

Child Labour in the Global Human Rights Regime

A POLITICAL ECONOMY PERSPECTIVE



Paul Close

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BY

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INVESTOR IN PEOPLE

To Amber Kimi and Christopher John

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Preface

the emergence of the market as our dominant social paradigm brought about a revolutionary transformation in the art of government. Again quoting Foucault, 'population now represents more the end of government than the power of the sovereign; the population is the subject of needs, of aspirations, but it is also the object in the hands of the government, aware, vis-à-vis the government, of what it wants, but ignorant of what is being done to it' [Foucault, 1979, p. 100]. It is this ignorance, stemming from a world pulled over the population's eyes that blinds them from the truth of their enslavement, [which] represents the other side of disciplinary power's coin. This ignorance, this blindness facilitates the population's obedience to the state, its docility in the face of power. In its traditional role, compulsory schooling targets the consciousness of each individual that comprises the population in order to maintain this obedience grounded in ignorance. This renders the paradox of the traditional disciplinary role of schools more heinous, for at the same time that its processes aim at enslaving us to the market, schools strive to blind us from the truth of this enslavement by convincing us that we are free. For example, we never learn that we are a market society. Schools teach us that we are a democratic society. We are led to believe that democracy represents our dominant social paradigm, not the market.

(Gabbard, 2004, pp. 82–83)

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Chapter 1

Child Coverture

the legal tradition of ‘coverture’ encompassed the idea that both women and children were the property of a husband and father (Quinter & Markowitz, 2023, p. 1927)

as marital coverture has largely disappeared, child coverture persists (Dailey & Rosenbury, 2021, p. 84)

The Supreme Court of Missouri [...] wrote in 1949 that ‘[i]t is as repellent to our present-day thinking to regard a child as the chattel or servant of his [*sic*] parent as it is to regard a wife as the chattel of her husband’. [Still, there are] many ways that children remain subject to the prerogatives of their parents [whose] control over children continues unabated in the form of expansive parental rights. (*ibid.*, p. 94)

Child Labour in the Global Human Rights Regime is about child labour and human rights in *modern society* at the global level (see: UN, December 2022) [1.1] and in *modern societies* at the nation-state level. It is about child labour and human rights under globalization towards *a single global social space* (see: Close, 2014, p. 79, p. 164; Close & Askew, 2004, pp. 243–244; Close *et al.*, 2007, pp. 34–35) [1.2], and in societies represented primarily, but not exclusively, by the Member States and Accession Candidates of the Organisation for Economic Co-operation and Development (OECD), of which in August 2024 there were thirty-eight and eight respectively (see: OECD, 10 August 2024). The focus on the evolving relationship between child labour and human rights in modern nation-states, on the one hand, and in the emerging globalized social space, on the other hand, is not to ignore the relevance of the considerable resistance to globalization from outside and inside the OECD-centred social sphere of Western, or Westernized, economic, political and cultural influence.

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In *Child Labour in the Global Human Rights Regime*, the key analytical terms include ‘labour’, ‘child labour’, ‘human rights’ and ‘global human rights regime’ [1.3] (see: Chapter 3 of this book), and it is assumed that it will help the reader to make sense of and appraise what is written if these terms are clearly and unambiguously defined. A ‘good definition’ (Bickenbach & Davies, 1996, p. 93) in each case will allow child labour, for instance, to be readily identified as a particular type of labour in general; will allow labour in general to be distinguished from all other activities; will allow child labour to be recognized, analysed and understood in relation to other types of labour, such as adult labour; and will allow child labour to be usefully examined in relation to a range of other matters, such as human rights. With these considerations in mind, a *good definition* of child labour would presumably have been useful to Franziska Humbert (a policy advisor on labour standards with Oxfam Germany and a research fellow at the University of Zurich) in her study of *The Challenge of Child Labour in International Law* (Humbert, 2009), where she ‘explores the status of child labour in international law’, and in particular in relation to ‘the various UN and International Labour Organization (ILO) instruments’ (*ibid.*, Abstract). Humbert exposes, she claims, ‘the weaknesses of the current frameworks installed by these bodies to protect children from economic exploitation’; and, *after assessing the extent to which* ‘trade measures such as conditionalities, labelling and trade restrictions and promotional activities can reduce child labour, she suggests an alternative legal framework which takes into account the needs of children’ (*ibid.*, Abstract).

She introduces Chapter 1 on ‘The Problem of Child Labour’ by saying that she ‘presents the main facts about child labour’; that she ‘starts by defining child labour, outlines its current forms, explores the statistics on child labourers worldwide and examines the causes of child labour’; and that she ‘concludes by developing possible strategies for combating child labour, taking into account the factors causing child labour’ (*ibid.*, p. 14).

She then goes on to argue:

It is part of the problem of child labour that to treat all work done by children as equally unacceptable means to confuse and trivialise the issue. Children do a variety of work in widely divergent conditions. But age limits differ from activity to activity and from country to country. Many societies, especially poor rural ones, do not necessarily view child work as ‘bad’, even at an age of eight or nine years. This is partly due to the fact that, in many societies, an apprentice of eight or nine years is not considered as a child. [Ideas] concerning the rights of children are dependent on the prevailing image of childhood, and when that image changes, the ideas about the rights of the child also change. Therefore, to understand the problem of combating child labour one has to become aware of the relativity of the notions of ‘childhood’ and ‘child labour’, although the complete analysis of the complex relationships between the social and cultural context

and children's rights in different backgrounds is beyond the scope of this work. (*ibid.*, pp. 14–15)

In other words, Humbert decided after all not to define 'child labour' because it is too difficult a 'part of the problem of child labour'; and because, in particular, it is too difficult to take into account and cut through 'the relativity of the notions of "childhood" and "child labour"' (*ibid.*, p. 15). But, in the absence of a definition of – of attaching a clear meaning to – *child labour*, it is difficult to know for sure what her book, her analysis and her conclusions are about.

Despite her failure to define – to specify the conceptual boundaries around – child labour, Humbert claims that 'around the world [over] 200 million children can be regarded as child labourers' (*ibid.*, Abstract), prompting the question: according to which notion, if any, of 'child labour' are there at least 200 million child labourers in the world? What about according to the ILO's notion? The ILO says:

The term 'child labour' is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to [their] physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and/or [that] interferes with their schooling by depriving them of the opportunity to attend school, [by] obliging them to leave school prematurely, or [by] requiring them to attempt to combine school attendance with excessively long and heavy work. (ILO, 29 July 2024)

Or, instead, what about according to UNICEF's notion? For UNICEF, *child labour* 'refers to work that children are too young to perform or that – by its nature or circumstances – can be hazardous'; and, in 'its most insidious forms, [child labour] can amount to slavery'. *There are places in the world where children are*, for instance, 'forcibly recruited into armed conflict, used in the production and trafficking of drugs, or offered into prostitution' (UNICEF, 11 July 2024) (see: Chapter 4 of this book). The problem, however, with the ILO's and UNICEF's definitions of *child labour* is that they are difficult to *operationalise*, not only for quantitative measuring purposes but also for any data gathering, analytical, observational or any other purpose, this being a problem that extends beyond the ILO, UNICEF and their *child labour* notions.

Fortunately, in *Child Labour in the Global Human Rights Regime*, child labour statistics receive some attention, but are of only secondary (support) interest in comparison with the main focus, this being the substantive social (political, economic and cultural) relationship between child labour and human rights in modern nation-states, on the one hand, and in the emerging modern globalized society, on the other. For the purpose of examining *child labour in the global human rights regime*, labour is viewed as a *productive activity* (see: Bueno, 2021; Marx, [1867] 1990; Smith, Adam, [1776] 1999). *Labour* is defined as that activity which produces, or creates, items that are, have been, can be or could be

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exchanged, sold or bought on *the market*, whether directly or indirectly (by way of a medium of exchange). *Child labour* is children's productive activity, wherever it is performed; and forced labour is coerced, or compulsory, productive activity. Slavery (see: UNICEF, 11 July 2024) entails both the forced labour and the ownership (whether of the *de jure* kind or of the *de facto* kind) of the slave. All slaves are owned, if only *de facto* owned; and all slaves are forced by their owners to labour. Likewise, *good definitions* will allow *human rights* to be viewed as a distinct type of rights that is not to be confused with other types, such as 'labour rights', 'children's rights', 'women's rights' and 'animal rights'; and subsequently to be substantively related to both these other types of rights and a range of other matters, such as child labour.

Ilias Bantekas and Lutz Oette mention in their account of *international human rights law and notions of human rights* that the 'term human rights is frequently used as if it were self-explanatory' (Bantekas & Oette, 2016a, p. 9). But not always! In its 2016 *human rights handbook for Parliamentarians*, the Inter-Parliamentary Union (IPU) does not use the term *human rights* as if it is self-explanatory, but instead expounds a definition, beginning with: 'Human rights are rights that every human being has [because they are] inherent to all human beings' (IPU, 2016, p. 19), an idea which has been similarly and widely expressed elsewhere, including by the United Nations Office of the High Commissioner for Human Rights (OHCHR), according to which:

Human rights are rights we have simply because we exist as human beings – they are not granted by any state [*sic*]. These universal rights are inherent to us all [...]. The principle of universality of human rights is the cornerstone of international human rights law. This means that we are all equally entitled to our human rights. This principle, as first emphasized in the [Universal Declaration of Human Rights (UDHR), as adopted by the UN General Assembly in 1948] is repeated in many international human rights conventions, declarations, and resolutions. (OHCHR, 14 August 2024)

Here, the OHCHR is saying that human rights are not so much granted at the nation-state level, such as by individual member states of the OECD, as at the global level by the UN, through, for instance, the Universal Declaration of Human Rights (UDHR), which, together with the International Covenant on Civil and Political Rights (ICCPR; or CCPR) and the International Covenant for Economic, Social and Cultural Rights (ICESCR; or CESCR) 'make up the International Bill of Human Rights' (*ibid.*). It is because human rights are granted above the nation-state level, and so at the global level, that they are 'rights [to] which all human beings are entitled' (Australian Human Rights Commission, 13 August 2024); and so rights that are and can be 'enjoyed by all people, no matter who they are or where they live' (*ibid.*); or, that is, *universally* (see: Endnote 1.1) At the same time, while human rights may be granted and enjoyed universally in

principle under international human rights law (OHCHR, 14 August 2024), what about in practice? What about actually, concretely in people's everyday lives?

The IPU draws attention to these questions and hints at possible answers in its *human rights handbook* when it says that human rights are a set of 'individual and collective rights laid down' not only in 'international law' [1.4] [1.5], but also in 'State constitutions' (IPU, 2016, p. 19 Human rights are *entitlements* that are *enshrined* not only in 'international human rights norms', but also 'recognised by sovereign States and enshrined in national legislation' (*ibid.*, p. 20). The IPU adds: 'Governments and other duty bearers are under an obligation to respect, protect and fulfil human rights', and these obligations 'form the basis for legal entitlements and remedies in case of non-fulfilment' (*ibid.*, pp. 19–20; see also: *ibid.*, pp. 31–40). It is because, or in so far as, human rights are enshrined not only (remotely) in international law at the global level, but also in *domestic law* at the nation-state level that these rights can be experienced and used directly and concretely by people in their everyday lives. Or, that is, when, but only when, nation-state governments (along with other state agencies, such as courts, at the nation-state level) *become obliged to respect, protect and fulfil* (*ibid.*, p. 19) human rights, then these rights *become empowering* for people. Human rights are about power. Nation-state governments have the power to include or not to include global-level human rights in nation-state law. By not including them in domestic law, the state at the nation-state level retains and can use the power it would otherwise lose. When nation-state governments include human rights in *domestic law*, then those for whom the rights are intended will be, it is argued, *empowered* by the rights, and will be able to use the power they acquire in their relationships with the state.

Human rights, the IPU argues, 'define relationships between individuals and power structures, especially the State'; human rights 'delimit State power and, at the same time, require States to take positive measures [which will ensure] an environment that enables all people to enjoy their human rights' (*ibid.*, p. 19). Indeed, the 'idea of human rights has driven many revolutionary movements for empowerment and for control over the wielders of power, [over] governments in particular' (*ibid.*, p. 19). It is a widely held assumption that *human rights are empowering*, as reflected in what the OHCHR has said about them. For the OHCHR: 'Empowerment rests on the promotion and protection of people's ability to claim their human rights' (OHCHR, 13 August 2024, p. 3); 'Empowerment requires securing civil and political rights as well as economic, social and cultural rights' (*ibid.*, p. 3); and the 'promotion and protection of human rights is about empowering people to stand up for themselves and for each other, for equality, and for inclusive societies' (*ibid.*, p. 1; see also: *ibid.*, p. 6). The OHCHR has argued: 'People are empowered when they are able to claim their rights and to shape the decisions, policies, rules and conditions that affect their lives' (*ibid.*, p. 3); and, when people 'can exercise their human rights, they can stand up for themselves and for each other, [this being because] they are empowered to shape the decisions that impact their lives' (*ibid.*, p. 1).

In 2012, the UN General Assembly established (resolution 67/290) the UN High-level Political Forum on Sustainable Development (HLPF) (UN, December 2022). The HLPF is the main UN 'platform on sustainable development and it

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has a central role in the follow-up and review of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs) at the global level' (*ibid.*). The General Assembly mandated the Forum to meet 'annually under the auspices of the [UN's] Economic and Social Council [ECOSOC] for eight days', and 'every four years at the level of Heads of State and Government under the auspices of the General Assembly' (*ibid.*). In 2019, the OHCHR anticipated the Forum's meeting of that year in the following way:

At the [HLPF], governments will assess progress in achieving empowerment, inclusion and equality, as part of the SDG implementation review. The HLPF will also review progress in achieving five SDGs: education (SDG4), decent work (SDG 8), equality (SDG 10), good governance, peace and justice (SDG 16) and global partnership (SDG 17). *All of these SDGs are closely linked to human rights, including both economic, social and cultural rights and civil and political rights. A wealth of human rights resources built up within the human rights system at national, regional and global levels are available to guide states in empowering people and ensuring inclusion and equality through their implementation. Education is critical to empowerment, inclusion and equality, unlocking human potential and achieving social transformation. The right to education means that every person is equally entitled to free, quality, inclusive education without any kind of discrimination.* Minimum standards of adequacy, accessibility, availability, and appropriateness of education for all, need to be guaranteed by the state as part of a commitment to equality. (OHCHR, 13 August 2024, p. 8, *emphasis added*) (see: Chapter 2 of this book)

Here, the OHCHR singles out *education*, and therefore *the right to education*, as being *critical to people's empowerment* – which, if so, might be taken to mean that the right to education empowers, or should empower, children (see below on this issue) – *the right to education* having been included as a global-level human right in the UN's Convention on the Rights of the Child (CRC). The CRC was adopted by the UN General Assembly in November 1989, came into force in September 1990 (OHCHR, 1989; UN, 1989), and as of August 2024 had 196 State Parties, having been ratified by all UN Member States except the United States (which had signed but not ratified the treaty), plus Cook Islands, Niue, State of Palestine, and Holy See (UNTC, 03 August 2024).

It appears that the CRC's State Parties have agreed to, among other things, 'recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, [will], in particular: Make primary education compulsory and available free to all' (OHCHR, 1989, Article 28). It seems also that the CRC has achieved almost complete global-reach subscription at the nation-state level, and that therefore *the right of the child to education* has become not only universal in principle, but also almost universally enjoyed in practice. On the other hand, the issue arises of whether this particular

human right is empowering, at least for those primary-age children who are compulsorily required to attend school. The question arises: does compulsory education undermine the empowerment prospect of the right to education at least for the children who under the CRC are forced in practice to engage in *primary education* – or, that is, in *primary schooling*, including primary home schooling? In the United Kingdom, for instance:

You can teach your child at home, either full or part-time. This is called home education (sometimes ‘elective home education’ or ‘home schooling’). If your child is currently at school, you should tell the school if you plan to educate them at home. The school must accept if you’re taking your child out completely. They can refuse if you want to send your child to school some of the time. If your child is attending school because of a school attendance order, you must get permission from your local council before you can educate them at home. You must make sure your child receives a full-time education from the age of 5, but you do not have to follow the national curriculum. The council can make an ‘informal enquiry’ to check your child is getting a suitable education at home. They can serve a school attendance order if they think your child needs to be taught at school. (UK Government, 14 August 2024)

If anything, does compulsory schooling empower others, and only others, such as those *individuals and collectivities that have rights* (IPU, 2016, p. 19) in relation to the children concerned; and/or, does it empower certain social institutions (such as schools), state agencies (such as governments and courts) or other bodies that have rights in relation to the children. Whatever the answers here it is clear that human rights (a) are universal if, and only if, they are enshrined in law, and first of all in international human rights law; and (b) are empowering if, and only if, they can be *claimed* (OHCHR, 13 August 2024, p. 3) and *exercised* (*ibid.*, p. 1) in practice by being enshrined in law at a level where the necessary, or facilitating, *sovereign power* and control (see: IPU, 2016, p. 20; Kaul, 2011, p. 12) and *jurisdictional authority* (or *competence*) (see: IJRC, 18 June 2024; Pegram, 2014; Ryngaert, 2015; Shaw, 2021; Tokdemir, 2023) are present. As outlined by Cedric Ryngaert (Professor of International Law, Utrecht University):

the concept of jurisdiction as exercised by States (or regional organizations such as the European Union) is concerned [...] with the reach of a State’s law [...]. Jurisdiction is an aspect of a State’s sovereignty, as the right to prescribe and enforce laws is an essential component of statehood. In the classic Westphalian [1.6] understanding, this right has been limited to a State’s territory, a limitation that at the same time ensures that no State intervenes in another State’s affairs [...]. Exceptions that allow for limited extraterritorial jurisdiction have been carved out, and, moreover,

the territoriality principle has been construed rather liberally [...].
(Ryngaert, 2015, p. 50)

The state (or state agencies, including any courts) through which a nation-state or other geo-political entity, such as the EU and perhaps other regional organisations, is governed, exercises jurisdiction as an aspect of its sovereignty over its territory (in accordance with the principle of *jurisdictional territoriality*) and perhaps to some extent beyond, or extra-territorially. Human rights are universal (in the sense of being enjoyed, or available, to everyone everywhere, at least in principle) when they are enshrined in law at the global level and are empowering when they can be *claimed* and *exercised* in practice by being enshrined in law at a level where the necessary *sovereign power* and control and *jurisdictional authority* (or competence) are present, which means for the most part, if only for now, in law at the nation-state level (see: IPU, 2016, pp. 19–20), but which is not to ignore the part played by the International Criminal Court (ICC) and the UN’s International Court of Justice (ICJ) at the global level (see: ICC, July 2019; Kaul, 2011; McDermott, 2019; Tokdemir, 2023).

Human rights, which might otherwise, and perhaps preferably, be called *human entitlements* (see: OHCHR, 13 August 2024, p. 8; IPU, 2016, pp. 19–20; OHCHR, 14 August 2024; Australian Human Rights Commission, 13 August 2024) are rights in law, legal rights, *de jure* rights. There are no *de facto* human rights. And, human rights are empowering if, but only if, they are legal rights in geo-political formations with the sovereign power and jurisdictional authority that are required for their use, exercise and empowerment in practice, in everyday life. The value of human rights in practice can be illustrated with reference to what Ilias Bantekas and Lutz Oette have said about *the human right to life* under the heading *human rights and international criminal justice* as follows:

Human rights rules are multifaceted. The right to life, for example, encompasses not merely a negative obligation on *the state* to refrain from arbitrarily using lethal force but also a positive obligation to prevent and punish those (including non-state actors) unlawfully taking the life of another. (Bantekas & Oette, 2016b, p. 682, *emphasis added*)

According to the IPU, the ‘right to life is the most fundamental human right and cannot be subject to derogation even in war or in states of emergency’ (IPU, 2016, p. 119). While the human right to life cannot be suspended or suppressed, lessened or weakened under any circumstances in principle, it can be and is in practice, even by *the state*. The principle of the human right to life is firmly established in international law at the global level. As the OHCHR mentions, the right to life is recognised in Article 3 of UDHR and Article 6 of the CCPR, the latter declaring that ‘the inherent right of every person to life “shall be protected by law”’ and that ‘no one shall be arbitrarily deprived of life’ (OHCHR, 15 August 2024a). In accordance with Article 2 of the UDHR, Articles 2 and 6 of the CCPR, and ‘pursuant to several other United Nations declarations and