

THE RIGHTS TO PROTECTION OF CHILDREN AND VULNERABLE ADOLESCENTS

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ABSTRACT

This article presents in a succinct form the relevant theories used in an investigation currently in progress in Bogota De La Salle University, in collaboration with RELAL (Lasallian Region of Latin America) which sets out to ascertain and describe the way in which the rights to protection of children and vulnerable adolescents are guaranteed in three public institutions of education in Bogota and Cundinamarca, Colombia. One of the basic pieces of evidence to be analysed will be the Manual of Behaviour (or Code of Conduct) of each establishment, in order to determine whether these rights can be seen to be contained in them and in what manner.

Key Words: vulnerable children (boys and girls) and adolescents, rights to protection, school, manual of behaviour.

Introduction

The study of and reflection on the child population in conditions of vulnerability in school communities leads to a revision of ideas and practices which aim to ensure the rights of protection and are designed to mitigate the damage cause to those children.

The article will explore the situation relating to childhood and the concept people have of it at the beginning of the 21st century, in order to understand its relationship to the rights of the child (especially the right to protection) in the school environment. Consequently, this text uses the concepts of vulnerability, protection and rights in the framework of their legal status, based on a social agreement and a basic ethic, which promotes the development and the enjoyment of happiness by all the members of a society.

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1. *The situation regarding childhood in the 21st Century*

To view human beings as social beings means to place them in a context of interaction with other persons. This interaction is understood as a complex set of emotions, feelings, attitudes, symbols, signs and languages, all of which interact with one another and thus allow us to live in a variety of scenarios, using enough mutual respect and acceptance to create the organised system we call society. Society enables the people that constitute it to establish different kinds of relationships based on a series of ideas which change throughout the course of history. One of these ideas is that of childhood, which appears for the first time in the modern era, and which views the child as having his/her own characteristics belonging to a specific period of life during which children develop and mature mentally and physically, given the right conditions of protection and care.

Throughout history, society has constructed different approaches to childhood. For example, according to the historian Francis Philippe Ariés (1987), prior to the modern era children were considered to be adults in miniature, and as soon as they were able to act independently they were expected to take part in all adult activities. Until then, it was felt necessary to isolate children from the adult world while turning them into complete human beings through education and socialisation, as Rousseau describes in his book *“Emile, or Education”*. For this purpose, social institutions were developed to provide education and corporal discipline by isolating children in schools, colleges and hospices (Varela y Álvarez. 1991, p. 58). As a result, it was assumed that childhood was the time of greatest fragility for a human being.

During the 20th century, childhood began to be recognised as having its own characteristics and needs, and so changes were accordingly introduced into the areas of politics, law and society in order to give official weight to this recognition. In this modern era, children became subjects to be protected on account of their fragility, innocence, lack of knowledge or experience of life. They were seen as persons, human beings, subjects capable of their own acts, and just like adults they were recognised as having the social and civil rights of personal identity, dignity and freedom. For that reason, there took place a consolidation of organisations, and social conventions appeared, such as UNICEF and the *Convention on the Rights of the Child* (CRC).

When we come to the 21st century, social changes, particularly in the way in which we view individuals, have been accelerated by globalisation and neo-liberalism. Studies made by Narodowski (1999), Carli (1999) and Postman (1999) among others, have supported the argument that widespread communications media and digital technology have unleashed a series of new relationships between adults and childhood, just as they have produced developments in the world of childhood involving new ways and codes for understanding the world and surviving in it. In the same way, the focus on childhood by commercial interests has turned children into consumers, as can be seen by the increase in the range of high-tech toys and latest gadgets on offer to them.

The information that children can access through communication technology outstrips all they can learn in the classroom, and it gives them knowledge of the world that is limitless and without restrictions. It offers children experiences of life at the same level as adults, and this gives them a shared identity and shared characteristics with adults. Their minds and bodies belong to the digital world, they no longer express their feelings and they no longer inspire affection. This produces what Narodowski has called “hyper-realized childhood” (virtual children). This Argentine researcher has indicated that for such hyper-realized children it is no longer a question of just waiting to grow out of childhood and become a complete adult. On the contrary, “they are shaped by the need for immediacy

provided by a media culture offering immediate satisfaction: 'I do not know what I want, but I want it now.' Their initiation into adulthood has been diluted by anticipation through hundreds of media experiences". (1999, p. 47).

On the other hand, Narodowski goes on to say that there is also an "under-realised childhood", which is marginalised and limited by socio-economic circumstances and dominated by situations which force children to use their own strategies for survival in face of the realities of life, without considering the consequences. "Children of this sort of are independent and autonomous, because they live on the streets and start working at a very early age. They are young people of the night, who have developed their own behaviour codes to give themselves a certain amount of economic and cultural independence" (1999, p. 51).

The consequences of this 'virtualising' of childhood are evident in instances of isolation from social interaction, loss of a sense of identity, living in an artificial world, seeking speed as a result of digital technology, the desire for immediacy and the uncertainty as to how to achieve it. This has taken away individual awareness and left aside the ideological and social models of behaviour which went with human development in the past and which in one way or another made individuals feel part of a group, of a society, of a locality, aware of where they came from and where they were going. This state is further reinforced by external factors that are economical, political, cultural and social, and which give the human being an even greater degree of vulnerability (Bauman, 2008, pp. 19-25).

For this reason, the Convention on the Rights of the Child laid down as one of its principles the priority of the interests of the child. It is the duty of families, of the State and of society to ensure the full application of the rights of children, the right to development, the right to survival, the right to participation and the right to protection (UNICEF, 1998).

2. *Human rights and the Rights of the Child*

Ethics presents itself as a way of regulating the infinite number of individual actions and reactions which answer human needs for the existence, durability and preservation of the species inherent in human activity. Ethics is here understood as the combined traits and modes of behaviour which make up the character or identity of a person or of a community. These modes of behaviour are taken as rules or norms, and they are part of a universal agreement on what is essential for living happily and peacefully in an ordered society. As Adela Cortina (1992) expresses it, they form a group of principles which guide human actions so as to promote the good of all, and on which most human communities can agree.

These rules or norms are agreements which have been generated in the course of time as a result of a collective struggle in a search for well-being and the good of all rather than just of a few. They are universal principles because they take the whole of humanity into account and they are supposed to be incumbent on all and applicable to every individual. "To be fully human, every individual must be free, must seek equality for all, must be in solidarity with and have respect for other people as well as for him/herself, must work for peace and the development of nations, must preserve the environment and pass it on to future generations in as good a state as it is received..." (Cortina, 1992). It is in this interaction that morality has an important role to play, because the search for well-being must be thought of in collective rather than just individual terms. These rules must be interiorised and come from within a person, if they are to be appropriated and reveal an autonomous individual capable of

imposing on him/herself norms that specify him/her as human because they are valid for all humanity. Cortina also says, basing himself on Kant, that the human being must be ready to accept these rules as principles, in the knowledge that other people accept them likewise, because it is thanks to these basic principles of behaviour that there is order in human activity through which the various categories of good and evil, correct and incorrect, permissible and not permissible can be defined within a moral code and be agreed through interaction (Cortina (1992).

‘Human Rights’ emerge in the course of this continual to-ing and for-ing of human interaction and the struggle for a more just society manifesting human ethics and morality. They emerge as part of the basic ethics of human social behaviour that is pleasing and conducive to well-being. They first came to the fore in the age of Enlightenment and were proclaimed during the French Revolution in the course of intellectual, political, philosophical and artistic disputes aiming to dispel the darkness of humanity through the light of reason. According to the thinkers of that period, human reason was able to combat ignorance, superstition and tyranny and so build a better world. They wanted to abolish privilege and hence equality was one of the basic foundations for the modern theory of human rights.

Human rights can be classified according to three phases of development. The first phase emerged in the 19th century in the form of civil and political rights based on “liberty” which provided the legal and ethical basis for the guarantees of human dignity. The second phase, in the 20th century, saw the emergence of collective economic, social and cultural rights founded on “equality”. The third phase is the most recent and involves the right to solidarity in response to the need for co-operation between countries, in order to stimulate progress and raise the standard of living of all populations. It is based on the idea of “fraternity”.

The essential foundation of these rights lies in the recognition and acceptance of the liberty, equality and dignity of individuals because, as Rousseau says, “all men are born free men by nature (1996, p.12). Minority groups are formed by the interaction of human thoughts, ideals, feelings, passions, communications, emotions, customs and rationalizations. As Habermas indicates (2008), “...united by ties of blood and cultural identities, with a shared belief in a common origin and a shared identification as members of one and the same community, these communities mark themselves off from their surroundings” (p. 108). They determine it and specify it. However, “when a majority culture is politically dominant and imposes its way of life, it disrupts the liberty and effective rights of citizens with a different cultural origin. *As a result, the basic rules of behaviour lose their meaning and the members of the minorities who are affected risk being alienated, ill-treated, attacked or wounded. In other words they are vulnerable.* This applies to those political questions which affect the self-understanding and citizens’ identity”⁴ (p. 123).

In relation to the above, the International Convention on Human Rights (1948) defines rights as faculties, prerogatives and fundamental liberties that are inherent or innate in human beings, by the simple fact of being human, without regard to age, religion, race, sex or social condition. This fundamental quality concerns the way in which people conceive the art of living, thinking about happiness and the limits of activity, regulating customs in society, because in this way it makes sense to limit the abuse of power, to establish limits and rules of interaction between people who make up the communities, so that, little by little, they develop into organisations which can be called societies as defined by Rawls: “an association of individuals, more or less self-sufficient, who co-operate with one

⁴ Our italics.

another, recognising certain rules of conduct as being obligatory in their relationships and according to which the majority act” (1979, p. 19).

Human beings and citizens become fused together. The former are characterised by the desire to satisfy needs and to be happy; the second are characterised by the feeling of being identified as members of a society in which they hope, by their own efforts and risk, to realise the plan for a happy life, to be free and to feel themselves equal in conditions with the others and as having political standing in that society. Consequently, there is a need to develop an organised grouping under a political system in which “each member is part of the whole [...] and in which there is a social contract to defend and protect the persons and the possessions of each of the members” (Rousseau, 1996, p. 21). This will guarantee their liberties so that they can live together and achieve their goals, directed by a moral consciousness, in which strength is not the basis of authority and in which there is a great difference between submitting to the multitude and ruling a society.

This transformation manifested itself during the Renaissance as a phase marking the transition from feudalism to capitalism and characterised by confusion, power, slavery, inequality and individualism. The consolidation of constitutional democracy in the State and the recognition of fundamental rights gave rise to the idea of man as a subject, occupying a preeminent place in social and political life so that the State was obliged to protect individual rights (Linares, 2011). This transformation was founded on the theoretical construction of social law, so that Kant was led to say that the purpose of the State was to create and establish law, using precisely the expression “state of law”, which in concrete terms meant the liberal state where the rights of man were guaranteed.

“By making our social pact, we have given life and existence to the body politic. Now it is a question of giving it movement and willpower through the medium of legislation, since the initial act by which this body was formed and unified in no way determines what it needs to do to be conserved” (Rousseau, 1996, p. 58). The need society has for someone to govern it converts the State into a public person, a sovereign body that holds the interest of the people above its own and is thus called a republic. Such a development requires the institution of laws or norms which establish the boundaries between the governing and the governed so as to prevent abuses. This is the fundamental legitimacy of the social state of law, that is to say it guarantees the rights, the freedoms and the development of the duties of each human being who belongs to the republic in equality of conditions and justice. The body of laws and norms of a Republic or State are enshrined in a charter called The Constitution.

This development in the theories that are the basis of human rights and their implementation in law and politics were born in mind when considering those sections of the population that are vulnerable in relation to those rights, such as women, minorities and children. Throughout the 20th century, and specifically in 1924, 1948 and 1959, as a result of international agreements, the General Assembly of the United Nations adopted a series resolutions concerning the rights of children, which became more than just a statement of norms when they were turned into a plan of action aimed at the recognition of the basic needs of children to guarantee them dignity of life. Initially, there were just five classes. These then became seven, until finally the existing convention was produced, based on the responsibility humanity has of providing its children with the best that it has to offer. In 1989, following meetings and discussions on the rights of the child, they approved the International Convention on the Rights of the Child, recognising the child as a subject with full rights rather than a subject with needs.

To ensure a more complete presentation of the rights of the child, UNICEF (1998) organized them into the four following groups:

- **Rights of survival:** including all related matters; not just the right to live, but the right to live with dignity.
- **Rights of development:** including physical, mental, social, moral and spiritual development.
- **Rights of protection:** including two kinds of protection. Firstly, it involves the prevention of all violations of children's rights by protecting them from dangers and adverse circumstances. Secondly, it involves restoring the rights of those who have been wounded and preventing any further infringements of their rights.
- **Rights of participation:** Children can and should be free to act and to express their thoughts and attitudes, to take decisions, to be listened to and taken into account.

To sum up: guaranteeing the rights of children means applying human rights to specific elements of the population who, in view their age and restricted development, should be given priority when it comes to devising strategies of development in society, and be protected by the constitutions and international agreements signed in this respect.

3. *The rights to protection: vulnerability, prevention and custody in school*

Vulnerability is a complex concept and hard to define. There is no universal definition for it because every community defines it according to its own needs and culture. We take as our starting point the view of the Economic Commission for Latin America and the Caribbean (CEPAL), which sees vulnerability as directly related to social inequality, so that it is understood economically and politically as a multidimensional process which is shown in the risk, or probable risk, that a family or community will be "wounded" (Busso, 2001). "It evokes the idea of fragility and defenselessness, which then adjusts itself naturally to the systems of social assistance. It thus becomes institutionalised as the right of someone else to decide, to attribute and to adjust the perception of the risk" (Durán & Torrado, 2007, p. 347). In the same sense, Arboleda (cited by Garzón Díaz in an article published in 2009 the *Revista Latinoamericana de Bioética*) indicates that vulnerability corresponds to the measure of the degree or level of exposure to damage or abuse for an individual or a social group, "...resulting in the fact that their status as autonomous personas is impaired or diminished". Among the conditions which increase the risk of vulnerability are: being a minor in terms of age, having some sensory handicap, suffering cognitive alteration or psychiatric disturbance, being confined in an institution, being pregnant; belonging to an ethnic minority, holding a different ideology or belief; being impoverished, a refugee etc. (Garzón, 2009).

To speak of protection in the context of vulnerability is to speak about a commitment to safeguarding against any damage whatever. According to Tejeiro, the Convention on the Rights of the Child expresses it as follows.

Protection is meant in two senses. Firstly it means to prevent any violations of rights and to protect children from risk and adverse situations so as to maintain their rights. This is based on the consideration that children suffer a greater impact from adverse conditions, whether economical, social, educational or emotional. It includes “the broad range of measures that fall to the human individual endowed with personality and potential, who by reason of age or special circumstances require the application of special or general means to guarantee the attainment of their life potential and the consolidation of the basic circumstances for developing their personality, based on the objective acknowledgement by others and the need to attain self-realisation (Tejeiro, quoted in Durán and Torrado, 2007, p. 13).

Tejeiro goes on to say that the second meaning of ‘protection’ refers to the restoring of wounded rights and avoiding any further wounding of them. That is to say, it means restoring to children the conditions necessary for their full development. The role of the State is crucial in this respect. The Convention lists 22 rights of protection and gives States the responsibility of intervening when these rights are violated by families or any other social entity (p. 49).

One of these other social entities is the school, and although all of these conditions of vulnerability may not be found in every school, they still contain children and adolescents who are suffering from one or other of these circumstances, and who consequently form a group that is vulnerable and capable of being wounded or damaged by existing situations or by a change in situations, internal or external.

The school as an organ of and as representing the State is a stage for public interaction and cultural socialisation, where rights need to be protected by providing the conditions for child development. The school functions as a state in miniature and needs a governing rule controlled by legislation in the form of the School’s Manual of Behaviour, which acts as a social pact, defining relationships, establishing boundaries, shaping behaviour, specifying recognition of who is part of the educational community, providing proper measures for justice, protection and assurance.

In the light of the above, the children attending a school as individuals with rights but also in situations of risk need to be recognised as a group who need to have their rights guaranteed, and the means for protecting and guaranteeing the restoration of their rights have to be established. Consequently, this miniature legal state must set up, in its official documents and especially in its Manual of Behaviour, structures which enable differentiated attention to be paid to this group in the school population, promoting effective strategies of daily interaction in the educational community.

Conclusion

The National Ministry for Education of Colombia defines vulnerable people as “those who are largely exposed to damage and are unprotected or helpless in the face of the threats that come from their psychological, physical and mental condition, or any other factor” (2005). In the light of this definition, we can say that children and adolescents come to our schools faced with various adverse situations which place them in a highly vulnerable position: children who are marginalised, who have been exploited and/or ill-treated, or who have grown up in violent or difficult circumstances. In one way or another, their rights have been violated, and this experience is reflected in their behaviour, in their feelings and in their thinking. One of the prime aims of the current study is to identify how their rights can be guaranteed in the school, especially their right to protection, by means of the school’s Manual of Behaviour and the practices it enshrines.

As a result of the above, various questions have arisen, as for example: What circumstances have to be kept in mind so as not to neglect the other children who do not fall into the category of vulnerable children and whose rights must also be guaranteed? ¿What arrangements does the school have in place in order to get to know its pupils so as to be able give suitable guidelines for promoting equality and justice in the school environment? To what extent will the school be able guarantee pupils' rights, especially the right to protection, with the aim of both restoring damaged rights and preventing future infringements?

It is our aim and intention to provide answers to these and other questions, once we have completed this study which is still in the phase of data collection.

References

- Álvarez -Uria, F., and Varela, J. (1991). *Arqueología de la Escuela*. Madrid: La Piqueta.
- Arent, H. (1993). *La condición humana*. Barcelona: Ediciones Paidós.
- Ariés, P. (1987). *El niño y la vida familiar en el antiguo régimen*. Madrid: Tauros Publishers.
- Busso, G. (2001). *Vulnerabilidad Social: Nociones e implicancias de política para Latino América a inicios del siglo XXI*, An international seminar on the different kinds of social vulnerability in Latin America and the Caribbean, Santiago de Chile, ONU-CEPAL-CELADE, December 2011.
- Bauman, Z. (2008). *Los retos de la educación en la modernidad líquida*. Barcelona: Gidisa Publishers
- Carli, S. (1999). *La infancia como construcción social y las miradas sociológicas sobre los procesos de socialización (1ra Edición)(Comp.)*. Buenos Aires, Republic of Argentina: Santillana.
- CEPAL Economic Commission for Latin America and the Caribbean, 2002, *Distribución del ingreso en América Latina 2002* United Nations, Unit for Statistics and Economic Projections.
- Constitución Política de Colombia. (1991). Republic of Colombia.
- International Convention on Human Rights. (1948), United Nations Organisation General Assembly.
- Convention on the Rights of the Child. (1989). United Nations Organisation General Assembly.

- Cortina, A. (1997). *Ciudadanos del mundo: hacia una teoría de la ciudadanía*, Madrid: Alianza Publishers
- Cortina, A. (1992). *Ética mínima: introducción a la filosofía práctica*; Foreword by José Luis L. Aranguren. Madrid: Publishers
- Durán, E., & Torrado, M. C. (2007). *Derechos de los niños y las niñas. Debates, realidades y perspectivas*. Bogotá D. C.: National University of Colombia.
- Garzón Díaz, F. A. (Septiembre de 2009). Aspectos bioéticos del consentimiento informado en investigación biomédica con población vulnerable. *Revista electrónica*, 9. Bogotá D. C.
- Habermas, J. (2008). *La inclusión del otro. Estudios de teoría política*. Barcelona: Paidós.
- Linares, P. (April 2011). *Cómo Surge y porqué se hace un estado laico en Colombia*. April2012. http://www.estadolaico.info/IMG/pdf/Ponencia_Final_Patricia_Linares_28-04-2011.pdf
- Martínez Boom, A., Noguera, A., & Castro, O. (1999). *Maestro, escuela y vida cotidiana en Santafé Colonial*. Bogotá D. C.: Sociedad Colombiana de Pedagogía.
- MEN (2005). *Lineamientos políticos para la atención educativa de las poblaciones vulnerables*. Bogotá D. C.: Columbia Ministry of Education.
- Naciones Unidas*. (2008). (United Nations: Departament Economic and Social Affairs, Population Division) January 2012
- Narodowski, Mariano. (1999). *Después de clase. Desencantos y desafíos de la escuela actual*. Buenos Aires: Novedades Educativas
- Postman, N. (1999). *O desaparecimiento de la infancia*. Rio de Janeiro: Graphia.
- Rawls, John. (1995). *Teoría de la justicia (Tr. Maria Dolores González)* Publishers: Fondo de Cultura. México.
- Rousseau, J. J. (1996). *El contrato social, principios de derechos políticos; (Tr. Andebeng-Abeu Alingue ; Foreword and notes by Víctor Florián Bocanegra*. Santafé de Bogotá: Panamericana Publishers
- Rousseau, J. J. (1970). *Emilio o la Educación*. Lima: Universo Publishers
- UNICEF. United Nations Foundation for Childhood, 1998, *Convención sobre los derechos del niño y sus protocolos facultativos*, Recuperado el 10 de marzo de 2012
- UNICEF. (s.f.). *UNICEF*. December 2011
<http://www.unicef.org/search/search.php?q=2007&hits=10&type=Main&navigation=%20sltopicsid:^472>

UNICEF United Nations Foundation for Childhood, 2005, *Estado Mundial de la Infancia 2006: Exclusión e invisibles*, New York, February 2006.

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UNICEF. (2011). *UNICEF*. February 2012

http://www.unicef.org/devpro/files/AOWC_2011_Main_Report_SP_02092011.pdf