

FINAL
International Law on Children’s Rights
Irish Centre for Human Rights, National University of Ireland Galway
Academic Year: 2019-2020

Syllabus

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Times of Seminars: Dates in Feb-Mar 2020 tbc (see Section 3)

Note: I am based in Liverpool but feel free to email me to arrange a meeting in Galway, or to arrange a phone/skype meeting.

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1. Introduction: Children's Rights – A Contested Area

The area of children's rights is a compelling one. Children, formerly perceived by the law as an **extension of their parents**, now have an international human rights instrument outlining their **rights as individuals** – the UN Convention on the Rights of the Child (**CRC**). But what has changed? Children still lack legal autonomy for most purposes, they are the group most likely to suffer violence and poverty, and whether they enjoy CRC rights is highly dependent on the adults in their lives. In this module, we will take a **critical view** of the CRC, examining key issues, such as children's rights in court and the rights of working children. We will question the relationship between parent, state and child, looking at how and whether the CRC has influenced law and practice in this area.

2. Module Details

2.1 Module Objectives

- To understand the **theory** underlying children's rights;
- To be able to critically analyse the **legal arguments** around children's rights;
- To evaluate the challenges and opportunities in using the **CRC** and other avenues to progress children's rights;

2.2 Mode of Study

- **Seminars:** 3 hours of lecture presentation and class discussion;
- Analysis of the various **international legal documents** on child rights;
- Examination of **literature** in the area;
- Seminars are of a **participatory** nature to encourage free exchange of critical views and perspectives;

2.3 Core Text

- There is **no core text** for this module- instead a variety of sources will be used.
- See seminar overviews below for details of the **literature** for this module.

2.4 Preparation for Seminars

Please read the **essential reading** in advance of class. For many of the readings it is expected that only designated excerpts must be read. This is to ensure the task is not too onerous. Feel free to read the entire piece if you can of course. Obviously the **additional reading** will be hugely helpful for your preparation also. Please consider the '**key questions**' posed in this syllabus, and informally **prepare in advance** thoughts and views in response to these question (perhaps in the form of bullet points) as you will be expected to contribute to class discussion.

2.5 Assessment

Students will be assessed via an essay of 3,000 words. The essay is due for submission by 3rd May 2019. The title will be of your own choosing and will be on a theme related to

children’s rights in international and/or national law. Students will decide on their essay title based on discussions with the module co-ordinator.

3. Module Outline

Date	Seminar	Topic
Fri Feb 21 st 2-5pm (provisional)	1	<i>Introduction to Children’s Rights</i>
Sat Feb 22 nd 10am-1pm (provisional)	2	<i>Children and Personal Autonomy – Voices or Choices?</i>
Fri Mar 20 th 2-5pm (provisional)	3	<i>Children, Protection, Vulnerability</i>
Sat Mar 21 st 10am-1pm (provisional)	4	<i>Children, Poverty and Exploitation</i>

4. Seminar Overviews

Seminar 1: Children, Rights and the UNCRC

This lecture will provide some introductory thoughts on **children’s rights theory**, looking at the work of those who take a strong **welfare approach** (and primarily think that children need protecting from themselves), and comparing it to those who think that children should have greater say in decision-making about their lives and about society generally. How these issues play out in the CRC are also considered. The contested relationship between child, parent and state is also examined. The **general principles** of the CRC are discussed – these principles aim to balance children’s best interests, right to be heard, right to life and right to freedom from discrimination.

Essential Reading

- Manfred Liebel, “Welfare or Agency? Children’s Interests as Foundation of Children’s Rights” 26 *International Journal of Children’s Rights* 597 (2018) – **Section 2.3 ‘Criteria of Children’s Interests’**.
- Aoife Daly, *Children, Autonomy and the Courts: Beyond the Right to be Heard* (Brill/Nijhoff 2018) –**Chapter 2 ‘The Best Interest of the Child’**.
- Bruce Hafen and Jonathan Hafen, “Abandoning Children to Their Autonomy” (1996) 37 *Harvard International Law Journal* 449 – **excerpt: Section I**.
- Harry Shier, “Towards a New Improved Pedagogy of ‘Children’s Rights and Responsibilities’” 26 *International Journal of Children’s Rights* 761 (2018).
- CRC Text

Additional Reading

- Ann Quennerstedt, “Children, But Not Really Humans? Critical Reflections on the Hampering Effect of the ‘3 Ps’” 18 *International Journal of Children’s Rights* 619 (2010).

- Matias Cordero Arce, “Maturing Children’s Rights Theory: From Children, With Children, Of Children” 23 *International Journal of Children’s Rights* 283 (2015).
- CRC General Comment No. 5: *Implementation of the CRC* (2005).

Key Questions

1. Do you think that rights for children must be **different to rights for adults**? **Why?**
2. Hafen and Hafen are of the opinion that the CRC does not sufficiently recognise the **rights of parents**. Do you agree?
3. Do you think that any of the rights in the CRC are **more important** than any others?
4. Cordero Arce proposes that we should not “be **bounded by** the institutional framework (i.e. CRC) but ... freely think it.” Do you agree the CRC is not enough?

Seminar 2: Children and Autonomy – Voices or Choices?

In this session we will examine the matter of children’s autonomy. Article 12 of the UN Convention on the Rights of the Child (CRC) aims to **empower children** where previously decisions were made without their input – children must be “heard” and their views given “due weight”. However the **impact** of this principle in legal proceedings to determine the best interest of the child (e.g. where children may be taken into state care, and where parents are in dispute) is questionable. In this seminar we will examine critical questions about the **nature and power** of the right to be heard in this context.

Essential Reading

- Aoife Daly, *Children, Autonomy and the Courts: Beyond the Right to be Heard* (Brill Nijhoff, 2018) – **Introductory chapter**.
- Kay Tisdall and Fiona Morrison, “Children’s Participation in Court Proceedings when Parents Divorce or Separate: Legal Constructions and Lived Experiences” 14 *Law and Childhood Studies: Current Legal Issues* 156 (2012) – **Excerpt: Section 11.3**.
- Michael Freeman, “Rethinking Gillick” 13 *International Journal of Children’s Rights* 201 (2006).
- Laura Lundy, “Voice is Not Enough” 33 *British Educational Research Journal* 927 (2007) **Section entitled ‘A new model for understanding Article 12’**

Additional Reading

- Roger Hart, *Children’s Participation: From Tokenism to Citizen* (UNICEF, 1992).
- Gerison Lansdown, *The Evolving Capacities of the Child* (UNICEF, 2005).
- Committee on the Rights of the Child, *General Comment No. 12: The Right to be Heard*, CRC/C/GC/12, 20 July 2009.

Key Questions

1. What do you think are **important ingredients** for getting child participation right?

2. Why are children **denied legal autonomy** that is fundamental to adults, and is it justifiable?
3. What does the right of children to be heard in legal proceedings really **mean** in theory and practice?
4. When (if ever) should children's views be the **determinative** outcome in a case?
5. I argue in Daly (2018) that the 'right to be heard' can actually **compound children's exclusion** from the process where decisions made about them. Do you agree?

Seminar 3: Children, Protection, Vulnerability

In this seminar, the vulnerabilities of children which lead to, e.g. sexual exploitation will be examined. Questions will be posed about the extent to which undue attention is given to children's vulnerability, and not enough to the obligation to boost their capacity for autonomy through, for example, sex education and political voice. The most **ground breaking** aspect of the CRC was the inclusion of civil and political rights. In the CRC, the template of the **ICCPR** was used to enshrine a variety of rights for children such as freedom of expression, information, association and assembly. Yet these rights are under examined and under used.

Essential Reading:

- Aoife Daly et al., "Vulnerable subjects and autonomous actors: The right to sexuality education for disabled under-18s" *Global Childhood Studies* (forthcoming, 2019).
- Hansen K (2016) Children's participation and agency when they don't 'do the right thing'. *Childhood* 23(4): 471–475.
- Ruth Payne, (2012) "'Extraordinary survivors' or 'ordinary lives'? Embracing 'everyday agency' in social interventions with child-headed households in Zambia" 10 *Children's Geographies* 399.
- Aoife Daly, "Under-18s and the Right to Vote" in David Keane and Yvonne McDermott (eds), *The Challenge of Human Rights: Past, Present and Future* (Elgar, 2012).

Additional Reading:

- Martha Fineman, "The vulnerable subject: Anchoring equality in the human condition." 20 *Yale Journal of Law & Feminism* 1 (2008).
- Campbell, "The challenges of girls' right to education: Let's talk about human rights-based sex education." 20 *The International Journal of Human Rights* 1219 (2016).
- Bordonaro and Payne, "Ambiguous agency: critical perspectives on social interventions with children and youth in Africa" 10 *Children's Geographies* 365 (2012).
- Tobin J. (2015) Understanding Children's Rights: A Vision beyond Vulnerability" 84 *Nordic Journal of International Law* 155 (2015).

Key Questions

1. How **vulnerable** are children generally, compared to other groups?
2. How do we **balance** autonomy and vulnerability?
3. How well are children protected from **exploitation**?
4. What obligations have to **decrease children's vulnerability** through for example sex education?
5. Does the notion of '**participation rights**' **hinder** children's engagement in civil and political rights issues?

Seminar 4: Children, Poverty and Exploitation

Children are assumed to be in need of **protection** from the difficulties of the adult world. Yet millions of **children work**, many in exploitative conditions. In this seminar, we look at how poverty affects children. We also look at children's relationship to work, examining the contested area of **minimum age standards**. If children wish to **assert a right to work**, how is the participation v protection rights issue resolved? We also ask whether children should have responsibilities for their actions in this regard, for example whether child soldiers should be held accountable for their actions.

Essential Reading:

- Elżbieta Goździak, "Forced Victims or Willing Migrants? Contesting Assumptions About Child Trafficking" in Marie Louise Seeberg and Elżbieta Goździakeds, eds, *Contested Childhoods: Growing up in Migrancy* (Springer, 2016). Available at https://link.springer.com/chapter/10.1007/978-3-319-44610-3_2/fulltext.html
- Cynthia Arat, "Analyzing Child Labor as a Human Rights Issue: Its Causes, Aggravating Policies, and Alternative Proposals" (2002) 24 *Human Rights Quarterly* 177.
- Paul O'Connell, *Vindicating Socio-Economic Right: International Standards and Comparative Experiences* (Routledge, 2012), Chapter 3 (South Africa).
- Please explore website of Concerned for Working Children: <http://www.concernedforworkingchildren.org/empowering-children/childrens-unions/>

Additional Reading:

- Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the Protection and Promotion of the Rights of Children Working and/or Living on the Street* (UN Doc A/HRC/19/35, 2012).
- Brian Milne "Is 'Participation' as it is Described by the United Nations Convention on the Rights of the Child (UNCRC) the Key to Children's Citizenship?" (2005) 9 *Journal of Social Sciences* 31.
- Antonella Invernizzi, 'Street-Working Children and Adolescents in Lima: Work as an Agent of Socialization' (2003) 10 *Childhood* 319.
- Michael Corriero, "The Involvement and Protection of Children in Truth and Justice-Seeking Processes: The Special Court for Sierra Leone" (2002) 18 *New York Law*.

Key Questions

1. When **is it ok**, if ever, for children to work (or to be soldiers)?
2. Is it justifiable that the **minimum working ages differ** slightly between industrialised and non-industrialised countries?
3. If children wish to **assert a right to work**, how is the participation v protection rights issue resolved?
4. Do you think children's **voices are heard** sufficiently in the efforts to combat child labour?
5. Do you think the **ILO approach** – zero tolerance of child labour – is correct?
6. What is the difference between **work and labour**?
7. What responsibilities **should children take** for their actions?