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## *A Review of David Archard's Children: Rights and Childhood*

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David Archard, *Children: Rights and Childhood*. New York: Routledge, 1993. Pp. ix, 188 [Cloth \$83.95 (Cdn.); paper \$24.95 (Cdn.)].

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### Introduction

Whether children should have rights and what these rights should be are questions that continue to engage scholars, legislators and social-policy makers who are interested in the plight of young people. Were the legal status of other groups of human beings questioned in the same way, our responses would likely range from disbelief to anger. What is different about the case of children? The persistence of the debate stems from two concerns. The first relates to differences between children and adults which significantly affect the former's capacity to hold and exercise rights. The opposing argument presented is that denying rights to children leaves them vulnerable to harm and unjust disadvantage. Although elements of controversy remain, members of contemporary legal communities would likely affirm the existence of children's rights. Some would point to the *United Nations Convention on the Rights of the Child*.<sup>1</sup> Others would refer to those provisions in legislation governing custody or child welfare that protect a child's best interests. Still others might point to children who have mounted successful challenges on equality grounds under the *Canadian Charter of Rights and Freedoms*.<sup>2</sup> A whole range of entitlements would be indicated, some of which are exercised by children and others by parents or the state.

At the same time, the disturbing reality of many children's lives confronts us both internationally and in Canada. The recent U.N.I.C.E.F. report, the *State of the World's Children 1996*,<sup>3</sup> focused particularly on the toll that war has taken on the

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<sup>1</sup> GA Res. 44/25, UN GAOR, Supp. No. 49, UN Doc. A/44/736 (1989) (entered into force 2 September 1990) [hereinafter *U.N. Convention*].

<sup>2</sup> Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter *Charter*].

<sup>3</sup> U.N.I.C.E.F., *The State of the World's Children 1996* (New York: Oxford University Press, 1996).

world's children. Since 1985, 2 million children have died as a result of war, while 4 to 5 million have been left disabled, 10 million psychologically traumatized, and 12 million left homeless.<sup>4</sup> In times of armed conflict, children are as likely as adults to be tortured and physically or sexually assaulted and are more likely to suffer malnutrition.<sup>5</sup> U.N.I.C.E.F. also reports that millions of children live in "close-to-battlefield conditions" on the streets of developing countries as well as those of the industrial world.<sup>6</sup> Here in Canada, C. Bagley, B. Burrows, and C. Yaworski identify a serious problem with street youth and juvenile prostitution but find that our governments have failed to address it in any significant manner.<sup>7</sup> In addition, more than one in five Canadian children live in poverty; at 21.3 percent, this is the highest percentage since Statistics Canada began reporting low-income statistics for children in 1980.<sup>8</sup> P. La Novara also reports that children make up a significant group of victims of both family and other forms of violence in this country.<sup>9</sup>

These statistics demonstrate that even with the various "rights" that young persons have, many face extreme violence, exploitation, and economic hardship. Moreover, a child's chances of experiencing these conditions seem to be greatly affected by his or her gender, racial or ethnic origin, socio-economic status, and nationality. The creation of special entitlements and protections is obviously not the end of the inquiry. We still have a lot to learn about how to make rights work for society's young members. The process becomes extremely complex as children are vulnerable to their parents and other exploitive adults in their communities in addition to representatives of both their own and other states. Moreover, if we accept the proposition that a person's childhood has a significant impact on his or her life choices and opportunities, it is difficult to imagine promoting equality and human rights for adults without addressing young people's most fundamental concerns.

This complexity of issues has inspired *Children: Rights and Childhood*,<sup>10</sup> a philosophical essay by David Archard, Senior Lecturer in Philosophy at the University of Ulster in Jordanstown. In the book, the author applies the tools and experience of a philosopher to the daunting task of developing workable rights for children, in light of some of the difficulties outlined above. While the questions may be complex, Archard's approach is simple and pragmatic, reaching beyond the "philosophical" or theoretical concerns regarding rights for children to their various legal and social consequences. His exploration starts with "modern" conceptions of childhood, traces

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<sup>4</sup> See *ibid.* at 13.

<sup>5</sup> See *ibid.* at 18-20.

<sup>6</sup> *Ibid.* at 28-29.

<sup>7</sup> See C. Bagley, B. Burrows & C. Yaworski, "Street Kids and Adolescent Prostitution: A Challenge for Legal and Social Services" in N. Bala, J.P. Hornick & R. Vogl, eds., *Canadian Child Welfare Law* (Toronto: Thompson Educational, 1991) 109 at 129-30.

<sup>8</sup> See Statistics Canada, *Income Distributions by Size in Canada 1993* (Ottawa: Industry Canada, 1994) at 20-21.

<sup>9</sup> See P. La Novara, *A Portrait of Families in Canada* (Ottawa: Statistics Canada, 1993) at 53.

<sup>10</sup> (New York: Routledge, 1993) [hereinafter *Children*]. The book is one of a Routledge series called IDEAS, which endeavours to make contemporary philosophy accessible to all readers.

their role in liberal theory and the children's rights discourse, and assesses the consequent effects on current relationships among children, parents, and the state. The author's final destination is a tentative proposal for children's rights, a "modest collectivism" which seeks to guarantee young people the "best possible upbringing".<sup>11</sup>

As will be shown, Archard's proposal reflects current initiatives in Canadian human-rights law, social policy, and the *U.N. Convention*, measures which have proven less than successful in meeting many of children's most pressing needs. By exploring how Archard reaches his conclusions and comparing his theory to other work on children's rights, this review will identify possible modifications to his view, ones which may enable more powerful advocacy on behalf of children, even within the current legal structure. It may be noteworthy that the focus on the effectiveness of rights for children and potential *Charter* and international human-rights claims comes, in no small part, from my own background and interests. An appreciation of young peoples' lack of power and voice when confronted with legal and social-service systems, derived from my social work experience with street youth, those from child-welfare placements, and the juvenile justice system, formed the impetus for undertaking legal studies. My legal education, in turn — especially with respect to the *Charter* and international human rights — illustrated the promise of law to address social inequities facing children. Archard's *Children* provides an excellent opportunity to explore this potential.

## I. The Child in Early Liberal Theory

The book begins by recounting how children figure in the writings of John Locke, "arguably the most important and influential figure in the history of English-speaking philosophy".<sup>12</sup> Locke believed that children could not participate as full citizens as they did not have the requisite rationality to exercise their natural freedom and rights. Children's incomplete rationality also justifies parental authority, in that adults — normally parents — must protect the young from the dangerous exercise of freedom without reason. Yet, parental rights to control children are rooted in, and thus limited by, the adults' obligation as caregivers.<sup>13</sup> Archard refers to Locke's work to show that many of the difficulties that face those who promote and develop legal entitlements for children derive from the traditional liberal theory of rights and its inter-relationship with understandings of childhood and parenthood. The reader realizes that many arguments made today against rights for children are remarkably similar to Locke's assertions. The author effectively sets the stage for a challenge to those arguments, one based on more current values and realities, but nonetheless consonant with the general tenets of liberalism.

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<sup>11</sup> *Ibid.* at 170.

<sup>12</sup> *Ibid.* at 1.

<sup>13</sup> See *ibid.* at 3-7, 10.

## II. Childhood: Concept or Conception?

In Part I of the book, Archard turns his attention to the very notion of “childhood”. He first carefully differentiates this “concept”, that is, the universal idea that one might distinguish meaningfully between children and adults, and the modern “conception”, which involves moral judgments by a Western liberal society as to the most important differences between children and adults. In qualifying a conception as modern, Archard refers to ideas about childhood that developed within modernity, namely, the discourse of rational and empirical inquiry which has dominated Western thought from Locke’s writing to the present.<sup>14</sup> Archard maintains that the distinction is valid because the concept of childhood has existed throughout history and has continued relevance across cultures. Yet the author offers a model for critiquing various *conceptions* of childhood.<sup>15</sup> Archard sees value in such an exercise: “[T]he way we see the difference between children and adults owes everything to what concerns us about being adults in an adult world.”<sup>16</sup>

What does the modern conception of childhood say about Western societies’ priorities? While many inconsistent conceptions may exist, they share the notion of the separateness of childhood. In the West, children and adults inhabit different worlds, those of work and school or play, and within these they take on opposing roles. The segregation results from a view of childhood as being a distinct yet inevitable stage on the road to adulthood, a perception that relies upon psychological theories of child development as well as the portrayal of childhood in modern religion and literature. The stage is marked by innocence and incompetence which must be overcome to be fully adult. Western cultures believe that these characteristics preclude a child from enjoying the same rights and responsibilities as an adult.<sup>17</sup> Archard does not accept that children are naturally innocent and incompetent. He suggests that the very separation of childhood and adulthood may well create these traits in children, which, in turn, serve to maintain them in dependent and vulnerable relationships with adults. Child sexual abuse provides a forceful example: our attempt to keep children innocent about sexuality denies them knowledge of what is acceptable sexual behaviour by adults toward children. This leaves them much more vulnerable than would relevant information that is appropriate to their age and level of understanding.<sup>18</sup>

This section of the book is essential yet incomplete. The distinction between concept and conception is useful as it exposes the historical, social, and political nature of knowledge claims regarding children, particularly those from the social sciences. This concern is clearly inspired by the postmodern critique; however, while Archard specifically refers to and expresses sympathy with the postmodernists, he neglects the content of their analysis. Postmodernism exposes the power dimensions of knowledge

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<sup>14</sup> See *ibid.* at 20-21.

<sup>15</sup> See *ibid.* at 28.

<sup>16</sup> *Ibid.*

<sup>17</sup> See *ibid.* at 29-30.

<sup>18</sup> See *ibid.* at 40.

production and the impossibility of creating a discourse that serves more than the interests of its originators.<sup>19</sup> These criticisms thus provide serious challenges to any discussion of children's rights given the absence of young people in the production of the theory. Exploring the role of children in the various decisions and truth claims made regarding them might provide some useful clues as to why the effectiveness of existing rights for children seems so limited.

In this aim, Archard would have done well to look at whether and how children have been discussed by some prominent postmodern thinkers. A more extensive analysis might have resulted in scepticism regarding any conception of childhood as potentially empowering for children, at least to the degree that it is developed solely by adults. On Archard's own terms, conceptions simply express moral choices made by a society as to what it wishes to encourage in its adult members. This assertion is seen as inevitable yet may present serious moral problems in its own right if one considers that children are excluded from society's processes of knowledge production or decision-making. Without addressing this criticism, readers may well wonder how Archard can ensure that his own vision of childhood be any less oppressive for children than that built on traditional modern conceptions.

### III. Children's Rights and Childhood

Having established that the modern conceptions of childhood are determined by inconsistent and questionable beliefs and priorities, Part II describes the role these conceptions have played in the development of children's rights. The various entitlements children now enjoy have grown from two opposing movements. The "child liberationists" argue for children to have the same basic rights as adults. The "caretaker thesis" promotes the opposing view that children must be denied self-determination to ensure that they can exercise it upon reaching majority. Caretakers, therefore, must be supported and guided in making decisions on behalf of children, which reflect not only their interests at the time but those of the adults they will eventually become.<sup>20</sup>

Archard enumerates prevailing problems in the two views. The liberationist ignores the reality that some children, particularly young ones, are neither equally competent to adults nor interested in exercising rights.<sup>21</sup> The caretaker thesis, on the other hand, denies children self-determination as a group with no assessment of individual competence. It is also questionable whether caretakers can somehow ensure free self-determination of their offspring once they have reached adulthood, because parents

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<sup>19</sup> See P. Leonard, "Knowledge/Power and Postmodernism" (1994) 11 C. Soc. Work Rev. 1 at 11-26. Leonard explores the development of a social work practice that incorporates a self-reflective, postmodern-inspired critique. Application of these ideas could be similarly sought in legal practice and theory.

<sup>20</sup> See *Children*, *supra* note 10 at 45-49, 51-56.

<sup>21</sup> See *ibid.* at 49-51.

will have shaped their children's "self" to fit with a personal ideal of who their sons or daughters should be as adults.<sup>22</sup> In resolving the conflict, the author concludes that while differences may exist in the competence levels of children, these need not preclude them from exercising all basic rights to self-determination. The task becomes that of determining accurate levels of competence necessary to exercise various rights and assessing the age at which a child can be expected to have the particular capacity. In Archard's view, an adolescent should be capable of voting, and a young child should be able to make choices regarding sexual activity.<sup>23</sup> This latter capacity, however, should not be seen as the ability to consent within unequal power relationships with adults: "[S]ociety should act to provide the conditions under which the proper exercise of that competence can be secured and protected."<sup>24</sup>

Archard's view of effective rights for children emerges at the conclusion of this section of the book. Resolution of the tensions in the two visions of children's rights is sought through a flexible competency standard. Little is said, however, as to how competency will be assessed and how it will interact with the interests and needs of parents in caring for children. Child-development theory is no doubt the basis on which he would make such assessments; yet on his own terms, this theory is open to question. It creates a notion of children's rights that leaves no room for a child's dissenting voice. The potential of such a standard for oppressing children should be examined, particularly when it is seen as determining their access to many basic rights. At the same time, children depend on adults, usually parents, for their most fundamental needs. What role would these relationships play in the determination of a child's competency for self-determination?

A different perspective of children's rights has been developed from within feminist legal theory, one which rejects competency standards and recognizes the importance of relationships in any legal entitlement. Such an approach would be more effective in achieving the aims Archard promotes, while avoiding the problems inherent in a competency standard set by adults. Martha Minow, a strong proponent of this view, suggests that we stop comparing children's abilities to those of adults' and begin addressing "their mutual needs and connections".<sup>25</sup> Such a perspective involves changing our understanding of what it means to have rights. According to Minow, the liberal conception of rights was developed as a means of challenging the legally enforced relationships of authority and subordination, which constituted feudalism. Independent, autonomous individuals were created in their stead. As Minow explains, however, for children, women, and persons with disabilities, "who continued to occupy special statuses even under the liberal order" the "dependency track of legal treatment remained in force".<sup>26</sup> Vestiges of the older status-based legal protections are

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<sup>22</sup> See *ibid.* at 56-57.

<sup>23</sup> See *ibid.* at 69.

<sup>24</sup> *Ibid.* at 81.

<sup>25</sup> M. Minow, "Rights for the Next Generation: A Feminist Approach to Children's Rights" (1986) 9 *Harv. Women's L.J.* 1 at 2.

<sup>26</sup> *Ibid.* at 16.

also found in the various freedoms protected in liberal democracies, such as those of association and marriage. The law thus encourages both autonomy and relationships between individuals, a seeming contradiction that is most evident in the case of children but nonetheless true for all people.<sup>27</sup> Both connection and independence are necessary entitlements in a democratic society. In order for children's rights to be meaningful, we must develop an understanding of the relationships that are required to ensure their autonomy and to free them from abuses of power.<sup>28</sup>

This thesis is intriguing as it presents a notion of rights that applies to all members of society. It exposes as fallacy the increased independence of adults by explaining that our patterns of interdependence simply change as we grow older. Adults, too, need others to achieve self-determination. In this view, children have basic human rights; we simply have to determine how these can be achieved within the relationships that are essential in their lives. The oppressive potential of competency as the condition for basic human rights is largely overcome; children, as rights bearers, will necessarily have some say as to the form these relationships should take. The purpose of consulting with them changes from one aimed at proving or disproving a theory of child development or cognitive ability, to one ensuring that their basic rights are protected.

As a former social worker for adolescents, I am reminded of the plight of a number of street youth. They would clearly say that they needed love, support, and the guidance of caring adults. The state gave them the choice, however, of either living with their natural families or with substitute caregivers, often an institution. Young people from the street often spoke of abuse suffered in both situations and a resulting reluctance to live with either. At the same time, they had not reached the age of competence necessary to live independently and to receive social assistance. Moreover, even upon reaching that age, they would continue to need caring and guidance to live independently. A state response with a competence standard means choosing between independence and care, when these youth clearly need and want both. The "rights in relationships" approach would surely be more effective in ensuring their safety and welfare. Such rights would assure that these young people could live independently with support into early adulthood and would go a long way to addressing the serious problem of street youth in Canada.

#### IV. Children, Parents, Family, and State

Part III of *Children* shifts the focus of its analysis to parental rights and the role of the state in mediating conflicts between these and the rights of children. Archard argues that the right claimed by natural parents to rear their children rests essentially on the assumption that they are most likely to be suitable caregivers. Any right to raise children that is independent of this assumption cannot be justified within liberal the-

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<sup>27</sup> See *ibid.* at 16-17.

<sup>28</sup> See *ibid.* at 24.

ory. The strongest case that can be made in favour of natural parents is a presumption of their capacity to fulfil the child's right to the best possible upbringing.<sup>29</sup> While this claim involves the idea that children should be assured minimum standards of welfare, education, and health care, youngsters would clearly not be subject to removal from their families simply because a better alternative appeared. In order to guarantee this, caregivers may need a "right to rear" their children, but such a right becomes contingent on their discharging parental duties of parenthood. Society then has the obligation of intervening where the child is not assured a satisfactory upbringing. Archard admits that such a standard will likely lead to equality-based claims by children for adequate social and economic resources, a result with both national and global implications.<sup>30</sup>

Archard's view of parental rights leads him to revisit the liberal standard for intervention in families. The current norm sees the family as having the primary care-taking role for children and, thus, remaining entitled to a certain measure of autonomy and privacy. The state must only involve itself on the basis of a clearly specified, neutral threshold of intervention. Archard challenges the notion of an un-involved, neutral state given that governments develop many social and economic policies that serve to reinforce social inequities and hierarchies within families. In addition, while he accepts that families may be desirable and inevitable, albeit in a variety of forms, their claims to absolute privacy and autonomy can be seriously challenged.<sup>31</sup> Some limited family activity will truly require privacy, but these needs can be met as long as constant scrutiny is not required, and moral claims to privacy continue. The potential for harm, in the form of private abuse of children, outweighs the family's interest in absolute protection from outside observation. As for family autonomy, some measure is required to ensure both stability of relationships and the tolerance of diverse life choices so important in liberalism. Yet to the degree that society can agree on certain features of what is desirable in life, some "collectivist parenting" — that is social policy aimed at supporting child-rearing — is feasible in a liberal paradigm. Archard envisages a system in which state workers would have intermittent contact with families to ensure that children receive the care they need.<sup>32</sup>

Having established his conception of parental rights, the social and economic claims these entail for children, and a threshold for intervention that relies on a more permeable barrier between families and the state, Archard uses the concept of child abuse to demonstrate how his ideas would alter current practice. At present, definitions of abuse are used to set thresholds of state intervention in child-rearing. These are generally limited to physical harm or the risk thereof. Emotional abuse and neglect are considered less harmful and, thus, insufficient to warrant government action.<sup>33</sup> The author argues for a "broader, less legalistic" definition of abuse, one which

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<sup>29</sup> *Children*, *supra* note 10 at 102-106.

<sup>30</sup> See *ibid.* at 106-108.

<sup>31</sup> See *ibid.* at 110-21.

<sup>32</sup> See *ibid.* at 122-32.

<sup>33</sup> See *ibid.* at 149.



more clearly reflects the impact of other forms of deprivation on children.<sup>34</sup> As he states, any definition will involve a social norm regarding the dimensions of adequate childcare. He advocates defining harm and, thus, the standard of intervention as falling below a minimum necessary to encourage proper child development. Parents must provide a "good enough" upbringing; otherwise, the state will have a responsibility to act. This definition turns the quest for child-abuse prevention into a guarantee of a child's most basic welfare rights.<sup>35</sup>

Such a definition does not require removing children from their families when their basic rights are not respected. If the "abuse" is occurring due to a problem with, for example, social welfare or education policy and services, intervention should take place at that level, likely involving a re-distribution of resources on equitable terms. Archard explains that even with his minimum standard, gross inequities persist both locally and internationally with respect to the provision of children's basic needs. He also finds that social science evidence overwhelmingly links physical abuse to poverty and child sexual abuse to gender- and age-based hierarchies.<sup>36</sup> Archard explains: "As long as the question of equality, in its various aspects, is not addressed[,] the sad history of children's maltreatment at the hands of adults is unlikely to end."<sup>37</sup>

In this section of the book, Archard strives to establish claims by parents and children against the state for the provision of children's basic needs. He achieves his goal by starting with liberal conceptions of responsibility for children and challenging the basic assumption about the appropriate relationships between children, parents, and the state in ensuring that this responsibility is discharged. Archard conceives of a state policy where many professionals are involved with the family from its creation. Their job is to ensure that the state meets its obligations to provide the social and economic support that parents need to raise their children adequately. In Canada, if a social services minister read Archard's work, he or she might well assert that our country has established such rights. In most provinces, child-protection intervention would be seen as the last resort on a continuum of support services for families. Social assistance benefits would be perceived as adequate to provide the essentials for children. The right of older children to be heard during custody and child welfare decisions is provided in many — if not all — provinces and territories. However, as already stated, many children continue to live in poverty and suffer abuse whether within their families, from state-provided care, or on the street. Certainly, many of my former colleagues and clients would accurately deny that the government was ensuring the best possible upbringing for children.

Archard has presented a powerful argument within liberal theory itself that children have a right to an adequate upbringing. The next step would be to find effective means for children and parents to exercise this right against the state. While Archard

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<sup>34</sup> *Ibid* at 150.

<sup>35</sup> See *ibid.* at 152-53.

<sup>36</sup> See *ibid.* at 154-58.

<sup>37</sup> *Ibid.* at 159.

does not directly address this problem, he does suggest that children have an equality claim. To a student currently learning about equality jurisprudence under the *Charter*, this idea sounds promising (at least in Canada). After all, the *Charter* binds government action through the process of judicial review and includes section 15, which specifically mentions age as a prohibited ground of discrimination. Also, in *Andrews v. Law Society of British Columbia*,<sup>38</sup> still the leading case for interpreting and applying section 15, a substantive notion of equality is described, in which members of oppressed groups in society may claim differential treatment if necessary to equalize the burdens and benefits of impugned legislation. This may require positive steps on the part of legislators who must consider the social and political context in which claimants find themselves. Interpreted in this manner, the equality provision of the *Charter* is consonant with the claim Archard suggests and is exercisable against the state.

Such a claim would also be congruent with the conception of children's rights discussed at the end of the previous section; children would be understood as having basic rights to equality, in the same manner as adults. To develop substantive equality for children, we must identify the patterns of children's disadvantage in society and the appropriate means for addressing them. An understanding of the relationships in which children are involved, *from their own point of view*, is clearly essential to such an inquiry. As Professor Colleen Sheppard explains in her work on equality claims for children, many forms of protection for young people are paternalistic in that they are based on the assumption that children are not equal to adults. Child welfare and special educational and labour policies are examples of this approach. The originators of such measures, no doubt, envisaged only formal notions of equality where individuals had to be the same to be treated equally, and children were thus naturally unequal to adults.<sup>39</sup>

As Professor Sheppard also indicates, substantive equality for children would entail a number of special measures to achieve an equality of outcomes, ones which address their needs and circumstances. These protections must be based not on paternalistic ideas of inequality, but on an appreciation of how children's needs will impact on their access to basic human rights. As in other equality claims, systemic and structural features that contribute to inequality must be changed. The most obvious challenge is child poverty, a basic source of inequality for young people which is linked to many other forms of disadvantage. We must also use a relational perspective which assesses how inequality plays out in both institutional and familial relationships and recognizes children's needs for caring and interdependence.<sup>40</sup>

An equality claim would transform Archard's right to an adequate upbringing into a basic human right exercisable by children and parents against the state. Moreover, it would resolve the dichotomy between paternalistic protection and

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<sup>38</sup> [1989] 1 S.C.R. 143 at 164ff, 56 D.L.R. (4th) 1 [hereinafter *Andrews*].

<sup>39</sup> See C. Sheppard, "Children's Rights to Equality: Protection versus Paternalism" (1992) 1 *Ann. of Health L.* 197 at 203.

<sup>40</sup> See *ibid.* at 208-10.

autonomy, which seems to fuel the debate over children's rights and remains present in Archard's differentiation between rights to self-determination and rights to the best possible upbringing. Distinctions between children and adults should have no bearing on one's capacity to hold rights. Instead, they should inform the means through which the state ensures their realization, as have distinctions between men and women or different racial groups. From such a perspective, Archard's "best possible upbringing" notion would represent *basic* human rights understood in the context of children, as opposed to *specialized* rights for children.

### Conclusion: The Modest Collectivism of the *U.N. Convention*

Based on his challenges to traditional liberal assumptions and standards of intervention, Archard concludes *Children* with "some ideas for thinking about, caring for, and empowering children".<sup>41</sup> First, he reminds us that any proposal for developing children's rights must be directed by what we desire in society's adults. In this aim, equality, democracy, and collectivism are the values the author seeks to encourage. For children, these would entail equal access to those resources that will ensure the best possible upbringing, education about democracy and participation in decisions that concern them, and collective responses to the task of raising them. Archard's suggestions for giving life to these values include universal provision of pre-school programming, shared responsibility for parenting with state and community, expression of our collective valuation of children through children's rights charters and advocates, and an expansion of children's rights in accordance with their competency.<sup>42</sup> Archard believes that his collectivism would bring children out of the "private shades of the family" and "into the public domain", thus making it easier to track their progress and prevent abuse both at the societal level and within families.<sup>43</sup> Moreover, the liberal commitment to pluralism can be respected because modest collectivism does not rely on a single ideal of how to provide the best possible upbringing; rather, it requires some common minimal standards to be set, which is a goal best achieved through collective planning and action. Archard hopes that his model would raise children who, with their respect for diversity and sense of shared concerns, will become a "better community of adults".<sup>44</sup>

The values and goals evident in Archard's "modest collectivism" are not only theoretical ideals; they appear in the *U.N. Convention*, a treaty which is fast approaching universal ratification.<sup>45</sup> Indeed, its preamble expresses the objective of raising children to be tolerant members of a society committed to human rights, much in keeping with Archard's own goal of creating a better community. The general values of equality, democracy, and collectivism as understood by Archard are evident in the

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<sup>41</sup> *Children*, *supra* note 10 at 161.

<sup>42</sup> See *ibid.* at 162-68.

<sup>43</sup> *Ibid.* at 169.

<sup>44</sup> *Ibid.* at 170.

<sup>45</sup> See U.N.I.C.E.F., *supra* note 3 at 66.

various rights included in the treaty. The *U.N. Convention* has been called a "signal achievement" for its success in combining and, thus, giving equal status to two groupings of rights: the civil and political as well as the social, economic, and cultural.<sup>46</sup> The latter cluster definitely reflects a commitment to the "best possible upbringing" theme and the equality this will bring to children. Children acquire basic rights to an adequate standard of living for their physical and social development,<sup>47</sup> social security benefits,<sup>48</sup> maximum standards of health,<sup>49</sup> and protection from violence and exploitation.<sup>50</sup> While the implementation of social and economic rights is limited by the state parties' economic circumstances, Professor Stephen Toope reminds us that states are required to do the maximum possible to ensure the survival and development of children: "If these commitments are to be taken at face value they will require states to reassess their spending priorities [with a new emphasis on children]."<sup>51</sup>

Archard's value of democracy finds expression in the various civil and political rights included in the *U.N. Convention*, such as protection from discrimination<sup>52</sup> and the right of children to express their views in decisions that concern them.<sup>53</sup> Children are also to be guided by parents in exercising their rights with regard to their evolving capacities. Collectivism is reflected in the various measures that provide for social services to aid parents in raising and educating their children.<sup>54</sup> The *U.N. Convention* can thus provide a model of modest collectivism but one which also clearly transforms Archard's notion of the right to an adequate upbringing into a basic human right. Will such rights prove effective for children?

Since the *U.N. Convention's* coming into force in 1990, Canada's commitment to children seems, if anything, to have weakened. As already mentioned, child poverty is at an all-time high.<sup>55</sup> The Federal Government's new cost-sharing plan, the Canada Health and Social Transfer, will reduce transfer payments to the provinces for health and social services over the next few years. Many commentators predict that the poor will be the hardest hit by this change in policy;<sup>56</sup> this is a concern for children who are disproportionately economically deprived. From a global perspective, U.N.I.C.E.F. acknowledges that "the prospects for the fight against poverty generally appear mixed", and that "poverty is actually deepening in [some] regions of the world."<sup>57</sup>

<sup>46</sup> S. Toope, "The Convention on the Rights of the Child: Implications for Canada" in M. Freeman, ed., *Children's Rights: A Comparative Perspective* (Brookfield, Vt.: Dartmouth, 1996) 33 at 35.

<sup>47</sup> See *U.N. Convention*, *supra* note 1 at art. 27.

<sup>48</sup> See *ibid.* at art. 26.

<sup>49</sup> See *ibid.* at art. 24.

<sup>50</sup> See *ibid.* at arts. 19, 32, 34. See also Toope, *supra* note 46 at 38.

<sup>51</sup> Toope, *ibid.* at 36.

<sup>52</sup> See *U.N. Convention*, *supra* note 1 at art. 1.

<sup>53</sup> See *ibid.* at art. 12.

<sup>54</sup> See *ibid.* at art. 18.

<sup>55</sup> See Statistics Canada, *supra* note 8 at 20-21.

<sup>56</sup> See e.g. M. Kennedy, "Ottawa's New Transfer Program Gives the Provinces More Say But Less Money" *The [Montreal] Gazette* (1 April 1996) A11.

<sup>57</sup> U.N.I.C.E.F., *supra* note 3 at 67.

While U.N.I.C.E.F. describes the *U.N. Convention* and other such documents as “genuine landmarks”, it recognizes “the extent to which [their] principles have been flouted” and states: “Clearly, what is lacking ... are the mechanisms and the will for enforcement.”<sup>58</sup>

In its transformation of an adequate upbringing into a basic human right for children, the *U.N. Convention* achieves in the international context what might also be pursued through a *Charter*-based equality claim. Nonetheless, few advocates seem willing or able to use the *Charter*'s tools to empower young people. More effective *advocacy* is also clearly essential if such rights are to make a significant difference to children's lives. Much can be learned from the forgoing analysis of children's rights about how adults can respond more justly to children's concerns. The following principles, which are inspired by an egalitarian approach to human rights for children, may assist child advocates.

First, advocates must adopt a systemic approach. Much of children's disadvantage grows from state mechanisms which were based on the notion of children's inequality. To achieve the best possible upbringing that is enshrined as a basic right in the *U.N. Convention*, these systems must be re-evaluated and changed to reflect an egalitarian basis. Advocacy must, therefore, go beyond the courts to those institutions and systems which are meant to foster relationships for children and families. A second principle grows from the relational analysis of children's rights. If we understand children within existing relations and structures, we soon see that their legal and factual dependency on adults prevents them from forming a powerful constituency in their own right. At the same time, conceiving of rights for children as fundamentally different from those of adults prevents them from joining issue, whether in the legal or political sense, with other groups who are making human-rights claims. In many cases, children's interests will overlap with those with whom they form the most intimate connections. Quests for women's rights and the self-determination of ethnic and cultural communities may well promote interests and claims important to children. As such, child advocates should seek ways to work and join cause with these more powerful movements, thereby supporting the relationships that are crucial to the exercise of young people's rights.

Finally, we must remain ever mindful that children's unique position in relation to adults also requires special means through which their own concerns can be articulated and protected within their communities and families. Child advocates must, therefore, appreciate the special circumstances in which children find themselves and seek ways to overcome children's lack of access to the production of knowledge about their circumstances and decisions regarding their care. Our approach to children must reflect upon the power that we have in relation to them and work to overcome the difficulties this presents. In advocating for children, the dangers of speaking for them from our position as adults should be addressed; many of our beliefs about children will be based on what adults observe, not on what young people experience.

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<sup>58</sup> *Ibid.* at 30-31.

Helping children organize and express themselves may be a very good start. The National Youth in Care Network provides an excellent example of such a process. With assistance from concerned adults in the community, many of whom are former wards of child-welfare agencies, children in care are able to express their concerns and advocate for change in child-welfare policies affecting them.<sup>59</sup> Efforts to support and include such groups should be an integral part of all attempts respecting human-rights advocacy. This three pronged approach of targeting systems, forging connections, and supporting children's expression and participation could guide either independent or state-provided child advocates. It would ensure an advocacy for children truly based on the principles of human rights and equality.

As David Archard concludes in *Children*, empowering young people may well require fundamental changes to our social and political institutions.<sup>60</sup> Such changes will only be possible, however, if children's rights are understood as part of a greater effort to eradicate basic inequality. At the same time, children's rights should not simply be an expression of what society wants for its adults, but what children want for themselves — now and in their future. Let us not abandon children to their rights but, rather, seek out ways for young people to participate in the greater quest for human rights and equality for us all.

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<sup>59</sup> See B. Raychaba, *To Be on Our Own with No Direction from Home* (Ottawa: National Youth in Care Network, 1988) at 2-3.

<sup>60</sup> See *Children*, *supra* note 10 at 160.