

# CHILDREN'S RIGHT TO DEFEND THEIR WELL-BEING AND DEVELOPMENT

Bill Myers

This exploratory think-piece probes a few provocative issues raised by the conference topic: Children's Participation in Child Protection. It is occasioned by a theoretical question arising from practical field experience: What right do children have to independently defend their own best interests, as they see them, against not only the usual oppressors and exploiters, but also against putative government or NGO "protectors" they either do not recognize as legitimate or whose purposes and agenda they disagree with? As minors, do they have to knuckle under to whatever adult authority claims to want to protect them, or is there sufficient legal and moral justification for them to dismiss or oppose "protective" intrusion they did not invite and regard as irrelevant or counterproductive? And what about their rights? Sometimes children claim their rights in ways that directly conflict with national and international "child protection"<sup>1</sup> policies also justified in the name of children's rights. Whose rights are the right rights?

I am naturally disposed to extend benefit of the doubt to children above a reasonable threshold age of discernment (which I would typically place somewhere around 10-12 years of age, depending on the circumstances), granting them a presumed right of dissent and independent action in defense of their own well-being and development. That may reflect my experience of 35 years, in which I have often found older children to be as well informed and wise as adults about their best interests. Not infrequently, their perspectives respond better to the specifics of their actual situation than do those of outside adults advocating the application of generic child protection policies and programs of action. While I have been concerned with the practical implications of that observation, I have not until lately devoted much thought to its potential theoretical foundations and implications. This informal essay sticks a toe in that water, sketching some arguments toward a way of policy thinking and program organization that empowers children to participate more centrally in the protection of their own well-being and development. It should also allow them to stick up for themselves against prevailing child protection agency opinion, while convincing adults to grant them leeway to do so.

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<sup>1</sup> For purposes of this essay, "Child Protection" refers to international policies and programs specifically targeting violence and exploitation against children and typically supported by a loose network of multi-lateral, government, and international NGO organizations. However, I exclude from this definition emergency and humanitarian protective assistance, such as life-saving interventions for severely abused children or child refugees from armed conflict or natural disaster.

I will begin by considering some legal and moral sources for a right of children to participation and perhaps self-determination in deciding and defending their best interests as they see them, especially in regard to child protection issues. Then I will comment on the child protection system in that light. That leads to some thoughts about accountability and finally about supposed “tensions” between child protection and children’s participations.

**Children have a legal right to both integral well-being and development and living conditions adequate to support it.**

Let’s begin with a little legalese. The usual legally reasoned defense of children’s participation begins by citing UNCRC Article 12, granting children free expression of their views and mandating opportunities for them to express them. I find that defense too insipid to be satisfying because it grants children only the right to say something, but does not lend them and their views any particular authority as the primary stakeholders who have to live with decisions taken about them, perhaps even over their objections. I wonder if UNCRC Article 27 might not be impressed into service to help with that. I have long felt that Article 27 should have from the start been identified as one of the convention’s most basic, cross-cutting provisions, and that it has been denied that status largely because strongly capitalist countries have feared some of its economic implications. But now that we have found a way to legitimize Conditional Cash Transfer programs in Brazil, Mexico and elsewhere, their fears should be assuaged.

However, I want to explore taking this UNCRC article in a quite different direction as a way to put some weight of authority behind children’s perspectives that will help justify their strong participation, even activism, in defense of their own well-being and development. Article 27 recognizes “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.” It in effect confers on each child the right to integral development and the right to social provision of a suitable developmental context. Parents of course have first responsibility for providing a supportive home environment for their children, but where they lack the means, Article 27 demands that ratifying countries “take appropriate measures to assist parents and others responsible for the child to implement this right and in case of need to provide material assistance and support programs.” Since a child’s development is by definition also an indicator of its present status—a child developing poorly cannot be considered to be healthy--- Article 27 should be understood to mandate a child’s present well-being as part and parcel of its development.

Originally, “standard of living” referred primarily to economic status, calling for an effective income floor sufficient to sustain the well-being and development even children living in relative poverty. Since then, we have learned from research and experience that the economic factors in poverty are seldom separable from causes social, cultural

and political, and that a standard of living adequate for child development therefore has to involve much more than merely raising household income. At the same time, we have been learning from psychology and social science that children's development is highly integral, with the various aspects physical, mental and social powerfully affecting each other. Moreover, that integral development is strongly influenced by the ways in which a child interacts with its environment. In other words, children's development and the conditions on which it depends have to be understood as a complex whole. By implication, the working definition of "standard of living" should be expanded to encompass critical non-economic factors in a child's socioeconomic environment that we now know are fundamental to the multi-dimensional child development the article seeks. Interpreted in the light of modern scientific understanding of child development and its relationship to environmental factors, Article 27 should today be understood as calling for a healthy social and physical environment that provides developmental space and opportunity conducive to the holistic development of children.

There is a lot more to be said about the validity of a more expansive interpretation of Article 27, but for purposes of this exploratory discussion let's just leave it at that and go on to the notion of developmental space to see what authority it can lend to the credibility of children's participation.

**Because human development depends on participation, children have a moral right to the spaces they need to participate fully in society.**

Children are the principle stakeholders in their own development, and for that reason they have the biggest stake in how well society provides suitable developmental spaces in which they can participate and grow. Modern developmental psychology emphasizes that children are not only shaped by others, but that they also actively shape their own environment right from infancy--"I cry to make Mama pay attention to me". Children are not just reared; they also grow themselves. They grow in part by learning how to influence their environment, opening opportunities to ensure their well-being and to promote their own development. They are biologically programmed to participate in their own growth and development by acting on their environment to make it amenable to their well-being and development. Let me say that again: children do not just passively grow up in a set environment. They actively shape that environment so that it bends to them. As many parents of babies or teen-agers will confirm with a wry chuckle, they can do so very powerfully.

That active participation is from birth an essential condition of children's growth, and a society attuned to promoting child well-being and development provides carefully structured and welcoming spaces that encourage them to pursue this developmental participation. The family home is normally the first such space, followed a bit later by community institutions such as day care, kindergarten, and primary schools. As children

mature, participative development spaces and opportunities broaden to include after-school sports and arts programs, progressive family and community responsibilities, cultural and civic activities, work that earns income and status, rites of passage, participation in self-government, and so forth. By adolescence, the baby's activism to make its family more responsive to its needs may have naturally evolved even into social, political or economic activism to make the broader society more responsive to what older children and youth need to become independent, productive adults. That brings us to the age groups and kinds of participation this conference is primarily concerned with. But the point I want to leave clear is that this participation is not an anomaly. It is a direct continuation of vital survival mechanisms that from infancy onward drive human development. We are not talking about something new or added on, even less something we create by running a program for kids. Child participation at any age is an expression of biologically programmed human will to survive and develop that has been there all along. It is who we are, so we all have a right to it. That suggests to me that we have no right to deny self-directed participation to others, including children, and only a limited right to help shape and constrain its expression. But we adults do have a right to help create the social spaces for it, especially for children. On the other hand, I am not sure how much right we have to say how children can or must use those spaces.

Youthful interest in bringing constructive change to adult society is in many societies considered a sign of healthy development and a source of growing respect and opportunity for the youngster involved. Democratic societies provide space for developmental participation that altruistically seeks justice, equity, and economic opportunity to open developmental spaces for everyone. All children should have available to them the full range of developmental participation spaces from family to political involvement for them to access as, with the support and guidance of others, they propel themselves toward maturity. To develop is to participate.

Most societies, each in their own way, understand that development is integral. They try to nurture children to become physically healthy, cognitively smart and skilled, emotionally self-controlled, open to beauty and hope, compassionate toward others, righteous without moralism, and well-adjusted and able to move in society with ease and skill. But they do not always realize that such traits depend on children having appropriate social spaces to seek out and develop into through active rather than passive participation. What happens when social spaces for developmental participation are scarce, or perhaps even become areas of oppression that hinder, disfigure, or even punish healthy development rather than promote it? What can young persons do when families, communities, or governments are unwilling or unable to create adequate developmental spaces for them?

It seems to me that we are learning by experience that older children and youth themselves often undertake to defend their own right to well-being and development as they interpret it in their situation, and to open the developmental participation spaces they need and feel have been unjustly closed to them by society, even at considerable risk and cost to themselves. This can lead them into sharp conflict with powerful people and institutions who have made the rules the kids object to. We should be not in the least surprised by this. Creating and defending their own developmental space—sometimes even against their parents--is what they have been doing since infancy. But taking social action in the face of hostility from powerful interests may demand more courage and effort, perhaps even up to and including mobilized activism against oppression from entrenched interests. That may take a lot of assertiveness, even some outright aggression. It seems to me that we should expect such assertiveness as an expression of normal growth imperatives, and that we should work creatively with young persons to help them open developmental spaces they pursue in ways that are constructive for both them and society in general. Sometimes that may involve taking their side as allies in a conflict, or at other times it may entail playing a mediation role finding ways to bring differing views together in harmony, and still at other times it might necessitate counseling against ill-considered intentions potentially courting disaster.

In all cases, however, I would argue that the proper stance for adults concerned to promote the well-being and development of children is one of staunch solidarity with young persons seeking to open developmental spaces and opportunities. Our passion should be in line with their aspirations, even if not always their tactics. Our commitment to them should be undivided by competing loyalties and priorities. When at certain moments we feel we should criticize or even oppose as unwise some idea or action they propose, our dissent must reflect unquestioned loyalty to them and their long term development. It should never be instigated by detracting ideologies and affiliations from elsewhere. The children are ours to help guide in respect, not manipulate. They are our beloved, not just professional clients. That should dictate how we treat them.

### **The protection of children should serve their development.**

Child development is a fine objective, but children still have to be protected against violence that thwarts it. That is the mission of the child protection system. How does that fit in? It is first of all important to recognize that the world already is reducing violence, and much better than one might think from just looking at the day's news. Violence of virtually all kinds, including against children, has been falling for a couple hundred years, and dramatically so in the last 50, first in the so-called "advanced" countries, but now worldwide. Statistically speaking, a child born today is less likely to die or be injured by violence than at any time in history that we can find evidence for. Never have children been so safe. Today we have a lot less violence of all kinds---not just less war and genocide, but also less domestic violence, fewer blood feuds, almost extinct public

torture and executions, and even reduced corporal punishment of children. However, there still is so much violence around and in the news that many find it difficult to believe what carefully researched and analyzed data tell us. Especially those of us who in our daily work deal with violence of many types perpetrated against children can be forgiven for not being able to see the statistical forest for the trees of personal experience we stand so close to. But the forest is there and real. It is a forest of rapidly falling rates of violence of just about all types just about everywhere. Children are prime beneficiaries.

We also know a lot about what is driving down the violence. It started with the invention and growth of modern states that disarmed feuding tribes, clans, and petty nobility by granting the state a monopoly on violence. Now murders and child abusers go to court rather than have to be murdered in revenge, which makes more difference than most of us are aware of. But to be reminded, just look at the seriously violent places today and in recent history without working states to reign in the violence of chaos. The spread of literacy is another major factor, and even reading trash novels seems to have increased empathy by teaching us to see ourselves in the shoes of others. That has proved a powerful cultural factor in reducing violence. Globalization of commerce, ideas and institutions is especially important. Internationalized human rights and multi-lateral organizations are forms of political globalization that have since the mid 20<sup>th</sup> century contributed to the decline of war and many other types of violence. In the last few decades it appears that the rapid spread of world prosperity—especially the dramatic reduction in absolute poverty--- and associated public investment in services like education and public health also are depressing violence. And now we know that the promotion of women’s rights and status reduces violence. We could go on, but the point I wish to make is that the very significant decline of violence against children comes primarily from powerful general factors that reduce violence against everybody. This suggests that an effective way to further reduce violence against children would be to reinforce social factors that reduce violence more generally.

But what about targeted child protection policies and programs specifically aimed at reducing violence against children? Even after accounting for improvements driven by major social forces, one could still envisage a role for activities aimed at specific needs, such as hard-to-reach people and places, or intended to complement and speed up the positive effects of the broader forces. Unfortunately, the record of the problem-specific approach and loose system to promote it we know as “child protection” seems to me at best mixed. I frequently read, review, edit, or even write articles about how policies and programs go awry and end up hurting kids they were intended to help. Maybe I am just positioned where I happen to encounter more of that kind of material, but I am inclined to think it reflects the real world more than most of us might care to admit.

But children in many adverse circumstances do have to be specially protected, and I am not willing to give up on the idea of specific targeted interventions, for which I think there

is a demonstrable need. If the current child protection approach and system is not a very good answer, what might be a better one? Try this for size. Rather than to start out by asking how children can be protected from threats—which is how we got into today's child protection system---what if we began by inquiring how to more effectively support children's participation in safe spaces and activities that reinforce their well-being and development? This is by no means a new idea---UNICEF has for a long time been talking about the virtues of a protective environment—but I think we could do a lot more to specifically tie children's protection to their development. After all, our main goal we seek in caring for our children is for them to thrive and flourish, partially as defined by us and society, but mostly in terms of what they will define for themselves as they learn by expanding participation and progressively assume responsibility for their own aspirations and growth. If such flourishing is what we are primarily after for our children, and what our kids want for themselves---children's physical, mental, spiritual, moral and social development", in the language of Article 27—that is the goal that keeping them safe should serve.

That suggests to me that child protection should not be an end in itself, or established institutionally as a stand-alone program, but should be constituted as an important (and perhaps specialized) activity mobilized as needed within a broader program for child well-being and development. So contextualized, the proper measure of protection effectiveness would be how and to what extent it contributes to the child's well-being and development. Since we know that children's development depends on their expanding participation in society, a key function of child protection must be to help create and defend social spaces for developmental participation. We should track how well it does that.

### **The protection of children should be made more effective by making it more developmental.**

Starting from where we are right now, we child protection professionals might find it difficult to make our protective work more developmentally participative for children. That is because our current approach and is structured backward. There is a whiff of the absurd about it. If we want our kids to grow up healthily, it would be most logical to assist and monitor their development over time, keeping a sharp eye out for threats that might derail them—like family would do. Ideally we would track the well-being and development of every child in our care through childhood, and where something goes wrong—a threat to be protected against—we would step in to deal with it.

In the child protection system, however, people who do not have the problem (e.g. government or NGO bureaucrats) define in abstract and set a program priority for a child protection problem that seldom has been identified and prioritized by the people who are supposed to have it—children and their families and communities. That alone

should serve sufficient warning of discrepancies to come. That gap condemns us to not understand very well either who we are dealing with or what we are doing. For lack of knowing enough to come up with actions customized to fit their context, we tend to fall back on generalized ‘solutions’ prescribed by standardized rules and policies from one or another kind of international bureaucracy, which again is comprised of people who don’t have the problem but earn their salaries talking and preaching about it. Many of us with experience suspect these universalized solutions may not actually fit anybody or any situation particularly well, but we hope that on the average some good will rub off anyway. If we evaluate our work at all, we usually count up how many children we applied our intervention to---“1,229 saved from trafficking!”----but we seldom hang around for a few years to determine whether whatever we did actually improved the well-being and development of the children we touched. We know what **we** did, but we seldom how the **children** did, whether our interventions were beneficial or harmful to them. That is a formula for unaccountability. In fact, my biggest concern about the whole child protection system is that its only accountability is to donors and other people who don’t have the problem and may not even understand it, and that it has very little accountability to children, families and communities who supposedly have the problem and are in the best position to indicate what they need and whether interventions have helped or not.

We know that is a serious problem because a large and growing number of field studies by anthropologists, economists and other social scientists suggest that even some of the more widespread child protection policies and programs may not help children, and in many cases have been counterproductive. It is sobering to think some of our child protection doesn’t protect and even does harm. This suggests to me that accountability to children for the relevance and success of our actions on their behalf is sorely needed and that we probably should not be undertaking action that does not build in such accountability. I just can’t see how that level of accountability is possible without a very high degree of child participation, much of which probably would consist of kids telling us that what we propose or are doing is irrelevant or wrong. They probably would in such cases have better ideas, which they might benefit from helping implement. Since children from birth share responsibility for their own development and are the primary stakeholder in it, I just can’t think of any justification for not bringing making them full partners in whatever we do to help protect them. That in itself would create much needed spaces of developmental participation for them.

**What is our responsibility to protect children should not undermine their participation or otherwise disempower them.**

This is going to sound like goobledygook, but please consider it a minute. **Protective policies and interventions should defend and expand developmental participation spaces children need to become empowered toward independence.** Protection of

children's well-being should ward off threats to spaces and opportunities for their holistic development as mandated by the UNCRC. How well does current child protection policy open and maintain developmental spaces for children? The record is spotty. It does emphasize reaching children through crucial institutions like schools and health facilities, but these tend to be services offered rather than places of participative engagement. The longer I have been associated with child protection policies and programs, the more I am inclined to view many or most of them as "protecting" children into dependence more into independence and empowerment. This strikes me as a huge failing because it in effect pits child protection against child development.

There is too much institutional fear of letting children take risks. "Risk" is a bad word in the child protection community, and for serious risks with life-changing negative consequences, deservedly so. On the other hand, learning to risk and to manage and learn from that risk is an essential part of becoming mature, an essential element of human development. By not thinking developmentally, much child protection policy misses the need for appropriate developmental spaces that provide children with the empowering experience of learning to manage risk. There is something about the mind-set of "child protection" agencies and agents so hostile to even low level risks that it too often ends up smothering children, denying them important developmental opportunity. Rather than teach them how to negotiate risks, which would be highly developmental, they too often appear content merely to separate children even from relatively minor risks that present a valuable learning opportunity. This mind-set, when institutionally magnified into ideological group-think, can turn child protection policies and programs into significant developmental obstacles to the very children they are hoping to assist. Perhaps the anti-developmental aspects of child protection are on my mind because I have spent so much time working on child labor issues. But let me put up an example from that famously controversial area of child protection policy.

International Labour Organization Convention No. 138, adopted in 1973, establishes legal minimum ages for children to enter work, and almost all countries have adopted as law a version of this international norm. It remains the most ubiquitous child labor policy, and it effectively bans children below some early teen age (depending on the country) from working, with certain exceptions. It is intended to protect children, but it is in fact the most glaring case--but far from the only one-- of a child protection policy that has gone sour and by all accounts harms children more than it benefits them. There is considerable published research to that effect (some of which I have co-authored). So while this finding is politically controversial, it is now largely accepted by independent experts and scholars, and the ILO has not even tried to refute it, probably because it knows it has no case.

The issue is important to this discussion because banning children's work undermines child development by drying up what has been through history and in most cultures an

especially important integral development space open to children's participation—work. That might be acceptable were there an offsetting protective benefit, but since there is none, this child protection policy comes at a severe net cost to children and their families. The failure of this supposed child protection policy is now so obvious, and the social science findings on the topic so one-sided, that one has to ask why it is still in place. There is simply no coherent case for maintaining it. While everyone agrees on the need to keep children from truly hazardous or demeaning work, other kinds of policies do that successfully. Minimum age laws have no effect on that objective. Yet, most of the child protection system, aware of the facts but unfettered by them, continues internationally and in most countries to support this counterproductive child protection policy. Why? Because, in my ungenerous view, reversing it would be embarrassing, bureaucratically inconvenient, and politically inexpedient.

Recognizing this, working children and their supporters in various places have rebelled against such bans on their work, and their complaints have been either studiously ignored or actively suppressed. What kind of light does this case cast on a supposed tension between child protection and child participation? Is it even an honest question? It seems to me that there is no real protection involved at all; just the spurious claim of it. Any conflict is between children wanting to defend a participative development space that at least some of them value versus a child protection system fraud that actually harms them by closing off that desired space for reasons having nothing to do with them. I vote with the kids.

### **The current child protection mind-set needs to become more focused on children and their need to participate.**

How did the child protection system get itself into this kind of mess, anyway? There are many possible answers, but three strike me as especially fundamental. First, as the above discussion suggests, child protection seems to me to have lost its operational links to child development and therefore has a hard time proving that at least some of its interventions are in the long run and big picture good for kids. It is right now under considerable attack for that.

Secondly, child protection errs in trying to universalize, or at least generalize, protective needs and policies by defining them in “silo” categories (e.g. child labor, child trafficking, child marriage, etc.) that are poorly differentiated from seemingly similar practices that do not threaten children and that cut across huge social and economic differences in which apparently like situations are experienced very differently. This is a simplistic approach that turns child protection perceptions and interventions into isolated silos where what is needed is more specific and sophisticated understanding that reveals how children, communities and situations interrelate and affect each other. To be fair,

the child protection system has recognized this problem and is trying to deal with it by creating linkages. Personally, I'm not sure the problem can be solved that way.

Third, the child protection approach serves abstract principles—rights texts, international norms, institutional policy statements, and maybe even imagined moral principles before actual people. Not being accountable for its results in children's lives, it has justified its actions largely explaining that it has followed the rules. That doesn't help. Imposing on people a right or policy or some other normative formula in difficult real-life situations where such artificial coherence is not possible can be inhumane and cause suffering to children, families and communities. There is a substantial literature about this happening as the result of imposing child protection policies of one type or another where they do not fit. While the people suffer, the unaccountable organization gets away scot free. Child protection unaccountable for its effects on the long term well-being and development of children neither recognizes nor owns the harm and suffering it may cause when its protective solutions don't really protect. Life is messy, and shortcutting the need to respond responsibly to the real dilemmas of living children by imposing an abstraction that does not address the complexities of their lives strikes me as plainly unethical. I have personally seen too much of this from child protection policies and programs, and have grave concerns about the ethics of today's international child protection system. That is pretty much my up-to-date conclusion about it. A complete revamping of the system and re-orientation of its approach is needed before it can be trusted as safe for children.

**Many perceived tensions between child protection and child participation are just conflicts between unreasonable child protection norms or policies and the reasonable needs of young persons for access to developmental participation space.**

The tensions I see are mostly between, on the one hand, a child protection system that does not adequately heed or understand children's participative development and the need for developmental spaces, and, on the other, children who have at least some inkling they progress and grow through participation in developmental spaces. They may feel a need to claim certain developmental spaces that others, perhaps child protection agencies, wish not to open to them. The child protection system is too often tone deaf to them. If child protection agencies are not close enough to the children to understand and invest in participatory child development, all they have to justify their action is their appeal to rules made by far away people who don't know the problem. Their "solutions" can be, and too often are, irrelevant or inimical to real developing children. The kids can see that and an impasse results. In that situation, when child protection agencies are playing by abstract policies and the kids are negotiating the real complications of life, how credible is the claim that there is inherent tension between child protection and children's participation?