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A. Taking Schlag to (the) Task: Reconstructing Rights, Reason, and Politics: *A Theory of Child Rights*

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A Theory of Child Rights

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SUMMARY

The focus on rights prevents a broader reallocation of resources. I want to examine the process that is at work when one chooses to use a rights language rather than question social hierarchy. Rights are based on constructed identities, not on lived conditions. A person calls for rights because the social hierarchy harms that person. The harm is connected to the person's social identity, an identity that is only given meaning through a lack. A lack is created and upheld by a harmful exclusion from human, organizational, or economic resources.¹ The harm becomes a social identity. The meaning of that social identity is found in the lack. The lack defines a person's social identity or place in the hierarchy. Rights are based on the presumption about constructed identities and not on lived conditions. To use rights language to speak from a particular place in the hierarchy, from a particular social identity, from a particular lack, prevents a questioning of the hierarchy that caused the harm, the identity, and the lack. To speak of rights is to

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1. David Parker, *Resources and Child Rights: An Economic Perspective*, in IMPLEMENTING THE CONVENTION ON THE RIGHTS OF THE CHILD 33, 37 (James R. Himes ed., 1995).

speak from a particular social identity and to speak from a particular social identity is to reinforce the hierarchy. To speak of rights is to make the state into the mediator on behalf of the oppressors, instead of the recipient of claims (claims based on lived conditions instead of identities). This article suggests that rights should be treated as a form of human, organizational, and economic resources and not as normative and descriptive expressions of something that is or should be.

The article is divided into sequentially numbered sections to enhance clarity. A glossary is also included to aid readers unfamiliar with the approach of the article.

1. RIGHTS

Rights are born out of pain and suffering. Rights are dependent upon pain and suffering. Without pain and suffering there would be no rights. Where there is pain and suffering, there are also calls for rights, rights that will cure. Rights do not cure. Pain and suffering do not exist because rights are not realized. Rights exist because there is pain and suffering. The rights of a person tell us more about that person's place in society than about the rights themselves. Rights are signs of what the human has been made to not be. Rights are the void. Rights are emptiness. Rights are the emptiness that remains when a person is made to be less than human. The language of rights takes the place of the unspeakable pain and suffering that is inflicted on people, by people. Rights are the bandages on already-inflicted injuries. Bandages do not heal; they cover and hide wounds. Instead of seeing the harms inflicted, one sees the bandages. Instead of seeing the pain and suffering, one sees the right.

1.1. THE MAGIC LANGUAGE OF LAW

Rights are the magic language of law that bridge the paradox that everyone is born free and yet some people are less free than others. Either one is human or not human. There is no less-than-human. Either one is free or not free. There is no less-than-free. To be free is to be human. To not be free is to not be human. Law legitimates and hides the violence involved in dehumanization.

1.1.2. TO GIVE A RIGHT

To give a person a right is to fill the lack of that which has been taken from that person. To give a right is to fill the void with emptiness. When one lack replaces the other lack, it means that there has not been a change. It means that there never was a change. Emptiness cannot be replaced by emptiness; emptiness is the same. Two emptinesses cannot

be different from each other; there is no difference between one emptiness and two emptinesses. A human is either free or not free. A human is either human or made less-than-human and, therefore, not human. A right cannot make a person free, only full humanness can make a person free.²

1.2. ILLUSION OF MOVEMENT

To be almost free is to not be free. To be almost human is to not be human. Rights are a technique of creating the illusion that the damage of the theft has been repaired. The repair is an illusion that what has been stolen has been returned. Rights are the gift without anything having been given in return of what was taken. Rights are the magic of the system of law. Rights create the illusion of movement and direction when everything stays in its place and everything remains the same. Rights create the illusion that it is possible to measure the emptiness within the emptiness.

1.2.1. SYMPTOMS

Rights are not the cure of societies' illnesses, they are the symptoms of the very illnesses that they are believed to cure. Rights are dependent upon social illness. It is only with the illness that the symptoms show. It is only with the illness a symptom can be.³ It is only through the lack that an understanding of a right can take form.

2. THE MASTER NORM

To be able to understand a lack, a norm has to be imagined. In society, the norm imagined, the norm against which a lack is understood, is the master norm.⁴ What is imagined is that the master norm can be measured and reached, that the master norm is both descriptive and normative at the same time. What is imagined is that there is a way to arrive. The master norm is not descriptive and it is not normative, it is functional. The master norm does not describe a state of facts as they are or as they should be. The master norm is, therefore, neither descriptive nor normative.

2. Humanness is my version of the adverb for human.

3. A symptom might be a simulation; this does not change the connection and dependence between illness and symptom. Regardless of whether the symptom and the corresponding illness is simulated, the symptom is still dependent on the illness for its existence. See Jean Baudrillard, *The Precession of Simulacra*, in *SIMULACRA & SIMULATION* 1, 26-27 (Sheila Fara Glaser trans., University of Michigan 1994) (1981).

4. Maria Grahn-Farley, *A Child Perspective*, 6 J. GENDER RACE & JUST. 297 (2002).

2.1. MOVEMENT

The master norm is functional. The master norm operates out of a power relationship and its function is to uphold and maintain that relationship. This is why a descriptive or normative rights language is not going to cure a particular society's illness, suffering, and pain. This is why one has to look at the motion of rights. This is why rights have to be about movement. Rights cannot be functional because to respond symmetrically to the master norm is to place oneself in an interdependent relationship to oppression. To respond symmetrically to the master norm is to respond not on one's own terms but on the terms of the master.

The master norm is a practice, not an object. The master norm, however, is imagined to be either descriptive or normative. The functionality of the master norm means that the measure of one's closeness to the fulfillment of the master norm is also in constant flux. Because the master norm is functional, it will always be in flux from either a descriptive or a normative perspective.

2.2. WHITE-ADULT-MALE HEGEMONY

A structural description of the master norm is white-adult-male hegemony. This does not mean that on an individual basis a person who is thought of as a white-adult-male prefers the master norm. Nor does it mean that a person who is thought of as a woman, a person of color, or a child cannot also prefer the master norm. The preference for white-adult-male hegemony is not connected to an *essence*. The preference for white-adult-male hegemony is not an identity. White-adult-male hegemony is a function of power, not of essence. Understanding of the master norm comes from looking at the allocation of society's resources (human, economic, and organizational⁵). A disproportionately large amount of resources are allocated to those who can be labeled white-adult-men. When looking at the allocation of resources (human, economic, and organizational) one sees that a disproportionately small amount of resources are allocated to those labeled women and/or children and/or people of color. Within each group there are separate allocations; yet, even collectively they are allocated fewer resources than white adult men.

5. Parker, *supra* note 1, at 37.

3. THE HYPERREAL CHILD

The system of marks⁶ and the system of law in combination create the hyperreal⁷ identity of the minority. The minority is the one with less and the majority is the one with more.⁸ The child is a minority.⁹ The hyperreal identity is a copy for which there is no original.¹⁰ There is no original child; there is only a belief that there is something that is naturally a child. There is only a belief that one can know what a natural child is. The system of marks alone cannot make the child real; it can only make believe that the child is real. The system of law alone cannot make the child real; it can only make believe that the child is real. It takes the system of law and the system of marks in combination to transform the belief in the real child into a hyperreal identity.¹¹ The child is constructed through the system of marks and executed through the system of law.

3.1. THE NATURAL LINE

Age is used as a "natural line" of authorization, a line with which the exercise of social and legal power upon the construction of the child is justified. The violence of the law cannot be questioned as long as the authority of the law is derived from the "natural." As long as the law only upholds what nature has already created, there cannot be a questioning of law's justification because nature cannot be questioned.¹² The system of law begins and ends with the system of marks; the system of marks begins and ends with the system of law; the hyperreal is the outcome.¹³ The desires that guide the system of marks are the desires that

6. Colette Guillaumin, *Race and Nature: The System of Marks*, in RACISM, SEXISM, POWER, AND IDEOLOGY 133, 149 (Mary Jo Lakeland trans., 1995) [hereinafter Guillaumin, *Race and Nature*].

7. Baudrillard, *supra* note 3, at 21, 23.

8. The word "minority" in this context means the people that have the least power. See Guillaumin, *Race and Nature*, *supra* note 6, at 153.

9. Symposium, *International Child Rights Abroad & At Home: A Symposium on the UN Convention on the Rights of the Child*, 30 CAP. U. L. REV. 658 (2001).

10. For a developed reading of the hyperreal, see generally Maria Grahn-Farley, *The Law Room*, 36 NEW ENG. L. REV. 29 (2001) [hereinafter Grahn-Farley, *The Law Room*].

11. Peter Goodrich describes the historical relationship between the law, text, and life in an instructive way: "The twelfth-century reception of Roman law established a highly specific, if complex, system of text as law. The texts were a design for social life; they instituted life and established the legal subject as a child of the text." Peter Goodrich, *Translating Legendre, or The Poetical Sermon of a Contemporary Jurist*, in LAW AND THE POSTMODERN MIND 223, 228 (Peter Goodrich & David Gray Carlson eds., 1998).

12. See Guillaumin, *Race and Nature*, *supra* note 6, at 149; see also PIERRE BOURDIEU, *MASCULINE DOMINATION* 8 (Richard Nice trans., 2001).

13. Baudrillard, *supra* note 3, at 39.

guide the system of law. There is no separation between the two systems. One is the other and the other is the one.

3.2. TO BE INVISIBLE

To be a subject and not an object is to be invisible. The subject is invisible because it is the master norm.¹⁴ The master norm is invisible, it can be seen only in its effects, in its maintenance of white-adult-male hegemony. The hyperreal identities of the child, the woman, and the person of color are effects of the master norm. The master norm can also be seen in its effects on those hyperreal identities (which are themselves effects of the master norm). The rule of law is white-adult-male rule.

3.2.1. THE PROBLEM FOR THE OBJECT

The problem of the invisible subject of law is not a problem for the subject;¹⁵ it is a problem for the groups of humans that it makes into objects. The problem of the invisible subject of law is not a problem for the subject; the problem of the invisible subject of law is the problem for the object.¹⁶ It is the object that has to live under the conditions of the master norm. This is why the problem of the subject is the problem of white-adult-male hegemony. A position of power is the position from which the subject's visibility becomes unnecessary. The rule of law's authority is the authority of white-adult-male hegemony. Invisibility is the non-sign that signals placement in the social hierarchy as the hegemon—the master.¹⁷

3.3. THE SCIENCE OF MARKING

The system of marks is the belief that the way that a group is being treated reflects that group's nature and that its nature or essence is displayed through physical features.¹⁸ The system of marks is the belief

14. See generally Grahn-Farley, *The Law Room*, *supra* note 10.

15. On the question of where is the legal-self, see PIERRE SCHLAG, *THE ENCHANTMENT OF REASON* 135-137 (1998).

16. Objectification is foremost a problem for the Object. Maria Grahn-Farley, *An Open Letter to Pierre Schlag*, 57 U. MIAMI L. REV. 755 (2003) (to be republished in *CRITICAL RACE FEMINISM* (Adrien Katherine Wing ed., 2d ed. forthcoming 2003)).

17. [I]f the human infant found that all its needs were instantly gratified by the environment, there would never be any need for it to think that it had "needs," that there was "an environment," or indeed, that there was a "self" or an "I." A perfect fit between self and environment renders the distinction between the self and not-self meaningless

ROGER HORROCKS, *AN INTRODUCTION TO THE STUDY OF SEXUALITY* 69 (Jo Campling ed., 1997).

18. For further reading on the system of marks, see Guillaumin, *Race and Nature*, *supra* note 6, at 133-52.

that physical features can be used to categorize people into groups of humans with what is imagined to be scientific precision. The system of marks is a way to justify the already-existing social order as natural, originating with the marked and not the marker.¹⁹ The process of making a human less than human begins with the division of people into groups of humans. This first step is followed by dressing these groups with specific marks.²⁰ The power relationship between the marker and the marked is hidden by the “natural.” Belief in the marks rests on a biological belief in difference, a difference that is manifested in the social treatment of the marked. Instead of attributing the difference between groups to the disparate treatment of these groups in the social hierarchy, the marks are presumed to indicate the essential character of the group. Instead of attributing difference to different treatment, difference is attributed to an essence that is manifested in physical features.²¹

3.3.1. THE INTERDEPENDENCE BETWEEN LAW AND MARKS

The system of marks cannot be applied in a scientifically precise manner, nor can it be executed on its own terms. For the system of marks to become scientifically precise it needs the system of law. The system of law is what saves the system of marks. It is through the system of law that the system of marks becomes scientifically precise. The system of law is based on the system of marks and the system of marks is based on the system of law.

The system of marks finds its justification in the system of law and the system of law finds its justification in the system of marks. The one justifies and authorizes the other. The system of marks justifies the beliefs that serve the power relationship upon which it is based; the system of law makes the beliefs of the system of marks into “nature” by legitimizing the violence of the system of marks.²² There is nothing

19. *Id.* at 140-42.

20. For a further argument on marks, see generally Maria Grahn-Farley, *Not for Sale!*, 17 N.Y.L. SCH. J. HUM. RTS. 271 (2000) [hereinafter Grahn-Farley, *Not for Sale!*].

21. The ambiguity of the self may be described as follows:

- (a) The understanding of the self from within; or
- (b) The understanding the Other has about the Other (the self-of-I); or
- (c) The reflection back to the self, coming from the Other’s understanding the Other (the self-of-I); or
- (d) The image thrown back to the self does not match the image coming from within the self. This discrepancy is never stable because it changes depending upon the image of the self from within, and the self’s relationship to the Other, and the Other’s image of its self from within, and the Other’s relationship to *its* Other (the self-of-I).

22. Bourdieu writes:

The mythico-ritual system here plays a role equivalent to that performed by the legal system in differentiated societies: in so far as the principles of vision and

separating the system of law from the system of marks. The system of marks begins and ends in the system of law; the system of law begins and ends in the system of marks.

The marker is invisible when upholding the power relationship between the visible marked and the invisible marker. It is by making the power relationship between the marker and the marked invisible that the meaning of the marks appears to be decided by nature instead of humans.²³ The system of law derives from and upholds the power relationship between the marker and the marked. It is through the system of law that the marker finds its authority and justification to mark.

4. TO FULFILL A RIGHT

Rights are the void that is supposed to fill the lack. The lack can only be understood in relationship to the master norm. Talk about the fulfillment of rights is talk about reaching the master norm.²⁴ The master norm, being neither descriptive nor normative, cannot be reached through a descriptive and normative approach. The function of the master norm is to maintain the power relationship between the people who have and the people who have less. The language of rights is an effect of this function. To argue for rights is to argue for nothing and to argue for nothing is to remain the same.²⁵

Rights serve on behalf of the master norm. Rights are the result of the master norm; it is only through measuring the lack against the master norm that rights can be understood. Rights language is the language of the empty justification and authorization of the violence of marking.²⁶

5. MOVEMENT OF RIGHTS

Rights may be understood through movement instead of lack. Rights that are constructed by the master norm do not give anything. A right to education does not give a school or teachers a right to teach in the school. It is not only that rights do not give, rights also take. Right takes away the possibility to want and will outside of what the master

division that it proposes are objectively adjusted to the pre-existing divisions, it consecrates the established order, by bringing it to known and recognized, official existence.

BOURDIEU, *supra* note 12, at 8.

23. See Guillaumin, *Race and Nature*, *supra* note 6, at 133-52; see also BOURDIEU, *supra* note 12, at 3.

24. "He dissimulates his subjectivity under the shield of rights which emanate from the ethical universe recognized by him: he is no longer a man, but a father, a boss. . . ." SIMONE DE BEAUVOIR, *THE ETHICS OF AMBIGUITY* 48 (Bernard Frechtman trans., 1996) (1948).

25. See, e.g., JEAN-PAUL SARTRE, *ANTI-SEMITES AND JEWS* 20 (George J. Becker trans., 1976) (1948).

26. *Id.* at 21.

norm makes possible to want and will in the name of rights. To see rights as movement one begins with the master norm but does not end with the master norm. The movement of rights has two main steps, one collective and one individual.²⁷ The movement of the collective is both a movement of mind and a movement of matter.²⁸ The collective movement of mind seeks liberation in a direction away from the master norm. To move away from the master norm is to free the mind from dependence on the master norm. To liberate the mind from dependence on the master norm is also to liberate the self from dependence on the master norm.

Rights direct us toward the master norm and not away from the master norm. One must project one's will-to-be-free away from the master norm instead of towards the very thing that constitutes the self as a hyperreal identity and a negativity.

In order to move away from the master norm it is necessary to have movement of matter as well as mind. A movement of matter is a reallocation of human, economic, and organizational resources from white-adult-men to women, people of color, and children, both collectively and individually. To will the self free is to will others free.²⁹ It is only when there is no master norm that the self is free. The move away from the master norm is a rejection of the normative and descriptive character of rights.

Each group has its own unique experience of being constructed through and by the master norm. Each group also has in common with every other group the experience of being constructed through and by the master norm. It is the joint experience of being constructed through and by the master norm that joins the different groups together. This is why the movement of rights has two steps: 1) the collective step to move away from the master norm in mind as well as in matter; and 2) the move toward the individual groups.

27. Movement of Rights:

(1) The Move of the Collective

(a) Movement of Mind: To Look for Liberation away from the Master Norm.

(b) Movement of Matter: Reallocation of Resources away from White Adult Males to Children, Women and People of Color.

(2) The Move to the Individual: The Move to the Perspective of the Individual Sub-group.

28. With matter I mean resources, defined as human, organizational, and economic resources. See Parker, *supra* note 1.

29. See DE BEAUVOIR, *supra* note 24, at 74.

5.1. THE COLLECTIVE MOVE

The first step in the collective move is the movement of the mind away from the master norm to a location external to the master norm.³⁰ This requires the non-use of the master norm as the norm against which success or arrival is to be measured. This requires self liberation to be projected in a direction away from the master norm. This requires a look for liberation away from the master norm.

The movement of the mind away from the master norm is important because one function of the master norm is to make the self of the minorities into objects from within. Instead of knowing oneself and one's will, or manifesting one's own mind with regard to the type of matter one wants, one defaults into the search for that to which one has a right. But rights are not defined by the self; rights are defined by the master norm as a lack. The movement of mind is needed to resist this objectification process from within, to resist replacing one's own will with the master's lack. To understand the self through the master norm is to understand the self as an object from outside instead of the self as a subject from within. This is why rights that liberate cannot be rights that are descriptive (depicting what is) or normative (depicting what should be). As long as rights are descriptive and normative they are the master norm, they derive from the master norm.³¹ It is through the understanding of a lack measured against the master norm that rights can be understood. Rights are the symptoms of the social illness called the master norm. It is by reclaiming the understanding of the self from within through "willing," instead of the understanding of the self as the object through the master norm, that one manifests oneself as a subject from within.

5.1.1. MOVEMENT OF MATTER

The second step in the collective move is the movement of matter. This is a move away from the master norm in the form of a reallocation of economic, human, and organizational resources from white-adult-males to women, children, and people of color, born individually and collectively, until there is no master norm to be found.³² David Parker

30. The mind is the psychological limitations of resources. The mind is not divided into material and immaterial categories.

31. "Our only hope of breaking out of that circle lies in finding a practical strategy for objectifying the subject of scientific objectification." BOURDIEU, *supra* note 12, at 5.

32. Women, children, and people of color are both overlapping and variable constructions of social identities. For an in-depth study of the interconnection between the identities of child and race, see PAMELA PERRY, *SHADES OF WHITE: WHITE KIDS AND RACIAL IDENTITIES IN HIGH SCHOOL* (2002). For a general discussion on the overlapping of race and gender, see *CRITICAL RACE FEMINISM* (Adriene Katherine Wing ed., 1997).

has defined resources within the field of international child rights as human, organizational, and economic.³³ Parker's list of resources is not exclusive and should not be interpreted as a list of absolutes. Parker's definition of resources is used in this article as a tool for understanding the allocation of power through access to and use of resources.

5.1.2. "RIGHTS-RELATED RESOURCES: STOCKS AND FLOWS"³⁴

It is through the disproportionately greater allocation of human,³⁵ organizational,³⁶ and economic³⁷ resources that white-adult-men assert

33. Parker, *supra* note 1, at 37.

34. *Id.* at 36-37.

35. Human Resources: *Stocks*: skills, professionalism, motivation, will-power, aspiration, vision, knowledge, experience, desire, commitment and energy. *Id.* at 37. The UN Committee states that: It is the Committee's view that further efforts must be undertaken to ensure that the general principles of the Convention, in particular 'the best interest of the child' and the participation of children, not only guide policy discussions and formulation, and decision-making, but also are integrated into the development and implementation of all projects and programmes. *Concluding Observations of the Committee on the Rights of the Child: Nigeria*, §32, U.N. Doc. CRC/C/15/Add.61 (1996), <http://www.unhchr.ch/tbs/doc.nsf>.

Flows: skilled manual and intellectual work or labor, struggle, threat, negotiation, dialogue, exchange of information and experience. The UN Committee states that: "The Committee recommends that the State party strengthen coordination between the various governmental mechanisms involved in children's rights, at both the national and local levels, with a view to developing a comprehensive policy on children . . ." *Concluding Observations of the Committee on the Rights of the Child: Mauritius*, §19, U.N. Doc. CRC/C/15/Add.64 (1996), <http://www.unhchr.ch/tbs/doc.nsf>; see also *Concluding Observations of the Committee on the Rights of the Child: Philippines*, U.N. Doc. CRC/C/15/Add.29 (1995), <http://www.unhchr.ch/tbs/doc.nsf>.

36. Economic Resources: *Stocks*: land, natural resources, physical infrastructure (roads, electricity, water), equipment, tools, assets, savings, technology, information. Parker, *supra* note 1, at 37. The UN Committee suggests the installment of systems of "child impact assessment." *Concluding Observations of the Committee on the Rights of the Child: Myanmar*, §32, U.N. Doc. CRC/C/15/Add.69 (1997), <http://www.unhchr.ch/tbs/doc.nsf>; *Concluding Observations of the Committee on the Rights of the Child: New Zealand*, §4, U.N. Doc. CRC/C/15/Add.71 (1997), <http://www.unhchr.ch/tbs/doc.nsf>. *Flows*: budget, expenditures, credits, supplies, interest, profit. The UN Committee states that: "There is an urgent need for a discussion on how children can be protected in programs of economic reform. International, regional and national financial institutions have a role to play in this endeavor." *Committee on the Rights of the Child*, 104th meeting, *Report on the Fourth Session*, at 57, U.N. Doc. CRC/C/20 (1993).

37. Organizational Resources: *Stocks*: administrative structures, norms, procedures, laws and regulations, professional organizations, political power, leadership, control, political organizations and committees, service organizations, family, clans. Parker, *supra* note 1, at 37. The Committee stressed the need for a comprehensive review of domestic legislation to ensure that all children under the jurisdiction of Indonesia are adequately protected in accordance with the provisions of the CRC. *Concluding Observations of the Committee on the Child: Indonesia*, §8 U.N. Doc. CRC/C/15/Add.25 (1994), <http://www.unhchr.ch/tbs/doc.nsf>; see also *Concluding Observations of the Committee on the Rights of the Child: Jamaica*, §7, U.N. Doc. CRC/C/15/Add.32 (1995), <http://www.unhchr.ch/tbs/doc.nsf>; *Concluding Observations of the Committee on the Rights of the Child: Jordan*, §10, U.N. Doc. CRC/C/15/ Add. 21 (1994), <http://www.unhchr.ch/tbs/doc.nsf>; *Concluding Observations of the Committee on the Rights of the Child: Ethiopia*, §5, U.N. Doc. CRC/C/15/Add.67 (1997), <http://www.unhchr.ch/tbs/doc.nsf>. The Committee has commented on the need for stable and permanent mechanisms for cooperation to ensure the fulfillment of the

themselves as subjects who exercise their will through the master norm. Consequently, people of color, women, and children come to have no power to put behind their will. It is through disproportionate exclusion from resources that children, women, and people of color come to constitute themselves as objects through rights defined through and by the master norm.

5.2. THE INDIVIDUAL MOVE

The third step in the movement of rights is a movement towards the individual groups. To be able to understand how individual groups of humans are constructed through and by the master norm we have to listen to each other and also express a will independent of the master norm. It is only through such listening and expression that it is possible to reclaim the self. The self must be reclaimed from within and through others. Individual groups have individual experiences of being constructed through and by the master norm and this is why individual groups must not be seen only as a "sameness of the subordinated group."³⁸ It is important to listen to and write as many narratives as possible because it is through this process of impression (listening and reading) and expression (telling and writing) that the self can manifest itself as a subject from within and not as the object that the self has become through the master norm.³⁹

To move to the individual is to take the perspective of individual groups of humans. People with different marks are treated as different through the system of law and the system of marks. It is the different treatment of people according to marks that makes people different. It is the different treatment of people that gives meaning to the marks. The treatment of people precedes the marks. This is what constitutes differ-

CRC. See *Concluding Observations of the Committee on the Rights of the Child: Germany*, §23, U.N. Doc. CRC/C/15/Add.43 (1993), <http://www.unhchr.ch/tbs/doc.nsf>. *Concluding Observations of the Committee on the Rights of the Child: Chile*, §15, U.N. Doc. CRC/C/15/Add.22 (1994), <http://www.unhchr.ch/tbs/doc.nsf>. *Concluding Observations of the Committee on the Rights of the Child: Canada*, §9, U.N. Doc. CRC/C/15/Add.37 (1995), <http://www.unhchr.ch/tbs/doc.nsf>. *Flows* decisions, participation, mobilization, management, regulation, monitoring, and training.

General lack of financial resources cannot be an excuse from establishing social security programs and safety nets for the most vulnerable children. *Concluding Observations of the Committee on the Rights of the Child: Nigeria*, *supra* notes 35, 36, at §33. When a nation-state cuts spending it should ensure that the best interest of the child is taken into consideration, especially those of the most vulnerable children. See *Concluding Observations of the Committee on the Rights of the Child: Sweden*, §10, U.N. Doc. CRC/C/15/Add.2 (1993), <http://www.unhchr.ch/tbs/doc.nsf>.

38. Grahn-Farley, *Not for Sale!*, *supra* note 20, at 282.

39. Peter Goodrich argues that "[p]ower is unseen, it can only be imagined through the surfaces upon which it is inscribed." Goodrich, *supra* note 11, at 237.

ent groups of humans, such as children, women, and people of color. The movement to the sub-groups serves as a manifestation of the self as a subject from within. This is done through expressions and impressions of the wills and wants of human sub-groups. The movement to the individual sub-group also challenges the self to see the self through the eyes of the Other.⁴⁰

The understanding of the self as an object occurs when the self must replace its will with what the self as an object is designated to be. The understanding of the self as an object happens when the agenda of the will of the self is already predetermined by the master norm. The understanding of the self as an object happens when it is irrelevant what the self wants, and the only thing that matters is what the rights language of the master norm makes it possible to want. The understanding of the self as an object happens when the agenda is already set by the lack. An understanding of the self from within becomes possible when one understands what one wants.

5.3. MOVE TOWARDS THE CHILD

A child perspective is a move toward the individual group children. A child perspective means that the Other that the self sees reflected back is the Other as seen through the eyes of the child. A child perspective means that the image of the self, as reflected back to the self from the eyes of the Other, is the image of the self as the Other in the eyes of the child. To take a child perspective on rights is to look at the collective movement of rights from the perspective of the individual group "child." This means that the group, "child," develops an understanding of the self's will (the self's own wants) while becoming conscious of the self from within instead of developing an understanding of the self through and by the master norm as formulated in rights language. For an adult to take a child's perspective by moving towards the group "child" means that the adult listens to and reacts to what the child says and wants instead of what the master norm has defined a child to have a right to want.

Reallocation of human, organizational, and economic resources must be viewed from the perspective of the child. A child perspective on the allocation and reallocation of resources is a look at the effects on children of the disproportional placement of human, organizational, and economic resources in the hands of white-adult-males, and the disproportional exclusion of children, people of color, and women from such

40. Jean-Paul Sartre, *Preface* to FRANTZ FANON, *THE WRETCHED OF THE EARTH* 13 (Constance Farrington trans., 1963).

resources.⁴¹

6. AMBIGUITY

When a human understands the self as a subject from within and meets the eyes of the Other, the Other that understands the self as a subject from within, an ambiguity appears. The ambiguity is created by the discrepancy between the reflection of the self through the eyes of the Other as an Other, and the understanding of the self from within as a subject. This is why the self can only become free through others.⁴²

6.1. FEAR OF AMBIGUITY

The understanding of the self is in constant flux. This flux creates a fear of ambiguity. This fear leads to essentialism. Essentialized identities serve two purposes. First, essentialization of the Other is an escape from ambiguity. By objectifying the Other, the image of the Other can be controlled. With a controlled image of the Other, the reflection cast back to the self by the Other can be interpreted to fit the self's understanding of itself from within. If the reflection becomes too intrusive, the reflection can be disregarded and made to have no meaning for the understanding of the self. The overly intrusive reflection can be disregarded because the Other as an object only comes into existence and is only given meaning through the eyes of the self.⁴³ Second, essentialized

41. Pierre Bourdieu connects the feminist struggle with "struggles against *all* forms of domination." BORDIEU, *supra* note 12, at 5.

42. This is why to will oneself free also has to be to will others free. See DE BEAUVOIR, *supra* note 24, at 90.

43. When the self-image does not match what the self does to another person, the self makes that person into an object. Through that act of objectification, the self enables itself to control or disregard the reflection of the self that is thrown back to the self in the eyes of the Other. One example of this is: People that commercially sexually exploit children as child prostitutes. They objectify and essentialize the children that they buy as a way to maintain their own self-image as good, while doing harm. "Bill," a middle class person from Boulder, Colorado, United States, and a child prostitute buyer in the Dominican Republic, justifies his behavior: "It is a more open culture, sexually, I mean, physically. They are much more physical, you have to admit that. They just seem to, I don't know, take more pleasure in their bodies. Look at her [he points to a prostitute working on her prospective client]. The way she moves, it's like she's having sex." Julia O'Connell Davidson & Jacqueline Sanchez Taylor, *Child Prostitution & Sex Tourism: Dominican Republic*, at 24 (A Research paper prepared for ECPAT in preparation for the World Congress Against the Commercial Sexual Exploitation of Children, 1995), <http://www.ecpat.net> (emphasis added). "Bill" assessed the girl working as a prostitute to be twenty years old, while the researchers interviewing him thought that she was fifteen. It turned out that she was fourteen years old. *Id.* It is important to "Bill" to distance himself from other sex tourists that exploit children in prostitution. He points out how other sex tourists just do this because they have relationship problems. *Id.* He states that he is not like them, even though he also exploits children in sex-tourism. See *id.* at 23-24. What he does to the children is in conformity with their "culture" which, according to him, is sexual. *Id.* at 23.

identities serve as an escape from the need to question one's placement in the social hierarchy because they set the power relationship between the marker and the marked in "stone,"⁴⁴ as if decided by "nature" instead of by people.⁴⁵

6.2. THE OBJECT OF OTHERS

There is a tension between being an individual and belonging to and being in need of a collective in which the self is a mere object to others, as they are to the self.⁴⁶ One way of dealing with the ambiguity or tension that is produced by the discrepancy between the understanding of the self from the perspective of the self and the understanding that the Other has of the Other⁴⁷ reflected back to the self, is to escape into a fixed notion of the Other.⁴⁸ If the image of the Other is fixed, the gaze from the Other reflected back to the self will also be fixed. To have a fixed notion of the Other is to be a self that does not see its surroundings. It is to be a self that does not exist among others.

7. CHILD

A universal human group is the group "child." The social notion of the group, "child," is so widespread that it is perceived by many people as a natural group.⁴⁹

The system of marks is executed through the system of law. It is through the system of law and the construction of the child's legal identity that authority and legitimization are given to the social construction

44. See SARTRE *supra* note 25, at 18.

45. See generally Grahn-Farley, *Not for Sale!*, *supra* note 20.

46. See DE BEAUVOIR *supra* note 24, at 82.

47. In this situation the Other is the self, seen from the perspective of the Other. To be more precise: the image of the self that is projected back to the self by the Other creates in the self a discrepancy between the self as it sees itself and the self as it sees itself in the projection *as the Other* by the Other.

48. See, e.g., SHULAMITH FIRESTONE, *THE DIALECTIC OF SEX, THE CASE FOR FEMINIST REVOLUTION* 94 (1970).

49. Simone de Beauvoir gives a fluid analysis on childhood and the child. At one point in her discussion of the construction of the child, she focuses on the importance of the spaces that are open or closed to the child. "The Child's situation is characterized by his finding himself cast into a universe which he has not helped to establish, which has been fashioned without him, and which appears to him as an absolute to which he can only submit." DE BEAUVOIR, *supra* note 24, at 35. This, de Beauvoir argues, leads to the child's perception of the world as a serious place where values are something that are pre-made and always acceptable. *Id.* She continues, writing that the child, because it does not take itself seriously, will be able to be happily irresponsible. *Id.* At other times, de Beauvoir focuses more on what a child is: "Childhood is a particular sort of situation: it is a natural situation whose limits are not created by other men and which is temporary for all." *Id.* at 141. This article focuses on the construction of an image of the child through law and social practices and believes. The article does not directly consider the question of what a child is.

of the identity of child in the system of marks. The system of law bases its presumption that the child is real on the system of marks; the system of marks bases its presumption that the child is real on the system of law.

7.1. TO BE SET IN STONE

Together the system of marks and the system of law create a copy for which there is no original. The identity of the child thus becomes the hyperreal identity of the child. The identity of the child is then perceived as natural.⁵⁰ The system of law hides its authority as naturalness. Nature is the point where the question of justifying law's violence ends. The natural identity of the child is a fixed identity decided by nature, not man. This means that the child is made into an object, a part of nature. This means that when meeting the eyes of the child, what one sees is the reflection of the self as fixed, as set in stone.⁵¹ The object can only reflect what the self understands the self to be from within. To look at the self in the reflection of an object is to look at the self as seen by the self.

7.2. THE MEANING OF THE IMAGE

It is difficult to know what constitutes a "projection into the sign or out of the sign" of the child.⁵² The child is a construction. The meaning of the sign of the child is determined by its purpose. The purpose of the child's image is defined by and through the master norm.⁵³ The interpretation of the sign of the child is done through the system of marks and executed through the system of law. The system of marks is the set of "cultural and conceptual reifications that establish the boundness, location, and identity of"⁵⁴ the child.

7.2.1. THE ADULT

The construction of the child is driven by the fear of not qualifying for the master norm and by the fear of becoming visible.⁵⁵ The adult

50. See Guillaumin, *Race and Nature*, *supra* note 6, at 147.

51. See SARTRE, *supra* note 25, at 18.

52. See PIERRE J. SCHLAG, *The Evaluation of Controversy*, in LAYING DOWN THE LAW 60, 61 (1996) [hereinafter SCHLAG, *Evaluation*].

53. Vanessa Pupavac argues that the CRC is a universalization of western childhood, and leads to an infantilization of the South. Vanessa Pupavac, *The Infantilization of the South and the UN Convention on the Rights of the Child*, in INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 517, 517-18 (Henry J. Steiner & Philip Alston eds., 2d ed. 2000).

54. SCHLAG, *Evaluation*, *supra* note 52, at 61.

55. My arguments based on Simone de Beauvoir are not based on her view on the child. My arguments are based on her view on the relationship between domination and the construction of

becomes through the child. The child saves the adult from the adult's own ambiguity and from having to question his or her superior placement in the social hierarchy.

7.3. SCIENTIFIC PRECISION

The social construction of the child through the system of marks could not be implemented with scientific precision without the system of law. The Preamble to the United Nations (UN) Declaration on the Rights of the Child states: "Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care"⁵⁶ The UN Convention on the Rights of the Child (CRC) presumes that there is a universal and with that natural identity that can be called "child." The CRC also presumes that immaturity is one of the essential marks of the identity of the child. There are many physically mature children, just as there are many physically mature adults. There are many physically immature children, just as there are many physically immature adults. There are many short children, just as there are many short adults. There are many tall children, just as there are many tall adults. There are many mentally immature children, just as there are many mentally immature adults. There are many mentally mature children, just as there are many mentally mature adults. There are many children who cannot read, just as there are many adults who cannot read.⁵⁷ There are many children who can read, just as there are many adults who can read, in other words, the child is not natural.

7.3.1. THE PRESUMPTION OF IMMATURITY

Most definitions of the child exclude some children and include some adults. What would the consequences be if the presumption were that a physically immature⁵⁸ person is a child, instead of the current

identities, and the placements of these identities in a social hierarchy. She writes, "If I find myself in a position to do violence to a child, or to a melancholic, sick, or distraught person the reason is that I also find myself charged with his upbringing, his happiness, and his health" DE BEAUVOIR, *supra* note 24, at 137.

56. United Nations Declaration on the Rights of the Child, G.A. Res. 1386 (XIV), U.N. GAOR, preamble (1959), <http://www.unhchr.ch/html/menu3/b/25.htm>.

57. A Democrat from Leominster noted in a hearing about MCAS (a required high school graduation exam) in Massachusetts, "that cities such as Springfield have adult illiteracy rates as high as 30 percent." Scott S. Greenberger, *At Beacon Hill Hearing, Foes, Supporters Speak out on MCAS, Some Criticize Graduation Role*, BOSTON GLOBE, June 21, 2001, at B2.

58. See *United Nations Convention on the Rights of a Child*, G.A. Res. 44/25, U.N. GAOR, preamble (1989), <http://www.unhchr.ch/html/menu3/62crc.htm> [hereinafter CRC]. The choice of the word *immature* is in itself interesting. It reveals a presumption that there is a general measurable state of maturity that the immature is being measured against. The use of the word immature indicates an inferior position and a lack in relation to the mature. The terms immature

presumption that a child is a physically immature person? Would every physically immature person be a child? What if every physically immature person were to be labeled a child?⁵⁹ What would the consequences be if the presumption were that a mentally immature person is a child, instead of the current presumption that a child is a mentally immature person? Would every mentally immature person be a child? What if every mentally immature person were to be labeled a child? To make the claim that an adult who is physically and/or mentally immature also is a child is not only discriminatory, but derogatory. Why, then, is it not discriminatory and derogatory to presume that a child is physically and/or mentally immature? Perhaps it is the "child" ideal that is derogatory and discriminatory, not the claim that the person is immature. If it is believed to be so good to be a child and if it is also believed that one obtains extra benefits from being a child, how can it be thought undesirable to be defined as a child?⁶⁰

What would happen if the presumptions that an adult is tall and a child is short were to be enforced as clear definitions of adult and child? Should every person below a specific height not be allowed to vote? Should every person above a specific height have an obligation to vote? What would the consequences be if the definition of adult was a person who could read and the definition of child was a person who could not read? Should the thirty percent of adults in Springfield, Massachusetts⁶¹ who cannot read be prevented from voting in political elections, owning property, consulting their doctors without parental consent, or obtaining an abortion without informing and receiving the consent from their nearest "adult" relative?

8. LEGAL DEFINITION OF CHILD

There are international human rights documents that provide age limits regarding specific situations.⁶² The CRC, however, is the first

and mature only make sense in relation to each other. To presume that immaturity and maturity hold a meaning in themselves and without context does not make sense.

59. The meaning of immature is a lack, a not yet achieved standard. It means to not yet be qualified according to a norm or a standard. The use of the word immature is in itself a questionable term.

60. See Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1500 (1983), for a discussion on how the family has served as both the despised and glorified sphere in a dichotomy to the market.

61. See Greenberger, *supra* note 57.

62. One exception to the universal use of age eighteen as the definition of a child in the CRC is article 38, regarding children in armed conflicts. There, age fifteen is used. This is because the United States and the then Soviet Union joined forces and resisted an upper age limit of eighteen for recruitment to armed conflicts in favor of an age limit of fifteen. SHARON DETRICK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 654-55 (1999). It is also possible to have lower age of majority in a nation state as long as it is not

international human rights document to construct a legal definition of “child” that is universally enforceable.⁶³ Article one of the CRC defines “child” as: “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”⁶⁴ The choice of age eighteen in the CRC constructed a universal and uniform identity of the child. From within the CRC there is no place to exist outside of the definition the child, no external position from which the definition of the child can be disproved. In contrast to the CRC, within and between different domestic legal systems there are spaces—external positions—from which the definition of the child as a natural identity can be disproved. The CRC, with its uniform universality, threatens those spaces or external positions from which a questioning of nature is possible.

8.1. THE NATURE OF INCOHERENCY

The variety of definitions of a child can be seen in the examples from the Initial State Reports from Monaco and Lesotho. According to the Monaco Initial Report, “a ‘child’ is any human being under 21 years of age, unless the specified age of majority is lower pursuant to relevant legislation.”⁶⁵ Similarly, the Lesotho Initial Report states:

In Lesotho, various pieces of legislation, including the Age of Majority Ordinance of 1829, the Children’s Protection Act of 1980 and the Labour Code of 1992, define children by different age limits. For purposes of criminal responsibility, protection, marriage and capacity to contract, the law further prescribes different ages regarding the definition of a child.⁶⁶

“Age” is the number of years that have passed since a person was born. A “year” is the earth’s full circle around the sun. How can the fact that the earth has circulated eighteen times around the sun be given any relevance at all in the understanding of a person? Further, how can

“incompatible with the provisions, aims, and objectives of the CRC, including the principle of the best interest of the child embodied in its Article 3.” *Id.* at 60.

63. See CRC, *supra* note 58. The United Nations’ Bill of Rights applies to children in general and also mentions children, without giving a specific age limit. *The International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), U.N. GAOR, art. 24 (1966), http://www.unhcr.ch/html/menu3/b/a_ccpr.htm [hereinafter CCPR]; *International Covenant on Economic, Social, and Cultural Rights*, G.A. Res. 2200A (XXI), U.N. GAOR, art. 10 (3) (1966), http://www.unhcr.ch/html/menu3/b/a_cesr.htm [hereinafter ICESCR]; *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. GAOR, arts. 25(2), 26(3) (1948), <http://www.un.org/overview/rights.html> [hereinafter UNHR].

64. CRC, *supra* note 58, art. 1.

65. *Monaco: Initial Report, Committee on the Rights of the Child*, §14, U.N. Doc. CRC/C/28/Add.15, (2000), <http://www.unhcr.ch/tbs/doc.nsf>.

66. *Lesotho: Initial Report, Committee on the Rights of the Child*, §24, U.N. Doc. CRC/C/11/Add.20 (1998), <http://www.unhcr.ch/tbs/doc.nsf>.

the earth's orbiting of the sun be considered to be of such importance that it becomes the sole factor in determining a legal identity? How can the earth's orbit create a legal identity with such severe consequences on the everyday lives of persons in every country in the entire world? One is either a child or an adult. Dependent on whether one is a child or an adult, one can or cannot vote, one can or cannot decide to see a medical doctor on one's own, one can or cannot own property, and so on.⁶⁷

8.2. AN ESSENTIAL IDENTITY

The identity of the child is not treated as a construction that is as random as the relationship between the earth and the sun. The identity of the child is instead treated as an identity with a substance based on its essence. Instead of connecting the legal identity to the earth orbiting the sun, the identity of child is connected to the system of marks. It is at this moment that the system of law finds its authority and justification in the system of marks. Instead of recognizing that the child's legal identity is based on the relationship between the earth and the sun, the legal

67. Section II, entitled "Definition of the Child," paragraph 24 states:

Under this section, State Parties are requested to provide relevant information with respect to art. 1 of the Convention, including on: Any differences between national legislation and the Convention on the definition of the child; The minimum legal age defined by the national legislation for the following: Legal and medical counselling without parental consent; Medical treatment or surgery without parental consent; End of compulsory education; Admission to employment or work, including hazardous work, part-time and full time work; Marriage; Sexual consent; Voluntary enlistment in the armed forces; Participation in hostilities; Criminal responsibility; Deprivation of liberty, including by arrest, Detention and imprisonment, inter alia in the area of administration of justice, asylum seeking and placement of children in welfare and health institutions; Capital punishment and life imprisonment; Giving testimony in court, in civil and criminal access; Lodging complaints and seeking redress before court or other relevant authority without parental consent; Participating in administrative and judicial proceedings affected the child; Giving consent to change of identity, including change of name, modification of family relations, adoption, guardianship; Having access to information concerning the biological family; Legal capacity to inherit, to conduct property transactions; To create or join organizations; Choosing a religion or attending religious school teaching; Consumption of alcohol, and other controlled substances; How the minimum age for employment relates to the age of completion of compulsory schooling, how it affects the right of the child to education and how relevant international instruments are taken into account; In cases where there is a difference in the legislation between girls and boys, including in relation to marriage and sexual consent, the extent to which art. 2 of the Convention has been given consideration; In cases where the criteria of puberty is used under criminal law, the extent to which this provision is different applied to girls and boys, and whether the principles and provisions of the Convention are taken into consideration.

General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties Under Article 44, Paragraph 1(B), of the Convention, Committee on the Rights of the Child, 13th Sess., §24, U.N. Doc. CRC/C/58 (1996), <http://www.unhchr.ch/tbs/doc.nsf>.

identity of the child is connected to the system of marks, a system which on its own terms cannot be executed with scientific precision. It is through the system of law that it becomes possible to execute the system of marks with scientific precision. Age, as a legal definition of child, gives the scientific precision that social and the cultural definitions could not give. This is how the system of law and the system of marks each begin and end in each other.

8.3. THE PREDICTABILITY OF AGE

Age is a definition that can help to escape the ambiguities and contradictions of other definitions of child. Age gives predictability regarding which rule or provision will apply to whom. With age as a dividing line between the two groups, adults and children, it is possible to construct an abstract notion that takes the concrete form of the hyperreal: the hyperreal identity of child. The child is a copy of what has never been, a copy without an original. People over and under a certain age are made to belong to different groups. People over and under a certain age are treated differently. The difference between people is fixed through the use of age. When one looks at a person under age eighteen one always knows who is looking back.

8.4. THE CONSTRUCTION OF SUPERIORITY

Every person above the age of eighteen in a group is made a person who is superior to every person in at least one group: the group children.⁶⁸ Thus even the most oppressed adult is saved from being on the very bottom of the hierarchy. There will always be a child version of the adult preventing the adult from being the absolute lowest. It is a way for the adult to qualify for a superior position in relation to an inferior, the child. It makes every discriminated-against person above the age of eighteen superior to at least one group, the group under the age of eighteen.

The use of age as the divider between the two groups gives the division an image of being "neutral," "natural," and non-discriminatory because everyone that belongs to the adult group has once belonged to the child group.⁶⁹ Every group of humans constructed through race,

68. See generally Frances E. Olsen, *Children's Rights: Some Feminist Approaches to the United Nations Convention on the Rights of the Child*, in CHILDREN, RIGHTS AND THE LAW 192 (Philip Alston et al. eds., 1992).

69. "They were used as another transient servant class, with the difference that because all adults began in this class, it was not seen as degrading." FIRESTONE, *supra* note 48, at 77.

color, sex,⁷⁰ language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status⁷¹ is also included in this group called 'child' as at one point having belonged to it or by belonging to it now. It is in the natural that the authority of the law hides; it is at the point of the natural that the questioning of the justifiability of the violence of law ends. For example, the Oman Initial Report states: "The Omani Personal Law defines 'child' in a manner consistent with the Convention on the Rights of the Child and does not discriminate between males or females in any matter."⁷² The child group is considered to be a "natural" group, and, therefore, it is possible to consider the different treatment of children from other people as neutral and not discriminatory.

8.5. THE SOCIAL CONTEXT OF CHILDHOOD

The definition of the child according to an age is not a "natural" definition. In fact, the definition of the child varies from one legal, social, and cultural context to another legal, social, and cultural context. The UN state reports give an indication of just how random the age eighteen is as a way of defining "child." The state reports show the use of age eighteen as a way to legally construct the child as a homogenous legal identity. Age eighteen becomes a line of authority, an authority that is constructed through the system of law and based on the ideology of the system of marks. This can be seen in the India Initial Report:

The word "child" has been used in various legislation as a term denoting relationship: as a term indicating capacity; and as a term of special protection. Underlying these alternative specifications are very different concepts of the child. These include viewing children as burden, which invokes rights to maintenance and support; regarding children as undergoing temporary disabilities, making for rights to special treatment and special discrimination; treating children as

70. For a general reading on the "Girl Child," see NERRA KUCKREJA SOHONI, *THE BURDEN OF GIRLHOOD: A GLOBAL INQUIRY INTO THE STATE OF GIRLS* (1995).

71. Article 2 of the CRC states that:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

CRC, *supra* note 58, at art. 2.

72. *Oman: Initial Report*, Committee on the Rights of the Child, §45, U.N. Doc. CRC/C/18/Add.1. (2000), <http://www.unhchr.ch/tbs/doc.nsf>.

especially vulnerable for ensuring rights of protection; and recognizing children as resources for the country's development, necessitating their nurturing and advancement.⁷³

The Bangladesh Initial Report provides an additional example:

As in many other former British colonies, the statutes of Bangladesh include laws and regulations that were enacted long before its independence. These laws were enacted at different times and in responses to different situations. The concept of "child" has thus been given varied definitions by different acts and status in force in Bangladesh. The Bangladesh Majority Act of 1875 defines a person below the age of 18 to be a child. The Guardians and Wards Act of 1890 states that if a child is made a ward of court then he/she will remain a ward until 21 years, thus defining him/her as a child up to that age.⁷⁴

The Hungary Initial Report follows the same line as the state reports by India and Bangladesh: "In Hungarian Law, a child is a person below the age of 18 years, unless the person is married. If a person is above 16 years of age, the guardianship authority may issue a marriage permit, which also means that adulthood has been attained."⁷⁵

It is worth noting that not all societies and cultures have the habit of counting a person's years to determine his or her age. Age is not a "natural" concept. This can be seen in the Honduras Periodic Report: "In case of doubt about the age of a child, it shall be presumed until the real age is established that the child has not passed the age of eighteen (18) years."⁷⁶

The use of different ages to define a child is documented by several countries. For example, the India Initial Report states:

legal enactments invoke differential age-specifics creating a dilemma whether the same human being is or is not a child, depending upon the law which is being invoked in a given case. Given the fact that a deprived child's birth is either inadequately or incorrectly recorded, the reliability and impact of the laws cannot be fully regulated in terms of age.⁷⁷

The discrepancy between the system of law and the system of marks can be seen in the example of the Ecuador Initial Report:

73. *India: Initial Report*, Committee on the Rights of the Child, §66, U.N. Doc. CRC/C/28/Add.10 (1997), <http://www.unhchr.ch/tbs/doc.nsf>.

74. *Bangladesh: Initial Report*, Committee on the Rights of the Child, §42, U.N. Doc. CRC/C/3/Add.38 (1995), <http://www.unhchr.ch/tbs/doc.nsf>.

75. *Hungary: Initial Report*, Committee on the Rights of the Child, §17, U.N. Doc. CRC/C/8/Add.34 (1996), <http://www.unhchr.ch/tbs/doc.nsf>.

76. *Honduras: Initial Report*, Committee on the Rights of the Child, §317 U.N. Doc. CRC/C/45/Add.2 (1998), <http://www.unhchr.ch/tbs/doc.nsf>.

77. *India: Initial Report*, *supra* note 73, at §68.

The age-limit established by law does not coincide with the cultural context, in which puberty marks the end of childhood. The definition of the Child in the Convention is not very practical because of the significant differences between the issues of survival, development, protection and participation of children, on the one hand, and young people, on the Other. At the national level, these differences have not been considered in the definition of policies, programs and projects, with the result that there is a serious deficiency with respect to young people.⁷⁸

In the Nicaraguan state report, it is the system of law that is not being met by the system of marks. The discrepancy between the system of law and the system of marks makes visible the process of the construction of the hyperreal identity of the child through the CRC. It makes visible the fact that the child is a construction made by people and not by nature. For example: "Nicaragua's laws do not speak of children or adolescents. They speak of 'minors,' thus using a term that is juridical rather than human."⁷⁹ Nicaragua also indicates that after becoming a party to the CRC it will use the word "child" for people between zero and twelve years old and adolescent for people between thirteen and eighteen years old.⁸⁰

It takes a global system of law to execute a global system of marks that enables a construction of the child so scientifically precise and universal that it could be perceived as natural. The CRC, through the system of law, has contributed to the creation of the hyperreal identity of the child, meaning that there is no position from which the identity of the child can be examined. Consequently, there is no external position. Universal legal harmonization makes unquestionable all of the presumptions of the child based on the system of marks. This makes the system of marks "natural," and it is behind nature that the master norm hides. It is in nature that the master norm finds the authority and justification for its violence against the minorities it creates. This "naturalization" of the child's identity through the CRC can be seen in the initial report submitted by Mongolia:

At present, Mongolia does not have legislation on the description of the child on the basis of the limited age qualification. But there is a general understanding that a child means anyone below the age of 18 years. Different laws fix the age restriction with regard to the rights

78. *Ecuador: Initial Report*, Committee on the Rights of the Child, §67, U.N. Doc. CRC/C/3/Add.44 (1996), <http://www.unhchr.ch/tbs/doc.nsf>.

79. *Nicaragua: Initial Report*, Committee on the Rights of the Child, §21, U.N. Doc. CRC/C/3/Add.25 (1994), <http://www.unhchr.ch/tbs/doc.nsf>.

80. *Id.* at §24.

of the child.⁸¹

8.6. AN ADJUSTABLE IDENTITY

Age is seen as a neutral divider of humans. The child is seen and treated as a natural identity, while at the same time very much an identity that is adjustable and modifiable by adults when so desired. Voting, but not a prison sentence, is considered to be too great a burden on a person under the age of eighteen. This thinking is illogical, as exemplified in the initial report submitted by Mali: "In criminal matters, the age of majority is 18 years. . . . From 13 to 18 years, his criminal responsibility may be engaged only when the court decides that he acted knowingly" ⁸² "In civil matters, the age of majority is 21 years." ⁸³

Mali is in no way alone in this inconsistent interpretation of what constitutes a child. The world's leading nation-state in executing juveniles, the United States of America, allows a child to be executed for a criminal offense committed before attaining the age to vote in political elections.⁸⁴

It is also illogical that a person can be deemed sufficiently mature to marry, but not to vote. A girl can be mature enough to marry and take care of her children but, at the same time, too immature to talk to a medical doctor without parental consent. Another example of this illogical thinking can be seen in the initial state report submitted by Turkey:

The Civil Code lays down the minimum age for getting married as 18. However, with the consent of parents, this limit can be 17 years of age for males and 15 years of age for females. Irrespective of these limits, the judge may permit the marriage of a 15-year-old male with a 14-year-old female for important reasons and under exceptional circumstances under article 88 of the Code.⁸⁵

The initial state report submitted by China is interesting in the sense that it gives an example of a nation-state that to some extent connects economic responsibilities with civic capacities: "Citizens aged 16

81. *Mongolia: Initial Report*, Committee on the Rights of the Child, §62, U.N. Doc. CRC/C/3Add.32 (1995), <http://www.unhchr.ch/tbs/doc.nsf>.

82. *Mali: Initial Report*, Committee on the Rights of the Child, §27, U.N. Doc. CRC/C/3/Add.53 (1997), <http://www.unhchr.ch/tbs/doc.nsf>.

83. *Id.* at §28.

84. *See generally United States, A World Leader in Executing Juveniles*, HUM. RTS. WATCH, Mar. 1995, Vol. 7, No. 2, available at <http://www.hrw.org/reports/1995/us.htm>.

85. *Turkey: Initial Report*, Committee on the Rights of the Child, §87, U.N. Doc. CRC/C/51/Add.4 (2000), <http://www.unhchr.ch/tbs/doc.nsf>. The Girl Child and article 2 have been a major concern of the UN Committee, specifically in preparation for the Fourth World Conference on Women: Action for Equality, Development and Peace, held in Beijing in September 1995. *Report of the Eight Session*, Committee on the Rights of the Child, 8th Sess., at 3, U.N. Doc. CRC/C/38 (1995), <http://www.unhchr.ch/tbs/doc.nsf>.

or over but not yet 18 whose income from labour constitutes their principal means of support shall be deemed to have full civic capacity.”⁸⁶

9. THE LACK

The adult needs proof that being free is possible, therefore it projects the image of being free onto the child.⁸⁷ This projection creates a lack. The lack makes it possible for the adult to be free. The adult that experiences the self as not being free has to hope that the lack which symbolizes the possibility to be free will be filled. The lack is created through the construction of the child as being free. The lack is the distance that separates the adult from transforming the not-free being of the self into the image of the child as the free being.

The adult sees the self⁸⁸ as not free. For it to be possible for the adult to become free an image of being free must be created. This is done through the construction of the child as a positivity.⁸⁹ This is possible because the child is seen as being free.

Constructing the child as being free creates a lack that leaves room for the possibility to escape the non-free situation of the adult and become free as the child seems to be. The image of the free child becomes the direction of the adult's projection of its transcendence. This projection is accomplished by making the child into less than what it is. It is by creating the child as a lesser being that the adult can assert the right to treat the child as the adult likes.⁹⁰ The child has to be controlled in order to control the transcendence.⁹¹

10. POSITIVITY

When a natural group is created, it is also possible to dress that group with specific essential characteristics that come with belonging to that group. The child is given the virtues of the ideal free mind: the child is seen as “straightforward”; the child is not yet corrupted by special interests; the child is still undamaged; the child acts out of its belief and honesty; the child is believed to not pretend feelings (which, of course, contradicts the widely-held belief that the child shall be obedient). One of the main characteristics of the identity “child” is that the

86. *China: Initial Report*, Committee on the Rights of the Child, § 18, U.N. Doc. CRC/C/11/Add.7 (1995), <http://www.unhchr.ch/tbs/doc.nsf>.

87. “The privileged slavery (patronage) that women and children undergo is not freedom. For self-regulation is the basis of freedom, and dependence the origin of inequality.” FIRESTONE, *supra* note 48, at 96-97.

88. The Adult and the Self are used interchangeably.

89. The Child and the Other are used interchangeably.

90. DE BEAUVOIR, *supra* note 24, at 102.

91. *Id.*

child is free. The child is described as spontaneous, naïve, and pure;⁹² free from the burden of responsibility over the self and others. The time of childhood is supposed to be a happy time: “*Proclaims* this Declaration of the Rights of the Child to the end that he may have a happy childhood”⁹³

“It is from drunks and children that one gets to hear the truth.”⁹⁴ The mentally and physically immature human being called a child has the same symptoms as “the drunk.” Both the drunk and the child are considered to lack physical and mental control: the child because of immaturity and the drunk because of immorality. Both are disqualified from authority. Both are free to tell the truth that no one else dares to tell, but no adult person has to act on what is said by either. The physically or mentally immature or out-of-control person has no authority over the mature and in-control adult. This is why the child and the drunk are free to say what no one else is free to say. The adult is now a negativity. For the adult to constitute itself as a positivity, the adult has to follow the direction indicated by the lack. The adult seeks its way of becoming free through the image of the child.

11. THE SPLIT

To make freedom a possibility, the adult has constructed the child as free. The construction of the child as free creates the lack that makes it possible for the adult to be free. By constructing the child as free and as a positivity, the adult creates the self as a negativity.

For the adult to transform from a negativity to a positivity, the child has to be made into a negativity at the same time that it is a positivity. This contradictory desire within the adult’s self is mediated through a constructive split of the image of the child into one part of mind and one part of matter. It is by constructing the child as free of mind that the adult constructs the self as a negativity; it is by constructing the child as not free of matter that the adult asserts the self as a positivity.

92. Firestone writes:

Children, then, are not freer than adults. They are burdened by a wish fantasy in direct proportion to the restraints of their narrow lives; with an unpleasant sense of their own physical inadequacy and ridiculousness; with constant shame about their dependence, economic and otherwise (“Mother may I?”); and humiliation concerning their natural ignorance of practical affairs. Children are pressed at every waking minute. *Childhood is hell.*

FIRESTONE, *supra* note 48, at 103.

93. See United Nations Declaration on the Rights of the Child, G.A. Res. 1386 (XIV), *supra* note 56, at preamble.

94. Swedish proverb.

Through the system of law, the state machinery is empowered to prevent the child from having freedom of matter. Through the construction of the child not having freedom of matter, the adult is empowered to constitute itself as a positivity.

12. THE FUNCTION OF THE MASTER NORM

The function of the master norm is to define without ever having to be defined. The image of the child is never outside the adult's control. The image of the child is always in the adult's possession. Feminists have found that the only truly mature people are men;⁹⁵ critical race theorists have found that the only truly mature people are white;⁹⁶ feminist critical race theorists have found that the only truly mature people are white and male;⁹⁷ critical child rights theorists will find that the only truly mature people are adults. Minority theorists⁹⁸ will find that the only truly mature people are white-adult-men. Maturity says nothing about maturity but says everything about the power to define maturity.

12.1. THE POWER OF MATURITY

To be an adult is to have the power to be mature. To be an adult is to have freedom of matter but not have a free mind. To be a child is to not have the power to be mature and, therefore, to be made immature. To be a child is to be free of mind but not have freedom of matter. The CRC presumes the child is immature. It connects the immaturity of the child with the vulnerability that comes with being a child. In that sense, the CRC makes vulnerability "natural." It makes vulnerability seem to be something that comes from nature rather than something that comes from adult abuses, abuses hyperrealized through the system of marks and the system of law.

12.2. PREDICTABLE LIMITATIONS

To be a child is not about being free of mind, it is about not having freedom of matter. For limitations to be distributed there must be clear predictability regarding who will be limited. For it to be possible to have a clear predictability regarding who will fall into the category of

95. See generally FRANCES E. OLSEN, *FEMINIST LEGAL THEORY* (Frances E. Olsen ed., 1995); Patricia J. Williams, *On Being the Object of Property*, 141 J. WOMEN CULTURE SOC'Y 8 (1988); Andrea Dworkin, *Against a Male Flood: Censorship, Pornography, and Equality*, 8 HARV. WOMEN'S L.J. 1, 15 (1985).

96. See generally Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1753 (1993).

97. See generally ADRIEN K. WING, *GLOBAL CRITICAL RACE FEMINISM* (Adrien K. Wing ed., 2000); GARAGI BHATTACHARYYA, *TALES OF DARK-SKINNED WOMEN* 71 (1998).

98. "Everyone that has less." COLETTE GUILLAUMIN, *Women and Theories About Society* 153 in *RACISM, SEXISM, POWER, AND IDEOLOGY* (Mary Jo Lakeland trans., 1995).

people that will be limited, the definitions of the category must be clear. The system of law enables the system of marks to be executed with scientific precision. When it comes to the construction of the child through the system of law it is the use of different legal ages; for example, minimum age, age of criminal majority and age of civic majority, that give a scientific precision that the system of marks was never able to give.⁹⁹ For a category to remain fixed, the categorization must be made to look natural.¹⁰⁰ The system of law is made “natural” through the biological argument that the child is physically and mentally immature.¹⁰¹

12.3. THE OBJECT OF FREEDOM

The adult’s need to fill the lack left by the creation of the child as free makes the adult begin to look for something with which to fill the lack. The adult finds the object freedom, with which the adult replaces the moral obligation to will-the-self-free. The understanding of the object freedom is created through the negativity of the object freedom in relationship to the child. The image of the child is that the child is free of mind but does not have freedom of matter. The child that does not have freedom makes it possible for the adult to understand what it means to have freedom. To have freedom is to be adult.

13. CIRCULAR JUSTIFICATION

The image of the child is constructed through circular reasoning. The positivity of the child is legitimated through the negativity, and the negativity is legitimated through the positivity. Each is used as the foundation for the other.

The construction of the child as free of mind is also the justification for preventing the child from having freedom of matter. This is done by making the same characteristic that symbolizes freedom also symbolize immaturity. The reason why the child is free is because it is not mature enough to be bound by responsibilities. The very fact that the mind of the child is presumed to be free also serves as the justification to prevent the matter of the child from being free. The child is seen as immature and therefore not able to have freedom of matter. This serves the purpose of constituting the adult as a positivity without giving up the ideology of white-adult-male hegemony, and without embracing the ambiguity of being free. This is the liberal circle’s spell.

99. “Age” as the Natural line. *See infra* Section 8.3.

100. *See generally* Guillaumin, *Race and Nature*, *supra* note 6, at 133-70.

101. CRC, *supra* note 58, at preamble.

13.1. THE CREATION OF THE PRESUMED

Many of the things that children are presumed to be, they are also created to be. For example, many children have such a bad school experience that they do not want or cannot learn how to read.¹⁰² Many children have such a lack of access to healthcare and food that their growth is delayed heavily. Many children do not feel responsibility for themselves because they are not given responsibility over themselves: many children are not allowed to think their own thoughts, to think something that an adult has not already thought, or express themselves individually, in groups, or organizations.¹⁰³ If the child expresses an opinion or thought, the child is often treated as unimportant and unworthy of being listened to by adults. By denying the child its ability to act, formulate opinions, and generate interests, the child becomes silent. Thus the saying: "Children should be seen and not heard."¹⁰⁴ This statement glorifies powerlessness and passivity, thereby giving the child the same characteristics as an actual image, a symbol into which adults can read whatever meaning they desire. The child becomes a sign and an object through which all types of desires and wishes can be read in order to answer the needs of white-adult-male hegemony to uphold and maintain the master norm.

14. JUSTIFICATION OF VIOLENCE AND AUTHORITY

With a clear and unambiguous definition of who belongs to the group and who does not, we may presume certain qualities to be group qualities. The system of law authorizes the system of marks and the system of marks justifies the system of law's violence. Once the qualities of the group are defined, the starting point for a dialog of anti-discrimination and oppression also shifts.

Adult manipulation is a common concern when it comes to children. Exclusion of children from places and positions where they could have actual impact over their own situation is often justified by refer-

102. Rhys Griffith suggests that education should be seen as "an agency of personal empowerment." Rhys Griffith, *New Powers for Old Transforming Power Relationships*, in *CHILDREN IN OUR CHARGE: THE CHILD RIGHT TO RESOURCES* 201, 201 (Mary John ed., 1996).

103. Simone de Beauvoir writes in a similar way about the second sex:

In woman, on the contrary, there is from the beginning a conflict between her autonomous existence and her objective self, her "being-the-other"; she is taught that to please she must try to please, she must make herself object; she should therefore renounce her autonomy. She is treated like a live doll and is refused liberty. Thus a vicious circle is formed; for the less she exercises her freedom to understand, to grasp and discover the world about her, the less resources will she find within herself, the less will she dare to affirm herself as subject.

SIMONE DE BEAUVOIR, *THE SECOND SEX* 280 (H. M. Parshley ed. & trans., 1968) (1952).

104. Proverb.

ence to the need to avoid the risk of adult manipulation. Adult manipulation of children is a well justified concern, just as adult manipulation of adults is a well-justified concern.

14.1. ADULT MANIPULATION

Adult use of children for personal gain is a well-known phenomenon. One common example of such behavior is seen in some divorce disputes. The manipulation of the children in divorces does not, however, start because the child is not prevented from expressing its opinion. Such manipulation begins when the adult starts manipulating the child and ends when the adult stops manipulating the child. The child is not less vulnerable because no one seeks out its interests, thoughts, or engages its ability to enforce its words. Fear of child manipulation does not explain why children should not have full freedom of matter when adults have full freedom of matter.

Adults not only manipulate children, but they also use other adults to advance their own agendas. For example, votes are bought through mass manipulation in election campaigns by promises of future economic gains if a specific candidate wins. It is a well recognized phenomenon that people tend to vote with their wallets. Free and open elections are built on the ability to manipulate adults to vote for specific adults.

To use the manipulation argument as a valid argument for why children should not have the right to vote is to put limitations on the people that are presumed to be the exploited, rather than placing such limitations on the people that are presumed to be the exploiters. The manipulation argument makes it look as if adults want to protect other adults from the consequences of adult exploitation by manipulating children.

14.2. EXCLUDED AREAS

The fact that children are excluded from political power in the form of elections probably makes them more vulnerable than they would be if they could vote or have a say in politics. If children were afforded voting rights perhaps school safety, the quality of the school environment, and the quality of education would have a higher priority.¹⁰⁵ There are many areas of society that might look different if children had a political

105. As it is now, the quality of a child's education depends on where the child lives and the income of the parents. Instead of having a high quality of education for every child, it is the class of the parents that determines the quality of the education that the child will receive.

say.¹⁰⁶

It is impossible to know if children would change the political agenda if they were allowed to participate in shaping it. One can know that many adults decide to not shape the political agenda even when allowed to participate. After all, adults do not always vote in ways that are in their best interest. Many adults voted for tax relief even though the amount relieved was insignificant compared with the benefits of a system providing free health care.¹⁰⁷ The fact of the matter is that it is impossible to know what would happen if children had a political say because they have never been allowed to participate politically.

15. MATURE & IMMATURE

For someone to be called immature, there must be something defined as mature. For someone to be called immature, there must be a standard to which the immature is not measuring up. Adult maturity is based on an imagined standard, a standard that has never been validated because every adult is presumed to meet the standard of "adult maturity." The adult must rebut the presumption of being within the standard; this means that the standard of maturity itself is kept invisible and imagined.

When the meaning of mature or immature is not connected to the character of the people that one would label mature or immature, but rather to the power relationship between those people, these labels say nothing about the qualifications of the people, but say everything about the power relationship between them. The labels "mature" and "immature" are not without a function just because they are empty of descriptive and normative meaning. They serve the function of the master norm; they serve to justify and authorize a separation of the treatment and capacities of adults and children.

15.1. THE IDEALIZED ADULT

The standard of adult maturity is a standard that only exists as a fantasy of the idealized version of what adulthood means. It is a standard that has never been proven to exist, and has never been made into an existence. It is a standard that is merely presumed to exist.

The child is presumed to be immature. For the child to be seen as mature, it has to reverse the presumption of being immature. Because

106. Such areas might look different or they might not. The point is that we do not know and yet we have acted. We have acted to limit the political power of the child.

107. For a study of the differences between a universal welfare system and an individual rights based system, see *RESPONSIBLE SELVES: WOMEN IN THE NORDIC LEGAL CULTURE* (Kevät Nousianen et al. eds., 2001).

there is no standard for adults (only an imagined standard that never has to be proved) the child, to be able to reverse the presumption of its immaturity, must be even more mature than the idealized imagined standard of adult maturity.¹⁰⁸

15.2. FREE AND EQUAL

Article 1 of the Universal Declaration of Human Rights states: "All human beings are born free and equal in dignity and rights. They are endowed with *reason and conscience* and should act towards one another in a spirit of brotherhood."¹⁰⁹ The child is presumed to be physically and mentally immature, and the adult is presumed to have reason and conscience.¹¹⁰ *Bearing in mind* that, as indicated in the Declaration of the Rights of the Child, the child, by reason of his *physical and mental immaturity*, needs special safeguards and care.¹¹¹

There are presumptions that must first be proved and disproved for a dialog about change to be possible. Further, if one creates the understanding that the definitions of the group's un-qualifications are not only based on good qualities but also desirable qualities, even pure qualities, it becomes even more difficult to object to this labeling. The creation of a feeling and understanding that the preferred group to belong to is the child group also hides the original discriminatory elements of the grouping.

16. NEGATIVITY

"Natural" vulnerability does not make the child vulnerable to exploitation and abuse by adults. Land mines harm many children more severely than they harm many adults.¹¹² This is because many children are shorter than many adults, and that means that their vital organs are usually closer to the explosion than the vital organs of a tall adult.¹¹³ First, this does not mean that children are naturally more vulnerable; it is

108. This is a version of women having to work twice as hard as men, and so on. My argument is that there is no standard against which one can even measure what twice as hard is because there has never been a standard. The standard begins with women in the space of men, and people of color in the space of whites.

109. UNDHR, G. A. Res. 217A (III), *supra* note 63, art.1 (emphasis added).

110. "[C]hildhood is emphasized above all else as an exit to immaturity, ignorance and incapacity leading to adulthood and the seniority. Such a viewpoint also legitimates one not needing to attach very great respect to the views and experiences of young people, as they are primarily regarded as incomplete adults." *Final Report the First Ten Years with the Convention on the Rights of the Child in Sweden* 20-21 (Rädda Barnen, Save the Children, Sweden, 2000).

111. Constructed "natural" vulnerability. *See infra* Section 13.1.

112. *See generally Uganda: Initial Report*, Committee on the Rights of the Child, U.N. Doc. CRC/C/3/Add. 40 (1996), <http://www.unhcr.ch/tbs/doc.nsf>.

113. *Id.*

adult production and distribution of land mines that makes children more vulnerable than adults.¹¹⁴ It is the manufacturers and the military that make children more vulnerable than adults.¹¹⁵ Adults, not nature, make children more vulnerable than adults in a mine-contaminated field. Second, land mines are harmful to adults as well; land mines are never good for anyone. The adult's vulnerability to land mines is not seen as "natural." Such vulnerability is seen as a result of the land mines and not as a result of nature.

16.1. TO CREATE VULNERABILITY

It is the way that adults treat children that makes children vulnerable, especially in war situations. One example of adults making children vulnerable in the worst possible way is taken from the Concluding Observations made by the UN Committee commenting on the Initial State Report by Uganda:¹¹⁶ "[T]he Committee is concerned about the abduction, killings, and torture of children occurring in this area of armed conflict and the involvement of children as child soldiers."¹¹⁷

Children as well as adults are made vulnerable to abuse and exploitation, not because nature makes people vulnerable to exploitation, but because people make people vulnerable to other people. It is not a "natural" vulnerability in children that makes children vulnerable to adult abuses of either parental power sanctioned through social, economic, and legal resources or committed through exploitation and violence in armed conflict situations.

Other forms of vulnerability that children experience, such as homelessness, are results of adult decisions that are oftentimes beyond the control of the immediate family and in some situations beyond the control of adults in the country as well. This is exemplified by the "street children"¹¹⁸ in Ghana: "Children living and working on the street is a growing phenomena in Accra, Kumasi and other regional capitals. It is thought to be caused by the difficult economic and social circumstances experienced by families in rural areas and the process of urbanization."¹¹⁹

114. *Id.*

115. *Id.*

116. *Initial Reports of States Parties Due in 1992: Uganda*, 17/06/96. CRC/C/3/Add.40.

117. *Concluding Observations of the Committee on the Rights of the Child: Uganda*, §19, U.N. Doc. CRC/C/15/Add.80 (1997), <http://www.unhchr.ch/tbs/doc.nsf>.

118. The use of the term "street children" is controversial. A more accurate description is children that find their livelihood on the streets. In this article I use the term "street children" because it is more familiar to the non-child rights accustomed reader and because this is the term used in the Ghana State Report. *Ghana: Initial Report*, Committee on the Rights of the Child, §75, U.N. Doc. CRC/C/3/Add.39 (1985), <http://www.unhchr.ch/tbs/doc.nsf>.

119. *Id.*

The CRC criminalizes economic,¹²⁰ sexual,¹²¹ and all other forms¹²² of child exploitation. The problem with the CRC's approach, however, is that it focuses on the good will of "good adults against the bad will of bad adults." According to the CRC, it is adults that shall protect children from other adults' exploitation. Children themselves are denied access to human, organizational, and economic resources. Access to such resources might enhance exploited children's ability to protect themselves against adult abuse especially at times when the "bad adults" overpower the "good adults."

16.2. THE BURDEN OF CHILDHOOD

The burden of childhood is not to be too free or have too much freedom. The real burden of childhood is to not be free and to not have freedom of matter. "In particular, the inscription of children as morally vulnerable and dependent posited childhood as a period of life requiring special protection and a delay from adult responsibilities."¹²³

The belief that freedom manifested through law and social norms functions as the strongest protection that one adult has against the abuse from another adult does not expand into the same belief when it comes to children. A large part of what is described as a "natural" vulnerability

120. 1. 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.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

CRC, *supra* note 58, at art. 32.

121. States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Id. at art. 34.

122. "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare." *Id.* at art. 36.

123. Bernadette Baker, "Childhood" in *the Emergence and Spread of U.S. Public Schools, in FOUCAULT'S CHALLENGE: DISCOURSE, KNOWLEDGE, AND POWER IN EDUCATION* 117, 119 (Thomas S. Popkewitz & Marie Brennan eds., 1998).

of a child is, in fact, adults taking advantage of privileges that the system of law and the system of marks give them in relationship to children.

16.3. LEGAL VULNERABILITY

Children are made vulnerable in numerous ways through law. For example, they lack both legal as well as social capacities, and the things that adults can do to children cannot be done to other adults. Children are also made vulnerable through law because of what adults can do to them through the state's machinery, things that the state cannot do to adults.

"As long as you live in my house it is by my rules." This phrase symbolizes one of the more nonsensical arguments adults use to justify their force of will over the child. It is a phrase that only makes sense when looking at the relationship between the adult and the child as a relationship based on power. It is power, rather than the quality of the argument, that allows the adult to set the rules.¹²⁴ Children who get this "adult argument" thrown at them do not have a real choice to leave the house. The ability of the child to actually choose how to live or with whom to live is legally, socially, and economically limited, as seen in the Italian Initial Report: "Parents who exercise authority over their children represent the child in all civil acts and administer their property (art. 320 of the Civil Code)."¹²⁵

The State Report of Italy is a typical example of how the system of marks, working through the system of law, constructs a vulnerability of the child in relationship to its parents: "A child cannot leave the home of parents exercising parental authority; if the child leaves without permission, the parents can apply to the guardianship judge (art. 318 of the Civil Code)."¹²⁶ The parental right is also upheld in article 5 of the CRC itself:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.¹²⁷

124. This should be interpreted in its double meaning. Both that adults often interpret their power to decide over children to also be a right to so do, and that this right becomes right. Right as meaning correct.

125. *Italy Initial Report*, Committee on the Rights of the Child, §25, U.N. Doc. CRC/C/8/Add.18 (1995), <http://www.unhchr.ch/tbs/doc.nsf>.

126. *Id.*

127. CRC, *supra* note 58, at art. 5.

In Italy, parental authority over the child can only be suspended (art. 330 of the Civil Code) when the parent seriously violates the power deriving from parental authority.¹²⁸ The hierarchical relationship between adults and children is cemented socially through the legal term "custody." Adults, through "custody," have not only legal and social power over children; parents in Italy as well as in many other countries also have economic power over children in their care.

16.4. THE SURPASSING OF THE ACCEPTABLE

The CRC and its committee, as well as the legislation in many countries, intervene with the parental right when the parents are surpassing acceptable parental authority. Nevertheless, the parental right is presumed and unquestioned as a general right of parents. Only on an individual basis may the general parental authority be questioned or revoked.

Article 19 of the CRC does not allow any form of physical or mental violence towards the child. Corporal punishment falls under the category of violence not allowed in the CRC.¹²⁹ The UN Committee expresses its concern over the parental abuse of children in Italy:

The Committee is preoccupied by the existence of child abuse, including physical and sexual abuse and violence within the family, and the insufficient protection afforded by the Penal Code in this regard, as well as the lack of adequate measures for the psycho-social recovery of child victims of such abuses.¹³⁰

Another example of a legally constructed vulnerability is that the child in many countries is not considered mature enough to independently receive medical or legal consultations. Togo's Initial Report explains:

There is no question that the legal minimum age for a child to receive legal or medical counseling without parental consent is the age of emancipation, which is set at 18 by article 311 of the Togolese Family Code of 31 January 1980. That age is obviously based on the age of majority, which must be lowered from 21 to 18, as suggested

128. *Italy: Initial Report*, *supra* note 125, at §26.

129. 1. States Parties shall take all appropriate legislative, administrative, social and educational measures 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, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

CRC, *supra* note 58, at art. 19(1).

130. *Concluding Observations of the Committee on the Rights of the Child: Italy*, §12, U.N. Doc. CRC/C/15/Add.41 (1995), <http://www.unhchr.ch/tbs/doc.nsf>.

above.¹³¹

Additionally, Panama's Initial Report states: "In hospitals, according to the administrative regulations minors under age of 16 must be accompanied by adults in order to receive medical treatment. In legal proceedings minors may request assistance provided their parents or guardians endorse a request."¹³²

The fact that the child is excluded from medical information, legal information, and self-determination may make the child more vulnerable than it would be if the child had access to these things.

It is not difficult to imagine a girl seeking medical consultation when suspecting herself to be pregnant. It is not difficult to imagine such a girl not wanting her legal guardians to know that she might be pregnant. It is not difficult to imagine that her desire or need for privacy might in some cases lead her not to seek medical consultations, thus possibly endangering her health. It is not difficult to imagine that the very cause of her desire to seek medical consultation might also be what puts her in danger. Absent the opportunity to seek medical consultation without parental consent, she might risk being abused, shamed, or banned from the family. Vulnerability is thus legally constructed.

16.5. CORPORAL PUNISHMENT

Adults target children in ways that cause children to become more vulnerable than adults. Adults take advantage of constructed vulnerabilities through the system of law as well as the system of marks. The system of law acts out the aggression of the system of marks by, among other things, defining what an adult can do to a child but not to other adults.

Most typically, countries allow corporal punishment of a child but not an adult.¹³³ This and other forms of violence comes from private as well as public actors in the form of "state violence."¹³⁴ The definition of

131. *Togo: Initial Report*, Committee on the Rights of the Child, §16, U.N. Doc. CRC/C/3/Add.42 (1996), <http://www.unhchr.ch/tbs/doc.nsf>.

132. *Panama: Initial Report*, Committee on the Rights of the Child, §67, U.N. Doc. CRC/C/8/Add.28 (1995), <http://www.unhchr.ch/tbs/doc.nsf>.

133. Mr. Doek described the problem of social acceptance of violence used against children as a form of discipline. See generally *State Violence Against Children*, Report and General Recommendations, Committee on the Rights of the Child Day of General Discussion, Friday, Sept. 22, 2000, Palais Wilson, Geneva [hereinafter *State Violence Against Children*].

134. 1. States Parties shall take all appropriate legislative, administrative, social and educational measures 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, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for

violence is a form of physical violence as well as a form of mental violence. For example, the child becomes a direct victim of mental violence when punished by being locked in a small confinement or dark room. The child is indirectly a victim of mental violence when witnessing physical abuse directed towards someone else in the house:¹³⁵

The Committee expresses its concern about the lack of prohibition in local legislation of the use of corporal punishment, however light, at the home. In the view of the Committee, this contravenes the principles and provisions of the Convention . . . The Committee is concerned by the existence of child abuse and violence within the family.¹³⁶

Concerning the Philippines: "[T]he Committee is seriously alarmed by the existence of child abuse (including sexual abuse) and neglect within the family, which often lead to children being abandoned or running away, thus facing the additional risks of violations of their human rights."¹³⁷

Regarding Spain: "[T]he Committee expresses concern at the wording of article 154 of the Spanish Civil Code which provides that parents 'may administer punishment to their children reasonably and in moderation,' which may be interpreted to allow for actions in contradiction with article 19 of the Convention."¹³⁸

Of the United Kingdom: "The Committee is also of the opinion that additional efforts are required to overcome the problem of violence in society. The Committee recommend that physical punishment of children in families be prohibited in the light of the provisions set out in articles 3 and 19 of the Convention."¹³⁹

From Ecuador: "The Committee is deeply concerned at the information provided in the States party's report that 'child abuse is a cultur-

the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

CRC, *supra* note 58, at art. 19.

135. UNITED NATIONS CHILDREN'S FUND (UNICEF), IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD 240 (1998).

136. *Concluding Observations of the Committee on the Rights of the Child: Libyan Arab Jamahiriya*, §14-15, U.N. Doc. CRC/C/15/Add.84 (1998), <http://www.unhchr.ch/tbs/doc.nsf>.

137. *Concluding Observation of the Committee on the Rights of the Child: Philippines*, §13, U.N. Doc. CRC/C/15/Add.29, (1995), <http://www.unhchr.ch/tbs/doc.nsf>.

138. *Concluding Observation Committee on the Rights of the Child: Spain*, §10, U.N. Doc. CRC/C/15/Add. 28 (1994), <http://www.unhchr.ch/tbs/doc.nsf>.

139. *Concluding Observation Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*, §31, U.N.Doc. CRC/C/14/Add. 34 (1995), <http://www.unhchr.ch/tbs/doc.nsf>.

ally accepted and justified practice.’”¹⁴⁰

Corporal punishment is strictly forbidden in Swedish law. This includes all forms of physical as well as mental violence toward the child:

The basic rights of the child are stated in the Code of Parenthood and Guardianship, chapter 6, section 1, of which lays down as follows: “A child is entitled to care, security and a good upbringing. A child shall be treated with respect for his person and individuality and may not be subject to corporal punishment or any other offensive treatment.”¹⁴¹

16.6. STATUS OFFENSES

Another characteristic behavior towards the group of humans defined as children is the right of countries to act out their aggression towards children in ways that they are not allowed to do to adults. The UN Committee on the Rights of the Child commented on use of status offenses,¹⁴² which increase the risk of the state committing violence against those children:

Participants also emphasized the problem posed by laws criminalizing children for “status” offences that should be seen as the result of failure to implement fully economic and social rights of children and to give them the necessary protection. Such criminalisation broadens the range of children who are placed at risk of being subject to State violence.¹⁴³

140. *Concluding Observation Committee on the Rights of the Child :Ecuador*, §21, U.N. Doc. CRC/C/15/Add.93 (1998), <http://www.unhchr.ch/tbs/doc.nsf>.

141. *Sweden: Initial Report*, Committee on the Rights of the Child, §52, U.N. Doc. CRC/C/3/Add.1 (1992), <http://www.unhchr.ch/tbs/doc.nsf>.

142. The Status Offence is in violation of every international child rights document. The CRC states that: “No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions, that were not prohibited by national or international law at the time they were committed.” CRC, *supra* note 58, at art. 40(2)(9).

“In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.” *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*, U.N. GAOR, 68th plenary meeting, §56, U.N. Doc. A/Res/45/112 (1990), <http://www.un.org/documents/ga/res/45/a45r112.htm>.

“Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act of violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.” *United Nations Standard Minimum Rules for Administration of Juvenile Justice (The Beijing Rules)*, U.N. GAOR, 96th plenary meeting, rule (17(c), U.N. Doc. A/Res/40/33 (1985), <http://www.un.org/documents/ga/res/40/a40r033.htm>. U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985), Rules; 13, 17, and 19. See also *id.* at rules 1-2, 13, 19.

143. *State Violence Against Children*, *supra* note 133.

Seven percent of the people called children in the United States are in detention, correctional, or shelter facilities because they committed a non-criminal status offense, such as running away from home, truancy, or curfew violation.¹⁴⁴

17. INCREASED VULNERABILITY

To make the above statistic even more horrifying, consider that children convicted for status offenses are children that often are victims of abuse and neglect from homes, families, or other places that are considered to be either “natural” places for children or supposed to replace dysfunctional “natural” places, such as foster care facilities. Many of these children suffer from mental and developmental disabilities.¹⁴⁵ The children from already discriminated against social groups are at an even higher risk.¹⁴⁶

These children convicted for status offenses did not commit any act that would have been a crime for an adult. They are merely punished for being defined as children. If the punishment had not been directed towards the “natural” group children, it would have been considered as the worst type of formal discrimination.¹⁴⁷

17.1. LEGALIZED VIOLENT STATE DISCRIMINATION

To criminalize a specific behavior and limit people’s movement based on the fact that they belong to a specific group is discrimination. And when it comes with imprisonment and other forms of punishments it is the state committing violent discriminatory aggressions on a specific social group; in this case, children.

18. THE INTERNAL CONFLICT OF THE CRC AND THE CHILD

The CRC is supposed to be an international document that guards the interests of children around the world, especially the “children living in exceptionally difficult conditions . . . [who] need special consideration.”¹⁴⁸ Contrary to its stated intentions, the CRC stops where the line between adult and child is at risk of becoming blurred. The CRC stops at that line at the expense of the children it sets out to protect. The CRC does not go beyond what is accepted; thus, the image of the child is

144. CHILDREN’S DEFENSE FUND, THE STATE OF AMERICA’S CHILDREN YEARBOOK 110-11 (2000).

145. *Id.*

146. Maria Grahn-Farley, *A Child Perspective on the Juvenile Justice System*, 6 J. GENDER RACE & JUST. 297 (2002) [hereinafter Grahn-Farley, *A Child Perspective*].

147. See Baker, *supra* note 123, at 130.

148. CRC, *supra* note 58, at preamble.

maintained. The protection against exploitation is to be done through adults, not through breaking down the legal and social constructed limitations on children's access to human, organizational, and economic resources.

18.1. THE RIGHT TO BE HEARD

One example of the built-in limit is article 12 of the CRC.¹⁴⁹ It is one of the most controversial and paradigm shifting articles of the CRC because it is the first article in child rights that recognizes the child as a subject of rights and not merely an object of care based on needs.¹⁵⁰ Article 12 stops short of the point at which the image of the child would be threatened. Article 12 limits its own range, thus falling short of the point where the capacity of the child would have threatened the natural division between the adult and the child. Therefore, the natural division is political and not natural. The article ends with the statement that "the views of the child [must be] given due weight in accordance with the age and maturity of the child." There is no such similar test for adults. This is to assume that age and maturity are the measurement of an opinion's weight or worth. With adults, different opinions are ideally supposed to be weighed according to the quality of the opinion and not the quality of the person giving the opinion. Further, article 12 does not advocate that the opinion of the child must be followed, it only says that the child should have a right to be heard and its view be given due weight, limited by the age and maturity of the child.

18.2. CIVIC LIFE

Three more examples of self-limiting rights are described in the CRC. These are rights that stop short of the point at which they actually would threaten the naturalness of the division between adults and children. The division can be observed in the right to freedom of expression found in article 13;¹⁵¹ the right to freedom of thought, conscience, and

149. *Id.* at art. 12.

1. 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.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Id.

150. CENTER FOR POPULATION AND DEVELOPMENT STUDIES, *THE POLITICAL PARTICIPATION OF CHILDREN* (Rakesh Rajani ed., 2000).

151. CRC, *supra* note 58, at art. 13.

religion found in article 14;¹⁵² and the right to freedom of association and to freedom of peaceful assembly found in article 15.¹⁵³ Limiting the span of articles 12, 13, 14, and 15 of the CRC was a major concern during the drafting procedures.¹⁵⁴ The limitations on the span of the articles are external to the subjects of the rights described in the articles, hence each article is limited not by what is relevant to the fulfillment of the right described in the article, instead the limitations are based on the system of law. The CRC states: "No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law,"¹⁵⁵ the parental rights,¹⁵⁶ public order,¹⁵⁷ or morals,¹⁵⁸ meaning that the rights have an internal limitation that ends where law and order begin. That place is where the relationship between adult and child is in risk of becoming blurred. Consequently, rights as descriptive and normative will not give more than what the master norm is willing to give.

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (order public), or of public health or morals.

Id.

152. *Id.* at art. 14.

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Id.

153. *Id.* at art. 15.

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.

Id.

154. For an extensive coverage of the drafting procedures regarding articles 12, 13, 14, and 15 of the CRC, see generally DETRICK, *supra* note 62.

155. CRC, *supra* note 58, at arts. 13(2), 14(3), 15(2).

156. *Id.* at art. 14(2).

157. *Id.* at arts. 13(2)(b), 14(3), 15(2).

158. *Id.*

This means that rights as descriptive and normative are only bandages covering the wound, they do not cure or fill the emptiness of the lack. Descriptive and normative rights are, therefore, stillness and sameness. They are made to not change; they are made to be the same; they are made to maintain the same.

18.3. A REALITY CHECK

The CRC does not connect the fact that children are not living under the CRC's imagined conditions for a child but under various limitations placed on children for being children. The CRC is inconsistent on its own terms. The CRC imagines and is based on the child's mental and physical immaturity and its need of extra protection due to its immaturity. When a child is not granted extra protection as a consequence of its mental and physical immaturity, the CRC does not adjust its rights to fit the child that is being exploited. The CRC does not adjust its rights by equipping the child with extra resources that would recognize and remedy the fact that the child is living in even harsher situations than would be legally and socially accepted for adults. The CRC still treats every child according to the same standard: the self-justified master norm, a norm of adults as adults and children as children. Adults are adults and children are children, even when adults do not really behave in ways that adults are imagined to behave in relation to children. Through the master norm's function in the system of law and the system of marks, the child is not allowed access to its own protection; instead, the child is forced to seek protection based on the good will of adults. The fact that adults do not fulfill their end of the deal does not change the rules for the children.

A child that is living on the streets, or as a child soldier, or as a child prostitute is, in the CRC, generally treated in the same way as a child that is receiving the extra protection and care that it should receive as a consequence of its supposed mental and physical immaturity.

The child that is living on the street, or as a child soldier, or as a child prostitute is treated in the CRC as an exception to the "child norm," but only in that specific regard. The CRC does not say that when a child is not treated as a child is imagined to be treated then the child should not be restrained as a child through the system of marks and the system of law. The exploited child is not exempt from the master norm. The exploited child is not exempt from the rules that render it powerless to stand against adult exploitation on its own. The child is thought to be exploitable and the response, incredibly, is to maintain the exploitability of the child, save in those situations in which the child can find adult protection. The exploited child, of course, is the child without adult

protection. The exploited child, then, is the child that will not receive adult protection and is most in need of its own access to human, organizational, and economic resources.

The master norm prevents any such access. Rights, understood through the master norm, are the bandages that hide but do not heal the wound. The self-limiting rights—rights granted only insofar as they do not disturb the boundary between adult/child by empowering the latter against the former—are examples of the master norm in operation. The child's vulnerability to exploitation is used to justify denying the child the power to protect itself from adult exploitation and forcing the child to rely on adult good will. The child, then, is made vulnerable in the name of its supposed natural vulnerability. It is denied access to the means of its own protection in the name of its need for protection.

18.4. A BUILT-IN LIMITATION

The rights in the CRC have a built-in limitation: they go no further than what is possible for the continued maintenance of the master norm. This is why descriptive and normative rights maintain the master norm. This is also why the master norm is functional. It is through incapacitating children through the system of law and the system of marks that children are forced to rely on the good will of adults. It is through withholding human, organizational, and economic resources from children that the construction of the child can be hyperrealized. When the adults fail the children, the children pay the price. The image of the natural difference between adults and children is worth more to the master norm than the actual lives of millions of children that are victims of adults who choose to not fulfill their part of the deal, a deal that was made by and between adults. Descriptive and normative rights do not threaten the master norm; they always stop short of over-turning the master norm.

19. THE MAP AND THE LANDSCAPE

There must first be a fixed notion of the Other and of the self for it to be possible to dress the Other with all the essential characteristics that constitute the negativity and to define the essential characteristic of the self as the positivity.

With the definition of age come many more presumptions of what can be done to a child but not to an adult and, additionally, what a child can and cannot do. These presumptions are enforced by efforts to fulfill the presumptions. The function of the master norm also produces a belief that the identity of a child says something about the essence of

that person, something that is external to the system of marks and the system of law, but internal to being under the age of eighteen.

If the map and the landscape do not match, then remake the landscape! It takes a lot of effort and energy to re-make the landscape, so the map must be re-drawn because the way the landscape looks is not likeable.¹⁵⁹ After the re-making of the map, re-make the landscape! The images of the map and the landscape are connected to adults' access to children and the limitations placed on children through legal and social practices and beliefs.¹⁶⁰

The definition of what a child is capable of doing remains a presumption, not a fact, about what a person characterized as a child can and cannot do. We do not know what a person categorized as a child is capable of doing. We only know what a child is capable of doing within socially constructed limitations. We only know what a child is allowed and not allowed to do.

20. A PRACTICE OF DETACHMENT

To perform the rights argument is to practice a detachment from the self as well as others. Rights are created through and by the master norm. It is against the master norm that an understanding of what is missing and what is lacking can be obtained. A descriptive and normative rights language removes the understanding of the self from within. It takes away the place from which an ethics of willing oneself free can start. A rights language fixes the understanding of the self to an understanding of the self through and by the master norm. This is done when a rights language replaces the self-understanding of "willing."¹⁶¹ Instead of the self-from-within expressing, demanding, and taking what the self wants, this feeling and knowing, this "willing," is reformed into a rights language. It is not what the self wills or wants that is important; rather, it is what the master norm allows, what there is a right to will or want, that matters. A rights language makes the master norm more important than the will. This forces the "Others" constructed through and by the master norm to only see themselves as the image of the "Others" in the eyes of white-adult-male hegemony. They become negativities in their own self understandings. A lack is thereby created and the direction of that lack is projected towards the master norm. Rights language serves as the vessel that will take you to the master norm that,

159. It is at this point that Rights are constructed. Rights are the tools for re-making the map into a more pleasant image. The re-made map is then the justification for a change of the landscape.

160. See generally Grahn-Farley, *The Law Room*, *supra* note 10.

161. I.e., feeling and knowing.

in turn, transforms you into white-adult-male hegemon. Because white-adult-male hegemony is not open for "Others," rights will never take you there. Rights make the self into the "Other." It fixes the understanding of the self according to the language of the master norm. It creates a dependency on the master norm because the self as a noun cannot exist outside of the master norm. It is only in the reflection back to the self as the "Other" that there is existence. This is the violence of rights.

20.1. THE WHITE-ADULT-MALE FETISH

"The empty circles of liberal justification"¹⁶² is a fetish of white-adult-male hegemony taking form in the fetish of the rule of law or a fetish of the critique of the rule of law.¹⁶³ It is a choice to remain in a relationship either to the rule of law itself or to its critique. It is a choice to organize the self around a relationship to the master norm. It is a choice to pretend that a rights language can change the relationship to the master norm. It is a choice to give the desire of white-adult-male hegemony precedence over the desire to be free.¹⁶⁴

20.2. THE SPELL OF RIGHTS

The spell of rights is the spell of white-adult-male hegemony. Rights enable a feeling of movement and change where there is only stillness to be found. To seek change through a liberal rights language is to always seek the same, always find the same, and always remain the same. It is the illusion of change and the illusion of courage. To fear a world without the master norm is also to fear the self. It is to fear the ambiguity of being without a fixed understanding of the self created through and by the master norm.¹⁶⁵ It is to fear the ambiguity of being free.

20.3. THE RIGHTS OF THE CHILD

A child is seldom given more than that to which it has a right. It is, however, very common that a child is given less than that to which it has a right. Rights are more a definition of what one does not have than

162. See generally Pierre Schlag, *The Empty Circles of Liberal Justification*, 96 MICH. L. REV. 1 (1997).

163. "In a word, you are being asked to become the one thing you are quite sure you don't want to become: 'Dad.'" Pierre Schlag, *The Problem of the Subject*, 69 TEX. L. REV. 1627 (1991).

164. "If fetishism is the perennial risk run by the defenders of the faith, then a fetishistic critique of fetishism is the perennial risk run by the critiques of the faith." *Id.* at 1644.

165. See generally Grahn-Farley, *The Law Room*, *supra* note 10.

what one has. As long as the descriptive or normative rights language does not describe the world as belonging to women, children, and people of color without limitation, right, even on its own normative and descriptive terms, will always also normatively and descriptively mean subordination to white-adult-male hegemony.

A rights language does not evacuate children from the places that are perceived as exploitive and abusive by adults. It is not the case that where children are exploited and abused there is an overrepresentation of children holding human, economic, and organizational resources. Rather, where children are being exploited and abused, children are underrepresented holders of human, organizational, and economic resources. No place exists where children, women, and people of color have so much economic, organizational, and human resources that it is possible to talk about a risk of power abuse by these groups. It is the case, however, that there are many places where white adult males have so much in terms of economic, human, and organizational resources that it is possible to talk about a risk of power abuse by white adult males. Despite this disparity, rights are the means by which women, children, and people of color are supposed to be protected from white adult male power abuse.

21. A MOVEMENT OF RIGHTS

A child perspective on the movement of rights is a look at the reallocation of resources from white adult males to children, women, and people of color from the perspective of the child. A child perspective is a look at how access to or exclusion from resources constructs and affects the identity of the child. To take a child perspective on the movement of rights does not mean blindness to the general distribution of resources. A child perspective is a look at how the master norm constructs and affects the identity of the child, and the identities connected to the child. It is to look at how the oppression of women and people of color affects and constructs the identity of the child.

21.1. A CHILD PERSPECTIVE ON OPPRESSION

To belong to the "minorities" is to belong to all the social groups that have fewer human, organizational, and economic resources. The master norm does not have an isolated effect upon the construction of the Others' identities. The oppression of women and people of color, which themselves are not separated identities,¹⁶⁶ affects children indirectly and directly.

166. See, e.g., *supra* notes 95-97.

The war on people of color conducted in the name of the "War on Drugs" has made millions of children fatherless and motherless.¹⁶⁷ This state-imposed parentlessness is an indirect harm. Thousands of children of color have been directly targeted by a racist juvenile and adult criminal system.¹⁶⁸ The oppression of women affects children directly and indirectly. Sexism affects children indirectly when witnessing sexist abuse of their mothers or other women around them in the forms of domestic abuse or a lower pay scale. Because women are often the breadwinners for the whole family, the abuse of women affects children indirectly. Children are affected directly by sexism in the form of denial of education either formally, when they are not being allowed to receive education, or informally, when they are ignored within educational institutions.¹⁶⁹ These are just a few examples of racist and sexist oppression that affects children directly and indirectly.

21.2. THE RELATIONSHIP IS OPPRESSION

Oppression is not isolated; it affects every one, either directly or indirectly. Some are beneficiaries of oppression, some are victims of oppression. When evaluating access to resources, white adult males, as a group, are the beneficiaries of oppression while children, people of color, and women are the victims of oppression. This is why it is not enough to look at the oppression of children to eliminate their oppression; one has to look at the ways white-adult-male hegemony operates and functions upon on the groups of humans surrounding children.

It is through the master norm, through the system of marks and the system of law, that such a disproportional allocation of resources is placed in the hands of white-adult-males that the women, children, and people of color become hyperreal constructions. This is why the elimination of oppression of children is also the elimination of the master norm.

21.3. THE MAINTENANCE OF OPPRESSION

White-adult-male hegemony is upheld through the disproportional access to human, organizational, and economic resources. White-adult-male hegemony is also obtained and maintained through the disproportional exclusion of children, women, and people of color from access to economic, human, and organizational resources. It is only when there is a movement of matter in the form of a reallocation of these resources

167. Grahn-Farley, *A Child Perspective*, *supra* note 146.

168. *Id.*

169. American Association of University Women, *How Schools Shortchange Girls*, in *CHILDHOOD IN AMERICA* 119 (Paula S. Fass & Mary Ann Mason eds., 2000).

from white-adult-men to people of color, children, and women that white-adult-male hegemony and the master norm can be challenged through rights.

The oppression of women, children, and people of color is collective, but the way the oppression of the master norm functions is individual. The experience of being constructed through and by the master norm varies between different individual groups. The differences in the ways that the master norm constructs the different groups according to marks are what make the groups different. The experiences of and the construction through and by the master norm are what make each group different. It is the different treatment of different marks that gives each mark a real meaning. Marking is not about essence; marking is about the power to mark and the power to resist being marked. This is why it is important to move to the perspective of the individual group in the move away from the master norm. The move to the individual is to take a specific perspective on the movements of rights. It is to value the self higher than the master norm. It is to give the will of the self precedence over the master norm. It is to value the self instead of white-adult-male hegemony. It is to become a self from within. It is to exist in the ambiguity between the understanding of the self from within and the reflection back in the eyes of the Other when the Other sees the self as the Other.¹⁷⁰ It is about ending the practice of understanding the self as the Other from within. It is about ending the practice of understanding the self through the fixed notion of the self as the Other. It is about not being dependent on existing through and by the master norm. To take a child perspective on the movement of rights is to take the image of the self back from the position of the master norm.

22. CRC AS RESOURCES

The CRC, seen as descriptive or normative, is a bandage on a symptom of a social illness called the master norm. The CRC, seen as descriptive and normative, will not cure any illness caused by the master norm. The CRC, as descriptive and normative, is the master norm. It is possible, however, to look at the CRC as movement instead of as descriptive and normative. Instead of looking at the rights described in

170. The ambiguity of the self:

(a) The understanding of the self from within; (b) The understanding the Other has about the Other (the self-of-I); (c) The reflection back to the self, coming from the Other's understanding the Other (the self-of-I); (d) The image thrown back to the self does not match the image coming from within the self. This discrepancy is never stable because it changes depending upon the image of the self from within, and the self's relationship to the Other, and the Other's image of its self from within, and the Other's relationship to its Other (the self-of-I).

the articles of the CRC as descriptive and normative, they could be seen as resources. The rights described in the CRC could, from a child perspective, be seen as resources that must be used to their maximum extent in order to fulfill the convention.¹⁷¹

22.1. TO THE MAXIMUM EXTENT

Article 4 of the CRC is the general implementations article of the convention. The CRC does not define which of its articles are civil and political, nor does the CRC define which of its articles are social and economic or cultural, in other words, the CRC does not commit to the division of rights made in the 1966 covenants.¹⁷² Article 4 of the CRC does not define resources. It does, however, give directions on how to use resources: "With regard to economic, social, and cultural rights, States Parties shall undertake such measures to the *maximum extent of their available resources* and, where needed, within the framework of international co-operation."¹⁷³

The CRC addresses resources as a main factor of implementation in article 4.¹⁷⁴ The CRC and its committee, by focusing on the importance of the obligation of the States Parties to use the maximum extent of available resources for the implementation of the rights set forth in the CRC, did something that had not been done in earlier international child rights documents or international institutions; they placed the child in the center of interpreting the society, the society's effects on children, and the children's effects upon the society.¹⁷⁵

The CRC does not create a hierarchy of different rights. The section about the traditional interpretation of what counts as civil and political rights of the child is the most controversial and contested part of the CRC. The thought that a child should have rights that recognize the child as a subject is alarming and horrifying to many adults.¹⁷⁶ Even adults who care and devote their lives to helping and assisting children in need sometimes react strongly to the child as an active subject and holder of its own rights.¹⁷⁷ Such strong reactions occur even when these

171. CRC, *supra* note 58, at art. 4.

172. Neither the text of the CRC nor the UN Committee definitions of the articles of the CRC specify which rights are economic, social and cultural rights.

173. CRC, *supra* note 58, at art. 4 (emphasis added).

174. Thomas Hammarberg says that unless governments can feel it in the pockets, they will not take the rights of children seriously. See generally Thomas Hammarberg, *Foreword to IMPLEMENTING THE CONVENTION ON THE RIGHTS OF THE CHILD*, at vi (James R. Himes ed., 1995).

175. Thomas Hammarberg also discusses placing children on the international agenda. See *id.*; see also generally LISA WOLL, *AN IMPACT STUDY OF THE IMPLEMENTATION OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD* (Rädda Barnen 2000).

176. UNITED NATIONS CHILDREN'S FUND, *supra* note 135, at 149.

177. In the ICESR the child receives the rights through the rights of the mother. ICESR, *supra*

rights are limited in their span so as not to blur the differentiation between children and adults.

22.2. HUMAN RESOURCES

When looking at society through the lens of human resources, it becomes clear that from a child perspective the children and their adults are in need of a society-wide reallocation of human resources. This section of the article will focus on the ways that the CRC can serve as a movement of human resources.

Human Resources:

Stocks: skills, professionalism, motivation, will-power, aspiration, vision, knowledge, experience, desire, commitment and energy.

Flows: skilled manual and intellectual work or labor, struggle, threat, negotiation, dialogue, exchange of information and experience.

This is an area where the CRC is opening the door for the interested to explore a more nuanced view of the socio-culture construction of the child. The leading article in the CRC in constituting the child as an active subject of rights and an active participant in the society is article 12.¹⁷⁸

This article sets one of the fundamental values of the Convention and probably is also one of its basic challenges. In essence it affirms that the Child is a fully-fledged person having the right to express views in all matters affecting him or her, and having those views heard and given due weight.¹⁷⁹ Thus the Child has the right to participate in the decision-making process affecting his or her life, as well as to influence decisions taken in his or her regard¹⁸⁰

The UN Committee has in this regard been a strong advocate for the child to be seen as a full subject: "Further efforts are required to ensure the active participation of children and their involvement in all decisions affecting them in light of articles 12, 13, and 15 of the Convention."¹⁸¹ Similarly, in its concluding observations of the Initial Report submitted by France, the UN Committee stated: "The Committee would like to

note 58, at art. 10(3). The ICCPR recognize the child as a subject in itself but the child is still strongly connected to the rights of the family. ICCPR, *supra* note 58, at arts. 23, 24. The same reasoning can be found in the CRC. CRC, *supra* note 58, at art. 5.

178. See generally CENTER FOR POPULATION AND DEVELOPMENT STUDIES, *supra* note 150.

179. Elaine E. Sutherland, *The Role of Children in the Making of Decisions that Affect Them*, in *THE IDEOLOGIES OF CHILDREN'S RIGHTS* 155-66 (Michael Freeman & Philip Veerman eds., 1992).

180. *General Guidelines Regarding the Form and the Contents of Periodic Reports to be Submitted by States Parties Under Article 44, §1(B), of the Convention*, Committee on the Rights of the Child, 13th Sess., U.N. Doc. CRC/C/58 (1996).

181. *Panama Initial Report*, Committee on the Rights of the Child, §29, U.N. Doc. CRC/C/3/Add.28 (1995), <http://www.unhchr.ch/tbs/doc.nsf>.

suggest that further consideration be given to ways of encouraging the expression of views by children and those views being given due weight in the decision-making process affecting their lives, in particular within school and the local community.”¹⁸² Similar views were expressed in the concluding observations from the UN Committee on the content of the Initial Report submitted by Korea:

The Committee considers that greater efforts should be made to promote the participation of children in family, school and social life, as well as the effective enjoyment of their fundamental freedoms, including the freedom of opinion, expression and association, which should be subject only to the restriction provided by the law and which are necessary in a democratic society.¹⁸³

Article 12, the right to participation, has stimulated many efforts worldwide to increase child participation on all levels of society.¹⁸⁴ If article 12 is treated as a movement of resources in the form of a reallocation of resources from white-adult-males to children, the limitation of the article would be defined by the fulfillment of the CRC and not by what white-adult-males are willing to give. Article 12 could then be seen as a resource to be used to the maximum extent of its availability. The only limitation on the breadth of article 12 would be when the skills, professionalism, motivation, will-power, aspiration, vision, knowledge, experience, desire, commitment, and energy of the child and adults have been used to their maximum extent in fulfilling the rights in the CRC. This means that the limiting point of the article would not be connected to the limitations adults have placed on the child, but, rather, to the fulfillment of the rights set forth in the CRC.

22.3. ORGANIZATIONAL RESOURCES

When looking at society through the lens of organizational resources, it becomes clear from a child perspective that children, as well the adults around them, need a society-wide reallocation of organi-

182. *France: Initial Report*, Committee on the Rights of the Child, §23, U.N. Doc. CRC/C/3/Add.15 (1993), <http://www.unhchr.ch/tbs/doc.nsf>.

183. *Republic of Korea: Initial Report*, Committee on the Rights of the Child, §33, U.N. Doc. CRC/C/3/Add.41 (1996), <http://www.unhchr.ch/tbs/doc.nsf>.

184. For an extensive reading on participatory rights, see ROGER A. HART, *CHILDREN'S PARTICIPATION: THE THEORY AND PRACTICE OF INVOLVING YOUNG CITIZENS IN COMMUNITY DEVELOPMENT AND ENVIRONMENTAL CARE* (1997); see also *STEPPING FORWARD: CHILDREN AND YOUNG PEOPLE'S PARTICIPATION IN THE DEVELOPMENT PROCESS* (Victoria Johnson et al. eds, 1998); UNICEF, *STANDING UP FOR OURSELVES: A STUDY ON THE CONCEPTS AND PRACTICES OF THE YOUNG PEOPLE'S RIGHTS TO PARTICIPATION* (1999); Christine Hallet & Cathy Murray, *Children's Rights and the Scottish Children's Hearings System*, 7 INT'L J. CHILD. RTS. 31-51 (1999); Virginia Morrow, *We are People too: Children's and Young People's Perspectives on Children's Rights and Decision-Making in England*, 7 INT'L J. CHILD. RTS. 149-70 (1999).

zational resources. This section of the article will focus on the ways that the CRC can serve as a movement of organizational resources.

Organizational Resources:

Stocks: administrative structures, norms, procedures, laws and regulations, professional organizations, political power, leadership, control, political organizations and committees, service organizations, family, clans.

Flows: decisions, participation, mobilization, management, regulation, monitoring, and training.

When it comes to children and the question of participation in article 12 of the CRC, it is mainly the outcome of the participation that is presumed not to be valid, not the ability to participate. There is a worry that the outcome of the participation of children will be an unwanted one. To entertain such a worry is to value the participation only as a tool to achieve other rights or goals. For adults, participation itself is a resource. For adults, it is the very possibility to participate that is valued. The value of the result of participation is dependent on adults' eligibility for participation, even though such treatment of participation as a value in itself often leads to compromising the quality of the result. For adults, the participation process is such a highly valued resource that it is the participation itself that gives the outcome legitimacy, even if its quality is thereby compromised. Article 12 could be seen as a resource to be moved from white-adult-males to children to increase child participation in "decisions, participation, mobilization, management, regulation, monitoring, and training" to their maximum extent to fulfill the CRC. The bar to child participation does not protect children from adults. The results of adult participation, even if bad, affect children, even if they did not participate in the process.

It is also interesting that all these limitations on the child's ability to participate and have freedom over itself have no connection to the horrifying experiences of childhood that are covered in the articles that concern the right to protection from economic and sexual violence, abuse, and exploitation. If many of the barriers to child participation were removed, children would more likely be protected from circumstances of violence, abuse, and exploitation.

To look at rights as movement from a child perspective is to look at the rights to participation, freedom of expression, freedom of thought, and freedom of association as resources to be used to their maximum extent in the form of "administrative structures, norms, procedures, laws and regulations, professional organizations, political power, leadership, control, political organizations and committees, service organizations,

family, clans”¹⁸⁵ to fulfill the CRC.

The right to vote is a resource that, if used by children to its maximum extent, might force politicians to start taking the interests of children seriously.¹⁸⁶ If legal capacity was seen as an organizational resource to be used to its maximum extent to fulfill the rights in the CRC, adults might not be able to sell children as slaves to brothels and plantations. And perhaps a child that is being beaten in the home might not have to hide as a criminal when seeking to escape abuse by running away.¹⁸⁷

22.4. ECONOMIC RESOURCES

When looking at society through the lens of economic resources it becomes clear, from a child perspective, that children and the adults who serve as their support system need a society-wide reallocation of economic resources. This section of the article will focus on the ways that the CRC can serve as a movement of economic resources.¹⁸⁸

Economic Resources:

Stocks: land, natural resources, physical infrastructure (roads, electricity, water), equipment, tools, assets, savings, technology, information.

Flow: budget, expenditures, credits, supplies, interest, profit.

Article 12 as a resource is important when it comes to the right to participate in the decisions regarding land distributions and distribution of natural resources. One example of this can be seen in the experiences

185. See *supra* notes 40-42 and accompanying text.

186. It is impossible to know what would happen and whether there would be more “child-friendly” legislation if people under age eighteen were allowed to vote. The lowering of the voting age on the federal level in the United States in 1972 might not have had a tremendous impact. U.S. News & World Report, *Now That the Voting Age is Lower . . .*, in *CHILDHOOD IN AMERICA* 592, 592-93 (Paula S. Fass and Mary Ann Mason eds., 2000). This does not mean that lowering the voting age cannot have a positive effect on legislation and politics regarding “child friendly” issues. The Council of Europe adopted a resolution “On the Lowering of the Age of Full Legal Capacity” in 1972. The resolution recommends to member states to lower the age of majority below age twenty-one, if they deem it advisable. DETRICK, *supra* note 62, at 65 n.57.

187. Being a runaway is in many states a status offense and can be grounds for losing one’s liberty. See, e.g., ARIZ. REV. STAT. ANN. §§ 8-229, 8-235, 12-661 (Supp. 1994).

188. “[T]he oppression of children is most oft rooted in economic dependence.” FIRESTONE, *supra* note 48, at 95.

of child soldiers¹⁸⁹ from Uganda¹⁹⁰ and Mozambique.¹⁹¹ Land was to be distributed when they returned home, however, they were excluded because they were children. This exclusion occurred despite the fact that being children had not prevented the military from recruiting them into the war in the first place.¹⁹²

An important source of power in a market economy is the right to own property. To connect the right to own property with being an adult gives property as such an additional meaning. Property then does not only have the meaning of its concrete purpose, but also has a symbolic value. Property then does not only symbolize wealth, but also capacity; a capacity that stems from both the actual benefit of the specific property and the symbolic value that the property represents. The capacity to own property is not only a symbol of the freedom to obtain property, but also can symbolize actual freedom from other people's power over you. In Bolivia, for example, "[p]roperty transactions can only be conducted by persons over 21, the age of acquisition of the legal capacity . . . to perform for oneself all the acts of civil life."¹⁹³

It is even the case that in some places, Argentina for example, the child itself is considered to be the property of the parents or of the adult community.¹⁹⁴

189. An estimated 300,000 children under the age of eighteen are involved in armed conflicts worldwide. *The Maputo Declaration on the Use of Children as Soldiers*, Apr. 22, 1999, <http://chora.virtualave.net/maputo-declaration>.

190. "In Uganda, the phenomenon of child soldiers first gained prominence after 1981 [W]hen the current government of President Yoweri Museveni was still a resistance force, there were an estimated 3,000 kadogos, or child soldiers, under the age of sixteen among its ranks. Of these, approximately one-sixth were young girls." ACT AGAINST CHILD SOLDIERS IN AFRICA: A READER 41 (Elizabeth Bennett et al. eds., 2000).

191. In 1998, UNHCR and the International Save the Children Alliance published a material on child soldiers within their joint project ARC; Action for the rights of the child. According to this document, 25,498 (almost 28 per cent) of the 92,881 officially demobilised soldiers in Mozambique were younger than 18 when recruited. Of these, 4,678 were under 13 years when recruited, 6,829 were 14-15 years old, and 13,982 were 16-17 years old. "The group includes a significant number of government soldiers . . ." even though the document also states that "[t]he recruitment of minors by the government forces was never done purposefully and did not involve very young children. <http://www.rb.se:8082/www/childwar.nsf/HTML/Forsta?openDocument>, (Mar. 30, 2002).

192. "States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities." CRC, *supra* note 58, at art. 38(2). The Optional Protocol gives an age limit of eighteen. *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, G.A. Res. A/RES/54/263 art.1 (2000), <http://www.unhcr.ch/html/menu2/6/protocolchild.htm>.

193. *Bolivia: Periodic Report*, Committee on the Rights of the Child, §149, U.N. Doc. CRC/C/65/Add.1 (1997), <http://www.unhcr.ch/tbs/doc.nsf>.

194. Eugene Verhellen expresses optimism that this might change in time because the understanding of the capability of the child to personally implement its rights is changing and can be recognized in almost all social and legal areas where the child is involved. Eugene Verhellen,

Art. 264. Parental authority is the body of rights and obligations incumbent on parents and relating to the persons and assets of their children, for their protection and full upbringing, arising at the time of conception of the latter and continuing for as long as they are under legal age and have not been emancipated.¹⁹⁵

Congo gives a similar view in their Initial Report:

[In the Congo, t]he family is the natural base element of the human community; the primary environment in which the individual socializes; the product of marriage; and the legal framework for procreation. It is placed under the protection of the State. It consists essentially of a man, a woman and a being called a "child."¹⁹⁶

The UN Committee has expressed concerns regarding the view of the child as the property of its parents and family, or as a not-fully active participant and subject of rights. Often the "propertyfication" of the child is justified with the principle of "best interest of the child."¹⁹⁷

The interpretation of what is in "the best interest of the child" can be highly dependent on cultural context and power relationships¹⁹⁸ and might not always actually serve the "best interest of the child." The familiarity with this phrase from domestic laws might have contributed to the fact that article 3 was not interpreted concretely.¹⁹⁹ The Danish Initial Report is an example of this:

Changes in the Images of the Child, in THE IDEOLOGIES OF CHILDREN'S RIGHTS, supra note 179, at 79, 90-91.

195. *Argentina: Initial Report*, Committee on the Rights of the Child, §56, U.N. Doc. CRC/C/8/Add.2 (1997), <http://www.unhchr.ch/tbs/doc.nsf>.

196. *Democratic Republic of the Congo: Initial Report*, Committee on the Rights of the Child, §80, U.N. Doc. CRC/C/3/Add. 57 (2000), <http://www.unhchr.ch/tbs/doc.nsf>.

197. CRC, *supra* note 58, at art. 3.

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Id.

198. See Stephen Parker, *The Best Interest of the Child-Principles and Problems*, in *THE BEST INTERESTS OF THE CHILD: RECONCILING CULTURE AND HUMAN RIGHTS* 26, 28 (Philip Alston ed., 1994).

199. Philip Alston, *The Best Interest Principle: Towards a Reconciliation of Culture and Human Rights*, in *THE BEST INTERESTS OF THE CHILD: RECONCILING CULTURE AND HUMAN RIGHTS, supra* note 198, at 1, 11.

[In Denmark, u]nder the Legal Incapacity and Guardianship Act, the person having custody may make decisions as to the child's personal affairs on the basis of the child's best interests and needs. Upon an assessment of what is in the best interest of the child, parents may thus make a number of restrictions on the child's opportunities for self-expression, including the exercise of freedom of expression.²⁰⁰

The limitations on the capacity of children are justified with explanations that children are not suited for these rights; they have to develop into them.²⁰¹ In Korea, for example:

The Civil Law adopted on 5 September 1991, following the requirement of the Constitution, defined that majority is attained at the age of 17 (art. 20 of the Civil Law). This is one year earlier than the definition in article 1 of the Convention, but is based on the reality that one is mature enough physiologically and physically and reaches the level of an adult mentally and morally at the age of 17.²⁰²

A child perspective on the principle of the best interest of the child would see CRC article 3 as a resource.²⁰³ One way of using the resource, "the best interest of the child," to its maximum extent would be to make it possible for children to influence decisions regarding physical infrastructure so that the infrastructure really takes the best interest of the child into consideration. The best interest of the child as a resource is important when promoting the survival and development of the child in article 6 of the CRC, or in fulfilling the right to education.²⁰⁴ The best interest of the child might be promoted through the maximum use of equipment, tools, assets, savings, technology, and information. To look at the right to education, health care, and adequate standard of living as resources to be used to their maximum extent in the fulfillment of the CRC would be to place the limitation of the articles at the point where and when the convention is fulfilled and not, as now, at the point where and when white-adult-males decide that they have reached the limit of what they want to give.

200. *Denmark: Initial Report*, Committee on the Rights of the Child, §83, U.N. Doc. CRC/C/8/Add.8 (1993), <http://www.unhchr.ch/tbs/doc.nsf>.

201. See generally David Archard, *Do Parents Own their Children?*, 1 INT'L J. OF CHILD. RTS. 293 (1993).

202. *Democratic Republic of Korea: Initial Report*, Committee on the Rights of the Child, §38, U.N. Doc. CRC/C/3/Add.41 (1996), <http://www.unhchr.ch/tbs/doc.nsf>.

203. See generally Alston, *supra* note 199, at 1 (discussing the cultural context of the understanding of what would be the best interest of the child). My argument is that this is not foremost an issue about culture but an issue of a power relationship between the interest of children and the interest of adults. This is why it is important to look at "The Best Interest of the Child" as a resource where the maximum extent of available resources shall be used to fulfill the principle. This means we need to explore and change the structure of how decisions affecting children are being made.

204. CRC, *supra* note 58, at art. 28.

23. DILEMMA

The fetish of white-adult-male hegemony rests on a fear of standing out. The notion of natural groups is a way to categorize humans into groups by identifying their essence according to bodily marks. Through the system of marks a “natural line” is found. The “natural line” is given meaning through the system of law. The natural line is the authorizing line of social hierarchy. “The empty circles of liberal justification”²⁰⁵ is a fetish of the master norm taking its form in the fetish of “the rule-of-law.”²⁰⁶ It is a choice to remain in a relationship either to the rule-of-law itself or to a critique of the rule-of-law; either way, it is a choice to remain in a relationship to the master norm. It is a choice to give the desire of white-adult-male hegemony precedence over the desire to be free.²⁰⁷

23.1. THE DURABILITY OF THE MASTER NORM

The durability of the empty circles of liberal justification is the durability of the master norm. It is by devaluing women, children, and people of color, that the emptiness of rights and this criticism become fetishes that survive on their own circular ideology: an ideology of white-adult-male hegemony. It is by being blind to the power relationship that the process of marking is made possible. It is by seeing only the mark of woman, the mark of color, and the mark of childhood, and not the power relationship that made the marking possible, that the stillness of rights can be mistaken for movement. The problem of the invisible subject is ultimately a problem of white-adult-male hegemony.

23.2. THE INTERNAL POSITION

It is only from a position internal to the master norm that one can afford the luxury of treating the liberal paradox, the problem of the invisible subject, or the problem of the rule of law as complicated dilemmas in law. The liberal dilemma is only a complicated dilemma for the liberal:²⁰⁸

- The liberal dilemma is not a complicated dilemma for feminist theory; male oppression is.
- The invisible subject is not a complicated dilemma for critical race theory; white oppression is.

205. See generally Schlag, *The Empty Circles of Liberal Justification*, *supra* note 162.

206. See Schlag, *The Problem of the Subject*, *supra* note 163.

207. “If fetishism is the perennial risk run by the defenders of the faith, then a fetishistic critique of fetishism is the perennial risk run by the critiques of the faith.” *Id.* at 1644.

208. See generally Grahn-Farley, *An Open Letter to Pierre Schlag*, *supra* note 16.

- The problem of the rule of law is not a complicated dilemma for critical race feminists; white and male oppression is.

The liberal dilemma is only a complicated dilemma from the internal position of the master norm. The liberal dilemma from a position external to the master norm is a dilemma of submission and survival under white-adult-male hegemony.²⁰⁹

It is a choice to not want to break free from the master-norm, and with that, from the liberal dilemma. It is a choice to not look outside the circular ideology of white-adult-male hegemony. It is a choice to not look beyond the normative and descriptive language of rights. It is a choice to not look for the people that would make the circle asymmetric and break it up. It is a choice—blindness—to not position the self outside of the master norm, to not take the perspective of the minorities. To leave the circular ideology of white-adult-male hegemony is to question the unquestionable; it is to question nature. To leave the circular ideology of white-adult-male hegemony is to question the system of law and the system of marks. To leave the circular ideology of white-adult-male hegemony is to recognize that the hegemon is placed on the top by people and not by nature. To leave the circular ideology of white-adult-male hegemony is to question the rules of the game. To leave the circular ideology of white-adult-male hegemony is to recognize that the rules of the game are made by people and not by nature, to recognize that the rules of the game are upheld by people and not by nature, and to recognize that the rules can change. To leave the circular ideology of white-adult-male hegemony is to see that the game has been rigged.

23.3. WHO IS A WINNER?

Only the acceptable winners of the game are allowed to play. This means that the one that wins is always a winner and was a winner even before winning. It makes the game foolproof. It means that a non-winner can never win. The fetish for the perfection of the circle is the fetish for the perfection of white-adult-male hegemony. It is the perfection of a game the outcome of which can only be given meaning because the outcome will always be the same. It is the illusion of a game, the perfect illusion of competition. It is like when the Old Monarch, the father of fathers, played tennis with the best players in the world and mysteriously always won.²¹⁰ The people preferred to think of the Old Monarch as a great tennis player instead of as a cheating old man afraid of losing such

209. See generally Dworkin, *supra* note 95.

210. King Gustav VI Adolf of Sweden: 1882–1973. Regent 1950–1973.

a banal thing as a tennis game.²¹¹

24. FREE

White-adult-male hegemony and the rule of law are like water in water, together becoming an ocean of power. The hegemon is the rule of law and the rule of law is the hegemon. The one is the other and the other is the one. He begins and ends with the rule of law and the rule of law begins and ends with him. There is no way to separate the one from the other, or the other from the one. When law is speaking, it is the voice of him. The rule of law is the rule of white-adult-male hegemony. Out of this comes the hyperreal, the identities of the minorities, the ones who have less. All the visible beings, painted by the system of marks, are blown into life by the system of law.

24.1. THE IMAGE OF THE CHILD

The adult wants to use the image of the child's negativity (of not having freedom of matter) so that the adult can constitute the self's positivity as being free. This is made possible through the understanding of the negativity of the self in relationship to the lack understood through the child as a positivity²¹²—lack that can be understood through the construction of the mind of the child as free and a positivity. The lack does not only make it possible to become free, it also gives direction to the projection to become free. It is through the image of the child that the adult wants to become free. It is through image of the Other that white-adult-male hegemony wants to become free.

24.2. A PROJECT DOOMED TO FAIL

To become free through the image of the child is a project doomed to fail. The adult has replaced willing to be free with the object freedom. Instead of willing the self free, through a state of mind and matter as free and in constant flux or in the suspension of judgment,²¹³ freedom and not willing the self free is found through the fixation and the eternal judgment of nature in the function of the master norm upon the mind and matter of the minorities.

Instead of willing to be free the adult has acquired the object freedom by constructing the child as not having freedom of matter. The adult has replaced the will to be free with the object freedom. By

211. The Old Swedish King loved playing tennis with the best tennis players of his time. The King always won.

212. See DE BEAUVOIR, *supra* note 24, at 12-13.

213. See Peter Goodrich, *Europe in America: Grammarology, Legal Studies, and the Politics of Transmission*, 101 COLUM. L. REV. 2033, 2067-68 (2001).

replacing the painful will to be free with the object freedom, the adult has constructed the image of the child as well as the adult.

25. TO NOT HAVE FREEDOM

Through the understanding of what it is to not have freedom, adults become conscious about what it is to have freedom. Through the understanding of what a child is, the adult becomes conscious of what it is to not be a child. To not be a child is to be adult. To be a child is to not have freedom, but to be free of mind. To be an adult is to have freedom, but to not be free of mind.

It makes the adult feel that having freedom is the same as being free. It is an escape from yet another paradox: being born free and willing to be free. The self escapes the moral obligation of willing-to-be-free because it can pretend that it is enough to have freedom. By making the burdensome object, freedom, equal to willing the self free, adults can avoid both the absolute responsibility of willing the self free and the ambiguity of the paradox itself.

25.1. THE FORMALITY OF SUCCESS

By making possession of freedom into a formal impossibility for the child, success is made into a formal guarantee for every adult. Every adult can then acquire freedom without qualification and still make freedom appear as an achievement. Freedom is described as an achievement in the sense that with freedom comes responsibility and seriousness. Freedom is only for those who have left immaturity: the essence of childhood. Freedom is only for those who have advanced into a higher group of people: the adult group.

The belief that it can be harmful to be free is a projection of the fear of ambiguity, which takes the form of the rejection of willing to be free. It is to project upon the image of the child the desire to be free as well as the fear of being free. It is to escape the individual responsibility that is connected to willing oneself free. It is to confine the willing to be free into a safe place, where it cannot extend beyond its assigned space; it cannot extend beyond the place of a fixed understanding of the self: a place outside of the ambiguity that comes with seeing the self through the eyes of the subject and not the object Other. To see the self through the eyes of the Other as a subject is to not remain in a dependent relationship to the master norm for one's existence.

The child is described as the physically and mentally immature being that is not yet aware of the constraints of adulthood. This description connects to the child's need of protection from having freedom.

This, in turn, is what defines being adult: to have freedom. This, finally, is what is denied the child.

25.2. TO CROSS THE LINES

There are lines not to be crossed.²¹⁴ To even contemplate crossing the lines is a sign of remaining a child. A hegemon cannot be limited by anyone but himself.²¹⁵ The adult has learned the danger of crossing the lines: he knows the price of a free mind. The child serves as the constant reminder of the consequences of a free mind. The child, the woman, and the colored are constant reminders of the consequences of the movement away from the master norm.²¹⁶

By making the child the symbol of a free being and simultaneously placing limitations upon the child, the image of the child is confined and controlled. The adult thereby escapes the ambiguities of the self. The image of the child is controlled through limitations placed upon the person defined as a child. Nature is given as the explanation and justification for why the child should not have freedom. The dividing line between the child and the adult—mediated through the system of marks and executed through the system of law in the form of minimum ages and age of majority—does not have a connection to the child. Instead, it connects to the concept of years, which in turn connects to the earth orbiting the sun—neither has a connection to the actual context of the child.

The adult projects upon the child a glorified, generalized, and universal childhood that never was and never will be. The adult also projects upon the child the image and feeling of inferiority and fear of the ambiguous. To explain why this freedom is something that one cannot fight for, but is granted by nature, the adult has created a notion of the “natural” child. The natural child means that the characteristics of the child are also its essence. One of the characteristics of being a child is to be vulnerable in relation to adults. That vulnerability is described and treated as an immaturity and therefore natural. Another way to say that a child is immature is to say that the child is in a vulnerable position in relation to adults. When a characteristic is seen as essential and natural, there is nothing that can be done about the nature of the child. The only thing to be done, once vulnerability is seen as natural and essential, is protect the child from its own free being.

214. “Not only are there things that you cannot do or say—lines you cannot cross—but you are not even permitted to talk about the fact that there are lines you cannot cross or inquire into the whys or wherefores.” Schlag, *The Problem of the Subject*, *supra* note 163, at 1681.

215. Himself meaning him and his mirror image, the structure of white-adult-male.

216. See DE BEAUVOIR, *supra* note 24, at 13.

This resolves the paradox that every one is born free, yet there remains a moral obligation to will oneself free. The foundation of liberal ideology—that each individual is born free—is also the aspect of the image of the child that serves as the excuse to withhold freedom. Instead of looking at the self as having a moral obligation to will the self free, adults create an understanding of the child as free and, therefore, vulnerable to freedom. The idea is that freedom can harm the child and that the moral obligation of adults is to prevent the child from having freedom (this also justifies not willing the self free because the will-to-be-free is despised and used to justify losing the possession freedom). This also can justify not willing the self free because to be free is also despised and justifies losing freedom.

This also makes it possible to create an elite out of normalcy.²¹⁷ The very fact of being over the age of eighteen becomes a qualifier for entry into a higher group in the hierarchy. This means that every person over the age of eighteen can feel accomplished without having accomplished a single thing.

26. FUTURE

There is a presumption that the child is irrational and has to be protected from causing itself harm that might not be possible to undo and that might affect the child's future life.²¹⁸ The notion of the child as being the "future"²¹⁹ is a way to escape from the responsibility of the moment: a moment that is in the present, a moment that is the past that is no more, a moment that is the future that will never be.²²⁰ The adult is thus liberated from the responsibility to change and break out of the anonymous collective and become visible as an individual. The child as the symbol of the future must be controlled because the future has to be controlled and confined. To be able to control the child is to be able to control the future. It is to be able to make sure that the future will never come and that the present will continue. The present remains the same as long as no choices are made that will change the present. As long as the search for rights is conducted in accordance with an accepted method,²²¹ the moment will never end.²²²

217. Simone de Beauvoir calls this type of person "serious." See DE BEAUVOIR, *supra* note 24, at 46. Jean-Paul Sartre calls it to value the permanence of a stone. See SARTRE, *supra* note 25, at 18..

218. Catherine Lowy, *Autonomy and the Appropriate Projects of Children: A Comment on Freeman*, in CHILDREN, RIGHTS AND THE LAW, *supra* note 68, at 72-75.

219. See DE BEAUVOIR, *supra* note 24, at 102.

220. See *id.* at 7.

221. See PIERRE SCHLAG, *THE ENCHANTMENT OF REASON* 3 (1998).

222. "It has been a matter of eliminating the ambiguity by making oneself pure inwardness or

The argument that children are the future is an empty and false statement in the sense that it takes away the responsibility of adults to do something about their future—a future that is now, at the same time, as it will never be. Instead, the adult projects its future into the future of some abstract construction of a universal child. To project one's future upon someone else, instead of taking responsibility for one's future in the present, is to channel the responsibility to change onto the image of the child. The responsibility to change is projected onto the image of the very same people that have been denied human, organizational, and economic resources because they have been made into children. This is to prevent children from having a say in the creation of the future, a future that will affect the now in which the adult also has guaranteed that everything will remain the same. This is a way to maintain the master norm in the name of change and to pretend to be an agent of change while maintaining the social order that one represents. To place the responsibility for the future upon the people that are made into children today and, at the same time, make it impossible for them to affect the present, is to pretend to take responsibility for one's life while in fact evading responsibility for one's life.

26.1. PROTECTION FROM EXPLOITATION

The protection of children from adult exploitation does not require the exclusion of children from human, organizational, and economic resources. There are many harms that children—because they, through the system of marks and the system of law, are made into children—have survived and are still trying to survive. These harms include: corporal punishment,²²³ sexual abuse,²²⁴ sexual exploitation,²²⁵ participa-

pure externally, by escaping from the sensible world or by being engulfed in it, by yielding to eternity or enclosing oneself in the pure moment." DE BEAUVOIR, *supra* note 24, at 8.

223. Corporal punishment is a parental right in many countries. See, e.g., *Concluding Observations of the Committee on the Rights of the Child: Zimbabwe*, §18, U.N. Doc. CRC/C/15/Add.55 (1996), <http://www.unhchr.ch/tbs/doc.nsf>; *Concluding Observations of the Committee on the Rights of the Child: Sudan*, §17, U.N. Doc. CRC/C/15/Add.10 (1993), <http://www.unhchr.ch/tbs/doc.nsf>.

224. As we have learned from the feminist movement, sexual abuse and rape deal with power relationships and have very little to do with sexuality.

225. "[R]esearchers at the University of Pennsylvania unveiled the grim results of a three-year study of children under 18 living in the U.S. They found that roughly 400,000 children, or one in 100, are victims of commercial sexual exploitation." Jessica Reaves, *Children and Commercial Sex: A Terrible Trend*, Sept. 10, 2001, at <http://www.time.com/time/nation/article/0%2C8599%2C174482%2C00.html>. Sexual exploitation is strongly connected to parental power in the United States, where many of the runaways that end up in child prostitution are from white, middle class families with child abuse. *Commercial Child Sexual Exploitation: "The Most Hidden Form Of Child Abuse," says Penn Professor*, Sept. 10, 2001, at <http://www.upenn.edu/pennnews/releases/2001/Q3/restes0901.html>. This differs from the general trend of child prostitution where the children often are at the end of a long chain of global power abuse; from the

tion in armed conflict as soldiers, state violence in the form of capital punishment, life imprisonment and incarceration, economic exploitation, and commercial sexual exploitation to the form of slave labor on plantations, in brothels, or on the streets. Commercial sexual exploitation is a source of income for many children that make their main livelihood from the streets: "Child sexual exploitation is the most hidden form of child abuse in the U.S. and North America today. It is the nation's least recognized epidemic."²²⁶ Those children are in many ways refugees from adult abuse in their homes: "[A] disproportionately small number of street youth [in the United States] have histories of recurrent physical or sexual abuse at home and took to the streets in a desperate effort to bring their abuse to an end."²²⁷

This type of adult violence directed toward children occurs because of the disproportionate allocation of human, organizational, and economic resources to children. These resources are distributed through the system of law and the system of marks to white-adult-males and kept out of reach of children. Violence against children does not function differently from violence toward adults. What differs between adults and children is that adults, especially white-adult-men, are protected from violence by human, organizational and economic resources, while children are protected only by their own vulnerability. What is similar between adults and children is that the resources that serve as a protection for adults against violence could also serve as a protection for children against violence. The best defense against exploitation is the same for children as for adults: access to human, economic, and organizational resources.

The image is that freedom is a civic burden and the duty of the citizen. The claim that the child has to be protected from the burden of freedom for its own good is a false claim. Such "protection" has no correlation to the perceived burden of freedom of matter and mind. Such "protection" has no connection to the limitation on freedom of matter and mind to participate and have influence over the self, as well as the society in a whole.

rich north to the poor south, parents will sell or give up their children to prostitution. Children that are the indirect and direct victims of AIDS and HIV are also included. *See generally* Davidson & Taylor, *supra* note 43; Julia O'Connell Davidson & Jacqueline Sanchez Taylor, *Child Prostitution and Sex Tourism: Costa Rica* (A research paper prepared for ECPAT, at the World Congress Against the Commercial Sexual Exploitation of Children, 1995), <http://www.ecpat.net>; Julia O'Connell Davidson & Jacqueline Sanchez Taylor, *Child Prostitution and Sex Tourism: Venezuela* (A research paper prepared for ECPAT, at the World Congress Against the Commercial Sexual Exploitation of Children, 1995) <http://www.ecpat.net>.

226. *Commercial Child Sexual Exploitation: "The Most Hidden Form Of Child Abuse,"* says Penn Professor, *supra* note 225.

227. *Id.*

Children do not enforce the death sentence on other children in the United States. This task is performed mostly by adults. Children do not go to war with other children; it is adults who go to war against children and others. Children are not the biggest threat to children. White-adult-males are the biggest threat to the survival of both children and adults.²²⁸

27. CONCLUSION

Rights will not give the child more than what will keep it in its place, thus they will continue to serve the function that the child was made to have.²²⁹ The function of the child is to make the adult a winner without having to give a winning performance. This is why rights will not take the child out of its place; this is why rights are stillness.

It is the disproportional allocation of human, organizational, and economic resources to the hands of white-adult-males that makes the master norm white, adult, and male. It is the disproportional exclusion of human, organizational, and economic resources from the woman, the child, and the person of color that makes the master norm white, adult, and male. It is the present allocation of resources that upholds the master norm.

It is the fear of ambiguity and the fear of an escape from ambiguity that creates dependency on the master norm. It is in the search for and through the need of a fixed understanding of the self, through the objectification process of the master norm, that an interdependency between the master norm and the self is created and sustained. This is why the movement of rights must be a movement away from the master norm in both mind and in matter.

As long as the function of the master norm can be upheld through matter, it is not enough to make the move away from the master norm only in mind. It is not enough to move away from the master norm in matter because as long as our mind is dependent on the master norm, every reallocation of matter will serve the needs of the master norm. The move away from the master norm has to be a move of mind as well as matter. Rights-in-motion can be seen as human, organizational, and

228. Firestone writes:

What we ought to be protesting, rather than that children are being exploited just like adults, is that adults can be so exploited. We need to start talking not about sparing children for a few years from the horrors of adult life, but about eliminating those horrors. In a society free of exploitation, children could be like adults (with no exploitation implied) and adults could be like children (with no exploitation implied).

FIRESTONE, *supra* note 48, at 96.

229. See generally Grahn-Farley, *The Law Room*, *supra* note 10.

economic resources to be used to the maximum extent possible in accordance with article 4 of the CRC.

GLOSSARY

Adult:

A person who has reached legal majority and, with that, full legal capacity.

Adulthood:

The social position of a person who is constructed as an adult vis-à-vis the social position of a person who is constructed as a child.

Child:

A person who has not reached legal majority and therefore does not have full legal capacity.

Childhood:

The social position of a person who is constructed as a child vis-à-vis the social position of a person who is constructed as an adult.

Child-as-free:

Used to indicate that power has been replaced with responsibility. Indicates that the child is denied power because power is seen as too much of a responsibility.

Freedom:

Freedom is constructed through the system of law and the system of marks. A person can, through law and social practices, have or not have freedom.

Freedom of Mind:

In the context of looking at rights as movement, this means that there is a personal responsibility to create a change of the system of law and the system of marks by not allowing the mind to be fixed to the matter.

Freedom of Matter:

In the context of looking at rights as movement, this means that there is a personal responsibility to create a change of the system of law and the system of marks through a reallocation of resources from the master norm to women, children, and people of color until there is no master norm.

Being Free:

When a person is able to live without the certainty of the system of law and the system of marks. Being Free is when a person can live as a human and not as a fixed identity based on social hierarchy.

Hegemony:

Describes the social position of the group that can rule over others because they, in relationship to others, have disproportional human, organizational, and economic resources.

Hyperreal:

The fantasy based on an ideology of social hierarchy that the system of law and the system of marks together make real.

Lack (void, emptiness):

A lack is what is not at the same time as it is a void and emptiness. A lack is what is imagined to be incomplete in relationship to what is imagined to be complete.

Master Norm:

The structural description of the group white-adult-men created through a disproportional access to human, organizational, and economic resources in comparison with women, children, and people of color who individually and jointly are disproportionally excluded from those resources. This disproportional allocation of resources is upheld and maintained through the system of law and the system of marks.

Minority:

This phrase is borrowed from Colette Guillaumin. Minority is everyone who has less.

Object:

The result of not having enough power to prevent someone from using one's body as a sign open for interpretation, an interpretation that serves the interpreter.

Rights:

The way a person has been made less, less-than-human.

Descriptive:

Descriptive rights are when a belief in something also means that what is believed in is treated as a fact and actually existing.

Normative:

Normative rights are when a belief in something also means that what is believed in is treated as a fact and, when this fact cannot be found, it has to be created so that it can be found.

Functional:

The process of making something appear as descriptive or normative.

Motion:

To not be paralyzed by the belief in rights as descriptive and normative.

Movement of Mind:

To choose to dis-identify and to detach from the master norm.

Movement of Matter:

To move human, organizational, and economic resources away from the master norm.

Move to the Collective:

To identify and attach with the people the master norm makes into objects and to choose to reallocate human, organizational, and economic resources from the master norm to the people that the master norm makes into objects.

Move to the Individual (individual here means the specific):

To take the perspective of the specific groups that the master norm makes into the hyperreal identities of women, children, and people of color. To look at the process of objectification from the different specific perspectives that exist when the master norm makes those groups into objects. The objectification process is different for different groups, which is how groups become different.

Subject:

To have the power to prevent someone from using one's body as a sign open for interpretation, an interpretation that serves the interpreter.

System of Law:

The codification of the belief that there is something descriptive that justifies the violence of objectification through the master norm. It is the codification of the belief that there is something normative that authorizes the violence of objectification through the master norm.

System of Marks:

The belief that what can be classified according to bodily marks also has factual meaning by nature. Nature is also where the questioning has to end; it is where the belief cannot be questioned and must be treated as a fact.

Will:

The personal responsibility to expand the mind beyond the constraint of the matter.