



Law, Social Justice & Global Development
(An Electronic Law Journal)

**A Bully in the Playground: Examining the Role of Neoliberal
Economic Globalisation in Children's Struggle to Become 'Fully
Human'**

Jennifer C. Davidson
Director, Scottish Institute for Residential Child Care,
Glasgow School of Social Work,
Universities of Glasgow and Strathclyde, Scotland
jennifer.c.davidson@gmail.com

This is a **refereed article** published on: 21st May 2010

Citation:

Davidson, J.C., 'A Bully in the Playground: Examining the Role of Neoliberal Economic Globalisation in Children's Struggle to Become 'Fully Human'', 2010 (2) Law, Social Justice & Global Development Journal (LGD).
http://www.go.warwick.ac.uk/elj/lgd/2010_2/davidson

ABSTRACT

This article begins by exploring the Western historical progression of the conceptual place of children along a *Property-Welfare-Rights* continuum. It applies Baxi's 'logics of exclusion and inclusion' to the complex dynamic of children's advancement in becoming 'fully human' through their achievement of internationally recognised human rights. It critically considers the comprehensive vulnerability of children based both on their evolving levels of development and on the multifaceted challenges of the application and enforcement of their rights. The ideological and practical realities influencing this evolution exist in an increasingly globalised world in which international economic dynamics play a particularly influential role. The character and substance of these are explored. This is followed by an examination of the influence of these dynamics on both the environment in which the struggle for children's rights to be recognised takes place, and on the ideological concepts of these rights themselves.

It is proposed that the dominant form of globalisation, NEG, perpetuates ideological exclusionary criteria which thwart children's achievement of becoming 'fully human.' This is most evident in the neoliberal views on the paramount importance of the individual, and on the limited role for the state. It is the NEG perception of the child, in locating her/him within an individualistic framework and dismissing the wider societal context, which justifies at best a welfare-entitlement agenda and denies children rights. Further, this results in a justification of the effects of poverty, in particular for children of the South. This exclusion of children from bearing rights is achieved globally through NEG systems and processes which handicap the autonomy of states. The NEG maintains this exclusion of children through its deemed legitimate and commonsensical hegemony. Through these mechanisms, NEG bullies states into advancing a new form of colonialism that discriminates against children. The related way in which human rights discourse has itself been influenced by NEG ideology is also explored.

The article concludes with the proposal that the effective recognition of children's rights necessitates an understanding of the exclusionary criteria imposed by NEG. A fundamental modification of the terms and mechanisms within which NEG functions is essential to compensate for children's unique and disproportionate vulnerabilities.

KEYWORDS

Children, Rights, Globalisation, Neoliberalism

1. INTRODUCTION

Neoliberal economic globalisation (NEG) and its consequent institutions and processes were not constructed with children in mind. The moment one brings children into the equation, the exclusionary nature of this system is revealed; children experience a special marginalisation under NEG and the struggle to recognise and enforce children's rights is made more difficult under its global dominance.

2. CHILDREN AND THEIR RIGHTS

2.1 'LOGICS OF EXCLUSION'

What is classified as 'human' today has not been historically constant, and some would argue that this category of personhood may in fact be continuing to evolve (Fukuyama, 2003; Mitchell, 2004; Baxi, 2005a). Baxi's 'logics of exclusion and inclusion' (2005a, p28) considers the evolving criteria for what is fully 'human' (p28) and what is viewed as 'Other' (p28), with various criteria having been used throughout history to disallow people having rights. This lack of rights thereby sustains these groups' states of suffering. He suggests this has included for example slaves, indigenous people, women, the impoverished, and children. Society has treated these 'others' at best as worthy of charity and at worst, as property. It is the increasing achievement of rights which contributes to the emancipation and inclusion of these groups which were formerly excluded as 'other'. Baxi's 'logics of exclusion and inclusion' are applied here to the unique and complex dynamics of children becoming 'fully human' through achievement of internationally recognised human rights.

2.2 THE PROPERTY-WELFARE-RIGHTS SPECTRUM

The concept of becoming more 'fully human' through the bearing of rights is particularly relevant when considering the complex and changing place of children in wider society. This idea of an evolutionary process can be applied to children from their 'Other' positions as property and later as receivers of charity, to becoming more 'fully human' through the bearing of rights. A brief historical look at the place of children in Western society, for example, supports this view that children have progressed along a *Property-Welfare-Rights* journey, albeit a potholed, circuitous and faltering one, from being excluded 'Others' toward becoming more 'fully human'.

Prior to the sixteenth century, children over the age of about six were considered adults, and parents had virtually unobstructed power over their children (Hart, 1991; Burke, 2007). The following several centuries saw a progressive change in the property status of children, with children becoming increasingly more 'valuable and vulnerable' property (Campbell & Covell, 2001, p124). The child-saving movement in the nineteenth century changed children's position further by promoting children as 'potential persons,' and state protective intervention increased in response. Following the Second World War and in line with the wider human rights movement, children advanced from being objects of rights to bearers of rights (Jones, 2005). This culminated in the introduction of the United Nations Convention on the Rights of the Child (CRC) in 1989.

A more contemporary example of children's progression to achieving rights and becoming more 'fully human' is seen in the complex problem of child labour, which at one time might have been understood as simply a transactional cost for international trade. As child work became viewed with increasing concern internationally, the issue was then framed as the domain of state sovereignty. It has now evolved into a problem predominantly understood within a human rights paradigm (Myers, 2001; Sanghera, 2008) and codified in international law.¹

Children's attainment of rights codified in international public law is an important achievement for improving their circumstances and reducing their suffering. Rights ensure a duty on others, create accountability, and allow for a valid claim. Unlike a welfare perspective, a rights perspective places a duty on others and views children and the causes of their problems within their wider societal circumstances. In contrast, a welfare or protectionist approach to children's needs is based on a child's entitlement. This entitlement is defined by others and is easily usurped by various exclusionary criteria which disallow access to services or remedies. This approach does not identify individuals or institutions as having an obligation to meet the specified need; fulfilling the need is dependent on the benevolence of others (Vrouwenfelder, 2006). As such, it is more susceptible to discrimination, changes in priorities and consequent funding.

2.3 THE DYNAMICS OF THE SPECTRUM

The evolving place of children along this *Property-Welfare-Rights* continuum has not been without its struggles and its opponents, nor has it remained static. The position of children as more 'fully human' and active bearers of rights, however imperfect, continues to be vulnerable to barriers in application and to regression both in practice and in discourse, as we will examine below.

2.3.1 Barriers in application

The achievement of children's rights codified in international law is an important component of becoming more 'included' in society. However, despite evidence that children have become bearers of rights, for example through the CRC, in a range of policies and practice areas that directly affect children's lives we continue to see notions of children as property or as passive recipients of welfare based on entitlements rather than on rights. Consider for example in the West, states' reluctance to introduce legislation banning parental corporal punishment (Bitensky, 1998); the low priorities placed on children in government budgets for services for children; the consequent difficulties human services can face when intervening in abusive family situations; and the more lenient sentences for crimes committed against children (Campbell & Covell, 2001). In these and other areas, policies and their related practice do not yet effectively apply the rights which are already enshrined in international, national and regional laws. Exclusionary criteria continue to exist in policy and practice arenas which disallow children enjoying their rights in practice. It is this exclusionary criteria which continues to act as a barrier to children becoming, in Baxi's (2005a) terms, 'fully human'.

Campbell and Covell (2001) suggest policy and practice which still reflect the view of children as property is due in part to the remarkably quick time period in which the transition to children becoming bearers of rights was accomplished. While the achievement of children bearing international rights has been relatively recent—twenty years this month—this benign interpretation overlooks other possible underlying causes for the stubbornness of these exclusionary criteria in the application of children's rights to practice. The role of NEG in actively perpetuating these barriers is explored further below.

In addition to exclusionary criteria which may be imposed in the translation of children's rights from law to policy and practice, the very construction of some rights create intrinsic limits to their enforceability. The lack of an individual remedy within the CRC has been criticised as a shortcoming of the instrument, for example. The difficulties which 'third generation' development rights present in the identification of a violator and a violation, in enforcement and in delivering collective remedies are also substantial (Roth, 2004).

However, the very search for individual remedies can itself be criticised for its Western roots, which risks perpetuating the exclusion and devaluation of more collective notions of remedy.

2.3.2 International rhetoric as regression

The discourse of children's rights is vulnerable not only to exclusionary criteria which limit its applicability to children's lives and the reduction of their suffering, but this discourse also experiences forms of regression, even within the context of children's rights and international law; the *Property-Welfare-Rights* continuum is not a linear unidirectional progression. Within the very institutions in which international children's rights were developed and promoted, commitment to children's rights has wavered. A 'retreat from rights' (Jones, 2005) is best exemplified in the United Nations General Assembly Special Session (UNGASS) on Children in 2002, which sought to review the progress for children in the previous decade since the introduction of the CRC and jointly plan for the future. Due to pressure from some governments—the US in particular—the CRC was removed from being the focus of the outcome document (United Nations, 2002), and a list of worthy welfare-related goals were compiled instead.² Jones (2005) draws our attention to then UK Chancellor, and recent Prime Minister, Gordon Brown's address to the UNGASS, in which Brown makes reference to a 'moral framework that development should be "for children" and makes no reference to the idea of children as the subject of rights' (p336).

It is not uncommon that within large institutions, different departments may be following differing policy priorities, resulting perhaps in the apparent retreat from children's rights in one case and the apparent contradictory promotion of their rights in another, for instance the UNGASS described above, and UNICEF which continues to hold up the rights of children as its key *raison d'être*.³ Progression to rights-based notions of children as well as regression to more welfare and protectionist positions reflect the dynamic character of this *Property-Welfare-Rights* continuum; exclusionary criteria influences at multiple levels in civil and political institutions.

2.4 CHILDREN'S VULNERABILITY

There is both complexity and fragility in society's movement to 'include' children and recognise their rights in practice. Children's individual evolving levels of development and the multifaceted challenges in the application of their rights impedes their journey in becoming more 'fully human'. The ways in which these vulnerabilities impact on the complexity and achievement of their progression to becoming 'fully human' is proposed below.

2.4.1 Children's dependence

Children's relative biological, psychological and social immaturity results in their greater level of vulnerability than most adults. This leads to children's experience of suffering at a disproportionate rate in circumstances in which their rights are not upheld, for example in impoverished conditions (Penn, 2002). This susceptibility is further compounded by children's immediate vulnerability to violations of their caregivers' rights, which should not be underestimated.

2.4.2 Children's vulnerability within a rights framework

While children's achievement of internationally recognised rights is important, children are positioned uniquely in their role as subjects of rights. For example whereas children have a right to 'express their views'⁴ (UN, 1989, Article 12; African Union, 1999, Article 4), their capacity to participate in decisions related to them are dependent on their ability and stage of development. This makes children's rights more complex than other human rights, as the

CRC fundamentally separates the right holder from the moral agent who is empowered to act on the child's behalf (Pupavac, 2001). Hence, even within a human rights paradigm, children are at greater risk than others of not having their voices heard effectively.

Additionally, Pupavac (2001) and others have proposed that the CRC embodies a conception of childhood which reflects a Western 'white, middle-class' (Penn, 2002, p118) view of children. For example, the CRC is criticised for focusing on the individual child without accurately reflecting the child's wider societal context—a more predominant notion of children in the South—and for its promotion of Western notions of professional therapeutic intervention. This Western-bias marginalises children of the South, as they may not be accurately represented in the international document asserted as key to upholding their rights.

2.4.3 Children's disadvantage in the 'logics of inclusion'

The 'logics of inclusion' poses particular problems for children, given the function of these logics in light of children's unique vulnerabilities. Baxi (2005a) is one among many who propose that exclusionary criteria have effectively justified Western colonialism. He refers to the role social Darwinism has played as a rationalization for imperialism: it was the viewing of other cultures as being infantilised, that is, seeing their civilization as less mature and not-as-developed, which provided the justification for colonisation 'for the collective "good" of humankind' (p135). This racism was accepted as sound until pluralities of culture became appreciated. It is important to note that this discrimination was not eradicated due to a progressive understanding that those who are indeed less mature still ought to bear rights. Rather, other civilisations became 'fully human' when their cultures were perceived to meet different criteria, to be equally mature and worthy of rights.

The basis for *inclusion* is the eradication of the *exclusionary* criteria. However, if becoming 'fully human' is not predicated on a revision or evolution of the exclusionary criteria but rather it relies on the subject of the exclusion to be raised to 'equally mature' status with those doing the excluding, this poses particular problems for children, given their evolving development. In light of the function of these logics, children—who are by their definition immature—continue to remain vulnerable to a patronising, protectionist agenda and to being excluded from having their rights enforced despite the codification of these in international law.

3. GLOBALISATIONS

The ideological and practical realities influencing children's advancement and retreat along the multifaceted *Property-Welfare-Rights* spectrum are taking place in an increasingly globalised world in which international economic dynamics play a particularly influential role. And so it is to this multi-levelled process of economic globalisation that we now turn as we aim to understand wider, dominant forces and conflicting ideologies in which the struggle for children's rights to be recognised takes place.

3.1 THE CHARACTER AND SUBSTANCE OF ECONOMIC GLOBALISATION

The process of economic globalisation is not a new phenomenon, yet there is substantial disagreement on the character and substance of the process: '...the only consensus about globalisation is that it is contested' (Scholte, 2000 in O'Connell, 2007, p484). Santos challenges the very notion of 'one globalisation', and suggests rather that there are many globalisations (Santos, 2002). For the purpose of this paper, globalisation will be understood as a complex movement actively facilitated by two opposing, unequal forces; one being a top-down hegemonic approach and the other, a bottom-up counter-hegemonic approach

(Santos & Rodriguez-Garavito, 2005). O'Connell (2007) articulates this succinctly, basing his understanding in Falk (1993):

‘...globalisation is both driven from above, by dominant states, international economic actors and institutions and the economic and political elites which they serve, and simultaneously from below, by broad participation at the local level, interaction among globally conscious non-governmental organisations and other organisations committed to international human rights’ (O'Connell, 2007, p485).

O'Connell (2007) names the dominant hegemonic process as NEG and globalisation from below as being driven primarily by the rejection of NEG in search of a more ‘humane alternative’. This counter-hegemonic movement, with its variations and critical offshoots, for example ‘Subaltern Cosmopolitan Legality’ (Santos & Rodriguez-Garavito, 2005), is based on international human rights as defined by the Universal Declaration of Human Rights (UDHR) (UN, 1948). The efforts to recognise children's rights are a component of this counter-hegemonic movement.

The impact of the NEG movement should not be underestimated. This dominant form of globalisation ‘influences the lives of billions of people in every continent in a multiplicity of ways’ (Saad-Filho and Johnston, 2005, p1). The markedly unequal power relationship between these two paradigms makes this struggle to recognise children's rights all the more difficult. The legitimacy attributed to neoliberalism through its established international institutional support (such as the World Bank (WB) and the International Monetary Fund) can be overbearing, intimidating and can make it difficult for developing states—states being the key player in promoting and respecting human rights—to resist. In this respect, NEG's hegemony functions in the manner of a sophisticated bully. Given the patriarchal undertones of its epistemological relative ‘bull’, and in view of its commonality with the trade term ‘bullish’ which is generally used to refer to the stock market, it would seem that ‘bully’ is a particularly appropriate term to describe the force of NEG's hegemony.

Further, the ‘entrenched and powerful interests, ideologies and institutions’ of NEG achieve and preserve this hegemony because they are seen as ‘commonsensical’ (Santos & Rodriguez, 2005, p17). This ‘common sense legitimacy’ has historically played a leading and destructive role in the exclusion of the ‘Other’. In the context of hegemonic globalisation it results in a silencing of those who protest neoliberalism's influence; ‘groups who protest ... are not only unheard, but cannot even be understood within existing economic and political paradigms’ (Scheper-Hughes, 1993 in Penn, 2002).

3.2 IDEOLOGIES AND THE INFLUENCE OF NEG

Several authors propose that the dominant NEG paradigm and one which promotes human rights are essentially irreconcilable (Myers, 2001; Penn, 2002; O'Connell, 2007). ‘The human rights view of the individual, society and human needs is anathema to neo-liberal orthodoxy’ (O'Connell, 2007, p498). More specifically, the NEG paradigm is in conflict with the idea and realities of children as bearers of rights. This perpetuates an ongoing struggle to have children's concerns understood and addressed within a human rights framework. Key features of the NEG paradigm which best reflect the tensions between these ideologies are explored below.

3.2.1 View of the individual

Within the NEG paradigm, the individual is paramount. People are viewed as consumers, as commodities, as ‘human capital’. Any locus of control is seen to be in the hands of

individuals, and it is these same individuals who will be blamed for not changing when it is believed that they should.

What supporters of a rights-based approach would point to as structurally embedded denials of human rights are considered by NEG to be failures of the individual to appropriately provide for themselves (O'Connell, 2007). The NEG perspective is represented well by the idiom that 'one should pull oneself up by one's bootstraps'. In response, a human rights perspective might question the wider circumstances, and point out the impossibility of this task if one has no bootstraps—or boots, for that matter.

‘...the idea of human rights is, at the very least, founded on a more textured and substantive conception of the individual and society and the relationship between the two than the one valorised by the advocates of neo-liberalism’ (O'Connell, 2007, p498).

As such, the NEG has a distorted view of children, seeing them within the microcosm of the family and not in their wider context (Penn, 2002). ‘The invocation of simplified and idealised notions of childhood, family and community legitimizes the effects of macroeconomic policies in the South⁵ in order to justify actions that may in reality damage the lives of real children’ (Stephens 1995 in Penn 2002).

Supported by this individualistic paradigm, NEG justifies poverty and its extensive effects on children, blaming parents for shortcomings. Consider, for example, the view that poor mothers are more likely to neglect their children (Penn, 2002). Penn (2002) points out the conclusions of a WB report (2000) on early childhood development in Africa which reflect just such a perspective. While cursorily allowing for the structural problems of HIV/AIDS and civil conflicts, the report nonetheless concludes that children's malnourishment is ‘largely due to inappropriate child feeding practice, high morbidity, and poor child caring practices’ (WB, 2000).

NEG-led interventions for children such as those undertaken by the WB are described by Penn (2002) as ‘diversionary’, thereby perpetuating the acceptance of considerable income disparities. She cites evidence that these poverty programmes promote lower standards of care, exacerbate inequalities, and rather than helping the poor, exploit women in low paid jobs thereby impacting on children further. These policies limit both children's rights and those of their caregivers. The NEG paradigm supports these policies' exclusionary criteria which disallow children from embracing an emancipatory place along the *Property-Welfare-Rights* continuum.

3.2.2 Role of the state

The neoliberal view of the role of the state is contrary to that of a human rights paradigm, and it is here again that the differences between the two paradigms are brought into stark relief. NEG aims to establish a market approach to as many aspects of human activity as possible through privatisation, the reduction of non-market provision of goods and services, and deregulation (Baxi, 2005; O'Connell, 2007; Schneiderman, 2008). The NEG promotes as its ‘central objective’ (O'Connell, 2008) a limited capacity of the state for the purposes of profitability. These limitations result in the state's inability to fulfil its human rights obligations. ‘The changes which the neoliberal project requires of a state may be a significant contributing factor to the denial of human rights’ (O'Connell, 2007, p489).

A state's capacity to regulate and intervene in markets is unwanted, and viewed as unnecessary by NEG. This logic of profitability is achieved through '...systematically strengthening those rules and regulations that favour global market expansion while neglecting or even weakening those...that put limits on the activities of market actors in order to protect society...' (Kirby, 2006 in O'Connell, 2007, p491).

The neoliberal-led regime limits government intervention, and through legal commitments in for example bilateral investment treaties, it substantially reduces states' capacity to introduce regulatory policies which uphold the rights of its citizens when it interferes with investors' profits.

Schneiderman (2002; 2008) describes the influence of NEG, proposing that the investment rules regime which gives legal structure to this economic globalisation process facilitates the free flow of capital and gives substantial power to investors at the high cost of state liberty and democratic process. He proposes this regime has created a substantial power imbalance globally, and names it a 'new constitutional order', raising an alarm about its long-term, binding nature:

'The constitution-like constraints of the regime are designed to bind states far into the future, whatever political combinations develop at home to counteract it, by imposing punishing monetary disciplines that make resistance difficult to sustain, if not futile' (p.6).

He echoes Baxi:

'Indeed, what we witness today is the emergent global economic constitutionalism, the networks of global and regional economic treaty regimes posing challenges to the protection and promotion of human rights within national constitutional frameworks' (Baxi, 2000, p1207).

In contrast, a UDHR-based human rights paradigm views the state as central to the realisation of rights, without which rights would have no locus or influence. A strong state, which promotes transparent processes, inclusive democracy, and regulatory accountability, must be autonomous to meet its human rights obligations. The global dominance of the neoliberal approach threatens states' freedom to meet their corresponding duties to children's rights.

Consider the following application of NEG market logic to children's circumstances. In international public law, children have an individual entitlement to free primary education and states have the corresponding duty of ensuring this education is 'available free to all' on the basis of 'equal opportunity' (CRC, 1990, 28:a). Note that this establishes a child's right to education, rather than an access to education based on specific criteria. This state obligation is echoed in the African Union Charter of the Rights and Welfare of the Child (ACRWC) (11:3a-e):

'States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular: (a) provide free and compulsory basic education...(e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.'

NEG, with its market-driven approach, aims to commodify education services, viewing these services as commercial transactions under private law. The change of vocabulary accompanying this approach, from an 'entitlement to education' to 'access to education', is an indication of an erosion of a rights-based approach (O'Connell, 2007).

This commoditisation may take the form of fees for primary education, which has been criticized as discriminating against poor children and resulting in reduced uptake of educational services (Penn, 2002; Tomasevski, 2005a; O'Connell, 2007). School fees act as financial barriers, ' [retrogressing] rather than [progressing] the realisation of the right to education' (Tomasevski in O'Connell, 2007, p492). Less directly attributable perhaps, Penn (2002) notes UNICEF's report that 'the transition to a market economy in Communist countries has in all instances led to a fall in access to education, in some cases drastically so' (p122). Tomasevski, former UN Special Rapporteur on the Right to Education, argues strongly that in order to ensure children's rights are respected, a human rights approach must take precedence in the face of a dominant neoliberal economic agenda (Tomasevski, 2005b).

NEG policies also impact on states' autonomy to financially prioritize (for example in WB structural adjustment programmes) resulting in pressure to limit its funding of human services. Numerous authors have made a direct association between NEG policies (in particular when these have been rapidly introduced), increases in poverty and the suffering of children (Woodward, 1992; Rampal, 1999; Penn, 2002; Fass, 2003). Children's continuous development results in their accessing disproportionately more human services than adults. Hence children are particularly susceptible to cuts in infrastructure spending, for example in education and health services where they exist (Woodward, 1992; Scheper-Hughes, 1993; Rampal, 1999; Fass, 2003).

3.2.3 NEG influence on human rights discourses

Rights discourse cannot expect to be entirely impervious to this NEG hegemonic, common sense-based legitimacy. Naming its influence is an essential step in the process of deconstructing this hegemony, and two particular aspects of NEG's control in the rights arena are explored here.

The Western view of childhood is a paradigm which is culpably linked to NEG, particularly with its view of the individual child which is taken in isolation of the wider societal context. This Western view risks undermining wider views of the child held by other cultures, and will have had some influence in the shaping of the CRC. Pupavac (2001) suggests that when states are called to account under the CRC Committee reporting procedures, countries which do not adhere to these Western views of the child risk being misperceived to be failing the children in their countries. 'Non-Western societies where the Western model of childhood has not been realised become delegitimised as moral agents' (Pupavac, 2001, p103). She warns that through the CRC accountability mechanism, the West takes on the role of moral agent for the children of the South. At its worst, this risks perpetuating a NEG-led colonialism.

Baxi (2005a; 2005b) raises concerns about the emergence of a human rights ideology which has usurped the original intentions of the human rights movements as reflected in the UDNR. He proposes that 'trade-related, market friendly human rights' is an emerging paradigm driven by NEG interests which protects global capital rather than aiming to preserve the dignity and worth of human beings. The justification for this NEG approach is couched in human rights language, thereby appropriating its authority as it 'render[s] unproblematic the voices of suffering' (p. 152).

4. A GLOBAL EXCLUSIONARY CRITERION

Consider the global dominance and bullying nature of NEG in light of the unique vulnerability of children in their struggle to attain and retain their rights. Baxi (2005a) suggests the exclusionary criteria for determining who merits rights and who is 'Other' at one time justified Western imperialism. It is proposed here that NEG introduces a new global exclusionary criterion to children which, to use Baxi's phraseology, excludes children from becoming 'fully human' and promotes a new colonialism. It is the NEG perception of the child, in locating her/him within an individualistic framework and dismissing the wider societal context, which justifies at best a welfare agenda and denies children rights. Further, this results in a justification of the effects of poverty, in particular for children of the South. This exclusion of children from bearing rights, and having them recognised, is achieved globally through NEG systems and processes which handicap the autonomy of states. The NEG maintains this exclusion of children through its deemed legitimacy and commonsensical hegemony.

5. CONCLUSION

The struggle to recognise and maintain children's rights is undertaken within an increasingly globalised world. Ideologically, a UDHR-based human rights approach conflicts with the hegemonic NEG paradigm. When children, who are in a uniquely vulnerable position as bearers of rights, are considered within these conflicting paradigms, the exclusionary nature of NEG's ideology becomes clear. Applied to children's distinct circumstances, NEG introduces a new criterion which prevents children from bearing rights and justifies the effects of poverty through its mechanisms of both its myopic view of the individual and its promotion of a limited role of for state. Through these mechanisms, NEG bullies states into advancing a new form of colonialism that discriminates against children and perpetuates their suffering.

O'Connell (2007) proposes that the problem is not with the globalisation processes per se, but rather with the terms under which these are constructed. Successfully achieving and maintaining the recognition of children's rights necessitates an understanding of the exclusionary criteria imposed by NEG, and requires systemic changes to compensate for children's unique and disproportionate vulnerabilities. A fundamental modification of the mechanisms within which NEG functions is an essential starting point in bringing about change. Facilitative and inclusive mechanisms must be the defining features of these revised globalising processes to contrast with existing exclusionary methods.

6. REFERENCES

- African Union (1999). *African Charter on the Rights and Welfare of the Child*. Retrieved 21 March 2009 from http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/A.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf
- Baxi, U (2000) Constitutionalism as a Site of State Formative Practices, *Cardozo Law Review* 21(4), pp1183-1210
- Baxi, U (2005a) *The Future of Human Rights* (Delhi: Oxford University Press)
- Baxi, U (2005b) Market fundamentalisms: business ethics at the altar of human rights *Human Rights Law Review* 5(1), pp1-26

- Bitensky, S (1998) Spare the rod, embrace our humanity: toward a new legal regime prohibiting corporal punishment of children, *University of Michigan Journal of Law Reform*, 31, 353
- Burke, K (2007) Human rights and the rights of the child: a panoramic view. *Globalisation, Societies and Education* 5, 3, pp333-349
- Campbell, K.M. and Covell, K (2001) Children's rights education at the university level: an effective means of promoting rights and knowledge and rights-based attitudes. *International Journal of Children's Rights* 9(2), pp123-135
- Chowdhry, G and Beeman, M (2001) Challenging child labour: transnational activism and India's carpet industry. *Annals of the American Academy of Political Science* 575, pp158-175
- Fass, P (2003) Children and globalization. *Journal of Social History* 36(4) pp963-979
- Fukuyama, F (2003) *Our Posthuman Future: Consequences of our Biotechnology Revolution* (London: Profile Books)
- Hart, S. N (1991) From poverty to person status: historical perspectives on children's rights, *American Psychologist* 46 (1), pp53-59
- Himsworth C.M.G. (1996). In a state no longer: the end of constitutionalism? *Public Law, Winter*, 639-660
- International Labour Organisation (1973) *The Minimum Age Convention (No. 138)* Accessed 21 March 2009 from http://www.ilo.org/public/english/employment/skills/hrdr/instr/c_138.htm
- International Labour Organisation (1999) *The Worst Forms of Child Labour Convention (No. 182)*. Accessed 21 March 2009 from <http://www.ilocarib.org.tt/projects/childlabour/r190.htm>
- Jones, G (2005) Children and development: rights, globalisation and poverty, *Progress and Development* 5 (4), pp336-342
- Langlois, A.J (2002) Human rights: the globalisation and fragmentation of moral discourse, *Review of International Studies* 28, pp479-496
- Mitchell, D (2004) *Cloud Atlas* (London: Sceptre)
- Myers, R (2002) Thoughts in the role of the "private sector" in early childhood development. *From Early Child Development to Human Development - Investing in Our Children's Future*. World Bank. Accessed 11 March 2009 from http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2002/04/26/000094946_02041304004942/Rendered/PDF/multi0page.pdf
- Myers, W.E (2001) The right rights? Child labor in a globalizing world, *Annals of the American Academy of Political Science* 575, pp38-55
- O'Connell, P (2007) On reconciling irreconcilables: neo-liberal globalisation and human rights, *Human Rights Law Review* 7: pp483-509

- Penn, H (2002) The World Bank's view of early childhood, *Childhood* 9, pp118-132
- Pupavac, V (2001) Misanthropy without borders: the international children's rights regime, *Disasters* 25, pp95-112
- Rampal, S (1999) *Debt has a Child's Face*. UNICEF. Retrieved 19 March 2009
<http://www.unicef.org/pon99/debtcom2.htm>
- Rasheed, S (2000) Children: what future in the new millennium? *Development* 43: 3, pp7-13
- Saad-Filho and Johnston, (eds.) (2005) *Neoliberalism: A Critical Reader* (London: Pluto Press)
- Sanghera, G.S (2008) The "politics" of children's rights and child labour in India: a social constructionist perspective, *International Journal of Human Rights* 12(2), pp215-232
- Santos, B. S (2002) *Toward a New Legal Common Sense: Law, Globalization and Emancipation*, (London: Butterworths Lexis Nexis)
- Santos, B and Rodriguez-Garavito, C.A (2005) Law, politics and the subaltern in counter-hegemonic globalization, *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press)
- Scheper-Hughes, N (1993) *Death without Weeping: the Violence of Everyday Life in Brazil* (Los Angeles: University of California Press)
- Schneiderman, D (2002) Comparative constitutional law in an age of economic globalisation, in Jackson, V.C. and Tushnet, M (Eds.) *Defining the Field of Comparative Constitutional Law* (Westport, Connecticut: Praeger)
- Schneiderman, D (2008) *Constitutionalizing Economic Globalization: Investment Rules and Democracy's Promise* (Cambridge: Cambridge University Press)
- Smith, R (2000) Order and disorder: the contradictions of childhood, *Children and Society* 14, pp3-10
- Tomasevski, K (2005a) Has the right to education a future within the United Nations? A behind-the-scenes account by the Special Rapporteur on the Right to Education 1998-2004, *Human Rights Law Review* 5(2), pp205-237
- Tomasevski, K (2005b) Globalising what? Education as a right or as a traded service? *Indiana Journal of Global Legal Studies* 12, pp1-78
- United Nations (2002) A world fit for children: Outcome document from the Special Session. In: *Report of the Ad Hoc Committee of the Whole of the Twenty Seventh Special Session of the General Assembly; New York, 8-10 May 2002. Supplement No. 3 (A/S-27/19/Rev.1)*. Retrieved 19 March 2009 from
<http://www.unicef.org/specialsession/documentation/archive.htm>
- United Nations (1948) *Universal Declaration of Human Rights*. Retrieved 19 March 2009 from <http://www.un.org/Overview/rights.html>

United Nations (1989) *United Nations Convention of the Rights of the Child*. Retrieved 19 March 2009 from <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

Vronwenfelder, E (2006) *Children's Rights: How to Implement a Rights-Based Approach* (Glasgow: SIRCC)

White, S.C (2002) From the politics of poverty to the politics of identity? Child rights and working children in Bangladesh, *Journal of International Development* 14, pp725-735

Woodward, D (1992) *Debt, Adjustment and Poverty in Developing Countries: the Impact of Debt and Adjustment at the Household Level in Developing Countries* (London: Pinter Publications and Save the Children)

World Bank (2000) *Early Childhood Development: Conditions of Children*. Retrieved 19 March 2009 from <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTCY/EXTECD/0,,contentMDK:20426142~hlpk:547714~menuPK:1114015~pagePK:148956~piPK:216618~theSitePK:344939,00.html>

7. ENDNOTES

* Director, Scottish Institute for Residential Child Care, Glasgow School of Social Work, Universities of Glasgow and Strathclyde, Scotland. Email: jennifer.c.davidson@gmail.com

1 Myers (2001) identifies three international conventions as the key 'global reference points' for both national and international policy regarding child labour: the ILO (1973) Minimum Age Convention, the CRC (1989) and the ILO (1999) Worst Forms of Child Labour Convention.

2 The report bases its plan of action on the following ten principles and objectives: 1. Put children first. 2. Eradicate poverty: invest in children. 3. Leave no child behind. 4. Care for every child. 5. Educate every child. 6. Protect children from harm and exploitation. 7. Protect children from war. 8. Combat HIV/AIDS. 9. Listen to children and ensure their participation. 10. Protect the Earth for children.

3 UNICEF identifies children's rights as its primary reason for the work it undertakes. See <http://www.unicef.org/why/index.html>

4 Article 12(1) of the CRC states: 'States Parties shall assure to 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, the views of the child being given due weight in accordance with the age and maturity of the child.'; Article 4(2) of the ACRWC states: 'In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.'

5 Using the definition promoted by Santos and Rodriguez (2005), the South refers to 'not a geographical location but all forms of subordination...associated with neoliberal globalisation. In this sense, the South is unevenly spread throughout the world, including the

North and the West' (Santos and Rodriguez, 2005, p14). They refer both to the global South as well as the 'inner South in core countries.'