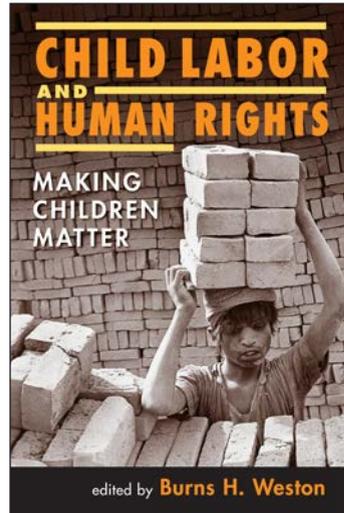


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# Child Labor and Human Rights: Making Children Matter

edited by  
Burns H. Weston

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# 1

## Rethinking Child Labor: A Multidimensional Human Rights Problem

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*Burns H. Weston and Mark B. Teerink*

It is indisputable. Child labor is a human rights problem,<sup>1</sup> and increasingly recognized as such the world over. Consider, for starters, the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR),<sup>2</sup> Article 10(3) of which provides, in part, as follows: “Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.” Consider also the 1989 United Nations Convention on the Rights of the Child (CRC),<sup>3</sup> so widely adopted (more so than any other human rights compact in history) that it may be said to have entered into customary international law.<sup>4</sup> Article 32(1) of the convention is explicit: “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” Article 32(2), requiring the states parties to take “legislative, administrative, social and educational measures” in respect of the foregoing, gives formal muscle to this human rights injunction.

Also explicit, though less directly, is the 1999 International Labour Organization Convention (No. 182) Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour (ILO C182).<sup>5</sup> In its preamble, ILO C182 recalls, *inter alia*, the 1989 CRC, the 1998 ILO Declaration on Fundamental Principles and Rights at Work,<sup>6</sup> and the 1956 United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.<sup>7</sup> Thus it predicates its prohibitions of child labor’s “worst forms” on a human rights framework, at least in part.

#### 4 *Clarifying the Problem*

But particularly instructive, especially when accounting for the most egregious forms of child labor, are multiple additional provisions of the 1989 CRC, among them:<sup>8</sup> Article 3, requiring the states parties, “in all actions concerning children,” to ensure “the best interests of the child,” including “such protection and care as is necessary for his or her well-being”; Article 6, requiring the states parties to ensure “to the maximum extent possible the survival and development of the child”; Article 8, requiring the states parties to respect “the right of the child to preserve his or her identity, including . . . name and family relations”; Article 9, requiring the states parties to ensure that, unless otherwise provided by law, “a child shall not be separated from his or her parents against their will”; Article 11, requiring the states parties “to combat the illicit transfer and non-return of children abroad”; Article 12, requiring the states parties to assure “the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child,” including “in any judicial and administrative proceedings affecting the child”; Article 13, safeguarding the right of children to “freedom of expression,” including “freedom to seek, receive, and impart information and ideas of all kinds”; Article 15, recognizing the right of children to “freedom of association” and “peaceful assembly”; Article 16, protecting children against “arbitrary or unlawful interference with his or her privacy, family, home or correspondence”; Article 18, requiring parents to assume “common” and “primary” responsibility for “the upbringing and development of the child,” guided by “the best interests of the child”; Article 19, requiring the states parties “to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”; Article 24, recognizing “the right of the child to the enjoyment of the highest attainable standard of health”; Article 26, recognizing “for every child the right to benefit from social security”; Article 27, recognizing “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”; Article 28, recognizing “the right of the child to education”; Article 31, recognizing “the right of the child to rest and leisure”; Article 34, requiring the states parties “to protect the child from all forms of sexual exploitation and sexual abuse”; Article 35, requiring the states parties “to prevent the abduction of, the sale of or traffic in children for any purpose or in any form”; Article 36, requiring the states parties to protect the child “against all other forms of exploitation prejudicial to any aspect of the child’s welfare”; Article 37, protecting children against “cruel, inhuman or degrading treatment”; and Article 38, requiring states parties “to ensure that persons who have not attained the age of fifteen years do not take direct part in hostilities” and to “refrain from recruiting any person who has not attained the age of fifteen years into their armed forces.”

In other words, the problem of child labor is and must be recognized as a human rights problem not in a narrow monolithic sense, but as one that is mul-

tidisciplinary, multifaceted, and multisectoral—in a word, multidimensional—and involving practices that violate children’s human rights both directly (e.g., slavery) and—more commonly—indirectly (e.g., compulsory labor that results in denial of the right to education). It embraces not only “the rights of the child” per se, but as well the broad panoply of entitlements across the whole spectrum of rights with which, at least in theory, *all* members of the human family are endowed—that is, the three “generations” of rights that have evolved since at least the English Bill of Rights of 1689 to the present day: (1) civil and political rights; (2) economic, social, and cultural rights; and most recently (3) community (or “solidarity”) group rights.<sup>9</sup> Each has its own historical roots that track the evolution of modern industrial society, including the development of a labor class.<sup>10</sup> Each is thus linked to the problem of child labor in one or more of its manifestations, including such third generation rights as the right to peace,<sup>11</sup> the right to development,<sup>12</sup> and the right to a clean and healthy environment.<sup>13</sup> The exploitive employment of trafficked children for commercial sexual acts, for example, flouts the right to the security of one’s person, ergo first generation civil and political rights.<sup>14</sup> The exposure of working children to toxic and otherwise hazardous substances infringes directly upon the human right to health, ergo second generation economic, social, and cultural rights.<sup>15</sup> Child soldiering subverts not only the first generation right to security of one’s person but, likewise, the group right to peace, ergo third generation community (or solidarity) rights.<sup>16</sup>

Indeed, few provisions of the three historic instruments that constitute the “International Bill of Human Rights”—the 1948 Universal Declaration of Human Rights (UDHR), the 1966 ICESCR, and the 1966 International Covenant on Civil and Political Rights (ICCPR)—are unaffected by the problem of child labor.<sup>17</sup> This is particularly apparent when one conceives of human rights in terms of “human capabilities” in the manner of Martha Nussbaum and Amartya Sen; that is, by reference less to abstract wants (policy objectives) than to concrete and measurable needs (life functions)<sup>18</sup>—for example, life itself; bodily health and bodily integrity; senses, imagination, and thought; emotions; conscience; affiliation qua friendship and respect; and political and material control over one’s environment.<sup>19</sup> It is impossible to dissociate the problem of child labor, especially its worst forms, from any one of these most central of human capabilities and therefore, as well, from any of their human rights correlatives. A mere glance at the 1948 UDHR proves the comparative point.<sup>20</sup>

But it is not only the multidimensionality of the child labor problem that reveals its human rights linkages. Also highly relevant is its interrelatedness with the human rights of the parents or guardians of working children,<sup>21</sup> a point well understood by, for example, the United Nations Children’s Fund (UNICEF), which works to advance the rights of children and of women—qua mothers—in tandem.<sup>22</sup> As evidenced elsewhere in this volume, the safe-

guarding of children's rights depends not merely on the promotion and protection of their rights, but on the promotion and protection of the fundamental human rights of their parents or guardians as well,<sup>23</sup> and "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."<sup>24</sup> Denying parents or guardians their human rights contributes to the propagation or perpetuation of child labor and thereby to denials of the rights of children.

In sum, the nexus between child labor and human rights is both broad and deep. That a number of states, intergovernmental institutions, and nongovernmental organizations (NGOs) engaged in the struggle against child labor have adopted or begun to adopt rights-based policies to prosecute its abolition is thus not surprising.

Still, as noted in the introduction to this volume<sup>25</sup> and in Chapter 10 as well,<sup>26</sup> a commitment to a rights-based approach to child labor is not yet common in official policy or practice. Skeptics assert that rights-based approaches to social ills such as child labor lack pragmatism because, it is said, they focus on unrealistic, aspirational norms that have little or no connection to the "real world." Indeed, some suggest that, in respect of child labor at least, human rights approaches tend to be counterproductive<sup>27</sup> and, more generally, that the international human rights movement is part of the problem, not the solution.<sup>28</sup>

We demur and contest these claims below. While the skeptics certainly have some valid points (the human rights movement is, after all, a human—ergo imperfect—project), there is no denying that a rights-based approach to child labor, especially when conceived and executed from a multidimensional, holistic perspective, has strong pragmatic underpinnings and thus can have substantial beneficial results.<sup>29</sup> One can point to numerous instances in which human rights discourse and strategy have had real impact,<sup>30</sup> including in the area of child labor.<sup>31</sup> Given the continued skepticism, however, it behooves us to explain why, and to explain also why the skeptics are mistaken.

## ■ **The Utility of a Human Rights Approach to Child Labor**

Why is it important to think and act upon the problem of child labor as a human rights problem? What purposes are served by such an approach?

### ***Human Rights as "Trumps"***

In his germinal book *Taking Rights Seriously*, legal philosopher Ronald Dworkin asserts unequivocally—and correctly—that when a claimed value or good is categorized as a "right," it trumps most if not all other claimed values or goods.<sup>32</sup> Rights discourse confers a special status of importance on claimed entitlements, juridically more elevated than commonplace standards or laws, which in contrast to human rights are subject to everyday revision and reci-

sion for lack of such ordination. A proximate analogy is the distinction between a contractual or statutory claim and a constitutional one.

Thus, when child labor is designated as a condition from which children have a *right* to be free and not merely an option for which regulating (but comparatively easily revocable) *standards* must be devised, there results an opportunity for empowerment and mobilization that otherwise is lacking. A rights-based approach to child labor elevates the needs and interests of children in this context to societal needs and interests—societal goods—with associated claims of legal and political legitimacy. As UNICEF’s 1997 *State of the World’s Children* report characterized the organization’s strategic decision to use rights to reduce child labor: “The idea that children have special needs has given way to the conviction that children have rights, the same full spectrum of rights as adults: civil and political, social, cultural and economic.”<sup>33</sup> Or as UNICEF put it two years later in its 1999 *State of the World’s Children* report: “What were once seen as the needs of children have been elevated to something far harder to ignore: their rights.”<sup>34</sup>

In other words, rights are not matters of charity, a question of favor or kindness, to be bestowed or taken away at will.<sup>35</sup> They are high-level public order values or goods that carry with them a sense of entitlement on the part of the rights-holder and obligatory implementation on the part of the rights-protector—intergovernmental institutions, the state, society, the family. They are values or goods deemed fundamental and universal; and while not absolute, they are nonetheless judged superior to other claimed values or goods. To assert a *right* of a child to be free from abusive, exploitive, and hazardous work is thus to strengthen a child’s possibility for a life of dignity and well-being. It bespeaks duty, not optional—often capricious—benevolence.

### ***Human Rights as Interdependent Agents of Human Dignity***

Central to the concept of human rights is the notion of a “public order of human dignity,” a public order (*ordre publique*) “in which values are shaped and shared more by persuasion than by coercion, and which seeks to promote the greatest production and widest possible sharing, without discriminations irrelevant of merit, of all values among all human beings.”<sup>36</sup> This notion of public order is embedded in the preamble of the 1948 UDHR, which proclaims the concept of human rights to grow out of “recognition of the inherent dignity . . . of all members of the human family” as “the foundation of freedom, justice and peace in the world.”

Thus, in the struggle against child labor, a rights-based approach signals more than the alleviation of child abuse and exploitation per se. It signals also that notions of nondiscrimination and justice and dignity must be central in all aspects of a working child’s life, including provision for her or his education, health, and spiritual, moral, or social development—precisely as the 1989

CRC envisions. A rights-based approach to the child labor problem is part of a complex web of interdependent rights that extends protection beyond one domain to many others in a child's life. Most if not all human rights (e.g., the right to be free from inhumane labor practices) depend on the satisfaction of other human rights (e.g., the right to education) for their fulfillment. Treating freedom from abusive, exploitive, and hazardous child work as a human right thus raises the stakes against those who would put children in harm's way. It transforms the struggle *against* child labor into a struggle *for* human dignity and thus better captures responsible attention and heightened pressure in the search for enduring solutions.

### ***Human Rights as a Mobilizing Challenge to Statist and Elitist Agendas***

Because they trump lesser societal values or goods and because they are agents of human dignity, human rights challenge and make demands upon state sovereignty. Scores of human rights conventions entered into force since World War II require states actually to cede bits of sovereignty in the name of human rights. Legal obligations of great solemnity, the 1989 CRC and 1999 ILO C182 are among them.

Proof is found, too, in the many occasions in which states, international governmental institutions, NGOs, transnational professional associations, corporations, trade unions, churches, and others have relied successfully on this "*corpus juris* of social justice"<sup>37</sup> to measure and curb state behavior. The legitimacy of political regimes—hence their capacity to govern noncoercively or at all—is today judged by criteria informed and refined by human rights.

All of this is well-known. Keenly aware of their interdependencies, most states, however much they may resist human rights pressures from within and without,<sup>38</sup> are mindful that their national interests and desired self-image depend on their willingness to play by the rules and especially those rules that weigh heavily on the scales of social and political morality. Even the most powerful states are thus vulnerable to what has come to be called "the mobilization of shame" in defense of human rights.<sup>39</sup> The case of apartheid South Africa is perhaps the best known in this regard. There is no reason why states that encourage or tolerate abusive, exploitive, and hazardous child work cannot or should not be similarly targeted and shamed.

But not just states. For the same reasons that human rights challenge and make demands upon state sovereignty, so also do they challenge and make demands upon the particularist agendas of private elites.<sup>40</sup> Why? Because human rights have as their core value the value of respect, by definition possessed equally by all human beings everywhere.<sup>41</sup> They insist upon equality of treatment across the board. Writes Virginia Leary, "[e]quality or non-discrimination . . . is a leitmotif running through all of international human rights law."<sup>42</sup> True, no observant person would dispute the widespread disregard of

these principles. Still, there is no denying the potential power of human rights discourse and strategy to stand up, dare, and defy the special economic and political interests, private as well as public, that, usually for selfish reasons, dismiss the equal treatment of all human beings and thus contribute to social ills such as child labor.

In sum, ordinary norms, institutions, and procedures are not defined, typically, by the language of human rights and therefore do not have the same gravitas as their human rights counterparts. They therefore do not carry with them the same moral authority upon which, in democratic societies at least, governing elites depend to exercise and retain legitimacy and power. The potential for human rights discourse and strategy to dislodge or seriously burden those private exclusive interests that help to perpetuate child labor is likewise manifest.

### ***Human Rights as Empowerment for Children***

As noted, human rights carry with them a sense of entitlement on the part of the rights-holder. Indeed, human rights law embraces not only this sense of entitlement, but also “the right of the individual to know and act upon his rights,”<sup>43</sup> hence a sense of duty and redress on the part of the state and other actors. The essence of rights discourse (or human rights law) is that, in Michael Freeman’s pointed alert, “if you have a right to x, and you do not get x, this is not only a wrong, but it is a wrong against *you*.”<sup>44</sup> This extends inexorably to children as rights-holders. CRC Article 12 expressly requires that states parties “assure to the child . . . the right to express [her or his] views freely in all matters affecting the child” and that “the views of the child [be] given due weight.”<sup>45</sup>

At least four specific ways have been identified by which human rights accomplish this empowerment.<sup>46</sup> Each bears obvious relevance to children and others who seek the abolition of child labor. First, human rights provide a level of accountability that transcends that of other legal obligations. Like those obligations, human rights provide victims of rights violations with the authority to hold violators accountable, even to the point of criminal liability. However, because human rights entail fundamental values of “superior” moral order, their violation correspondingly entails greater moral condemnation than other wrongs. This is what distinguishes “rights” from “benefits” or from being the beneficiary of another’s obligation,<sup>47</sup> and thus what makes possible, for example, “the mobilization of shame” and the condemnation of the international community, commonly without even having to go to formal court. The “truth and reconciliation” processes of Argentina, Chile, El Salvador, Ghana, Guatemala, Haiti, Malawi, Nepal, Nigeria, the Philippines, Serbia and Montenegro, South Africa, South Korea, and elsewhere are proof enough.<sup>48</sup> On occasion, they can be more effective than their more formal legal counterparts in overcoming impunity.<sup>49</sup>

Second, human rights provide access to international institutions dedicated specifically to their promotion and vindication, including the human rights mechanisms of the United Nations<sup>50</sup> and the regional human rights regimes of Europe, the Americas, and Africa.<sup>51</sup> The effectiveness of these institutions as enforcement mechanisms is not consistent and often cumbersome and time-consuming, particularly at the global level. Nevertheless, they confirm that human suffering is and can be taken seriously, providing formal legal tools to remedy or otherwise mitigate abuses and thereby help to prevent future abuse. Like less formal techniques (e.g., a civil society mobilization of shame), their use can result in both specific and general deterrence, potentially ensuring individual and group rights.<sup>52</sup>

Third, human rights generate legal grounds for political activity and expression because, as already noted, they entail greater moral force than ordinary legal obligations. This is abundantly seen in the many global and regional conferences and other gatherings commonly called under the auspices of the United Nations (including the UN's Commission on Human Rights) and such regional organizations as the Council of Europe, the Organization of American States, and the African Union, each providing a forum in which the voices of human rights victims and advocates can be heard. The history of the antiapartheid movement is replete with examples. Also illustrative are the annual conferences of the ILO and the high-level meetings of UNICEF and other intergovernmental organizations. All contribute to political empowerment, from the adoption of new resolutions and treaties to the recommendation of new norms and mechanisms to the reinterpretation of existing international and domestic rules and procedures—according to which, in Mary Robinson's pithy characterization of the 1989 CRC, "[t]he more fortunate are called upon to assist the less fortunate as an internationally recognized responsibility."<sup>53</sup> In turn, the resulting rights vocabulary and action plans help to refine the theoretical and operational foundations for human rights projects of all sorts, reinforced by the authority with which the sponsoring organizations and attending participants are regarded.

Finally, human rights discourse and strategy, which exist to promote and protect human capabilities of all sorts, encourage the creation of initiatives both within and beyond civil society that are designed to facilitate the meeting of basic needs. Excepting the 1975 Helsinki Accords,<sup>54</sup> such initiatives were not easy to find before the fall of the Berlin Wall in 1989, when tensions sacrificed these concerns on the altar of Cold War rivalries. But since then they have proliferated, especially in the human rights advocacy and scholarly communities.<sup>55</sup> All of which is of profound importance because the provision of basic needs provides the material basis for people to act on their rights—the very definition of empowerment.

Despite the relevance of these (and possibly other) forms of empowerment to children and others who seek child labor's abolition, however, some scholars

question whether they can in fact extend to children. Onora O'Neill, for one, is skeptical, because "[y]ounger children are completely and unavoidably dependent on those [adults] who have power over their lives."<sup>56</sup> Beyond perhaps the first six to eight years of childhood, we respectfully disagree, as would also most modern anthropologists, historians, and sociologists of childhood. While usually dependent on adults when very young, children are no longer "completely and unavoidably" dependent on them as they mature in age and experience. In fact, children may exhibit considerable independence and self-initiative well before adolescence. Their growing independence may be collective as well as individual. As Michael Freeman has argued, "there are prototypes or at least germs of children's movements already in existence."<sup>57</sup> Indeed, children's movements have long been noted among working children. In early-twentieth-century US cities, for example, the self-organization of child newspaper vendors to defend what they saw as their interests and rights attracted much public attention, and in some places was even supported by far-sighted and creative city officials who linked it to public child protection mechanisms.<sup>58</sup>

Present-day working children's organizations and movements in Africa, Asia, and Latin America have been amply noted and discussed in recent literature,<sup>59</sup> among them organizations linked in an international children's movement (the World Movement of Working Children and Adolescents) that maintains contact between countries and has had two international "summit" conferences, the first in 1996, the most recent in Berlin in April–May 2004, organized with adult assistance. The final declaration from the latter summit, in which the assembled working children reaffirmed their commitment to "practice protagonism" and fight for "recognition as social actors so that our voices be heard in the whole world," is noteworthy: "We value our work and view it as an important human right for our personal development. We oppose every kind of exploitation and reject everything that hurts our moral and physical integrity. . . . [W]e reaffirm our will to continue constructing a world movement that not only fights for, defends and promotes the rights of working children, but of children in general."<sup>60</sup>

In addition, nonworking children also have organized specifically to combat child labor. A prominent example is the Free the Children network, founded by Canadian youth Craig Kielberger, the work and motto of which ("Often assumed to be the leaders of tomorrow, our generation must be the leaders of today") also challenge skepticism of the sort expressed by O'Neill.<sup>61</sup> Further, the Global March Against Child Labour, while an adult-led initiative to mobilize international opinion against child labor, includes ample opportunity for the participation of both working and nonworking children to make their views known. At the Children's World Congress on Child Labor, organized by Global March in Florence in mid-May 2004, some 200 young persons from age ten to seventeen shared their opinions and perspectives and supported the creation of a "network for worldwide, youth-driven action to press international and

national efforts towards integrating world resources and responses on poverty, child labour, and education, [including] the development of strategies to enhance national support for implementation of ILO conventions 138 and 182, as well as the 2015 commitment for education for all children.”<sup>62</sup>

To be sure, there is room for debate over the extent to which children can or should be self-empowered, as evidenced by the manner in which the above-noted Berlin and Florence events were organized and conducted—the first primarily by working children, the latter primarily by adults. The fact remains, however, that children—including working children—are today demonstrating increasing resolve to assert their own interests and to do so as a self-conscious expression of their universal civil and political rights to access and participate in the decisionmaking and policy-implementing processes that affect their lives. Indeed, direct involvement by children in the defense and promotion of their interests and rights often is key to the validity and vitality of their claims. They are themselves often the best witnesses to the harm that results from violations of their rights and thus are uniquely well positioned to provide the most compelling evidence of the need for redress. Which is why, of course, the 1989 CRC and human rights values generally mandate the right of children to express their views freely and where it counts. Empowerment of children is not only a result of a rights-based approach to child labor; it is, subject to their evolving capacities, virtually a requirement of it.

### ■ **Contesting Resistance to Human Rights Strategy**

However manifest the premise and virtues of a human rights approach to the problem of child labor, our advocacy of it would be incomplete were we not to confront the conceptual, psychosocial barriers that all too commonly are mounted to resist human rights agendas and thwart their potential often from the start (testimony, of course, to the potential of human rights law and policy in the first place). Below, therefore, we respond to these conceptual barriers and to the vested interests that cluster behind them. Also, believing that there is nothing as practical as a good theory except the debunking of bad theory, we urge that human rights vis-à-vis child labor be taken seriously and actualized in everyday planning and programming. This may seem an obvious or even redundant thing to say, but it is important to appreciate completely the artfulness of one’s detractors in order to weigh in confidently with a human rights orientation to child labor and thereby reap fully its benefits in the making of daily decision and policy. Much hangs in the balance.

### ***Contesting the Claimed Immutability of State Sovereignty***

There is no disputing that the state has diminished in relative influence in the past half century. Nevertheless, the classical international law doctrine of ter-

ritorial sovereignty and its corollary of nonintervention remain the central props of our inherited state-centric system of world order. The values associated with these doctrines, however—a legal license to “do your own thing” and an injunction to “mind your own business”—resist the values associated with human rights, which tell us that “you are your brothers’ and sisters’ keeper” and therefore invite international scrutiny and outside interference in what otherwise would be internal matters.<sup>63</sup>

In other words, “human rights qualify state sovereignty and power,”<sup>64</sup> and as a consequence governments are naturally resistant to embracing the language of human rights, let alone rights-based agendas. Even governments that have voluntarily consented to human rights treaties, such as the 1989 CRC and 1999 ILO C182, are inclined to demur when it comes to implementation. However, it is disingenuous of them to tarry when they have committed officially to these legal promises. More important, after more than a half century of mounting international rejection of the claim that “the king can do no wrong,” it is no longer tenable for them to do so—least of all when, as in the case of the CRC and ILO C182, the treaty obligations involved command the support of the vast majority of the world’s states.<sup>65</sup>

In short, a sovereignty defense against human rights violations, particularly of the worst sort, is now, at least theoretically, a thing of the past. To be sure, the radical foundation upon which the scaffolding of contemporary international human rights law and policy has been erected is yet new and fragile. But as evidenced on at least the formal agendas of most international institutions and foreign offices, to say nothing of the agendas of global civil society, the world no longer deems impunity from human rights wrongs acceptable.

### ***Contesting the Claimed Sanctity of Corporate Sovereignty***

Also explaining resistance to a rights-based approach to child labor is what may be called “corporate sovereignty.”<sup>66</sup> Just as states seek to control the territory and populations of their claimed jurisdictions, so business enterprises, in pursuit of market shares and profits, seek sovereignty over the means of production that principally define their more or less private jurisdictions (including of course their labor forces). Human rights agendas, however, tend to be costly and otherwise inconvenient to this fundamental objective and thus often are downplayed or ignored.<sup>67</sup> Not infrequently, business enterprises actively resist human rights agendas—as when, for example, to curry favor with host governments, they break sanctions against repressive regimes, cooperate with such regimes economically, or lend them internal political support of some kind.<sup>68</sup>

In these circumstances especially, human rights discourse itself is avoided lest it encourage outside scrutiny, possibly intervention. True, many—perhaps most—business enterprises strive to be “good corporate citizens” and thus to

accept if not actually promote human rights agendas when called upon to do so.<sup>69</sup> True also, corrupt governmental practices often force business enterprises to comply with discriminatory and otherwise repressive legislation. Still, the impulse of corporate sovereignty remains a powerful deterrent to a rights-based strategy opposed to abusive, exploitive, and hazardous child work, especially when large-scale enterprises with great influence are involved.<sup>70</sup>

Corporate sovereignty, however, is an impulse to which public policy need not and should not defer. Throughout the world, governments adopt and enforce laws to limit factory emissions, regulate product content, set minimum wages, establish occupational safety standards, and the like. Indeed, labor conditions may be the most heavily regulated of business matters. Business enterprises should not therefore expect that a problem such as child labor should be subject to any less scrutiny and control. Nor should they, in their own self-interest, want such an outcome. Most business enterprises care more about stable production and marketing climates than they do about ideology, and the surest way to guarantee that such climates prevail is to safeguard the fundamental rights of the populations on which they depend for economic reward.<sup>71</sup>

### ***Contesting the Claimed Irrelevance of Public International Law to Private Actors***

Closely related to notions of state and corporate sovereignty as explanations for resistance to a rights-based approach to child labor—indeed supportive of them—is the orthodox theory that, by definition, public international law applies only to public—not private—actors.<sup>72</sup> Given that the vast majority of the world’s working children labor on behalf of private—not public—actors, this theory is of no small consequence to the present discussion. Public international law (which includes international human rights law) simply does not apply, so the argument goes, to private business associations, including ones that employ children.

Of course, theories are but intellectual paradigms, prototypes of thought that define not only what we look at but also how we go about looking at what we look at. They do not necessarily mirror reality. So when the facts of life no longer fit the theory, it is time, as Copernicus taught us, to change the theory. In recent years, feminist scholars have urged this kind of rethinking, successfully, relative to the theoretical structure of international law, particularly in relation to the status of women internationally.<sup>73</sup> There is no reason why the same cannot be done relative to the status of working children in private business enterprises, making such enterprises directly accountable to international human rights norms relevant to them.

In any event, there is UDHR Article 30: “Nothing in this Declaration may be interpreted as implying for any State, *group or person* any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”<sup>74</sup> Additionally, reflecting an emerging consen-

sus that the large economic and political power of at least multinational corporations must be subjected to heightened international accountability, the UN Global Compact launched by Secretary-General Kofi Annan in 1999, the UN Commission on Human Rights, the UN High Commissioner for Human Rights, and growing numbers of legal scholars now categorically endorse theories of international transparency and responsibility that rewrite the relationship between international law and the private sector, including in relation to human rights.<sup>75</sup> As key beneficiaries of the new economic world order created by international law (e.g., the World Trade Organization [WTO], the North American Free Trade Agreement [NAFTA], etc.), private business enterprises have no standing, it is appropriately argued, to claim immunity from the corresponding obligations established by international law; and trends in actual decision, both national and international, suggest that human rights responsibilities on the part of private persons are being increasingly recognized and enforced.<sup>76</sup>

Expressly or by implication, many of the most fundamental human rights instruments recognize human rights obligations on the part of private actors *per se*,<sup>77</sup> while others and cognate treaties require states parties to ensure and enforce the rights enumerated against violations by private perpetrators.<sup>78</sup> States often adopt laws giving domestic effect to human rights norms and standing to seek redress for their violation by private actors.<sup>79</sup> And with increasing frequency, corporations commit themselves at least morally to human rights obligations via voluntary “codes of conduct”<sup>80</sup> while consumers and other members of civil society invoke nonjuridical mechanisms to hold private actors accountable by voting with their pocketbooks and otherwise mobilizing shame against private human rights violators.<sup>81</sup>

True, legal scholars differ over the extent to which developments such as these confer “international legal personality” upon corporations and other nonstate actors. Moreover, old canons die hard. But resistance to a rights-based approach to child labor can no longer be justified on the basis of orthodox theory about the “subjects” and “objects” of international law. The world is now far too interpenetrating a place for that.

### ***Contesting the Claimed Indeterminacy of Human Rights***

Some scholars criticize the language of human rights as lacking conceptual clarity, noting that there are conflicting schools of thought as to what constitutes a right and how to define human rights.<sup>82</sup> For this reason, they claim the concept to be “indeterminate”<sup>83</sup> and therefore distrust its capacity to address pragmatic, “real world” social ills effectively or at all.<sup>84</sup> They observe that there are many unresolved theoretical questions about rights: “whether the individual is the only bearer of rights” (in contradistinction to such entities as families, groups of common ethnicity, religion, or language, communities, and nations); “whether rights are to be regarded as . . . constraints on goal-seeking action or as parts of a goal that is to be promoted”; “whether rights—thought

of as justified entitlements—are correlated with duties”; and not least, “what rights are understood to be rights to” a certain level of well-being, a certain access to certain resources in one’s life pursuit, and a certain quality of opportunity in that pursuit.<sup>85</sup> The recent debate over “Asian values” and its underlying tension between cultural relativist and universalist approaches to human rights make clear that all this questioning is no idle intellectual chatter.<sup>86</sup> It is very much present in the political arena as well and thus serves as another possible explanation for resistance to a rights-based approach to child labor.

The claimed indeterminacy of human rights, however, is less problematic than perceived. The core of the human rights concept is as well defined and clearly articulated as any social or legal norm,<sup>87</sup> a fact proven by the numerous widely accepted—and increasingly enforced—human rights norms already noted. Moreover, even conceding that unresolved theoretical issues relating to human rights remain, this fact should not be allowed to distract from the broadest and most effective actualization of the fundamental principles and values on which there is virtually universal agreement—for example, the right of children to be free from abusive, exploitive, and hazardous labor.

Thus, while the concept or language of rights, like most legal language, sometimes suffers ambiguity, it is not to be discarded in the anti-child labor struggle (or any other) simply for this reason. Rather, as with any human—that is, incomplete and imperfect—system, one must make use of those elements that are established and effective while working to finalize and perfect those that remain still vague or incomplete, just as we do all other legal norms as a matter of course all the time.

### ***Contesting the Claimed Absence of Human Rights Theory***

Perhaps the most confounding of the alleged unresolved theoretical issues about human rights is the claimed absence of a theory to justify human rights.<sup>88</sup> In the presence of ongoing philosophical and political controversy about the existence, nature, and application of human rights in a multicultural world, a world in which Christian natural law justifications for human rights are now widely deemed obsolete, one must exercise caution when adopting a human rights approach to social policy lest one be accused of cultural imperialism. It is not enough to say, argues Michael Freeman, that human beings possess human rights simply for being human, as does, for example, the 1993 Vienna Declaration and Programme of Action, which proclaims that “[h]uman rights and fundamental freedoms are the birthright of all human beings.”<sup>89</sup> Writes Freeman: “It is not clear why one has *any* rights simply because one is a human being.”<sup>90</sup>

We do not disagree. But neither do we accept that there exists no theory to justify human rights in our secular times, ergo no theory to justify a human rights approach to child labor. The concept of human rights is or can be firmly established on sound theoretical ground.

First, there is the proposition, formally proclaimed in both the 1948 UDHR and the yet more widely adopted and revalidating 1993 Vienna Declaration, that human rights derive from “the inherent dignity . . . of all members of the human family”<sup>91</sup> or, alternatively, from “the dignity and worth inherent in the human person.”<sup>92</sup> While this proposition informs us little more than the assertion that human rights extend to human beings simply for being human, it does point the way. Unless one subscribes to nihilism, it is the human being’s inherent dignity and worth that justify human rights. Of course, the obvious question remains: How does one determine the human being’s inherent dignity and worth?

Noteworthy in this regard is the previously noted work of Nussbaum and Sen on “capabilities and human functioning.” In their search for a theory that answers at least some of the questions raised by rights talk, they have pioneered the language of “human capabilities” as a way to speak about, and act upon, what fundamentally is required to be human—that is, life; bodily health; bodily integrity; senses, imagination, and thought; emotions; affiliation (friendship and respect); other species; play; and control over one’s environment (political and material).<sup>93</sup> While Nussbaum and Sen do not reject the concept of human rights as such<sup>94</sup>—indeed, they see it working hand in hand with their concept of capabilities, jointly signaling the central goals of public policy<sup>95</sup>—they propose emphasis on human capabilities as the theoretical means by which to restore “the obligation of result”<sup>96</sup> and thereby move the discussion from the abstract to the concrete without having to rely on controversial transempirical metaphysics to cut across human differences.<sup>97</sup> There remains, however, the question of how to distinguish those capabilities that are central to human existence—hence worthy of the title “human rights”—and those that are not.<sup>98</sup> Control over one’s political and/or material environment, for example, can lead to some very nasty results.<sup>99</sup>

Thus we dig deeper and find the work of the late John Rawls compelling.<sup>100</sup> Rawls proposed a thought experiment, akin to Kant’s “categorical imperative,” in which a group of thinking men and women of diverse characteristics (race, class, creed, etc.) come together in their private capacity (i.e., not as state representatives) in some “original position” to construct a just society with their personal self-interests in mind, but without knowing their own position in it (economic, social, racial, etc.). Behind this “veil of ignorance,” these “original position” decisionmakers, rationally contemplating their own self-interest, freely choose a society that is fair to all, one in which benefits (rights) and burdens (duties) are distributed equally and in which a core of fundamental liberties (freedom of conscience, speech, movement, religion, etc.) and equality of opportunity are protected. This social constructionism, however, need not be restricted to Rawls’s historically Western core values favoring individual civil and political rights. Accounting for *all* the voices assembled, the “original position” decisionmakers, transcending personal self-interest even while accounting for

it, could equally well choose a set of basic but diverse values (rights and/or capabilities) that would win the general assent of human beings *everywhere*—a set of universal basic values of human dignity that, grounded in principles of reciprocal tolerance and mutual forbearance, define the human rights society. It is such a society that can most guarantee the fairest distribution of basic wants (rights) and needs (capabilities) among all human beings and thereby ensure that all will benefit as much as possible and, by the same token, suffer the least possible disadvantage.

And therein lies, we believe, the theoretical justification for human rights in our secular age: a kind of share-and-share-alike Golden Rule that, in an “original position” behind a “veil of ignorance” and as rational human beings contemplating our own self-interest, we would choose for ordering a society in which all of us would want to live. However interpreted and applied in real world conflict and contestation, they are theoretically justified because they satisfy the fundamental requirements of socioeconomic and political justice. In the words of UN High Commissioner for Human Rights Louise Arbour before a working group on economic, social, and cultural rights of the Commission on Human Rights in January 2005, “[h]uman rights are not a utopian ideal. They embody an international consensus on the minimum conditions for a life of dignity.”<sup>101</sup> When joined to the struggle against abusive, exploitive, and hazardous child work, they can be a uniquely powerful tool.

## ■ Conclusion

In the preceding pages, we have challenged a palpable if diminishing reluctance to use human rights to combat child labor. We have done so, first, by calling attention to the multidimensional human rights nature of the problem; next, by detailing the virtues of human rights discourse and strategy to combat the problem; and finally, by contesting claims that would prevent or curtail resort to such rights talk and maneuver. These latter claims, we submit, are as unconvincing as the virtues of human rights law and policy are convincing. And thus we are driven to conclude that the core questions demanding responsible attention are not why or whether to bring human rights to the prosecution of child labor, but how and how quickly.

These core questions, we hasten to add, demand urgent as well as responsible attention. Economic globalization, which can be no more arrested than the transition from agrarian to industrial society,<sup>102</sup> is proceeding apace, and while it has its bright sides, it has also its dark sides, negative aspects that threaten human rights generally and the rights of working children in particular. A human rights approach to child labor, we believe, one that foresees a true culture of respect for children’s rights, can help to offset these darker forces if urgently as well as responsibly embraced and pursued.

In Chapter 10, therefore, we resume this discussion by proposing a comprehensive, multifaceted solution to child labor's abolition. Once the human rights of working children are recognized and their legal content understood, their provisions, both national and international, must be translated into effective policies, programs, and projects—measures that foresee, it bears repeating, a true culture of respect for children's rights. Both before and after we engage this discussion, however, experts from a wide variety of disciplines and professional experience lend their insights to a deeper understanding of child labor as a human rights problem, to the complexities that accompany it, and to some of the solutions they see as critical for it. Our purpose is to draw upon the extensive knowledge and experience of our co-contributors and, through them, bring human rights to child labor in a way that no longer can be denied. A hugely multidimensional human rights problem, child labor begs for a coextensively multifaceted human rights solution that, in whole or in part, can contribute to child labor's abolition.

## ■ Notes

We are grateful to Gavin Boyles, Susan Bissell, Kenneth Cmiel, Dorian Gossy, Teresa May Teerink, Willam Myers, Marta Santos-Pais, Chivy Sok, and Marta Cullberg Weston for gracious, insightful counsel.

1. In this chapter, we adopt the definition of "child labor" set forth in the introduction to this volume, in turn derived from Chapter 2, that is, "work done by children that is harmful to them because it is abusive, exploitive, hazardous, or otherwise contrary to their best interests—a subset of a larger class of children's work, some of which may be compatible with children's best interests (variously expressed as 'beneficial,' 'benign,' or 'harmless' children's work)."

2. United Nations, *International Covenant on Economic, Social, and Cultural Rights* (1966).

3. United Nations, *Convention on the Rights of the Child* (1989). See also United Nations, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* (2000); and United Nations, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography* (2000).

4. As of July 1, 2005, 191 states plus Niue (a self-governing island in free association with New Zealand) were party to the CRC, a process of ratification and accession that took just a little over seven years, with Ghana being the first to ratify, on February 5, 1990, and Switzerland the most recent, on February 24, 1997. Only Somalia and the United States among the signatories to the CRC have yet to ratify it.

5. ILO C182. See the appendix for Article 3 of ILO C182, which defines "the worst forms of child labour."

6. ILO, *Declaration on Fundamental Principles and Rights at Work* (1998). See also endnote 13 in the introduction to this volume.

7. United Nations, *Supplementary Convention on the Abolition of Slavery . . .* (1956).

8. For the full text of each of the provisions hereinafter quoted as well as other relevant provisions, see the appendix.

9. The notion of three “generations” of human rights is the brainchild of French jurist and former UNESCO legal adviser Karel Vasak, inspired by the three themes of the French Revolution, *liberté* (civil and political rights), *égalité* (economic, social, and cultural rights), and *fraternité* (community or “solidarity” rights). See Vasak, “Pour Une Troisième Génération des Droits de l’Homme.” For extensive explication, see Marks, “Emerging Human Rights . . .” See also Weston, “Human Rights,” p. 5: “Vasak’s model is, of course, a simplified expression of an extremely complex historical record, and it is not intended to suggest a linear process in which each generation gives birth to the next and then dies away. Nor is it to imply that one generation is more important than another. The three generations are understood to be cumulative, overlapping, and, it is important to note, interdependent and interpenetrating.”

10. This history is summarized in Weston, “Human Rights,” pp. 5–7.

11. On the right to peace, see, for example, Alston, “Peace as a Human Right.” See also United Nations, *General Assembly Declaration on the Preparation of Societies for Life in Peace* (1978); and United Nations, *General Assembly Declaration on the Right of Peoples to Peace* (1984).

12. On the right to development, see, for example, Alston, “The Right to Development . . .”; Marks, “The Human Right to Development . . .”; Sengupta, “On the Theory and Practice of the Right to Development”; and Udombana, “The Third World and the Right to Development . . .” See also United Nations, *General Assembly Declaration on the Right to Development* (1986).

13. On the right to a clean and healthy environment, see, for example, Boyle and Anderson, *Human Rights Approaches to Environmental Protection*; and Weiss, *In Fairness to Future Generations* . . . .

14. See, for example, United Nations, *Universal Declaration of Human Rights* (1948) [hereinafter “UDHR”], art. 1; and United Nations, *International Covenant on Civil and Political Rights* (1966) [hereinafter “ICCPR”], arts. 7–10.

15. See, for example, UDHR, art. 25. See also United Nations, *International Covenant on Economic, Social, and Cultural Rights* (1966) [hereinafter “ICESCR”], art. 12.

16. See, for example, United Nations, *General Assembly Declaration on the Preparation of Societies for Life in Peace* (1978); United Nations, *General Assembly Declaration on the Right of Peoples to Peace* (1984); and United Nations, *Security Council Resolution 1325* (2000).

17. Among the UDHR’s rights provisions, see, for example, arts. 1, 3–9, 11–15, 22, 25.

18. See, for example, Sen, *Commodities and Capabilities*; Nussbaum, “Capabilities and Human Rights”; and Sen, “Capability and Well-Being.” But see especially Nussbaum, “Capabilities, Human Rights, and the Universal Declaration.” In the policy-oriented jurisprudence of Myres S. McDougal and Harold D. Lasswell, the distinction would be between “goal values” (rights/wants) and “base values” (needs/capabilities). See, for example, McDougal, Lasswell, and Chen, *Human Rights and World Public Order* . . . . See also note 97 and accompanying text.

19. See Nussbaum, “Capabilities, Human Rights, and the Universal Declaration,” pp. 44–46.

20. Thus: *life* (UDHR art. 3 on the right to life, liberty, and security of the person); *bodily health* (UDHR arts. 12 and 25 on the right to privacy, family, and home and on the right to the highest attainable physical and mental health); *bodily integrity* (UDHR arts. 3–5 and 13 on the right to security of the person, to freedom from slavery or servitude, to freedom from cruel, inhuman, or degrading treatment, and to free-

dom of movement and residence); *senses, imagination, and thought* (UDHR art. 26 on the right to education and associated arts. 18, 19, and 27 on the right to thought, conscience, religion, opinion, and expression and to participate, enjoy, and share in cultural life); *emotions* (UDHR art. 12 on the right to privacy); *conscience* (UDHR arts. 18 and 19 on the right to thought, conscience, religion, opinion, and expression); *affiliation qua friendship and respect* (UDHR arts. 1, 20, and 29 on the right to peaceful assembly and association and to community duties for the free and full development of personality, all in a “spirit of brotherhood”); *play* (UDHR art. 24 on the right to rest and leisure); *political and material control over one’s environment* (UDHR arts. 12, 17, 19–21, and 23 on the right to privacy, property, speech, association, political participation, and to work and free choice of employment).

21. See, for example, Article 2 of the CRC, safeguarding children “against all forms of discrimination on the basis of the . . . activities . . . of the child’s parents.”

22. See, for example, UNICEF, *Human Rights for Children and Women . . .*

23. See, for example, UDHR, arts. 3, 6, 7, 13, 17, 23, 25, and 26.

24. *Ibid.*, art. 2.

25. See pp. xv–xvi.

26. See pp. 236–238.

27. See, for example, O’Neill, “Children’s Rights . . .,” p. 37.

28. See, for example, Kennedy, “The International Human Rights Movement . . .,” pp. 102–104. For convincing rebuttal, see Charlesworth, “Author! Author! . . .” But see also Kennedy, *The Dark Sides of Virtue . . .*

29. See, for example, Charlesworth, “Author! Author! . . .,” p. 130.

30. See, for example, Cassel, “International Human Rights in Practice . . .”; and Slye, “International Human Rights Law in Practice . . .” See also *infra* “Contesting the Claimed Irrelevance of Public International Law to Private Actors” in this chapter.

31. See, for example, the country studies in Part 3 of this volume.

32. Dworkin, *Taking Rights Seriously*, pp. 91–93, 189–191, 269.

33. UNICEF, *The State of the World’s Children 1997*, p. 9.

34. UNICEF, *The State of the World’s Children 1999*, p. 8.

35. Accord, Santos Pais, *A Human Rights Conceptual Framework for UNICEF*, p. 5.

36. McDougal, “Perspectives for an International Law of Human Dignity,” p. 987.

37. Van Boven, “Survey of the Positive Law of Human Rights,” p. 88.

38. See *infra* “Contesting the Claimed Immutability of State Sovereignty” in this chapter.

39. See, for example, Drinan, *The Mobilization of Shame*.

40. See, for example, the statement of common understanding developed at the UN interagency workshop on a human rights–based approach in the context of UN reform, May 3–5, 2003: “In a human rights–based approach, human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty-bearers). It identifies rights-holders (and their entitlements) and corresponding duty-bearers (and their obligations) and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.” UNICEF, *The State of the World’s Children 2004*, Annex B, p. 92 (emphasis added).

41. “[I]f a right is determined to be a human right, it is understood to be quintessentially general or universal in character, in some sense equally possessed by all human beings everywhere.” Weston, “Human Rights,” p. 5. The universality of human

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rights has been much debated in recent years. For pertinent discussion, see Weston, "The Universality of Human Rights in a Multicultural World . . . ."

42. Leary, "The Right to Health . . .," p. 37.

43. *Final Act of the Conference on Security and Co-operation in Europe . . .*, para. 7.

44. Freeman, *Human Rights . . .*, p. 61 (emphasis in original).

45. See CRC, art. 12(1) (emphasis added), quoted in the appendix to this volume.

46. For much of what follows, we are indebted to Slye, "International Human Rights Law in Practice . . ." pp. 73–76.

47. Donnelly, *The Concept of Human Rights*, pp. 1–13; Donnelly, *Universal Human Rights in Theory and Practice*, pp. 9–12.

48. See, for example, the website of the United States Institute of Peace, at <http://www.usip.org/library/truth.html>.

49. See Rotberg and Thompson, *Truth v. Justice . . .*. See also Minow, *Between Vengeance and Forgiveness . . .*, chap. 4; and Dugard, "Reconciliation and Justice. . . ."

50. See Marks, "The United Nations and Human Rights . . . ."

51. Stated in chronological order. See, generally, Shelton, "The Promise of Regional Human Rights Systems."

52. For pertinent discussion, see Chapter 10 in this volume.

53. Robinson, foreword to Marta Santos Pais, *A Human Rights Conceptual Framework for UNICEF*, p. v.

54. See *Final Act of the Conference on Security and Co-operation in Europe . . .*

55. See, for example, Chapter 14 in this volume.

56. O'Neill, "Children's Rights and Children's Lives," p. 38. O'Neill asserts skepticism also because, she writes, "the ranks of childhood are continuously depleted by entry into adult life" (p. 39). Surely, however, this second argument is neutralized by the truism, curiously disregarded by O'Neill, that children, absent catastrophes such as AIDS and genocidal conflicts, continuously maintain the ranks of childhood by entering into life itself, replacing their seniors who mature into adulthood.

57. Freeman, "Taking Children's Rights More Seriously," p. 57.

58. See Nasaw, *Children of the City . . .*, pp. 62–87.

59. See, for example, Black, *Opening Minds . . .*; Miljeteig, *Creating Partnerships . . .*; Swift, *Working Children Get Organised . . .*; and Tolfree, *Old Enough to Work . . .*

60. See *Final Declaration of the Second Meeting of the World Movement of Working Children and Adolescents*.

61. See the Free the Children website, at <http://www.freethechildren.org>. See also Kielburger, *Free the Children . . .*

62. Quoted from the website of the Children's World Congress on Child Labour, at [http://www.globalmarch.org/worldcongress/why\\_new.php3](http://www.globalmarch.org/worldcongress/why_new.php3). A resulting children's declaration ("We Are the Present, Our Voice Is the Future") bears witness to these youth-defined intents. See <http://globalmarch.org/worldcongress/dec.php3>.

63. Claude and Weston, *Human Rights in the World Community . . .*, p. 3.

64. Weston, "Human Rights," p. 4.

65. The CRC registered 192 parties as of February 1, 2005, one more than were party to the UN Charter (i.e., members of the United Nations) at the same time. As of February 1, 2005, 142 states were party to 1999 ILO C182.

66. We coin the term "corporate sovereignty" to cover a multitude of private business formations, not to single out corporations per se.

67. See, for example, Jennings and Entine, "Business with a Soul . . .," p. 72. See also, generally, Mock, "Human Rights, Corporate Responsibility, and Economic Sanctions . . . ."

68. See, for example, *ibid.* See also Lippman, "Multinational Corporations and Human Rights," pp. 256–259; Monshipouri, Welch, and Kennedy, "Multinational Corporations . . . ."

69. See, for example, Jennings and Entine, "Business with a Soul . . .," pp. 10–17.

70. As Richard Barnet and Ronald Müller pointed out in their germinal exposé of the power of multinational corporations three decades ago, "[a] global corporation is able to pay an annual retainer to a Wall Street law firm to represent its worldwide interests, which is perhaps five times the entire budget of the government agencies in poor countries that are supposed to regulate it." Barnet and Müller, *Global Reach . . .*, p. 138. See also Zia-Zarifi, "Suing Multinational Corporations . . .," p. 84, n. 6 and documents cited therein.

71. See Jennings and Entine, "Business with a Soul . . .," pp. 35–36, 41–46, 60–61.

72. According to this theory in its purest form, reflecting the dominance of the state as the primary organizational unit of human communities on the world stage since at least the Peace of Westphalia of 1648, states are the sole "subjects" of international law, the only actors with "standing" in the international legal order, the only beings competent to create and be bound by international legal obligations. See, for example, Shaw, *International Law*, p. 126; and Janis, *An Introduction to International Law*, p. 238.

73. See, for example, Charlesworth and Chinkin, *The Boundaries of International Law . . .*. See also Charlesworth, Chinkin, and Wright, "Feminist Approaches to International Law"; Orford, "Contesting Globalization . . ."; and Shelton, "Protecting Human Rights . . . ."

74. Emphasis added.

75. Regarding the Global Compact, see Global Compact, *The Nine Principles*. Regarding the United Nations Commission on Human Rights, see United Nations Sub-Commission on the Protection and Promotion of Human Rights, *Norms on the Responsibilities of Transnational Corporations*. Regarding the UN High Commissioner of Human Rights, see the OHCHR website, at <http://www.ohchr.org/english/issues/globalization/business/index.htm> ("Business and Human Rights"). And for scholarly commentary, see, for example, Monshipouri, Welch, and Kennedy, "Multinational Corporations . . . ."; Paust, "Human Rights Responsibilities of Private Corporations"; Ratner, "Corporations and Human Rights . . . ."; and Zia-Zarifi, "Suing Multinational Corporations . . . ."

76. *Ibid.*; Shelton, "Protecting Human Rights . . . ."; Office of the UN High Commissioner for Human Rights, *Business and Human Rights . . .*. See also the following pertinent websites: Business for Social Responsibility, at <http://www.bsr.org>; Business and Human Rights Resource Centre, at <http://www.business-humanrights.org/home>; and Amnesty International, at [http://web.amnesty.org/web/web.nsf/pages/ec\\_home](http://web.amnesty.org/web/web.nsf/pages/ec_home).

77. See, for example, ICCPR, arts. 8 (slavery, servitude, forced or compulsory labor) and 17 (privacy, family, home, or correspondence); ICESCR, arts. 7 (just and favorable conditions of work) and 8 (trade unions); and *American Convention on Human Rights*, arts. 6 (slavery and involuntary servitude) and 11 (privacy).

78. Labor treaties that have emerged from the ILO, for example, have long required governments to enact domestic legislation affecting private businesses.

79. Examples include *US Alien Tort Claims Act*, 28 USC sec. 1350; also the German federal system's concept of *Völkerrechtfreundlichkeit*, or "friendliness" to human rights, whereby treaties are adopted by federal statute and treated as federal law. See Oeter, "International Human Rights Law . . . ."

80. See, for example, Schrage, *Promoting International Worker Rights* . . . . See also Chapters 4 and 5 in this volume.

81. See, for example, Jennings and Entine, "Business with a Soul . . . .," pp. 10–16. See also Gonzales, "Latin Sweatshops Pressed by U.S. Campus Power" (discussing the impact of US student actions on sweatshops); Kelly, "For Some, an Uncomfortable Fit" (discussing antisweatshop actions against various footwear companies); and Mannion, "Lobby Groups Open Ethical Attacks" (discussing lobby groups' efforts to persuade pension funds to pull investments from companies accused of not being socially responsible).

82. For an insightful account, with discussion of other views, see Gewirth, *The Community of Rights*.

83. The concept of indeterminacy has been much discussed in several modern approaches to language and literature, contending that the meaning of a text never can be fully determined because its author's original intention is subject to the unfixed nature of the author's makeup and experience, because it is the consequence of the particular cultural and social background of the reader, and because language itself generates its own meaning over time. This contention, Michael Freeman points out, is prominent particularly when it comes to concepts such as "human rights"—abstract, oftentimes ambiguous, and therefore "a challenge" to the philosophical discipline of conceptual analysis, which "can seem remote from the experiences of human beings." Freeman, *Human Rights* . . . , p. 2.

84. For a seemingly nihilistic critique and a convincing rebuttal to it, see references in *supra* endnote 28.

85. Nussbaum, "Capabilities, Human Rights, and the Universal Declaration," pp. 26–27.

86. On cultural relativism versus universalism in human rights law and policy, see Weston, "The Universality of Human Rights in a Multicultural World . . . ."

87. See, for example, Weston, "Human Rights," pp. 4–9, especially pp. 4–5.

88. Richard Rorty, for one, contends that there is no theoretical basis for human rights on the grounds that there is no theoretical basis for any belief. See Rorty, "Human Rights . . . .," pp. 116, 126.

89. *Vienna Declaration and Programme of Action* . . . [hereinafter "Vienna Declaration"].

90. Freeman, *Human Rights* . . . , pp. 60–61 (emphasis in original).

91. UDHR, Preamble, para. 1.

92. Vienna Declaration, Preamble, para 2. The declaration was adopted by acclamation by 171 states. "Because the [Declaration] was agreed to by virtually every nation on earth," opines Robert Drinan, "the document constitutes customary international law." Drinan, *The Mobilization of Shame* . . . , p. x.

93. See Nussbaum, "Capabilities and Human Rights" and other references cited in *supra* endnote 18. See also Sen, *Equality of What?* For an early advocacy of a capabilities approach to human rights, see Williams, "The Standard of Living . . . .," p. 100.

94. In her essay linking the capabilities approach with the UDHR, Nussbaum acknowledges that the language of rights retains an important place in public discourse, providing a normative basis for discussion, emphasizing the important and basic role of the entitlements in question and people's choice and autonomy, and establishing the

parameters of basic agreement. See Nussbaum, "Capabilities, Human Rights, and the Universal Declaration," p. 59.

95. Regarding this symbiosis between capabilities and rights, see *supra* endnote 18 and accompanying text.

96. Nussbaum, "Capabilities, Human Rights, and the Universal Declaration," p. 56.

97. Similar efforts, distinguishing between "goal values" (rights) and "base values" (capabilities), have been articulated in the policy-oriented jurisprudence of the so-called New Haven School. See McDougal, Lasswell, and Chen, *Human Rights and World Public Order . . .* Likewise for research on the intersection of human rights and basic needs. See, for example, Galtung, *Human Rights in Another Key*; and Galtung and Wirak, *Human Needs, Human Rights, and the Theories of Development . . .* See also Claude and Weston, *Human Rights in the World Community . . .*, chap. 3. But see Donnelly, *The Concept of Human Rights*, pp. 28–31. Donnelly rejects the claim that human rights are justified by human needs because there is not, he argues, any scientific way to determine a universally agreed-upon set of needs.

98. Nussbaum and Sen go to considerable lengths to substantiate their choice of human capabilities on the basis of historical evidence, but history does not of itself answer this differential question.

99. Accord, Freeman, *Human Rights . . .*, p. 67.

100. See Rawls, *A Theory of Justice*, secs. 1–4, 9, 11–17, 20–30, 33–35, 39–40.

101. *Statement by Ms. Louise Arbour . . .*

102. See Sen, *Development and Freedom*, p. 240: "The one solution [to the problems caused by globalization] that is not available is that of stopping globalization of trade and economics." See also Howard-Hassmann, "The Second Great Transformation . . .," p. 1.