Remarks for the Opening Session of the Beijing International Conference on the Protection of Children’s Rights

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The matters I would like to address briefly at this opening session concern the general nature of children’s rights and what might be the future effects on children and on society at large of our attention to children’s rights. To many people the idea of children having rights is mildly nonsensical. For those of us who take the idea seriously, there is need to clarify what that means to us before we engage in detailed discussion and analysis of particular rights in particular places at particular times.

In order to proceed, I must first disclose a basic assumption I am making concerning our attitude toward children. It seems clear from the history of childhood that concern for the welfare of children is one of the themes that appears with some consistency through the centuries. Child abuse, however, is not a new phenomenon. In the very recent past many social historians believed that maltreatment of children was the dominant and pervasive way that adults had historically related to children. There now seems to be a more balanced view which acknowledges the historical existence of child abuse in much the same way that the headlines in our newspapers today force us to acknowledge that abuse still goes on. I take it, however, that historical opinion also confirms our experience of everyday life—that most adults, especially parents, generally have tried to make children happy, healthy, strong, and protected from the hazards of the world. The nature and magnitude of these hazards and the ability of concerned adults to provide the wished-for protection of children

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have all fluctuated widely over time, but I make the assumption that there is little new in our effort to embrace a general concern for the welfare of children.

In the context of that assumption, it seems important to think about why we now speak of children’s rights in addition to or instead of the traditional subjects of child welfare and child protection. Are we repeating the view of our ancestors that children are our hope and our future, that they deserve our care because in so many ways they cannot care for themselves? Perhaps there is really no difference between a policy of child welfare and the concept of children's rights. If that is the case then our concentration on children’s rights only illustrates that there is a fashion or fad in semantics, as in other things, and that it is now fashionable to express our traditional concerns about children in terms of their rights. But that is not the only interpretation for a conference on children’s rights. It may be that our language of rights reflects that we are, in fact, committed to something new about children, something that can be distinguished from child welfare. I am myself strongly inclined to believe that the rights of children are not merely a way of expressing traditional child welfare policies, and I hope to use my time before you to outline some of the reasons for holding this belief and to propose a particular conception of children’s rights.

I would also like to suggest that the question of precisely which rights children should have is intimately connected to the matter of why we speak about the rights of children and that we cannot discuss either of these questions without at least making assumptions about the other.

The question of what we mean by children’s rights has three central requirements. The first requires that in dealing with the question of why we now discuss the rights of children, we must be careful to avoid thinking that the question is somehow peculiar to children. Of course it is not. All parts of our planet, East, West, North, and South, have been occupied by discussions of rights, including human rights, minority rights, women’s rights, patients’ rights, people’s rights, and the rights of indigenous populations. Some parts of the world are even confronting challenges in the form of animal rights. To a large extent, therefore, our question is, why is use of the term rights now so broadly popular?

The second requirement is historical in nature. It compels us to acknowledge that, at least in Western civilization, the importance of rights is not something our own generation has invented.
One of the things that contributed to holding the Roman Empire together, for example, was the grant of citizenship rights to many whom the Romans had conquered. Similarly, it would be fair to say that in Western Europe the society of the Middle Ages was structured, at least in part, on a complex relationship of rights between individuals and classes.

The third requirement is in the nature of a sense of proportion. Specifically, it seems that an emphasis on the rights of children, rather than on their protection and welfare, is still much less than pervasive. For example, a joint resolution currently before the Congress of the United States stresses the importance of children’s health but makes no reference at all to a child’s right to health. More importantly, even where the matter of rights is central as it is in the Convention on the Rights of the Child, the human rights treaty that is one of the themes of this conference, the focus is largely on rights to protection and welfare. Civil and political rights are only modestly protected, and rights connected to making decisions for one’s self, or autonomy rights, are almost entirely absent.

The fact that emphasis on children’s rights is part of a wider emphasis on rights, and recognition that the matter of rights has long been a part of at least Western social history both contribute to our understanding of the nature of children’s rights. Together they suggest that children’s rights are different from child welfare. They also suggest that there is indeed something new about the subject of our conference. This newness has to do with the basic rationale for the current focus on rights and with the ease with which we can see a place for children in that rationale. Its essence is linkage of children with certain other groups in society, groups which have been perceptively identified by one American writer, Professor David Trubeck. Looking at one of the historic functions of rights, Professor Trubeck notes:

The recognition of the importance of rights as a weapon against power and privilege has been the impetus of a long struggle in Western capitalist nations through which workers and others outside the status and property elites have sought to protect their welfare.  

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Here we are asked to recognize that the strong and powerful have seldom needed rights to advance their welfare. Trubeck suggests that in contrast, the welfare of the weak and vulnerable has urgently needed the weapon of rights. The truth of this observation is easily recognized. We can, for example, readily identify the struggle for civil rights in the United States, the quest for gender equality in much of the world, and the quest for self-determination of colonized people as fitting into this conception of rights as a weapon against power and privilege. Rights as a means for advancing the welfare of the powerless has become a near-universal concern that is not limited to Western capitalist nations.

Children are probably the quintessential example of the weak and the vulnerable; and it is, therefore, no surprise that they are now to be counted among those for whom this weapon of rights is becoming available. But it is the analysis of why rights are considered a powerful weapon that gets us closer to understanding the nature of children's rights.

Rights have the power to compel. If they are legal rights then the law and the legal system compel their respect. A legal system that compels respect may be a system of national law, or it may be the international legal order. In the case of the rights protected by the Convention on the Rights of the Child, the compulsion comes from both domestic and international law. If moral rights are in question, then the principles of a system of morality require respect for such rights. When someone has a right, he or she need offer no justification for its exercise. If a woman is denied employment on account of her gender, she need not explain why discrimination is wrong; she can simply claim the equality to which her rights entitle her. Conversely, no proof by the employer that discrimination would in some sense be a good thing in this case can deny her claim.

Rights in this sense are demands to be sharply distinguished from requests. They are demands that cannot be resisted. The government has a right to require military service and payment of taxes from its citizens. The summons to the army and the bill from the tax collector are not requests to serve if you have nothing else to do or to pay if you think you can afford it. Similarly, if a child has a right to something, he or she can demand that thing

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and need not merely request it or beg someone to provide it. To have rights in this sense is to be taken out of the class of persons commonly called beggars and those who depend on the mercy of others for their welfare. The Convention on the Rights of the Child\(^4\) represents a consensus in the international community that children are entitled to demand, not request, certain things from their own governments.

The relationship between children’s rights and child welfare can now be identified. The power of children to compel advancement of their welfare by the assertion of rights is an essential component of child welfare.

At this point, the question arises as to whether we really want to include children’s rights in our child welfare policies. Does it make sense to empower children to make the irresistible demands that are implied by their having rights? Before jumping to an answer, we need to acknowledge that in recognizing children’s rights we are committing ourselves to satisfying the demands encompassed by those rights. Since to assert a right is to present a demand that cannot be resisted, we who have power over children, whether we be parents, private citizens, or governments, must accept that our power is eroded by the arrival of children’s rights. To expand the power of children is also to shift power from the presently powerful, such as governments and parents, to the powerless, such as children. But this is generally true about the creation of rights and is highlighted as to human rights by developments in international law from the United Nations Charter in 1946 and the Universal Declaration of Human Rights\(^5\) in 1948 leading directly to the Convention on the Rights of the Child\(^6\) that will be placed before the General Assembly in 1989.

The widespread acceptance of a world heavily dominated by rights pivotally rests on the conception of what the world would be like without rights. It would be one in which we could make no demands on each other and only requests to which no one was obliged to respond. Each of us, because we cannot be totally self-sufficient, would depend for the satisfaction of our needs on the goodwill of others, on how they defined this goodwill, and whether they chose to exercise it. Some might see such a society

\(^4\) Id.
as a utopia. For most people, however, such a world is firmly rejected, in part because the goodwill, mercy, and benevolence that would be necessary to get on with life are not guaranteed to be present in all people, nor in any particular people all the time. As well, there is not sufficient agreement on what these ideals imply in terms of care for others. But more fundamental than the fact that we are not all saints and martyrs is the fear of living in a dismal society of beggars where no one possesses the human dignity that accompanies the entitlement to have basic needs satisfied and personality respected, a society where no one, in other words, has rights.

This same rationale supports children's rights. Without them, children are dependent on a supply of kindness and concern that both past and present demonstrate is too often in short supply. They must be entitled to demand things from us, and we must be required to respond. If, in the process, we lose some of our power, surely we and they gain by introducing our world's children to the experience of human dignity in the justified expectation that their experience will strengthen their capacity to respect the dignity of others.

In closing, it is worth emphasizing and reiterating that there is an international consensus that the Convention on the Rights of the Child and its cousins in international human rights law represent erosions of the power of governments and provide weapons for children to use to advance their welfare, in many cases against their own governments. This consensus recognizes that not even governments or political parties, (some would say "especially not"), always embody the mercy and wisdom required by children.

This international consensus grows measurably and significantly more influential from the fact that the international movement to achieve children's rights now has a strong Chinese voice within it that is expressed by this conference taking place today in Beijing.