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AND ITS ROLE IN IMPLEMENTING CHILD RIGHTS**

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“CHILD-REARING” v. “CHILD-CARE”

Conflicts of Visions That Underlie Decisions About Private Actors and the Fulfilling of CRC Obligations

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“Children’s rights are what is left over after adults have gotten their rights.”

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Introduction

One of the important changes going on in many societies is that parents and the extended family are playing an increasingly smaller role in the raising of their children, with institutional child-care being one of the substitutes for familial child-rearing. Many people are concerned about the correlation between parents’ diminishing involvement in their children’s lives and the difficulties that kids are having in growing up to be healthy, happy adults. As States try to shape the directions that their societies are moving in, they will be choosing between measures that will either increase parental involvement in the lives of their children or increase the adults’ participation in the labor force. Under the CRC, a State has the duty to maximize the survival and healthy development of each boy and girl under its jurisdiction. The position that a State takes on the role of the family in promoting the best interests of children and adolescents is therefore central to how it will go about fulfilling its CRC obligations. This paper will not debate the merits of parental child-rearing versus commercial child-care, but will discuss several

conflicts in visions that lay behind the choices that people make about the raising of children and adolescents.

I. Changes in Child-Rearing Practices are a Result of Broader Economic and Ideological Shifts in Society

Children and adolescents need special attention and assistance because they are in the process of development. This is the period when they acquire their basic values, form identities, learn that they are loved, valued, accepted, and that they have a place in the world; during this period they develop the habits, skills, and some of personal ties that will serve them for the rest of their lives. There are basically four systems for the transmission of values, and for supporting the developmental process: children learn (1) from their parents, and adults in the extended family; (2) from their peers; (3) from other adults in social institutions, like schools; and (4) from the entertainment industry. The changes that are occurring in many societies today are affecting the four systems, most dramatically the parent-child system.

Some of the forces propelling social changes are economic, of which “globalization” is a key component, and some are ideological; there is, of course, a dynamic relationship between the various forces.

On the economic front, the trend is towards relatively unrestrained autonomy of the units of wealth production, whether these units be national or transnational corporations, or individuals. “Free market” refers to the autonomy of the economic actors, and the deregulation aspects of globalization are similar to the laissez-faire capitalism of earlier epochs. By leaving the units of economic production largely unregulated, each unit is free to pursue its own self-interests, creating a tremendous machine for wealth-generation that, in turn, gives rise to vast benefits to society, like the rising standards of living. At the same time, the virtually unrestrained pursuit of self-interest wrecks destruction on the human environment, causing enormous suffering. The task today is the same as it has been for centuries: to maximize the gains from a system that encourages each unit to pursue its self-interests, while regulating their autonomy sufficiently to prevent, or at least mitigate, the most harmful consequences of the process.

The same trend towards increasingly unrestrained autonomy is also occurring on the personal level in many societies, allowing individuals to pursue self-interest increasingly free of legal and social limitations. Just as with economically motivated self-interest, the pursuit of personal self-interest has a profound impact on the human environment, including the lives of children and adolescents.

The economic and cultural forces reinforce each other, and the results can dramatically affect young people. One of the changes are the transformations of family arrangements: nuclear families are being replaced by single parent (or no parent) arrangements; extended families are being replaced by nuclear families or just single parent households; child-bearing occurs frequently outside of marriage; the rates of divorce increase; and “serial marriages” become more common. Another change are work-patterns: both mothers and fathers tend to be increasingly occupied in the labor force, with both of them working longer hours; as a consequence, there are changes in who is engaged in the raising of the children.

Another set of changes are in the autonomous decisions of the youngsters themselves, some of which are cause for great alarm. One area of autonomous choices is sexual activity. According to WHO studies, for instance, the number of 15 year olds who report having sexual intercourse is high (e.g., 47% in Hungary, 38% in the US, 37% in Scotland, and 30% in France), and the mean age of sexual initiation of these youngsters is low (e.g., 13 years in the US, and 14 years in France and Scotland).¹ Other changes of great concern include teenage pregnancies; high and rising suicide rates, particularly among boys; and the increase in smoking and other drug usages, along with a lowering of the ages of drug initiation and addiction. These changes mirror the behaviors that are found in the adult segment of the population, and in popular entertainment.

Many researches have found a correlation between the changes in family life and the negative indicators of child and adolescent well-being. As the composition of the families change, and as mothers and fathers are less available to be engaged in the raising of their children, the other systems of value-transmission and developmental support play a greater role. However, these other systems do not have the same intimate, loving, life-long commitment that parents normally have for their children. While peers, adults in social institutions, and the entertainment industry fill the void, they are not real substitutes for the parental and extended family relations. The concern is that the diminishing role of the family in child-rearing is a significant cause of the negative indicators of well-being.²

II. Conflicts in Visions Regarding Who Should Have the Primary Responsibility for Raising Children

A. The three conflicts in visions

There are three beliefs, or visions, that directly bear upon questions about the raising of children and teenagers. These are visions in the sense of “gut-level” notions about human nature and the human condition, in contrast to ideologies, which are consciously worked-out, systematized, statements of belief.³

1. Conflicts of visions regarding the roles of mothers and fathers

There are basically three viewpoints about who should be most directly engaged in child raising, especially when it comes to younger children.

- Mothers have an instinctual drive pertaining to their young children that is different from that of the fathers, equipping them for a special role in child rearing.
- Mothers and fathers have exactly the same instincts for the raising of their children; the observed differences between men and women with respect to child-rearing behavior are the results of cultural conditioning.

¹ WHO, *Health and Health Behaviour among Young People* (2000), at 115-120.

² E.g., William Bennett, *The Broken Hearth* (summarizing research in the U.S.).

³ I am indebted to Thomas Sowell, *A Conflict of Visions* (1987) for the idea of looking at social policy disputes from the perspective of the underlying conflicts in visions. The visions that Sowell discusses are different from those in this paper.

- Unlike other animal species, human beings have absolutely no instincts pertaining to children; child-rearing practices are entirely a matter of culture.

2. Conflicts of visions regarding women's role in the labor force

Women make up half of the adult population, but not half of the labor force; there are some fields of employment where women predominate, but in many others they are numerically much fewer than men. There are basically two ways that people feel about this.

- There should be no differences between women's and men's presence in the work force, except for those discrepancies necessitated by the biological aspects of pregnancy; since women are currently under-represented, the State must take action to ensure that women's participation in the labor force as a whole, and in each sector, will be statistically the same as men's.
- While women should not be discriminated against in employment, there are valid gender divisions of labor in child rearing (whether due to instinct or to culture), and the State and society should respect and actively support these divisions.

3. Conflicts of visions regarding the roles of parents and paid care-givers

As more women enter the work force, work longer hours, and increasingly do the same jobs as men, there are policy choices to be made about who should be the most directly engaged in the raising of children. There are basically two opinions about the direction in which society should move.

- Child-care provided by paid and qualified persons is an appropriate substitute for child-rearing by working parents; such child-care should be actively promoted in order to free parents to participate as much as possible in the labor force.
- Institutional child-care is not an adequate substitute for parental child-rearing; work should be regulated in order to actively promote parental child-rearing as much as possible.

B. Links between the visions

The visions outlined above are summary descriptions of basic notions about human nature and society, and are therefore ideal types. In reality, people often have mixed feelings within a given vision. (E.g., the belief that the State must ensure equal participation of women in all sectors of the work force might be qualified by the belief that women should not be conscripted into the military, or serve in direct combat.) Still, when it comes to taking a position on a public policy issue, or to making a personal decision, the choices that a person makes will usually reflect a consistent pattern within a particular vision.

People are concerned about being coerced into acting in ways that are contrary to their wishes. As to the first conflict of visions, many people do not like the idea that there may be human instincts,

especially gender-related instincts, because they are concerned that this could lead to limitations on personal choices. Laws that prohibit sex discrimination in the labor force protect freedom of choice, freeing people from legal coercion pertaining to sex roles. This is often seen to be insufficient, however. Social pressure, and even the existence of values and attitudes about sex roles, create pressures that limit or otherwise influence choice. In addition, as the second conflict of visions indicates, many people want “carrot and stick” legislation that will bring about a certain kind of world, one in which instinctual or cultural differences pertaining to gender do not appear in the labor force, and where the only differences in behavior are those that are connected to the physical condition of pregnancy.

On the other hand, people who believe that there are valid gender differences, either due to human nature or to culture, are also concerned about coercion. The coercion could be legal, as when a State uses sex discrimination as a tool to achieve statistical parity of the sexes in the work force. Or the concern could be about social attitudes and values undermining their choices regarding child-rearing. For instance, a recent book describes motherhood as “the opposite of liberation.”⁴ To the extent that such attitudes take root in society there will be increased difficulties for the women who want to perform motherhood roles. Or the coercion could be structural. For example, as the number of two-earner house-holds increases, the cost-of-living rises, which creates economic pressure for the parent engaged most directly in child-rearing to enter the labor force, or to work longer hours.

Everyone is concerned about being coerced. In making economic and social policies, the State, businesses, and society in general will have to make choices about ends and means, and these choices will reflect their underlying visions of human nature and the human condition. The carrots and the sticks of social engineering are never neutral: they always coerce people, and oftentimes outright compel them, and the direction of the coercion will ultimately favor one vision over another.

Implementing the CRC is intimately connected to choices about visions. The Convention is not only about the promotion of the welfare of children and adolescents, it is about the ensuring of their rights. Rights are inherently coercive, and the coercion will always end up being in the direction of some vision about human nature and the correct ordering of society. The CRC’s best interests rule (article 3), the principle that parents should make their children’s best interests their “basic concern” (article 18), the right to know and be cared for by parents (articles 7, 8, & 16), and the various rights that promote the young person’s healthy, holistic development (articles 4, 6, 19, 24, & 29, in particular), all require decisions that depend upon assumptions about human nature.

Unfortunately, the basic questions about what children and adolescents need are relatively unaddressed in the CRC literature. Everyone can agree that kids must never be tortured, or forced to work in a mine or as prostitutes, but what is not discussed are the basic aspects of human nature that must be taken into account if each boy’s and girl’s “personality, talents and mental and physical abilities” are to be developed “to their fullest potential” (in the words of article 29).

III. Examples of Visions

⁴ Jennifer Baumgardner & Amy Richards, *Manifesto: Young Women, Feminism, and the Future*.

This section will illustrate choices about underlying assumptions through several real-life examples.

A. “Mothering”

Barbara Risman writes, in *Gender Vertigo*:

Can only women be effective as primary nurturers? The answer is crucial, for no one would want to abolish gender structure at the cost of harming our children. But I do not believe that sexual equality and a post-gendered society would hurt future generations of children. My research suggests that men *can* mother.⁵

I would suggest that Risman has dodged the question. The issue is not whether men in general have “the capacity to develop the needed skills”⁶ to take care of children, as if it were an either-or question of skill acquisition, like whether or not men can learn to sew or women learn to change a tire. Nor is it a question about specific individuals, as when in a divorce case the judge must decide whether the better custodial parent would be mother Sally or father Bill. Nor is it a matter of what a particular sociologist believes is “suggested” by her research project.

There are several billion children and adolescents in the world at this moment, and each one requires nearly two decades of child-rearing. The question is whether women in general have some natural inclination towards “mothering”⁷ that gives them an advantage, however slight, in the protection and nurturing of young children. As Darwinians tell us, the smallest advantage for individual survival can have profound consequences for the species when aggregated over time.

Risman observes the “nearly universal absence” of men in “mothering” and seeks to explain it. She says the cause is “gender structure,” not human instincts. If people find this too abstract and ideological to be persuasive, Risman’s answer is that the truth of her explanation is “deeply hidden by contemporary folklore about families.”⁸

I would suggest that the truth is that nobody knows for a scientific fact why things are the way they are, or knows with like certainty how they should be, or how to get there; ultimately, we are forced to fall back on our visions of human nature.

B. Babies

Although babies constitute a large portion of the population covered by the CRC, and although they are extremely vulnerable in comparison with other social groups, there is surprisingly little attention paid to their rights within the CRC movement. When there is large scale infanticide, for instance, we do not see ngo mobilization comparable to situations where like numbers of civilians are being killed in war, or where political prisoners are being murdered. In fact, we see no mobilization at all. A single adult criminal facing capital punishment will generate more concerted ngo efforts to save his life than all the

⁵ (Yale University Press, 1998) at 46.

⁶ Id. at 70.

⁷ Id., at 71.

⁸ Id.

ngo efforts to protect babies from infanticide put together. All humans beings are equal, but some are less human than others. Or so it would seem.⁹

The good news is that several ngos are doing outstanding work for babies by the promotion of breastfeeding. If there were to be a Nobel Prize for the Advancement of Children's Lives, then these ngos would deserve nominations.

One of these ngos has an excellent two-page brochure that explains the importance of breastfeeding for both the babies and their mothers. What is of interest to us here is that this brochure is written in order to help people "understand breastfeeding from the human rights perspective."¹⁰ To this end there is a section titled, "Who has the right?" It answers by saying, "Every woman has the right to breastfeed her child." There is absolutely nothing about the babies' rights to breastfeed. This section does mention the CRC, and even summarizes some of its provisions, but the brochure is totally silent about the human rights of babies to be breastfed.

How can this silence be accounted for?

The brochure says that "*the decision to breastfeed or not lies with each mother.*" It goes on to say that the decision is a "private matter," and that the government must protect, promote, and support the mother's right. This, I would suggest, is a vision of unrestrained autonomy. Nowhere does the brochure say anything about a mother's duty to breastfeed, even though it has explained how vitally important breastfeeding is to the survival and development of the baby. All rights, no duties.

But if a mother has a duty, if babies have a right to breastfeed, then there is no longer unrestrained autonomy. The basic function of rights is to limit discretion. If everyone automatically gave you what you needed or wanted then you would never need a right. Whether the right is legal or moral, it is a limitation on the duty-bearer's freedom to act in a manner that harms you.

It should also be mentioned that the brochure says nothing about fathers, or men, or about the role of other children in the family in supporting breastfeeding; indeed, the word "family" never appears. It has sections like, "What if my right to breastfeed is hindered?" and it discusses the roles of women's organizations, the government, and trade unions, but men never enter the picture. By contrast, the CRC expressly says that "parents and children" are to be informed about "the advantages of breastfeeding" (article 24), which is in keeping with its recognition of "the principle that both parents have common responsibilities for the upbringing and development" of their children (article 18).¹¹

IV. Monitoring State Fulfillment of CRC Obligations

⁹ Peter Singer, the most widely read philosopher in history, asserts that parents should have the unrestrained right to kill their children anytime within the first two or three months after birth. "Justifying Infanticide," in *Writings On An Ethical Life* (HarperCollins 2000), at 186-200.

¹⁰ While I leave the organization unnamed, the brochure is in my files, and can be consulted by anyone with an interest.

¹¹ For a more child-centered approach to breastfeeding, see Bruce Kent, "Realizing infants' nutrition rights," 5 *International Journal of Children's Rights* 457 (1997). Interestingly, Kent's approach is still not fully based on the baby's rights.

Occasionally the dialogues between the Committee on the Rights of the Child and State parties have touched upon the visions mentioned in this paper. The representative of Palau, for instance, said that in his island nation mothers were working more in the labor force, which jeopardizes the rights of children to be cared for by their parents. This reflects a particular vision, and takes a child-centered, rights-based approach. Another perspective was voiced in the session with the Swiss government. Some public schools do not have cafeterias, so the children walk home for lunch. A question was raised about whether this policy adversely affects working women.

On several occasions the Committee has made recommendations to States that concern child-rearing arrangements. It recommended that Saint Kitts and Nevis “undertake a study on the impact (both financial and psychological) of ‘visiting relationships’ on children¹²; that Grenada “undertake a study on child rearing practices and how they affect boys and girls”¹³; that the UK Dependent Territories “undertake a study on the situation of single parent families and visiting relationships in the Caribbean Territories and the impact (both financial and psychological) on children”¹⁴; and that Cape Verde study “the impact of the union libre fixe relationship structure on children.”¹⁵ It has also recommend that Djibouti “discourage the practice of polygamy.”

The diminishing involvement of parents in the lives of their children that is occurring in many countries, such as in the shifts to single parent families, walk-away fathers, and commercial child-care, have not yet become a focus of attention in the monitoring process.

V. Conclusion

A friend of mine in the CRC movement summed up the situation recently during a conversation about the present state of affairs. “Children’s rights are what is left over after adults have gotten their rights,” she said. Since babies, children, and, for the most part, teenagers depend upon adults to ensure the fulfillment of their rights, kids will always be at risk of getting only the left-overs. As private actors take on State activities under service-provider contracts, or as they directly compete with the State’s provisions of services (as with private schools), or as they provide parents with options (as with commercial child-care services), there will be more adults who could act as kids’ advocates. But at the same time these adults could be demanding their rights and pursuing thier interests. In which case kids’ rights will be what is left over.

¹² UN Doc. CRC/C/15/Add.104, para. 21.

¹³ UN Doc. CRC/C/15/Add.121, para. 13.

¹⁴ UN Doc. CRC/C/15/Add.135, para. 30.

¹⁵ UN Doc. CRC/C/15/Add.168, para. 38.