838).

When problematizing the lack of legal implementation of the rights of the child in countries around the world, we ought to take into consideration the normative and prejudiced values behind legislation. The experience of subjects before the law and the structural societal discriminatory discourses in place when laws are drafted and implemented are overlooked in process theory. Using narrative and critical race theory that value story-telling of marginalized groups, we can gain new understandings of justice, equality, and non-discrimination as these base knowledge claims on hitherto silenced experiences of the legal system. According to Johnson (1994): '[B]oth Narrative and Critical Race Theory adopt experiential approaches that eschew formal procedures' (1994, 824). In relation to the rights of the child, this would require legal professionals to be informed about children's perspectives of violence, abuse, and trauma. In other words, children's narratives of oppression on how crimes by adults and degrading treatment in childhood influence their sense of self, their interactions with the world, and their reactions in court (when children are deemed both perpetrators and victims) should inform legislation, if it is to address age discrimination and age-based violence against children (which intersect in different circumstances with racialized, sexist, and ableist discrimination and violence).

'A law that is applied in a just way'

The second juridical expectation—that people are treated as equals before the law—is equally problematic, even if we may hope that this would be the case. This expectation is closely connected to the first, of assuming legislators and judges to be able to refrain from privilege, prejudice, and stereotyping in legislation and decision-making.

In 1991, the first female African American Professor of Law at Harvard, Patricia Williams, published her personal reflections on being one of very few African American students and later faculty members, in an almost all-white and all-male environment. She writes, 'My abiding recollection of being a student at Harvard Law School is the sense of being invisible' (Williams 1991, 55). Williams begins her personal narrative by reflecting on an 1835 legal ruling on merchandise law in Louisiana. The case involved a plaintiff who bought a slave named Kate and later claimed to have discovered that she was crazy (for having run away) and so the slave-owner decided to demand reimbursement. When a society is unjust, treating individuals as having different legal statuses before the law, even reducing certain groups of people to the property of others, there

is no baseline—from a social justice perspective—at which to begin a rational, legal argument to reach a consensus on equality. Some arguments will, by default, be considered irrational to the judge or jury accustomed to a biased legal framework when the laws reflect societal racist, sexist, ableist, and childist beliefs and sentiments of the time. Today, children in the United States can be detained for running away from home. But, what are the social expectations on what is deemed a safe 'home' for children?

Williams describes how legal examples given during her studies and university exams were drenched by racist and sexist views and notes the difficulty of resisting the harm these prejudices caused.

> But as long as they are not unlearned, the exclusionary power of free-floating emotions make their way into the gestalt of prosecutorial and jury disposition and into what the law sees as a crime, sees as relevant, justified, provoked, or excusable. Laws become described and enforced in the spirit of our prejudice.
>
> (Williams 1991, 67)

Through seemingly one-sided descriptions of alleged perpetrators and victims, the law students were through Williams' account given a biased lens to determine intent and what would constitute a crime. Williams writes that child abuse, mistreatment of women, and racism lead children, women, and people of color to question their own experiential knowledge as the power always resides in another, outside themselves (Williams 1991, 63). Such tendencies would link childism, sexism, and racism by harming any sense of self-trust of the discriminated and thus diminishing her, his, or their ability to describe what has happened in their own words.

Legal spaces and discourses may generally already be gendered and the discourse on crimes and intent be racialized in prejudiced ways, affecting children's rights to a great extent. In her account, Williams analyzes legal verdicts and public reactions to several cases in the United States that she deems have been based on prejudiced ideas about young people and black people. One such case is the New York City Subway Shooting of 1984, during which a middle-aged, white man, Bernhard Goetz, shot four black youths who got seriously wounded. The jury freed Goetz on all three charges (attempted murder, assault, and reckless engagement) while he was sentenced for having carried an unlicensed weapon. In Williams's analysis of the verdict, the jury sympathized with how threatened Goetz must have felt on a subway train with four young black boys and did not probe his unjustified use of firearms against four unarmed individuals on public transportation. For the jury, the boys' skin color said something about their character and when widespread prejudice is shared by the general public, it risks playing a major role in unfair and unjust legal verdicts.

Williams reflects on the belief motivated by racist sentiments that 'a prejudiced society is better than a violent society' (Williams 1991, 61). This belief is

held about children, and especially about children from minority groups, and is motivated by racist and childist sentiments: That it is better to live in a prejudiced society, which curbs children's supposedly violent behavior with corporal punishment and youth detention, than to live in a society in which children spread 'violent and disobedient behavior.'

Even though not voiced as relevant in legal reasoning, racism, sexism, ableism, and childism may nevertheless play a role in the decisions made. While courts might chose to refrain from addressing different forms of prejudiced discourses when children from minority groups come in contact with the legal system such silences will not, however, evade their discriminatory effect on children's lives. Williams recounts an experience (about which there were different opinions on whether her skin color was relevant or not) of discrimination when being refused entrance into a store in New York as she could see other customers in the shop who were white. When using this example in a research article, she was advised not to mention her own skin color, as it was not deemed by the editor a 'relevant' detail. Williams responded that, on the contrary, it was the core of the whole experience and the basis for the argumentation. The editor did not agree. According to Williams, a common presumption seems to be that if prejudice in society is not mentioned in a specific case, its bearing on legal judgments can be ignored. She refutes this idea: Although racism may not be mentioned in legal cases, this does not mean defendants evade the racism that permeates society and courts alike.

In circumstances where structural oppression and prejudice against certain groups are not named, as when a situation of discrimination and harassment is de-colored and de-gendered, the person experiencing and reporting the injustice runs the risk of being questioned as overly sensitive. In what instances have children, in trying to voice objection to childist, racist, sexist, and ableist maltreatment and disrespect from adults and caretakers, been treated as overly sensitive?

Another overlap between various forms of prejudice and their embodiment in the violation of people's rights and freedoms is the way in which racist, sexist, and childist preconceptions shift the responsibility for harm onto the victim. The victim of harassment should 'have known better than to be out late'; the physical assault was 'caused by the child acting up' against the adult, by the woman 'provoking her husband,' or by the black youth simply walking into a white neighborhood and 'posing a perceived threat.'

The presumption that legal representatives, as well as police forces and social services, could be freed from commonly held prejudice against children, for example, a child with a disability, when acting in their professional capacity seems at best naïve. Conversely, professionals' moral judgments on what is fair and ethically justified may conflict with the rule of law since 'fair' judgments presuppose a collectively shared view of what constitutes fairness in a society. Even though the presence of childism and its intersection with racism, sexism, and ableism could be overlooked in courts and legal cases, such prejudiced interference with legal judgments may be pervasive.

'A law that protects the marginalized'

The third juridical expectation, or hope, is that the most socially vulnerable, like children, would be given adequate protection under just laws. Are children duly protected by the legal system created and upheld by adults? According to Human Rights Watch,

> The individuals most likely to suffer abuse in the United States—including members of racial and ethnic minorities, immigrants, children, the poor and prisoners—are often least able to defend their rights in court or via the political process.
>
> (Human Rights Watch 2018, 591)

If children—who, as a marginalized group, consist of all other minority groups—are most likely to suffer abuse around the world and when, according to Save the Children, only 53 out of 195 countries have legislation against corporal punishment of children as of 2018, then we need to question the expectation that adults have ensured protective legislation on the rights of the child worldwide. The expectation of legal safeguards for children could also be refuted by looking at the number of children kept in youth and adult prisons throughout the world. According to Human Rights Watch, 'the United States leads the industrialized world in the number and percentage of children it locks up in juvenile detention facilities, with over 60,000 children in such facilities in 2011,' according to data compiled by the Annie E. Casey Foundation, which works on juvenile justice and other children's rights issues (Bochenek 2016, 2).

> The United States also sends an extraordinary number of children to adult jails and prisons—more than 95,000 in 2011, Human Rights Watch and the American Civil Liberties Union estimated—with few opportunities for meaningful education or rehabilitation.
>
> (Bochenek 2016, 2)

Human Rights Watch states that 'many countries place children in detention for disobeying their parents or for "status offenses", acts that would not be crimes if committed by an adult' (Bochenek 2016, 2).

> A Texas Public Policy Foundation study found that in the United States in 2010, over 6,000 children were detained for acts such as truancy [absence from school], running away from home, 'incorrigibility' [not being able to change their 'behavior'], underage drinking and curfew violations.
>
> (Bochenek 2016, 2)

According to the Equal Justice Initiative, referring to a survey report published in 2005 by Amnesty International and Human Rights Watch, more

than 2000 children in America serve a life-without-parole sentence (Equal Justice Initiative 2007, 5). Before the ruling in Roper *v*. Simmons in 2005, when the US Supreme Court declared death by execution as unconstitutional for juveniles, 365 children had been legally executed in the United States since 1985. That amounts to one child being executed every day for a whole year. Arguments by adults that children should be held responsible for their actions stand in stark contrast to the lack of rights that children living in difficult circumstances can exercise in having control over their mental, physical, and emotional health.

On January 25, 2016, the Supreme Court held in the Montgomery *v*. Louisiana case that life-without-parole sentences for all children (of 17 or younger) convicted of homicide were unconstitutional and applied retroactively. This means that new hearings are required for everyone serving a mandatory life-without-parole sentence in the United States for an offense committed when they were under the age of 18. According to Human Rights Watch, 'children may receive life sentences in 73 countries, including the US and in 49 of the 53 states in the Commonwealth of Nations, a 2015 study by the Child Rights International Network (CRIN) found' (Bochenek 2016, 3).

If children are also the least able to defend their rights in court or via the political process, then we need to question the expectation that the traditional adult legislator in general has managed in a 'neutral' way to represent the rights of the child, especially the rights of girls and children of minorities. And, even if there exists, for example, a minimum age to marry in most countries, these laws are according to the United Nations International Children's Emergency Fund (UNICEF) not followed locally by those in power to make such decisions about children's lives. It is therefore noteworthy that Member States of the United Nations with no child representation or female representation are allowed to participate in debates on the rights of the child or on the rights of women to vote on these issues. Observer states to the United Nations that have discriminatory laws against women in terms of citizenship status have been allowed to participate at the annual meetings of the Commission on Women—that deal with crucial human rights protection for half of the world's population of children—such as the Vatican/Holy See, where around 30 women have Vatican passports. How would the adult majority feel about an international body that sets the standard for rights and freedoms in international law to exclude adult men, if issues dealt with concerned infringements on their rights and freedoms?

The three mentioned juridical expectations may be distorted by prejudice if we accept rather than try to upset the *status quo*. First, national laws are not necessarily aligned with justice. The function of courts is not primarily to deal with theories of justice but to apply laws and there can be a huge difference between the two. Second, even though laws themselves may correlate to theories of justice, their legal implementation may be distorted by discrimination and prejudices against children and against children of color, against girls, against children with other genders and sexualities than the gendered and

heterosexual norm, against children with disabilities, and so forth. Third, the idea that children would enjoy due protection under the law seems misguided as most countries do not even have statistics available for the number of children kept in adult prisons. In light of these problematizations, critical child rights theory on childism addresses hitherto unvoiced instances of intersectional injustice against children as a heterogenous group. Critical child rights theory on childism and intersectionality aims to open up for a reflective space whereby taken-for-granted assumptions about how things are done and why are shed in a new light that allows for needed critical questions about the possible increase of social justice for children. It is important, however, to remember, as critical scholar Gloria Ladson-Billings notes, 'as an academic, one is expected to write "cutting-edge" scholarship that pushes theoretical boundaries, but academic work is not to be literally applied to legal practice' (Ladson-Billings 1998, 10).

1.2 To address discrimination of children's rights

Although the UN Convention on the Rights of the Child (CRC) is one of the most ratified, with all Member States to the UN having ratified the convention by 2023 except the United States, research on children's rights speaks of its weak implementation. Human rights studies drawing on critical theory that seeks to answer why that is the case have gained increased interest among child rights scholars from an array of disciplines such as child and youth studies, sociology, law, philosophy, and education. Children constitute around a third of the world's population and 'children' as a heterogenous group consist of all other marginalized groups. The limit of human rights for all when discussed in relation to the marginalization that also targets adults such as statelessness or migration is for children noticeable in how they seem included as part of such categorizations but not explicitly recognized in how they become additionally marginalized through age-based power structures within minority groups.

The problems dealt with through the use of childism and intersectionality concern the ways in which children are treated in degrading ways and how the explanation-schemes adults use to defend such treatment of children seem more or less socially accepted when based on unreflected bias and prejudice against children that overlap with several other types of prejudice such as sexism, racism, and ableism. When marginalized children are treated in degrading ways, they would additionally not be deemed as credible testifiers to the injustice they experience. The aim of this work is to place forward the normative argument that overlapping prejudice upholds discriminatory structures against children as a heterogenous group. The objectives revolve around the usefulness of key concepts on prejudice and discrimination to discern limitations of children's rights today and to affirmatively discuss how children's rights as set forth in the CRC can be thought of differently when prejudice and discrimination against children are addressed.

Situating childism in critical child rights studies

Core concepts in this work on childism and intersectionality aim to destabilize systems of power and oppression, contributing to this interdisciplinary field that brings together human rights studies and childhood studies through critical lenses. The concept of childism is drawn from the work of psychoanalyst Elisabeth Young-Bruehl (2012). Psychoanalytic criticism is one of the major critical theories beside feminist theory and Marxist theory. The aim of critical theory on childism is to uncover the explanation-schemes to the continuation of degrading forms of power over children and reveal it as prejudice—in other words, to unmask the ideology that falsely justify different forms of oppression against children and in doing so contribute to ending the oppression of children. Critical theory aims to critique and change society by facing underlying assumptions in society such as prejudice that keep people from understanding how children are actually discriminated against as an age-group. Critical children's rights studies aim to reveal, critique, and challenge power structures by considering social, historical, and ideological forces producing and constraining policy and praxis on children's rights. In this work, empirical examples that are critically discussed derive mainly from the United Kingdom, the United States, and Nordic countries like Sweden, illustrating the dominant academic discourse on children's rights and policy on 'best practice.' Western countries where, contrary to the image of being liberal defenders of democracy and human rights globally, there exist domestic continuation of child rights abuses and age-based injustices in need of critical inquiry. The implicit, ingrained, and unreflected forms of bias, prejudice, and beliefs that warrant the systemic injustices against marginalized children in countries that have dominated the discourse on 'the rights of the child' are revealed and critiqued through the use of childism and intersectionality.

Vocabulary used

Childism and its related critical child rights concepts such as *adultism* provide scholars with a critical vocabulary to analyze policy and praxis that serve adult interests but are presumed to be 'child-friendly' and 'child-centered.' Childism as noted refers to prejudice, negative attitudes, and discrimination against children that maintain the adult power structure of adultism. Adultism refers here to adult power in the form of adult-dominant norms and the ways in which adulthood is given precedence over childhood. Prejudice and discrimination against children (childism) serve adult power positions (adultism), as sexism and racism, respectively, serve patriarchy and white supremacy. There is an urgent need to conceptualize and understand the many forms of prejudice and discrimination against children that sustain oppressive power structures of adultism. As earlier stated, I draw on conceptual work by Young-Bruehl in the field of prejudice studies related to psychology and sociology in relation to racism, sexism, and ableism but develop the conceptual frame to be useful in

the interdisciplinary field of critical child rights studies. The glossary of terms used in this work relate to ongoing social justice debates in different fields, where legal studies, sociology, and psychology intersect in human rights studies related to prejudice and discrimination.

A first set of concepts aim to unmask the taken-for-granted power structure by which parents, guardians, and adults in general are assigned the roles of caregivers, teachers, and discipliners who guard the limitations placed in childhood. These concepts concern dominant ideas about norms and normativity in how children or a child is defined in deficit terms to those that describe adults. Adultist norms are the norms that assign adults the status of being powerful and authoritative and which disregard children's voices, experiences, and different conditions. Adult normativity is defined as dominant ideas about the ideal adult in terms of capabilities and abilities that exclude individuals by definition by marginalizing perceived non-adults, noticeable in concrete ways in how society is structured according to this perceived ideal. Jeanette Sundhall (2017) discusses adulthood norms whereby adulthood is naturalized and constructs its opposite through a negative binary. She, however, uses Wall's opposite definition of childism to discuss adulthood norms and to deconstruct the naturalization of adulthood (Sundhall 2017, 164). Her aim is to escape the dominance of adult norms (2017, 165) and, to this end, Sundhall identifies, as in this work, age as a power order (what I refer to as adultism).

Adult ignorance is defined as the ways in which adult experts, theorists, professionals, and others are blind to or ignorant of the oppressive ways that children are kept in subordination, in both a historical and contemporary sense.

Adult privilege is defined as social, economic, and political advantages or rights that are available to adults solely on the basis of being adults (older than 18). An adult's access to these benefits varies depending on how closely an individual matches the adult norm of perceived autonomy, rationality, and authoritative behavior.

A second set of adultist concepts aim to unravel the invisibility of 'the child' in dominant rights discourses such as policy texts, legislation, and human rights law. Adult bias refers to the fact that a dominant majority of relevant theories are based on adult epistemologies, whereby theories and topics related to children have traditionally reflected adult perspectives, interests, and adult normative ideas. Adult bias in language are the preconceptions in language that assumes the 'person,' 'individual,' 'citizen,' or 'human being' to be an adult and how children are negated in language use and thus have to be explicitly mentioned in order to be regarded as included or addressed (in policy texts, laws, philosophical texts, and so forth). A paternalistic perspective refers to reasoning, theories, and argumentation sensitive to adults' interests and ideas, fulfilling the purpose of creating meaning, a sense of control, and ownership of any given situation for the adult. Characteristic for a paternalistic perspective is that the adult's sense of control comes at the expense of the child's needs and her, his, or their own expression. A growing number of children's literature scholars have come to question how child literature is created from an adult lens (see Nourhene Dziri 2022).

Adultism and childism

Whereas the above-mentioned set of adultist concepts are used to reveal the normativity of adulthood, the following set of adultist concepts label the oppressive forms of adult power structures. Adultism is broadly defined as adults' position of oppressive power and maintenance of this position of power over children. Adultism is thus the power structure by which adults hold oppressive power over children. Tim Corney, Trudy Cooper, Harry Shier, and Howard Williamson explore 'adultism' as a hindrance to youth participation but they define adultism in close resemblance to what is, in this work, referred to as childism, namely as a 'belief system' based on the idea of adults being superior to children (Corney et al. 2022). Hegemonic adultism is defined here as a practice that legitimizes adults' dominant position in society, by which adults maintain dominant roles in oppressive ways over children, and hegemonic adultism marginalizes other ways of being adult that are not characterized by authority, power, and control. Adult supremacy is exhibited in how states, systems, cultures, ideologies, and instances of violence uphold the childist belief that adults are superior to children and therefore should be dominant over them. Child subordination is the belief system and practice that children have to submit to adult headship, visible in adult refusal to give into the idea that children have individual rights and freedoms. Patriarchy is here defined as the rule of the father and parents in the family, of parental power and of male adult power in society connected to moral authority, social privilege, and control of property. Finally, paternalism refers to the actions limiting children's liberty and autonomy, expressing attitudes of superiority that disregards children's individual will.

As initially noted, adultism is upheld by childism, and childism more broadly refers to age-related prejudice, discrimination, or antagonism directed against someone who is between 0 and 18 years based on the belief that adults are superior. Childism characterizes persons as defined by their lack of adult abilities and as inferior to adults with such abilities. On this basis, children are assigned or denied certain perceived abilities, skills, or character traits. Childist beliefs are the ideas that rationalize discriminatory treatment of children who are viewed as serving the interests of adults rather than as human beings with interests and rights of their own. Childist behaviors are paternalistic adult interventions that cause children psychological and physical harm. Childist discourse refers to actions, as well as written or spoken discourse, that degrade children to mere instrumental means or burdens for adults (instead of valued for their own merit), thus diminishing children's proud sense of self.

Childist beliefs can be held about children and presented in public in both benevolent and hostile or ambivalent terms. Benevolent childism is paternalistic prejudice about children that seems affectionate but which is patronizing, where intentions for interventions may be formulated in the best interest of the child but where the consequences become discriminatory. Benevolent childism can be expressed through seemingly positive attitudes toward children as frail

beings requiring care and protection which nonetheless assert that they are inferior due to age, size, and abilities. Hostile childism in contrast to benevolent forms of prejudice refers to prejudiced attitudes and discriminatory behavior that *degrade* children in order to keep them in a subordinate position, based on the alleged inferiority of children to adults. Ambivalent childism is alternating between hostile attitudes toward children, perceiving them as inferiors who should be kept in place by adults, and benevolent attitudes toward children as adult-protection-seeking due to their fragility and vulnerability.

Childism becomes visible through different forms of reasoning, in language and through hostile speech about children. Childist reasonings are explanations in defense of treating children and adults differently by giving legitimacy to unfair treatment of children due to their perceived inferior status to adults. Childist language refers to expressions of negative attitudes and stereotypes of children and people perceived to be childish. Finally, childist hate speech is defined as dissemination of all ideas based on adult superiority or hatred toward children as a group, considered in itself as an incitement to violence and which is offensive enough to constitute violence in its own right.

In parallel with racism and sexism, childism is a form of discrimination. Covert childism is defined as adult bias in language that has discriminatory effects on children and systemic childism as the socioeconomic conditions that maintain social inequality for children. Jonathan Josefsson and John Wall (2020) use 'childist' in contrast to Young-Bruehl as child-empowered perspective, and they define systemic adultism as a long-standing historical patriarchalism (Josefsson and Wall 2020, 1055–56).

Anti-childist lenses

In order to explicate and critique and also aiming to change the unjust practices of childism, the concept of anti-childist lenses refers to the effort of uncovering ideas that support and justify practices which treat children as inferior and less deserving, with the aim of transforming instances of injustice with knowledge of how power can be used in allyship with and by children at the individual, community, and institutional levels for social change. Tanu Biswas (2023) use 'childist standpoint' to mean equivalent to a child perspective or to view something from the marginalized position of the child in order to lay bare adultism (2023, 1009). Macarena García-González similarly discusses 'how to overcome adultism' in the field of child literature studies; but while drawing on Wall in her use of childism, she proposes an 'affective childist literary criticism' (2022, 364).

In order to explore how to reach greater social justice for children, different forms of age equality will be discussed in this work. Formal age equality is equal ease of access to resources and desired opportunities for individuals under 18. Substantive age equality is a form of equality that focuses on equitable outcomes and equal opportunities for children that supersedes mere formal age equality, which only has regard for policies and practices put in place to suit

the majority (adults) and which, though appearing non-discriminatory, creates discrimination in its application to children (due to their specific conditions). Transformative age equality refers to equality practices that aim at dismantling systemic inequalities of children and at eradicating child poverty and age-related disadvantages while child-equity is defined as fairness of treatment for children according to their needs. Child-equity may include equal or different treatment according to what would be considered equivalent in terms of children's rights and in avoiding reifying childist stereotypes and adultist norms.

Age-based discrimination and violence

A final set of concepts used in the book distinguish between different forms of violence and discrimination targeting children. Age-based violence is violent acts that children are primarily or exclusively victims of and violence against individuals connected to normative understandings of their age (primarily children and youth). Age discrimination against children (childism) is a type of discrimination which is based on the age of the person (below 18) and occurs when a person is treated less favorably because of age (0–18) including age stereotyping. In this work, I discern between direct and indirect age discrimination. Direct age discrimination against children refers to when a child is treated less favorably—differently and worse—due to age by, for example, being denied services, while indirect discrimination against children refers to the instances where a child is treated in the same way as everybody else, but still suffers unequal opportunities due to age, gender, disability, or race.

Age discrimination in court and legal reasoning (childism) is especially discussed since the accessibility and enforceability of human rights for children through legal means risk being hindered through such forms of discrimination. Age profiling is defined as the practice of using minority age (under 18) as grounds for suspecting children of having committed an offense. Adult age framing is a form of legal reasoning by which adult intentions trump the outcome of an action, allowing adult perpetrators to escape ownership of, or responsibility for, the outcome of their actions against children. Adult perspective in courts is about regarding the rights, interests, and needs of adults primarily.

In terms of international legal instruments on human rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has identified gender stereotyping as a form of discrimination, and equivalent concepts on age stereotyping are used to address both harmful age stereotyping of children, which includes both negative stereotypes (e.g., that children are irrational) and seemingly benign ones (that they are carefree) that lead to lost opportunities for children and wrongful age stereotyping, which is stereotyping that results in discrimination or violations of children's rights and freedoms.

Jonathan Josefsson and John Wall (2020), Mehmoona Moosa-Mitha (2005, 2019), and Jeanette Sundhall (2017) use childism with an opposite definition to Young-Bruehl, with the aim to redefine central norms and include children's

own experiences and marginalized voices (Sundhall 2017, 166). Dziri uses the concepts of 'adultism' and 'ageism against youth' to describe what Young-Bruehl refers to as 'childism.'

Young-Bruehl, in developing the concept of childism as prejudice and discrimination against children, noted that the unbearable forms of abuse and neglect of children could be traced to less harmful and minor negative attitudes and beliefs about children held by the majority in the everyday. Drawing on this important insight that the unbearable has its inception in the everyday, I call on readers to ask themselves, while reading this book on childism, intersectionality, and the rights of the child, whether you can detect any signs of being complacent in the everyday mundane situations of adult ignorant behavior or if you identify in your social environment signs of unreflected childism? Signs of being complacent in adult ignorant behavior can be to only address other adults in a room and to ignore any presence of children, to make eye contact only with other adults while greeting but not with children, to refuse shaking hands with children, to not bother bending down if possible to listen to what a child says, to not relate to childhood experiences as if having always been adult, not noticing child subordination, and not noticing when children speak, claiming to not understand a word children say. Signs of unreflected childism can be to use the expression 'childish' only in a negative sense instead of a positive.

1.3 The Convention on the Rights of the Child and epistemic injustice

The CRC omits to define the discrimination that the rights therein are supposed to combat, namely, age discrimination. The idea that children crave protective rights during childhood is central to a needs-based discourse that distinguishes children's rights from human rights whereby the notions of participation and protection are brought into tension (O'Neill and Zinga 2008; Lindkvist 2023). An emancipatory critique challenges the notion that children's rights are merely a set of additional protection clauses based on the argument that children are competent beings with agency and abilities (see Lundy 2019; McMellon and Tisdall 2020). An emancipatory discourse regards children as rights subjects stressing the positive duties of adults to ensure that children receive the necessary compensatory adjustments to realize rights. Emancipatory rights include the right to be heard, to have a child's best interest be taken as the main consideration in issues affecting a child, and the freedom of conscious, thought, and opinion to be respected. Noam Peleg (2023) differentiates between these two discourses of children's rights as that between a paternalistic perspective on children's rights and an emancipatory perspective on children's rights.

Adopted in 1948, the Universal Declaration of Human Rights (UDHR) was the first UN document to define human rights through its 30 articles. Is there a difference between these formulations of 'human rights' and 'the rights of the child'? What are children's rights according to the articles listed in the

CRC and have these been formulated through a strengthened or weakened language use compared to the UDHR? According to Gerry Redmond, the purpose of the CRC is dual:

> [F]irst, to extend the fundamental human rights recognized for adults to children so as to challenge assumptions about children based on their age and the exclusion and exploitation to which this can give rise; and second, to call attention to children's particular status with specific vulnerabilities, interests and entitlements.
>
> (Redmond 2014, 620)

The CRC depicts children as rights-holders. 'The logic here is inclusion: to challenge unthinking assumptions of children's "difference," and the age-based exclusionary and exploitative practices to which this can give rise' (White, 2002, 1095). The CRC is a recognition 'that children's particular status engenders specific forms of vulnerability, interests and entitlements' (White, 2002, 1095). Before the adoption of the CRC, there were earlier declarations on the rights of the child, such as the Geneva Declaration of the Rights of the Child adopted in 1924 by the League of Nations (an institution preceding the United Nations founded in 1945), as well as the UN Declaration of the Rights of the Child from 1959 (on these preceding declarations, see Doek 2019). The Geneva Declaration was adopted at the end of the First World War. It emphasizes the duty of the adult community to shelter and feed hungry children and to ensure means for their survival. The declaration was drafted by Save the Children International and consisted of five points which would ensure the 'normal development' of the child if adhered to.[2]

The Declaration of the Rights of the Child from 1959, drafted by the UN Commission on Human Rights, consists instead of ten points. Declarations merely affirm an international political will rather than count as substantive and binding legislation. It was therefore with the adoption of the CRC in 1989 and Member States' ratification of the convention that international rights of the child would gain legal weight.

Children's rights are controversial, especially for adults

The CRC is the most ratified of all UN Conventions (the United States being the only UN Member State that in 2018 has only signed the Convention), which presumably reflects the idea that the rights of the child are non-controversial but highly supported. However, it is exactly that—the *idea* of children's rights, not the actual implementation and enforcement of such rights, which seems to be supported. The motivation for a special convention on the rights of the child was, as noted, the realization that children crave special protection and consideration for their rights as developing, vulnerable, and dependent on their guardians for their welfare. However, when comparing the scope of children's rights in the CRC with the UDHR, the rights of the child

are in several ways limited in relation to parental rights and to adults' interests and with respect to the social order. In other words, the rights set forth in the CRC have limiting clauses that restrict the articles by stressing the interests of parents and guardians as well as the 'public health or morale' of society when considering the rights of the child.

Core questions faced during the drafting of the CRC were linked to Cold War ideological debates, especially the question of whether to include both political and civil rights as well as economic, social, and cultural rights for children. These political tensions during the drafting of the convention reflect only part of the discursive power issues raised in relation to the rights of the child today. The CRC can be seen as a historical but living document. Even though several of the articles of the CRC were, for example, limited in relation to the interest of and respect for parents, the principles in the Convention can be read through a more progressive lens today. Turning to the General Recommendations of the UN Committee on the Rights of the Child (UN CRC), we find guidelines for a child rights framework that could address structural discrimination of children and question the negative consequences of prejudice against children (this last point is further developed in the following chapters).

The CRC which was unanimously adopted in 1989 entered into force in 1990. The initiator of the Convention was Poland. Poland saw it as integral to the mission of the United Nations to protect, safeguard, and reaffirm respect for the rights of children in light of the immense suffering inflicted upon children during the occupation of Polish territory (1939–1945) when children-only concentration camps had been built by the German National Socialists.

Polish children who had become orphaned or homeless, children whose parents refused to add themselves to the *Volkslist* for ethnic German status, or children caught by Nazis for activities seen as a threat to the Social Nationalist rule were transferred to the children's camp in Lódz, called 'Little Auschwitz,' where they were starved and severely beaten by guards for minor incidents such as wetting their beds. Several thousand children died in this concentration camp. The *Potilice* concentration camp was another example of a camp with a majority of children, erected on occupied Polish territory.

Cold War prolongations

Poland proposed a convention on the rights of the child on the 20th anniversary of the Declaration of the Rights of the Child in 1979, but the process of developing the Convention was prolonged by Cold War tensions in the Commission on Human Rights. According to the United Nations High Commissioner for Human Rights in their report on the legislative history of the CRC published in 2007, Member States consciously prolonged the work of the Commission.

> For example, they submitted controversial proposals and then withdrew them when a consensus was finally reached after long and tedious discussions. Some representatives also submitted large numbers of proposals all at once which—as was clear from the outset—could not be considered in due time because they were too numerous.
>
> (Office of the United Nations High Commissioner for Human Rights 2007, xxxviii)

The Working Group of the Commission on Human Rights was open to all interested states who wanted to work on the draft convention.[3] Non-governmental organizations were being represented under the umbrella of Defence for Children International and they cooperated in sending draft proposals to the Working Group.

No children participated in the drafting process nor during the debates. However, 'the delegates of a few Member States referred to opinions held by children and youth organisations active in the countries they represented.'[4] Schoolchildren from Canada 'came to listen to the debates in the Working Group' on a few occasions and representatives of 'several French child and youth organisations displayed an active interest in the work on the draft convention.'[5] At the end of the drafting procedure, a group of Swedish children entered the UN session with a petition 'signed by approximately twelve thousand children. The petition contained support for the Convention and especially for Sweden's proposal that children should not be called up for service in the armed forces or involved in armed conflicts.'[6] The Swedish proposal was nonetheless voted down in the Working Group. An additional protocol on children in armed conflict was instead drafted after the adoption of the Convention.

Children were invited to ask questions regarding the Convention after it had already been adopted. The CRC was adopted in Geneva 1989 on November 20 at 10.30 AM. That same afternoon, the UNICEF invited children to take the place of the adult delegates in the United Nations. They received information about the convention and were encouraged to ask questions to the UNICEF chief James Grant as well as to United Nations personnel (Ek 2009, 16).

The children expressed disappointment (a) over the limitations in Article 12 concerning freedom of opinion and expression, (b) that they were not granted political rights, as the right to vote, and (c) over the fact that the Convention lacked a right to love and the right to choose freely one's own friends without the opinion of adults (Ek 2009, 16).

The absence of children at the drafting is problematic as it stands in stark contrast to the rights of the child to be heard on all issues concerning the child. For example, the children's suggestion on 'the right to love' also points to a universal inequality between children and adults, by which adults have influence over their personal relations whereas children generally have no say in the parental and legal relationships that are fundamental for their survival and

emotional and physical well-being. Guardians may also restrict a child's relationships with others, against the will of the child. The myth that 'all children are loved by their parents' could increase the sense of powerlessness of those children who do not experience this assumption as a lived reality. The idea of a right for the child to love and to freely choose their own friends is a claim that does not need to be limited to the emotional ties to parents and guardians but could include relations with friends, siblings, and pets who provide a sense of love and safety to also be respected.

Preamble and Article 1: 'Rights before or after birth?'

> The definition of the child (Article 1) was the most contentious of all—it caused a great deal of disagreement and argument and was discussed at length. Proponents of the view that the child's rights come into being at the moment of conception insisted on including this view in the Convention. Others claimed that the Convention's objective was to protect the child after birth.[7]

A compromise was met: To mention in the preamble that the child needs 'appropriate legal protection before as well after birth.'[8] This was similar to the Declaration of the Rights of the Child, which indicated that 'the child, by reason of his [or her] physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.'[9] If children had been included in the drafting process, it is questionable whether they would have spent as much time as was used by adult delegates to debate children's right to life *before* birth. In light of their later criticism of the UN CRC, children might have raised issues concerning the rights of the *born* child to relationships conducive to their well-being and criteria for some basic living and health standards needed to welcome a child into the world in respect for their dignity.

The absence in Article 1 of the principle of dignity is noteworthy, as it is not mentioned here in the CRC as it is in the UDHR. Dignity is instead mentioned in the preamble of the CRC in reference to the principles of the UN Charter as well as in later articles—as in Article 28 on the right to education (to administer school discipline consistent with the human dignity of the child); in Article 23 on the right for physically disabled children (to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community); and in Article 40 on the child's right to treatment before the law with a sense of dignity and worth when children are 'recognized as having infringed the penal law.'[10] Article 1 instead defines the child as anyone under the age of 18 unless by law the person is regarded as 'legally an adult.'

The 'freedom' articles

During the drafting of the CRC, there was considerable conflict between delegates who proposed that parents should act as a mouthpiece for their children

and speak on their behalf and delegates who argued that children should have the right to speak on their own behalf.

> Much time was spent on formulating articles on the right of the child to express his or her views (article 12), the right of the child to freedom of expression (article 13) and the right of the child to freedom of thought, conscience and religion (article 14)[11].

The resulting freedom articles (Articles 13–15) on expression, the freedom of thought, conscience, and religion, as well as the freedom of association are all restricted in the CRC with limitation clauses, also referred to as derogation clauses. Article 13 states that 'the freedom of expression of children is restricted to respect the rights or reputation of others.'[12] Article 14 on children's freedom of thought, conscience, and religion is limited to allow for guardians' right to provide direction. Additionally, children's freedom to manifest their religion (through worship, observance, practice, and teaching) is limited to 'the freedom of others.'[13] Finally, Article 15 on children's freedom of association is to be restricted 'in conformity with the law.'[14]

By contrast, the freedom of expression in Article 19 of the UDHR[15] is restricted only by the general limitation to all its articles in Article 29, which states that

> in the exercise of his [or her] rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.[16]

The principles of freedom of thought, conscience, and religion in the CRC were heavily limited in their formulation in contrast to the definition of this right in the UDHR Article 14; 'this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.' During the drafting of the CRC, there was a debate between those who proposed that parents should choose the faith and religion of their children and those who argued for children having the right to freely choose their own faith and religion.[17] In contrast to the UDHR, the right to manifest one's religious belief in community with others and in public or private is not mentioned in the CRC and neither is the right to change one's religion or belief. What is the substance of freedom of thought, conscience, and religion, then, if lacking the basic tenets of manifestation or of changing one's belief? How could these freedom articles be interpreted in a more child-equitable manner (ensuring fairness of treatment for children according to their needs which may include equal or different treatment according to what

would be considered equivalent in terms of children's rights and in avoiding reifying childist stereotypes and adultist norm) so as not to merely mask adult interests and rights above those of the child? The freedom articles are referred to as 'civil and political rights' or as 'the first generation of rights' and they are described as 'negative rights,' since the state should refrain from interfering with or limiting these rights. Freedom of expression (including access to free information and the press), freedom of conscience, thought, and religion, and freedom of association are examples of so-called negative rights. Ensuring these so-called negative rights for the child would simply demand parents and adults not to interfere—in a child's right to freedom of opinion, for example. The rights are not 'positive rights' demanding financial duty from parents and guardians, but merely a respect for the opinion, feelings, choices, and wishes of the child. Following this logic, freedom of religion would mean freedom from religious indoctrination by the state, and not limiting children's right to seek their own spiritual answers through different sources. Freedom of association would mean non-interference or hindrance for children who wish to create associations and who wish to meet and discuss issues important to them. Freedom of opinion would mean withholding paternalistic force over children to think in certain ways and preventing the intrusion of adult interests in deciding the sole ideological, religious, or political content of a child's education.

Article 28: The right to education, 'at what cost?'

> The Working Group encountered another controversy when discussing the content of the article on the right of the child to education, especially the part referring to mandatory primary education that should be available free to all. Delegates of some States claimed that their countries were far from being able to meet this requirement. A similar note of pessimism was struck during the formulation of some other articles dealing with the social rights of the child.[18]

The right to education is one of the rights enlisted in the CRC with a strengthened vocabulary in terms of the duty of governments to ensure this right in relation to the wording of Article 26 in the UDHR. The so-called positive rights or second-generation human rights require positive duties from governments in how resources are used. Arguments given that lack of resources motivates a neglect of the positive duty to fulfill the right to education or healthcare conceal that budget priorities are priorities. The number of children without access to primary school and the percentage of illiterate children, compared to the number of weapons and military forces ready to be deployed into war and conflicts, indicates other national political priorities over the years since the adoption of the CRC in public budgeting than in the right to education for all children. Even though the governments of most countries in the post-war years did not find it difficult to budget generously for military refurbishment, there was a skepticism of the possibility to finance free and compulsory education

worldwide. Positive rights of children, including the right to education and the right to health, were argued by some countries as attainable after certain economic growth only.

Contemporary UN body discussions concerned with the right to education have demonstrated this right as interconnected with several other human rights issues. Ensuring the right to education requires political will and resources in different spheres: To create zones of safety in conflict areas, to establish adequate buildings for schools, to pay teachers adequate salaries and allow teacher unions, to abolish corporal punishments in schools, to prevent child marriages, and to allow political rights for a more inclusive citizenry to shape society for whom education is deemed pivotal.

How could the right to education be ensured without subsidized day care facilities and preschool? Without equal rights to work and equal salaries for women? Without healthcare and maternity care with insurances for mothers? Without affordable rents in housing for poor families? Without enforcing reproductive and sexual rights for girls and women including free choice of contraceptives and planned pregnancies? Without legislation against family abuse and subsidized family counseling to prevent children from running away from home? Without adequate resources for social services to carry out preventative work and do follow-ups in homes where there is drug and alcohol abuse?

Article 38: Children in war, 'can we use them as soldiers?'

Whereas the UDHR does not state that human rights include the right of Member States to recruit adults in war, Article 38 of the CRC does permit Member States' right to use children in armed conflict. During its drafting, arguments were put forth on the responsibility of Member States to protect young children; however, as there is not an absolute ban on enlisting individuals under 18 into armed conflict, the result achieved rather the opposite—the CRC opened up an international minimum standard on using children as soldiers from a certain age.

An Optional Protocol on Children in Armed Conflict (OPAC)[19] was by May 2000 open for Member States who questioned this regrettable result.[20] The optional protocol prohibits Member States and 'armed groups distinct from the armed forces of a country' the use of children (anyone under the age of 18) in hostilities and calls for the responsibility of Member States to 'demobilize' anyone under 18 used in hostilities and 'provide physical, psychological recovery services and help their social reintegration.' By 2018, 168 countries have ratified this protocol to the CRC.[21]

Child complaints to the UN Committee on the Rights of the Child

Studying the drafting process of the CRC reveals crucial complications which may hamper a just framework for the rights of the child: (a) Controversies in children's rights were identified and formulated by adults, not children; (b)

children were not listened to through active participation during the drafting process; and, as a consequence of these two facts, (c) limitation clauses which privilege the rights, freedoms, and power of adults over children were added to several articles in the Convention.

Examples of limitation clauses can be found in Article 3: 'Taking into account the rights and duties of his or her parents,' Article 12: 'Given due weight in accordance with the age and maturity of the child,' Article 13: 'Certain restrictions (…) for respect of the rights of reputations of others,' Article 14: 'Subjected only to such limitations (…) necessary to protect public safety, order, health or morals,' and Article 15: 'No restrictions (…) other than those imposed in conformity with the law' and 'in the interests of national security or public safety, public order, the protection of public health or morals.'

The drafting of the CRC as noted was no exception to the practice of adult neglect to listen to children on issues that concern them. Adults who speak on behalf of children reflect childist structures of society underpinned by the belief that children cannot speak for themselves. However, recent steps have been taken that may destabilize such power patterns. Children can, for example, lay complaints with the UN CRC which oversees the reports on the implementation of the CRC by Member States. However, children may face hindrances in writing reports of their concerns to the Committee since state reports have been criticized for not having been made available in child-friendly language by Member States (Heesterman 2005, 354).

What, then, have children complaining to the UN CRC brought up as important issues? Submissions by non-governmental organizations (NGOs) to the UN CRC, as noted in a study by Wiebina Heesterman (2005), 'tended to be based on the comments and views of concerned adults' (2005, 351). In the first ten years after the adoption of the CRC, only 'two reports were submitted reflecting the voices of children and young people in the more direct form of statements by under-eighteens' (2005, 351).

> Rather than just representing their own analysis of the situation, two Indian NGO coalitions assumed the role of facilitator enabling young people to make their voice heard. One of these reports (NMWC, 1998) was based on statements by working children between seven and fourteen and collected and compiled by older members from these groups.
>
> (Heesterman 2005, 351)

According to Heesterman's review of complaints, between 1998 and 2004, 'fourteen further reports, presenting statements by children and young people, have been submitted to the Committee on the Rights of the Child' (2005, 354). Issues children raised in these reports included the 'age of criminal responsibility and the age at which children can be locked up' (2005, 354 citing Children's Society, 1999:6, p.41). The Committee responded with concern to this issue

regarding criminal responsibility but neglected to take serious the children's complaints on the voting age, stating that they only have freedom of speech, but no right to make proposals or to vote (2005, 354).

The right to non-discrimination 'gave rise to many complaints and queries' (2005, 354) concerning gender, color, rights for children with disabilities, as well as children living in poverty. Heesterman observed that 'What was, however, the most quoted reason for grievance was discrimination based purely on 'age,' a classification which tends to be conflated into a measure of competence' (2005, 355) as exemplified in the following quote from her study,

> Young people suggested, for instance: 'I'd like make people more equal because adults have got more rights than children' (…) while an English eight-year-old complained: 'They [adults] don't treat us like humans. They treat us like babies who can't talk.'
>
> (Heesterman 2005, 355)

Children from Northern Ireland complained that confidentiality was not respected by teachers in the education system. They voiced the need to prevent staffroom gossip so that a child's behavior around one teacher would not necessarily affect the relationship that child had with another teacher (Heesterman 2005, 358).

Several submissions to the Committee stressed children's right to privacy. '[N]obody, not even our parents, should be allowed to pry into our correspondence, or read our diary' (Heesterman 2005, 359). The right to confidentiality in consultation situations was also stressed by children that 'young people ought to be able to consult a lawyer, doctor or other professional without having to ask their parents for consent' (Heesterman 2005, 359).

Non-discrimination in four core UN Conventions

In comparison to the CRC, the three other core UN conventions dealt with here comprehensively define (1) racial discrimination, (2) discrimination against women, and (3) discrimination against persons with disabilities that hinder the implementation of human rights for all. The articles of the CERD, CEDAW, and CRPD include legislative measures to combat racial, gender-based, and disability-related human rights violations. These three conventions also include provisions to prevent limitations of equity due to prejudice and stereotyping on these grounds. The core provisions of the CERD (found in Articles 1–7) encompass the definition of racial discrimination in Article 1, its prevention in Article 2, the condemnation of racial segregation and apartheid in Article 3, the prohibition of incitement to racial hatred in Article 4, the prohibition of racial discrimination in Article 5, the legal protection against racial discrimination in Article 6, and education as a means to combat prejudice in Article 7.

The core provisions in the CEDAW (Articles 1–16) deal with the elimination of gender-based discrimination and the promotion of equality in Articles 1–4 and 7–16, combating prejudice and stereotypes in Article 5, and prohibiting exploitation and harmful practices that result from such stereotypes in Article 6. The core provisions in the CRPD are found in Articles 1–32, and include the principle of reasonable accommodation as a positive measure against discrimination in Articles 19–20, the prevention of discrimination and degrading treatment in Articles 5 and 15–17, and ensuring accessibility in 'all areas and fields' in Articles 9–14, which include the guaranteeing of participation rights in Articles 29–30. A lack of 'reasonable accommodation' is in the CRPD defined as a form of discrimination. Accommodation refers to

> necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

In contrast to the CERD, CEDAW, and CRPD, all of which address specific forms of discrimination to ensure the provision of equality, age discrimination against children is not defined in the CRC. Additionally, the provisions for preventing and prohibiting multiple discrimination of children and for safeguarding their substantive age equality are not clearly included in the Convention either. The provisions in the CRC (found in Articles 1–41) cover the principle of 'the best interest of the child,' the provision of social, cultural, and civic rights for children, and their protection from violence, exploitation, and drugs and means to ensure children's 'right to participation and inclusion.' It is thus stated that the best interest of the child should be a primary concern in all issues affecting the child and that children should have the right to be heard and to participate in all matters affecting them.

The language use of the CERD and CEDAW of eliminating discrimination has not been used in the CRC, which would have stated the need for 'eliminating all forms of discrimination' against children. The preambles of all four conventions state the 'inherent dignity' and equal rights of people. Yet, while it is explicitly stressed in the preambles of the CERD, CEDAW, and the CRPD that 'all human beings are born free and equal in dignity and rights,' this expression has, for some reason, been omitted from the preamble of the CRC. Article 1 of the CERD gives an explicit definition of racial discrimination,[22] and likewise, Article 1 of the CEDAW clearly defines discrimination against women.[23] Article 1 of the CRPD, in a similarly direct fashion, defines its aim: To 'ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote and respect for their inherent dignity.'[24] In contrast, Article 1 of the CRC neither contains a definition of discrimination against children nor does it state that 'the child is equal in dignity and rights.' It does, however, include a definition of a child as 'every human being below the age of eighteen years unless under the law

applicable to the child, majority is attained earlier.'[25] The CRC also covers—to a certain extent—non-discrimination in its Article 2, paragraph 2:

> States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.[26]

The child is according to this formulation to be protected against discrimination directed toward the parent, guardian, or the child's family members. This formulation considers the child in relation to her, his, or their family but does not consider the child as an individual, toward whom discrimination or punishment can be directed because of age, class, gender, nationality, religion, sexuality, or beliefs. It thus overlooks the fact that children (age 0–18) can choose a different religion to their parents, legal guardians, or family members; that a child can express another sexual or gendered identity to that assigned and thus become discriminated due to sexuality or transgender; or that a child can become subjected to racism who has two white adoptive parents. Additionally, this formulation on non-discrimination in Article 2 of the CRC says nothing about prejudice, stereotyping, or discrimination against children purely because the child is a child.

The definitions of discrimination in the CERD and CEDAW take into account further considerations needed such as (a) the different expressions of racism and (b) women's social status in relation to marriage. Different expressions of prejudice against children that hinder the realization of their rights could have been considered in the CRC, alongside children's social status in families, which affect the totality of their rights. If the formulation of non-discrimination in the CRC followed that of the other two conventions (the CERD and CEDAW), Article 1 would stipulate that discrimination against children means any distinction, exclusion, or restriction made against human beings under the age of 18 which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by children of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. Note that such a definition would point to discrimination that hinders the realization of children's rights and freedoms while not placing any undue burden, in terms of duties or responsibilities that adults have, on children by not simply equalizing adult rights with those of children. Article 1, paragraph 4, of the CERD champions the provision of protection for positive measures enacted to ensure substantive equality,

> Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination (…).[27]

Positive measures taken toward substantive age equality should equally not be regarded as discrimination. Paraphrasing the CRPD, the CRC would thus need to define such special measures as those taken for the sole purpose of securing adequate advancement of children requiring such protection as may be necessary, in order to ensure the child equal enjoyment or exercise of human rights and fundamental freedoms. The protection against discrimination in the CRPD is even more elaborate than in the CERD and the CEDAW. Article 2 of the CRPD defines disability-derived discrimination as 'any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'[28] A similar protection for children against discrimination would state the existence of equality between not only women and men, but between children and adults as well. This would point to a necessity for Member States not only to respect the existence of the rights of the child, but to allow children to enjoy and exercise their rights as well. This notion of equality would not (as will be discerned in Chapter 4 between formal and substantive equality) be based on a simplified understanding of sameness, of children to be treated as adults. But, it would beg questions such as how can we in society create more equality for children on their terms and what legal, social, and structural changes are needed to accommodate age differences in society?

The CRPD additionally defines the lack of 'reasonable accommodation' as a form of discrimination which includes 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.'[29] Could an adjustment of railings which can be gripped by children in public spaces—where these exist for adults—be such a form of accommodation, the lack of which today could be seen as discrimination against children? Would a modification of safety belts on public transport—to also fit persons smaller than the adult norm—be another example of ensuring the right of the child to access public transportation? One of the reasons for hindering children in their enjoyment of public spaces is the lack of safe spaces free from traffic. The exclusion of children from public spaces could be turned into a call for adjustment. If accessibility in cities has been determined by the interests of car owners in how traffic and parking are prioritized over car-free walking lanes, then the lack of safe spaces may be a call for reallocation to allow for public parks, plazas, and other safe outdoor pedestrian spaces.

Summary

Critical child rights theory on power, discrimination, and epistemic injustice can be employed by professionals working with children's rights to better understand how the subject positions available to children become incapacious

in discourses characterized by racism, sexism, ableism, and childism. Incapacious subject positions in discourses reified by power in turn limit children's room for action and agency. Critical theory on intersectionality helps problematize how the uniqueness of a child's identity is not expressed freely under discriminatory stereotyping of 'children.' Intersectionality is used in this book to question not only the ways in which policy on children's rights that informs praxis might treat 'children' as a homogenous group that overlooks discrimination and privilege but also how prejudiced categorizations of children in dominating societal discourses make it hard for a child to take subject positions other than the stereotyping available. Children need to challenge negative expectations held about them on a daily basis if not to succumb to internalizing self-degrading prejudice. To employ the use of childism and intersectionality in child rights studies is to hold what some might regard as two seemingly opposing thoughts simultaneously: To explicate discourses that limit children while at the same time acknowledging that children have agency to question and challenge these discourses in different ways. It has been claimed that the use of critical theory in child rights studies reifies inequality through its focus on the nonideal situations of child abuses (discussed further in Chapter 2), but I argue that it is the dominating discourses on racism, sexism, ableism, and childism that fortify intersectional inequality and discrimination against children. Critical theory is used to question, reflect on, and ultimately change such oppressive societal discourses. Children are thus not 'turned into passive victims' when oppression and abuse are revealed as structural problems through the notion of childism; on the contrary, when termed as political and social problems, the discursive practices of discrimination can be addressed through politics, law, and change of social beliefs. The rights of the child and human rights are normative claims in themselves. The idea of social equality is normative. That does not prevent a critical examination *of* rights and ideas of equality whereby questions raised throughout the book (left without simplified answers) aim to create a reflective space over taken-for-granted problem-formulations in a normative field.

Notes

1 Young Equals, "Making the Case: Why Children Should Be Protected from Age Discrimination and How It Can Be Done, Proposals for the Equality Bill" (UK: Children's Rights Alliance for England, 2009), 17.

2 Five points of the Geneva Declaration of the Rights of the Child:

> 1) The child must be given the means requisite for its normal development, both materially and spiritually; 2) The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif [stray child] must be sheltered and succored; 3) The child must be the first to receive relief in times of distress; 4) The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation; 5) The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

3 Office of the United Nations High Commissioner for Human Rights 2007, xxviii.
4 Office of the United Nations High Commissioner for Human Rights 2007, xi.
5 Office of the United Nations High Commissioner for Human Rights 2007, xi.
6 Office of the United Nations High Commissioner for Human Rights 2007, xi.
7 Office of the United Nations High Commissioner for Human Rights 2007, xii.
8 Preamble, CRC, 1989.
9 Preamble, Declaration on the Rights of the Child, 1959.
10 Article 40, CRC, 1989.
11 Office of the United Nations High Commissioner for Human Rights 2007, xii.
12 Article 13, CRC, 1989.
13 Article 14, CRC, 1989.
14 Article 15, CRC, 1989.
15 Article 13, UDHR, 1948. 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'
16 Article 29, UDHR, 1948.
17 Article 14 CRC, '1. State Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. State Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.'
18 Office of the United Nations High Commissioner for Human Rights 2007, xii.
19 The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC), May 2000.
20 CRC, Article 38. 'States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.'
21 As the norms in the CRC were not set as high as several Member States would have hoped for concerning the protection of children from any form of sexual violence, abuse, and trafficking, there is also an Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) that, by 2018, 176 countries have ratified.
22 CERD: Article 1 1. 'In this Convention, the term "racial discrimination"'shall mean any distinction, exclusion, restriction, or preference *based on race, color, descent, or national or ethnic origin* which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life.'
23 CEDAW: Article I. 'For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made *on the basis of sex* which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by *women*, irrespective of their *marital status*, on a basis of *equality of men and women*, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.'
24 Article 1, CRPD, 2006.
25 Article 1, CRPD, 2006.
26 Article 2, CRC, 1989.
27 Article 1, CERD, 1956.

28 Article 2, CRPD, 2006.
29 Article 2, CRPD, 2006.

References

Adami, Rebecca, Anna Kaldal, and Margareta Aspán, eds. 2023. *The Rights of the Child: Legal, Political and Ethical Challenges*. London: Brill.

Adams, James. 2013. *Waffle Street: The Confession and Rehabilitation of a Financier*. San Clemente CA: ReadHowYouWant Publishing.

Baumtrog, Michael D., and Harmony Peach. 2019. "They Can't Be Believed: Children, Intersectionality and Epistemic Injustice." *Journal of Global Ethics* 15 (3): 213–32.

Biswas, Tanu. 2023. "Becoming Good Ancestors: A Decolonial, Childist Approach to Global Intergenerational Sustainability." *Children & Society* 37: 1005–20.

Bochenek, Michael Garcia. 2016. "*Children Behind Bars: The Global Overuse of Detention of Children*." Human Rights Watch. Retrieved from https://www.hrw.org/world-report/2016/children-behind-bars

Corney, Tim, Trudi Cooper, Harry Shier, and Howard Williamson. 2022. "Youth Participation: Adultism, Human Rights and Professional Youth Work." *Children & Society* 36: 677–90.

Doek, Jaap. 2019. "The Human Rights of Children: An Introduction." In *International Human Rights of Children*, edited by Ursula Kilkelly and Ton Liefaard, 3–29. Singapore: Springer.

Dziri, Nourhene. 2022. "Adultism at the Root of Youth Maltreatment in A.S. King's Still Life with Tornado." *Children's Literature in Education* 53: 18–32.

Ek, Simone. 2009. *Självklart Barnets Rättigheter. (Obviously the Rights of the Child)*. Stockholm: Save the Children.

Equal Justice Initiative. 2007. *Cruel and Unusual: Sentencing 13- and 14-Year-Old Children to Die in Prison*. Montgomery, Alabama. Retrieved from https://eji.org/reports/cruel-and-unusual/

Fredman, Sandra. 2003. "The Age of Equality." In *Age as an Equality Issue: Legal and Policy Perspectives*, edited by Sandra Fredman and Sarah Spencer, 21–70. Oxford and Portland, Oregon: Hart Publishing.

Fricker, Miranda. 2007. *Epistemic Injustice: Power and the ethics of knowing*. Oxford: Oxford University Press.

García-González, Macarena. 2022. "Towards an Affective Childist Literary Criticism." *Children's Literature in Education* 53: 360–75.

Guerin, Bernard. 2003. "Combating Prejudice and Racism: New Interventions from a Functional Analysis of Racist Language." *Journal of Community & Applied Social Psychology* 13 (29): 29–45.

Harvey Wingfield, Aida. 2017. "Legal Outsiders, Strategic Toughness: Racial Frames and Counter-Frame in the Legal Profession." In *Systemic Racism*, edited by Ruth Thompson-Miller and Kimberley Ducey, 185–202. New York: Palgrave Macmillan.

Heesterman, Wiebina. 2005. "An Assessment of the Impact of Youth Submissions to the United Nations Committee on the Rights of the Child." *The International Journal of Children's Rights* 13: 351–78.

Human Rights Watch. 2018. *Human Rights Watch World Report 2018: Events of 2017*. United States: Human Rights Watch.

Johnson Jr., Alex. 1994. "Defending the Use of Narrative and Giving Content to Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship." *Iowa Law Review* 79: 803–52.

Josefsson, Jonathan, and John Wall. 2020. "Empowered Inclusion: Theorizing Global Justice for Children and Youth." *Globalizations* 17 (6): 1043–60.

Ladson-Billings, Gloria. 1998. "Just What Is Critical Race Theory and What's It Doing in a Nice Field like Education?" *Qualitative Studies in Education* 11 (1): 7–24.
Lindkvist, Linde. 2023. "Five Problems with Children's Participation Rights." In *The Rights of the Child: Legal, Political and Ethical Challenges*, edited by Rebecca Adami, Anna Kaldal, and Margareta Aspán, 153–64. London: Brill.
Lundy, Laura. 2019. "Editorial: 'A Lexicon for Research on International Children's Rights in Troubled Times'." *International Journal of Children's Rights*, 27 (4): 595–601.
McMellon, Christina, and Kay Tisdall. 2020. "Children and Young People's Participation Rights: Looking Backwards and Moving Forwards." *The International Journal of Children's Rights* 28 (1): 157–82.
Moosa-Mitha, Mehmoona. 2005. "A Difference-Centred Alternative to Theorization of Children's Citizenship Rights." *Citizenship Studies* 9 (4): 369–88.
Moosa-Mitha, Mehmoona. 2019. "The Political Geography of the 'Best Interest of the Child'." In *Establishing Geographies of Children and Young People*, 295–314. Geographies of Children and Young People. Singapore: Springer.
O'Neill, Tom, and Dawn Zinga, eds. 2008. *Children's Rights: Multidisciplinary Approaches to Participation and Protection*. Toronto, Buffalo, London: University of Toronto Press.
Office of the United Nations High Commissioner for Human Rights. 2007. *Legislative History of the Convention on the Rights of the Child*. Volume I. New York and Geneva: United Nations.
Peleg, Noam. 2023. "A Children's Rights Dilemma - Paternalism versus Autonomy." In *The Rights of the Child: Legal, Political and Ethical Challenges*, edited by Rebecca Adami, Anna Kaldal, and Margareta Aspán, 17–22. London: Brill.
Redmond, Gerry. 2014. "To Their Fullest Potential? Conceptualising the Adequacy of Children's Living Standards for Their Development." *The International Journal of Children's Rights* 22 (3): 618–40.
Sundhall, Jeanette. 2017. "A Political Space for Children? The Age Order and Children's Right to Participation." *Social Inclusion* 5 (3): 164–71.
White, Sarah C. 2002 "Being, Becoming and Relationship: Conceptual Challenges of a Child Rights Approach in Development." *Journal of International Development* 14: 1095–104.
Williams, Patricia. 1991. *The Alchemy of Race and Rights*. Cambridge: Harvard University Press.
Woodiwiss, Anthony. 2006. "The Law Cannot Be Enough: Human Rights and the Limits of Legalism." In *The Legalization of Human Rights*, edited by Saladin Meckled-García and Başak Cali, 32–48. New York: Routledge.
Young-Bruehl, Elisabeth. 2012. *Childism: Confronting Prejudice against Children*. New Haven: Yale University Press.