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# Introduction

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The law has always been concerned with children, but prominently so only in the last 30 or so years. And it is not just child law to which one must look to see the way the law thinks about children.<sup>1</sup> There is family law more generally: custody disputes often conceived of children as ‘property’;<sup>2</sup> children are often marginalized. However, the child is now at the centre of family law, and the image of the child in family law has radically changed.<sup>3</sup> There is little concern today about whether the child is born in or out of marriage—almost as many are born outside marriage as in<sup>4</sup>—and questions of property and succession are marginal. But concerns with new forms of ‘property’ have emerged: conflicts over name and identity have resulted.<sup>5</sup> All areas of law impact upon children, and have concepts of childhood: contract law engages with capacity and unequal bargaining power;<sup>6</sup> tort law<sup>7</sup> is replete with examples of courts having to grapple with children’s sense of responsibility (think of cases about infant trespassers<sup>8</sup>). Criminal law has to confront the child as victim, with all that this entails for process, procedure, and evidence,<sup>9</sup> and the child as perpetrator<sup>10</sup> (the *Bulger* trial shows how ineptly this was done<sup>11</sup>). England and Wales still retains an absurdly low minimum age of criminal responsibility—10<sup>12</sup>—in effect lower than it was with the removal of the *doli incapax* presumption.<sup>13</sup> We can learn a lot about earlier attitudes to disobedient children from Shakespeare.<sup>14</sup> And it is interesting that children should use legal concepts to define their relationships with parents—Cordelia, when asked

<sup>1</sup> See M. King and C. Piper, *How The Court Thinks About Children*, Aldershot: Arena, 1995.

<sup>2</sup> See Butler-Sloss LJ’s criticism in *Re B (A Minor) (Residence Order: Ex Parte)* [1992] 2 FLR 1, 5.

<sup>3</sup> See M. Freeman, ‘The Child in Family Law’ in J. Fionda, *Legal Concepts of Childhood*, Oxford: Hart, 2001, 183–202.

<sup>4</sup> In 2005, 43 per cent of children were born outside marriage, most to couples living together.

<sup>5</sup> Reflected in case law. English examples are *Re P* [2000] Fam 15; *Re J* [1999] 2 FLR 698; *Re H and A* [2002] 1 FLR 1145

<sup>6</sup> See Law Commission, *Law of Contract: Minors’ Contracts* (Law Com No 134, 1984).

<sup>7</sup> See R. Bagshaw, ‘Children Through Tort’ in *op cit*, note 3, 127–50.

<sup>8</sup> See *Adams v. Naylor* [1944] 2 All ER 21, 30 (‘Children at play are always likely to trespass’). In this case a child trespassed on a mine field to retrieve a tennis ball.

<sup>9</sup> See J. Fortin, *Children’s Rights and The Developing Law* (3rd edition), Cambridge: CUP, 2009. See also G. Henderson, ‘The European Convention and Child Defendants’ (2000) 59 *Cambridge Law Journal* 235.

<sup>10</sup> See A. Levy, ‘Children in Court’ in *op cit*, note 3, 99–110.

<sup>11</sup> See M. Freeman, *The Moral Status of Children*, The Hague: Martinus Nijhoff, 1997, 235–53.

<sup>12</sup> There was a brief, and ultimately abortive, extension to 14 in 1969: see Children and Young Persons Act 1969 sections 4 and 70(1). In Scotland it is 8 (but they have a children’s hearing system).

<sup>13</sup> Crime and Disorder Act 1998 section 34.

<sup>14</sup> I. Ward, *Law and Literature*, Cambridge: Cambridge University Press, 1995; I. Ward, ‘Law, Literature and the Child’ in *op cit*, note 3, 111–26.

to define her love for her father, Lear, talks of 'bonds' and 'duties'.<sup>15</sup> 'Law', Ward comments, 'does not admit the emotions of love and family'.<sup>16</sup> And what are we to read into the fact that disobedient children in Shakespeare are all young women? Juliet,<sup>17</sup> Hermia,<sup>18</sup> Kate<sup>19</sup> in *The Taming Of The Shrew*, Helena in *All's Well*<sup>20</sup> (though, of course, there is Prince Hal<sup>21</sup> but was his 'misrule' not an illusion?<sup>22</sup>).

The law developed its concepts of childhood before the discipline of childhood studies emerged. The child was seen as an adult in the making, a future adult, rather than a growing human being. The adult is the finished product, with full competency. We were expected to make sense of childhood *through* adulthood. Lee puts it thus: 'Children's lives and activities in the present are... envisaged... as preparation for the future.'<sup>23</sup> This assumes 'adults' stability and completeness... [that] allows them to act in society, to participate in serious activities like work and politics [while] children's instability and incompleteness mean they are often understood only as dependent and passive recipients of adults' action's'.<sup>24</sup> This view of childhood was nurtured by a number of disciplines, in particular developmental psychology (the work of Piaget being especially prominent),<sup>25</sup> social anthropology (for example, the work of Margaret Mead),<sup>26</sup> and sociology (significantly the work of Talcott Parsons).<sup>27</sup> These disciplines' images of childhood—summarized by Nick Lee<sup>28</sup>—saw children as inadequate, incomplete, and dependent. So, society had to invest in their 'care, training and upbringing since it is children who represent the future of the social world'.<sup>29</sup> Without this conception of the child there was obviously no space for any action of the child as an agent.

A new sociology of childhood emerged in the 1970s and 1980s. It spawned its own journal *Childhood*,<sup>30</sup> and a burgeoning literature.<sup>31</sup> In the UK it led to a major research project.<sup>32</sup> There was (and is) particularly productive work in Scandinavia.<sup>33</sup>

<sup>15</sup> *King Lear*, Act 1, Scene 1, 90–106. <sup>16</sup> *Op cit*, note 3, 118.

<sup>17</sup> *Romeo and Juliet*, Act 5, Scene 3, 294.

<sup>18</sup> *A Midsummer Night's Dream*. The 'ancient' privilege of Athens allows a father to demand the death of a child who disobeys an injunction to marry (Act 1, Scene 1, 22–45).

<sup>19</sup> A child, but perhaps not a minor. But she will only escape her father's authority when this is transferred to another patriarch (a husband). See, further, J. Schroeder, 'The Taming of the Shrew: The Liberal Attempt To Mainstream Radical Feminist Theory' (1992) 5 *Yale Journal of Law and Feminism* 123–80.

<sup>20</sup> 'The most self-assertive of all Shakespeare's disobedient children' *per* Ward, *op cit*, note 3, 120. There is also Jessica in *The Merchant of Venice*.

<sup>21</sup> *Henry IV*, part 1 and 2.

<sup>22</sup> See his 'I know you all' speech (*Henry IV, Part 1*, Act 1, Scene 2, 190–212).

<sup>23</sup> N. Lee, *Childhood and Society—Growing Up in an Age of Uncertainty*, Maidenhead: Open University Press, 8.

<sup>24</sup> *Ibid.*

<sup>25</sup> *The Child's Conception of The World*, London: RKP, 1929. See also *The Moral Judgement of The Child*, London, RKP, 1932.

<sup>26</sup> *Coming of Age in Samoa*, Harmondsworth: Penguin Books, 1969 (originally published in 1928).

<sup>27</sup> *The Social System*, London: RKP, 1951. <sup>28</sup> *Op cit*, note 23, 42–3.

<sup>29</sup> Allison James, 'Agency' in (eds.) J. Qvortrup, W.A. Corsaro, and M.S. Hönig, *The Palgrave Handbook of Children's Studies*, Basingstoke: Palgrave Macmillan, 2009, 37.

<sup>30</sup> This began publication in 1994.

<sup>31</sup> Examples are C. Jenks, *Childhood*, London: Routledge, 1996; A. James and A. Prout, *Constructing and Reconstructing Childhood*, London: Falmer Press, 1997; W. A. Corsaro, *The Sociology of Childhood*, Thousand Oaks, California: Pine Forge Press, 2005. For a different view see J.R. Morss, 'The Several Social Constructions of James, Jessica and Prout' (2002) 10 *International Journal of Children's Rights* 73–88.

<sup>32</sup> The ESRC *Children 5–16: Growing Into the 21st Century*. This attracted 200+ applications. The Programme Director was Alan Prout. I sat on the committee which oversaw the research.

<sup>33</sup> Significant researchers are Jens Qvortrup, Leena Alanen, Ann-Magritt Jensen, Anne Solberg.

The result is a paradigm shift.<sup>34</sup> Instead of talking about children as ‘becomings’, this new framework emphasized that they were ‘beings’.<sup>35</sup> Of course, they are both— which the UN Convention on the Rights of the Child of 1989 recognized.<sup>36</sup>

Why did this shift occur, and occur when it did? There was a child liberation movement in the 1970s,<sup>37</sup> spearheaded by Richard Farson<sup>38</sup> and John Holt,<sup>39</sup> but this seems to have had little influence on the new sociology of childhood. There was no interest then in the ideas of such early thinkers about children’s rights as Janusz Korczak<sup>40</sup> or Ellen Key.<sup>41</sup> It barely needs to be said that Piaget, Parsons, Mead, etc were probably totally unaware of what these writers had said. Certainly, they were totally ignored by them. Korczak, in particular, had understood that children could be encouraged to be agents: he pioneered children’s parliaments, children’s juries, and children’s newspapers, and this in Poland in the 1920s.<sup>42</sup> The first serious history of childhood was published (in English) in 1962: although this, Philippe Ariès’s *Centuries of Childhood*,<sup>43</sup> is now thought to offer a distorted picture,<sup>44</sup> it was very influential at the time. If, as Ariès claimed, the ‘idea of childhood’ had only emerged in the seventeenth century, then perhaps it was a social construction. By the 1970s we had become aware of child abuse<sup>45</sup>—the whistle had been blown on it.<sup>46</sup> Sexual abuse did not rise to the surface for another decade.<sup>47</sup> That children needed to speak out and the need for advocates became all too readily apparent.

There had, of course, been initiatives by the League of Nations in 1924<sup>48</sup> and the United Nations in 1959.<sup>49</sup> Each organization had formulated Declarations of the Rights of the Child. The emphasis in both was on the protection of the child: the

<sup>34</sup> The concept belongs to Thomas Kuhn: see *The Structure of Scientific Revolutions*, Chicago: University of Chicago Press, 1960.

<sup>35</sup> But children have not always been seen as ‘becomings’. In the nineteenth century they were ‘beings’. See J. Gillis, ‘Transitions To Modernity’ in *op cit*, note 29, 114–126.

<sup>36</sup> In particular in Articles 3 and 12. The English Children Act of the same year also recognizes both facets.

<sup>37</sup> An early example of which is P. Adams et al, *Children’s Rights*, London: Granada, 1972.

<sup>38</sup> *Birthrights*, New York: Macmillan, 1974.

<sup>39</sup> *Escape From Childhood—The Needs and Rights of Children*, New York: E.P. Dutton, 1974.

<sup>40</sup> He wrote in Polish. His ‘The Child’s Right To Respect’ (1929) is now available in English published by the Council of Europe in 2009. And see G. Eichsteller, ‘Janusz Korczak—His Legacy and Its Relevance of Children’s Rights Today’ (2009) 17 *International Journal of Children’s Rights* 377–91.

<sup>41</sup> *The Century of the Child*, New York: Putnams, 1909 (originally published in Swedish in 1900). The twentieth century was to be the ‘century of the child’. It was perhaps ‘the century of the child professional’.

<sup>42</sup> A good discussion of these is B.J. Lifton, *The King of Children*, London: Chatto and Windus, 1988, an excellent biography of Korczak.

<sup>43</sup> London: Jonathan Cape, 1962.

<sup>44</sup> An early critic is Linda Pollock, *Forgotten Children: Parent-Child Relations From 1500–1900*, Cambridge: CUP, 1983. See further H. Hendrick, ‘The Evolution of Childhood in Western Europe c.1400–c.1750’ in *op cit*, note 29, 99–213.

<sup>45</sup> The work of Henry Kempe on the ‘battered baby’ was highly influential. In England, it was the Maria Colwell case in 1973–1974 which brought the subject to the attention of the public.

<sup>46</sup> According to Howard Becker (*Outsiders*, New York: Free Press, 1963) it requires ‘moral entrepreneurship’.

<sup>47</sup> With the Cleveland ‘affair’ in 1987, but it could have been discovered much sooner: see Carol Smart, ‘History of Ambivalence and Conflict in the Discursive Construction of the Child Victim of Sexual Abuse’ (1999) 8 *Social and Legal Studies* 391.

<sup>48</sup> See D. Marshall, ‘Children As An Object of International Relations: An Early History of the Declaration of *Children’s Rights*’ (1999) 7 *International Journal of Children’s Rights* 103.

<sup>49</sup> P. Veerman, *The Rights of the Child and the Changing Image of Childhood*, Dordrecht: Martinus Nijhoff, 1992, 155–80 is a full discussion of both declarations.

clear image of the child within these documents is that of the child as a ‘becoming’.<sup>50</sup> The 1959 Declaration had little impact on thinking about children—it passed even writers on children by. Nor should too much significance be attached to the naming of 1979 as the International Year of the Child.<sup>51</sup>

But this was the initiative which ultimately led to the 1989 Convention, which was ratified in haste by most of the world.<sup>52</sup> The Convention recognizes the child as both a ‘becoming’ (see for example Article 3), and a ‘being’. It recognizes the child as an agent, able to participate in decisions (see, in particular, Article 12).<sup>53</sup> It is interesting that as the drafting process was proceeding, the highest court in the UK also recognized that children could take their own decisions. *Gillick*<sup>54</sup> is a landmark case: ahead of its times, it is not surprising that it has not had the impact it deserves.<sup>55</sup> Indeed, there has been a retreat from its implications.<sup>56</sup> The *Tinker* decision seen in the USA was equally significant.<sup>57</sup> But none of these ‘events’ explains why we began to take a different view of childhood, or why childhood studies emerged.

For whatever reason, the disciplines which had nurtured the ‘becoming’ model began to question received ‘truths’. For example, Piaget’s work was shown to be of limited value.<sup>58</sup> It was demonstrated that the thought and reasoning of young children was much more sophisticated than Piaget had claimed. As Woodhead and Faulkner explained: ‘What appears to be “faulty” reasoning actually indicates children’s ingenious attempts to create sensible meanings for what are, to them, non-sensical situations and contexts’.<sup>59</sup> The structural functionalist agenda of Talcott Parsons was also criticized. It was shown to have placed too much emphasis on the role of social structures and institutions in shaping society, and so left little space for the part individuals (including children) could and did play in society.<sup>60</sup> Dennis Wrong famously accused Parsons of having an over-socialized conception of man.<sup>61</sup> The structure—agency debate began to awaken an interest in children, in particular on the part that children play in the growing-up process and in socialization.

<sup>50</sup> With an emphasis on ‘protection’, and this primarily for the benefit of future society.

<sup>51</sup> I gave a Public Lecture at UCL to mark the event. See ‘The Rights of Children in the International Year of the Child’ (1980) 33 *Current Legal Problems* 1–31. Another commemorative publication is Martin Hoyles, *Changing Childhood*, London: Writers and Readers Co-operative, 1979.

<sup>52</sup> Only Somalia and the USA have not ratified the UN Convention on the Rights of the Child. On the USA see D. Cook (2009) 16 *Childhood* 435–39.

<sup>53</sup> There is a large literature putting Article 12 into the context of participation rights more generally. A good example is the ‘Special Issue’ of an *International Journal of Children’s Rights* (2008) 16(3).

<sup>54</sup> *Gillick v. West Norfolk and Wisbech AHA* [1986] AC 112.

<sup>55</sup> It undoubtedly influenced the Children Act 1989. See M. Freeman, *Children, Their Families and the Law*, Basingstoke: Macmillan, 1992, 4. See also M.D.A. Freeman, ‘In The Child’s Best Interests? Reading the Children Act Critically’ (1992) 45(1) *Current Legal Problems* 173–211, and L. Fox Harding, ‘The Children Act 1989 in Context: Four Perspectives in Child Care Law and Policy’ (1991) *Journal of Social Welfare and Family Law* 179–93; 285–302.

<sup>56</sup> In particular relating to a child’s ‘refusal’ to consent to medical treatment. See *Re R* [1992] Fam 11 and *Re W* [1993] Fam 64. See M. Freeman, ‘Rethinking *Gillick*’ (2005) 13 *International Journal of Children’s Rights* 201.

<sup>57</sup> 393 US 503 (1969).

<sup>58</sup> See M. Donaldson, *Children’s Minds*, London: Fontana,

<sup>59</sup> See M. Woodhead and D. Faulkner, ‘Subjects, Objects or Participants? Dilemmas of Psychological Research with Children’ in P. Christensen and A. James (eds), *Research With Children*, London: Falmer Press, 2000, 25.

<sup>60</sup> See Chris Jenks, *Childhood*, London: Routledge, 1996, 13–22.

<sup>61</sup> ‘The Oversocialized Concept of Man in Modern Sociology’ (1961) 26 *American Sociological Review* 183–93.

There were also some significant studies, some now classics. It was shown that working class boys had subtle ways to learn to grasp the social world.<sup>62</sup> Charlotte Hardman suggested children might inhabit a 'self-regulating, autonomic world which does not necessarily reflect early development of adult culture', and that they would be seen as 'social actors'. This article, published in 1973, was not surprisingly reprinted in *Childhood* in 2001.<sup>63</sup> Most interesting of all—at least in my opinion—was Myra Bluebond-Langner's account of the private worlds of dying children.<sup>64</sup> This reveals children as actors in the scripting of death on a cancer ward. It is an ethnographic study based on a Department of Paediatrics in a teaching hospital in the USA. Her aim was to get 'as close as possible... to their thought, their interactional strategies, and their structuring of the situation'.<sup>65</sup> And she was able to reveal children's role in the structuring of hospital life, and the relations between parents and children.

By the late 1980s it was recognized that children were 'beings', social actors. This is reflected in the *Gillick* decision, already referred to,<sup>66</sup> where Lord Scarman articulated the view that a child's competence to make her own decision—in this case about contraceptive treatment—depended on her having 'sufficient understanding and intelligence to make the decision',<sup>67</sup> and not on 'any judicially fixed age limit'. Allison James and Alan Prout, writing in 1997, could conclude:

... children are and must be seen as active in the construction of their own lives, the lives of those around them and of the societies in which they live. Children are not just passive subjects of social structures and processes.<sup>68</sup>

Berry Mayall, writing some 10 years later, confirmed this. She wrote:

children are social actors... they take part in family relationships from the word go; they express their wishes, demonstrate strong attachments, jealousy and delight, seek justice.<sup>69</sup>

A new paradigm had emerged. Within this paradigm, childhood is understood as a social construction. So, the institution of childhood becomes an interpretive frame for understanding the early years of human life. Sociological (and anthropological) work into childhood began also to conclude that childhood cannot be totally separated from other variables: class, gender, ethnicity, disability, sexual orientation (though this is less discussed). This serves as a corrective to the globalization of a particular concept of childhood, imposed by the 'North' on the 'Third World'. A further feature of the new paradigm is, as James and Prout explain, that:

childhood and children's social relationships and cultures are worthy of study in their own right, and not just in respect to their social construction by adults.<sup>70</sup>

In addition, it is clear that to talk of a new paradigm is to engage in the process of reconstructing childhood in society. This has particular resonance for children and

<sup>62</sup> P. Willis, *Learning To Labour*, Aldershot: Avebury, 1977; P. Corrigan, *Schooling The Smash Street Kids*, London: Macmillan, 1979.

<sup>63</sup> C. Hardman, 'Can There Be An Anthropology of Children?' (1973) 4 *Journal of the Anthropological Society of Oxford*, 85–99; (2001) 8 *Childhood* 501–17.

<sup>64</sup> *The Private Worlds of Dying Children*, Princeton, NJ: Princeton University, 1979.

<sup>65</sup> *Ibid.*, xi. <sup>66</sup> [1986] AC 112, and above note 54. <sup>67</sup> *Ibid.*, 186.

<sup>68</sup> *Constructing and Reconstructing Childhood*, London: Falmer Press, 1997, 4.

<sup>69</sup> *Towards A Sociology of Childhood*, Buckingham: Open Univ. Press, 2002, 21.

<sup>70</sup> *Op cit*, note 68, 4.

the way children's rights develop. The clearest statement of the way main features of the new paradigm is set out by Prout and James in the following six points.

1. Childhood is understood as a social construction. As such it provides an interpretive frame for contextualizing the early years of human life. Childhood, as distinct from biological immaturity, is neither a natural nor universal feature of human groups but appears as a specific structural and cultural component of many societies.
2. Childhood is a variable of social analysis. It can never be entirely divorced from other variables such as class, gender, or ethnicity. Comparative and cross-cultural analysis reveals a variety of childhoods rather than a single and universal phenomenon.
3. Children's social relationships and cultures are worthy of study in their own right, independent of the perspective and concerns of adults.
4. Children are and must be seen as active in the construction and determination of their own social lives, the lives of those around them and of the societies in which they live. Children are not just the passive subjects of social structures and processes.
5. Ethnography is a particular useful methodology for the study of childhood. It allows children a more direct voice and participation in the production of sociological data than is usually possible through experimental or survey styles of research.
6. Childhood is a phenomenon in relation to which the double hermeneutic of the social sciences is acutely present. That is to say, to proclaim a new paradigm of childhood sociology is also to engage in and respond to the process of reconstructing childhood in society.<sup>71</sup>

There is now a vast amount of research demonstrating the agency of children. We have greater insight on what punishment means for children<sup>72</sup> (including their understanding of corporal chastisement).<sup>73</sup> We understand better children's understanding of the social organization of time<sup>74</sup> (should children therefore be consulted about the school timetable?). Since parents' involvement is widely regarded as necessary for their children's educational success, it is surprising how little knowledge there was of the part that children can play in the process—but there is now research on this, which indicates that children and young people are constructive and thoughtful commentators on the nature of home-school relations,<sup>75</sup> and the gender and class differences in these processes.<sup>76</sup> We now know more about how children negotiate their parents' divorce,<sup>77</sup> and how they cope with an abusive environment.<sup>78</sup> We have

<sup>71</sup> *Ibid.*, 8.

<sup>72</sup> R. Sparks, E. Girling, and M. Smith, 'Children Talking About Justice and Punishment (2000) 8 *International Journal of Children's Rights* 191–209. Another view of 'justice' is R. Bosisio, "'Right" and "Not Right": Representations of Justice in Young People' (2008) 18 *Childhood* 276–94 (see also this volume at 190).

<sup>73</sup> See B.J. Saunders and C. Goddard, *Physical Punishment in Childhood: The Rights of The Child*, Chichester: Wiley-Blackwell, 2010.

<sup>74</sup> See D. Moss, 'Memory, Space and Time: Researching Children's Lives' (2010) 17 *Childhood* 530–844; H. Zeiher, 'Institutionalization As A Secular Trend' in *op cit*, note 29, 137–39, and 131–32.

<sup>75</sup> See S. Etheridge, 'Do You Know You Have Worms on your Pearls? Listening To Children's Voices In The Classroom' in (eds) P. Pufall and R. Unsworth, *Rethinking Childhood*, New Brunswick, NJ: Rutgers University Press, 2004.

<sup>76</sup> *Op cit*, note 29, 31.

<sup>77</sup> C. Smart, B. Neale, and A. Wade, *The Changing Experience of Childhood*, Cambridge: Polity Press, 2001.

<sup>78</sup> See B. Saunders and C. Goddard, 'Some Australian Children's Perception of Physical Punishment in Childhood' (2008) 22 *Children and Society* 405–17.

greater knowledge of what they think of work,<sup>79</sup> of immigrant children's experiences of their neighbourhoods,<sup>80</sup> of children's sense of home, locality, and belonging(s),<sup>81</sup> of their consumption of fashion,<sup>82</sup> of the strategies emphasized by street children to survive.<sup>83</sup> And this is but a snapshot of what is available.

But where do we go from here? Adrian James<sup>84</sup> has recently argued that childhood studies has reached a crossroads in its development because of this very diversity of the interests and agendas being pursued under the interdisciplinary umbrella of childhood studies. The children's rights movement has had a major impact upon childhood studies—this was not anticipated when childhood studies was first emerging.<sup>85</sup> No discussion of the relationship between law and childhood studies can ignore the impact of the United Nations Convention on the Rights of the Child.<sup>86</sup> This offers four general principles (the best interests of the child as a primary consideration;<sup>87</sup> non-discrimination;<sup>88</sup> the right to life, survival, and development;<sup>89</sup> and the child's right to express views freely<sup>90</sup>), and a normative framework of rights. These have been an easy measuring-rod of the status of children in individual societies. They are also a linchpin upon which the UN Committee on the Rights of the Child can build 'General Comments'—there are now 13 of these, the latest building upon Article 19.

To a large extent the Convention emphasizes the universality of childhood. The childhood studies 'movement' by contrast is tending to stress the plurality of childhoods, and so we get talk of 'a right to childhoods'.<sup>91</sup> But Jens Qvortrup has challenged this. To look to plurality is, in his view, to overlook the universality of childhood as a social category. In a paper at an important conference in Oslo in 2005 (as yet not published) he argued that:

...the promoters of the plurality thesis typically belong to the social constructionist mood or the post-modernist strands of social research with some reservations against so-called grand narratives... They have a strong sense for perceiving the society as complex and therefore for avoiding simple—or in their view—simplistic—explanations, which at the end of the day typically leads to a preference for uniqueness. Each childhood, therefore, is a unique

<sup>79</sup> See M. Leonard, 'Children's Views on Children's Right To Work: Reflection From Belfast' (2004) 11 *Childhood* 45–62.

<sup>80</sup> M. Bak and K. von Brömssen, 'Interrogating Childhood and Diaspora Through the Voices of Children in Sweden?' (2010) 17 *Childhood* 113–28.

<sup>81</sup> K. Mand, 'I've Got Two Houses: one In Bangladesh and one in London... Everybody Here; Home, Locality and Belonging(s)' (2010) 17 *Childhood* 273–87.

<sup>82</sup> J. Pilcher, 'No Logo? Children's Consumption of Fashion' (2011) 18 *Childhood* 128–41.

<sup>83</sup> P. Mizen and Y. Ofosu-Kusi, 'Asking, Giving, Receiving: Friendship As Survival Strategy Among Accra's Street Children' (2010) 17 *Childhood* 441–54.

<sup>84</sup> 'Competition or Integration? The Next Step in Childhood Studies' (2010) 17 *Childhood* 485–99.

<sup>85</sup> D. Reynaert, M. Bouverne de Bie, and S. Vandeveld, 'A Review of Children's Rights Literature Since the Adoption of the U.N. Convention on the Rights of The Child' (2009) 16 *Childhood* 518–34; D. Hartas, *The Right To Childhoods: Critical Perceptions on Rights, Difference and Knowledge in a Transient World*, London: Continuum, 2008.

<sup>86</sup> See M. Freeman, 'Towards a Sociology of Children's Rights', this volume, 29. <sup>87</sup> Article 3.

<sup>88</sup> Article 2. <sup>89</sup> Article 6, and see N. Peleg, this volume, 371 and A. Barnes, this volume, 392.

<sup>90</sup> Article 12. And see M.A. Powell and D. Smith, 'Children's Participation Rights in Research' (2009) 16 *Childhood* 124–42.

<sup>91</sup> See D. Hartas, *The Right To Childhoods*, London: Continuum, 2008

childhood with its particular points of reference which cannot fully be shared by others' childhoods.<sup>92</sup>

There are parallels here with feminism and its debates about whether it should focus on a single gender dichotomy or recognize the diversity of womanhoods. Could 'essentialism' be justified or should race and sexual orientation, for example, be seen as raising different questions?<sup>93</sup> Perhaps the question is whether childhood studies is yet confident enough to abandon the political power of the 'one child' thesis. Does a focus on the plurality of childhoods put at risk the children's rights project? Is this more likely to succeed if we accept its premise that childhood is universal? If it does, children will suffer and I suggest it is those in the developing world who have most to lose.

In another, more recent, paper Qvortrup has made the point that we cannot proliferate into a multiplicity of childhoods until we 'grasp' what childhood is. And 'one good proposition to this effect is that children are as a collectivity set aside from adults'.<sup>94</sup> The law makes a clear dividing line between adulthood and childhood. It is 18 in most legal systems, a fact recognized by Article 1 of the UN Convention.<sup>95</sup> But even in this there are qualifications: for example, recruitment into the armed forces is permitted at 15.<sup>96</sup> And legal systems recognize different ages for different activities: thus English law targets criminal responsibility on children at 10, allows them to consent to medical treatment when *Gillick* competent,<sup>97</sup> and permits marriage at 16.<sup>98</sup> Childhood ends much earlier in practice in much of the world,<sup>99</sup> with children taking on work responsibilities at very young ages. There is concern that they do not become involved in 'the worst forms of labour', which is understandable, but our concern should be with the worst forms of labour whoever is involved in it, whether children or adults. Some argue that, since education is to inculcate skills and discipline to enter the work force, it should be regarded as work.<sup>100</sup> The insight from childhood studies is to ask how children experience schooling, how they exercise their agency in relation to it, and what meaning they attach to it. In relation to these questions there are clearly differences between children in a simple society and not just between cultures: class and gender are significant variables. There are also questions about when childhood begins. Most legal systems, and the Convention, say at birth. But this too is controversial; many regard childhood to start at conception. This is not a subject I will pursue here.<sup>101</sup>

Perhaps surprisingly, given the attention given to the 'being' child, much work in childhood studies remains firmly rooted in the child as a 'becoming'. Where are the

<sup>92</sup> 'The Little "s" and the Prospects for Generational Childhood Studies', *Childhoods Conference*, Oslo, 2005.

<sup>93</sup> See, for example, A. Harris, 'Race and Essentialism in Feminist Legal Theory' (1990) 42 *Stanford Law Review* 581.

<sup>94</sup> 'Diversity's Temptation—And Hazards', University of Sheffield, 2008.

<sup>95</sup> See M. Freeman, *Article 1*, Leiden: Martinus Nijhoff, forthcoming. See also C. Cassidy, *Thinking Children*, London: Continuum, 2009.

<sup>96</sup> See *Gillick v. West Norfolk and Wisbech AHA* [1986] AC 112.

<sup>97</sup> English law's tolerance to younger marriages where personal law allows it is shown in the case of *Mohamed v. Knott* [1969] 1 QB 1 (child of at most 13 from northern Nigeria).

<sup>98</sup> See H. Montgomery, *An Introduction To Childhood*, Chichester: Wiley-Blackwell, 2009.

<sup>99</sup> This is condemned in both the UNCRC (see Article 32) and the ILO Convention No 182 (Article 3).

<sup>100</sup> See D. Oldham, 'Childhood As A Mode of Production' in (ed) B. Mayall, *Children's Childhoods Observed and Experienced*, London: Falmer, 1994.

<sup>101</sup> Note the inconsistency between Article 1 of the UNCRC and its Preamble.

successors to Bluebond-Langner?<sup>102</sup> There is little work on how children perceive child abuse or chastisement,<sup>103</sup> and none on their views about the implications of the reproduction revolution: what is it like to be an IVF child? Or a child produced by a surrogate mother?

What is also missing is any real theory of childhood. We are right to reject the Piagets, the Parsons, the Meads, but what is put in their place? There is thus no sociology, as yet, of children's rights.<sup>104</sup> Children's studies surely has something to offer us on the limits of children's rights.<sup>105</sup> On why the Convention of 1989 has not been an unqualified success. On ways to improve the implementation process. On the part children can play in norm-creation when we come to revise the Convention. On whether we need to get 'beyond rights'. On the relationship between rights and social justice.<sup>106</sup> Can the indicators of children's well-being be fitted into a theory about children?<sup>107</sup>

The question is now being asked—and not before time—as to whether childhood studies can improve the lives of children. We certainly have better knowledge of children and their lives as a result of the work done by childhood studies scholars. But has all this work contributed to the empowerment of children? Are children's lives better? Is there more social justice for children? And are childhood studies yet asking what a better life for children looks like? Would this be the same for all children or is it different in the developed world from the developing world?

It is clear that law and childhood studies have much in common, most notably the emphasis on the child as a subject. The children's studies movement takes the implication of this further, for example often seeing the child as a citizen. Each discipline can learn much from the other but I suggest the law has most need of an input. The approaches of the two disciplines are different: one employs a research methodology,<sup>108</sup> the other tests out ideas pragmatically from case to case.

As far as is known, this is the first collection which puts the two disciplines together. Much can be learnt from the papers which follow. They can speak for themselves—no summary can do them justice.

<sup>102</sup> *Op cit*, note 84.      <sup>103</sup> But see Saunders and Goddard, *op cit*, note 73.

<sup>104</sup> See further Freeman, this volume, 29.

<sup>105</sup> And see M. Freeman, 'The Limits of Children's Rights' in (eds.) M. Freeman and P. Veerman, *The Ideologies of Children's Rights*, Dordrecht: Martinus Nijhoff, 1992, 29–46.

<sup>106</sup> But see J. McKendrick, 'Localities: A Holistic Frame of Reference for Appraising Social Justice in Children's Lives' in *op cit*, note 29, 238–55.

<sup>107</sup> See A. Ben-Arieh and I. Frønes, 'Indicators of Children's Well-Being: Theory, Types and Usage' (2007) 83(1) *Social Indicators Research* 1–4.

<sup>108</sup> See H. Beazley, S. Bessell, J. Ennew, and R. Waterson, 'How Are the Human Rights of Children Related To Research Methodology?' in (eds.) A. Invernizzi and J. Williams, *The Human Rights of Children*, Farnham: Ashgate, 2001, 159–78.