



Vulnerability and Children's Rights

Jonathan Herring¹

Accepted: 20 October 2022 / Published online: 15 November 2022
© The Author(s) 2022

Abstract

This paper will explore the relevance of vulnerability to children's rights. Broadly speaking legal debates over children can be broken down into two camps. First, those who emphasise the vulnerability of children. For them rights designed to protect children from abuse and promote their welfare are the most significant. Second, those who claim that children are far less vulnerable than is assumed and should be given many of the freedoms of adults. For them rights of autonomy and freedom should be emphasised. This paper will argue that both camps make the error of starting with the norm of adulthood being a time of invulnerability and independence from which children are either distinguished or are closer to than is normally appreciated. Once it is recognised that adults share in children's vulnerability, we can see that childhood vulnerability is not something which children should be enabled to escape from, nor is it something that is unique to children. Vulnerability and interdependence should form the basis of rights for both children and adults. There is, therefore, no reason why children and adults should not have the same rights.

Keywords Vulnerability · Childhood · Autonomy · Relationality · Care

1 Introduction

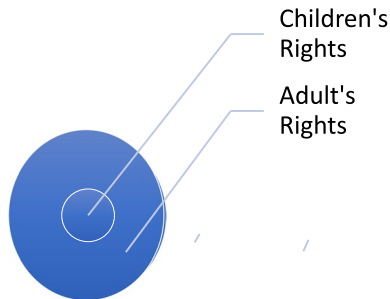
It is normally taken for granted that children and adults are fundamentally different [1]. How we understand childhood tells us much about how we understand adulthood. Indeed, to some extent childhood gets defined in terms of adult characteristics which children lack. Hence, part of the law's response to childhood is a list of things which children cannot do, and which adults can. Children lack self-sufficiency; understanding; and wisdom. As a result, they are vulnerable and need protection. By contrast adults are capable and need protection of their freedoms. And it is that perception which dominates the legal responses to childhood.

✉ Jonathan Herring
Jonathan.herring@law.ox.ac.uk

¹ University of Oxford, DM Wolfe-Clarendon Fellow in Law, Exeter College, Oxford, UK

A few people believe that children have no rights, but I will put that view to one side for the purposes of this paper. Then we might, broadly speaking, imagine the following models for the interplay between the rights of children and adults.

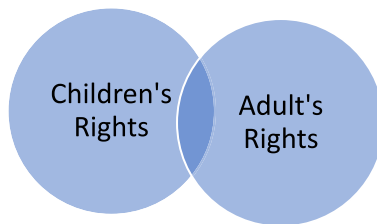
1.1 Model 1



This model imagines that children have some of the rights that adults have, but not all. It also imagines that there are no rights that children have that adults do not.

Model 2 recognises that children and adults share some rights, but there are some rights that adults have children and children do not have; and some rights which children have which adults do not.

1.2 Model 2



Model three posits that adults and children have identical rights:

1.3 Model 3



Children and Adult Rights

The second model represents the current law in most jurisdiction. As we shall see there are rights, such as to education which children, but not adults have. There are other rights, such as the right to engage in sexual activity, which adults have, but children do not. And there are yet other rights, such as the right to life, enjoyed by both children and adults. However, in this essay I will argue that the third model is preferable. Those who take this approach have traditionally been associated with the “child liberationist” school of thought. They reject the views of those who emphasise the vulnerability of children, for whom the protection of children from harm is key. And instead, they emphasise the capabilities of children. They often claim that adults use childhood as a means to limit the freedoms of younger people and that we need to liberate children from the restriction placed on them by law and society. Claire Cassidy et al. ([2], p.3) wrote that children:

are stifled and excluded from a society formed and defined by adults’ interests until they—the children—are trimmed and shaped in a way that allows adults to find children agreeable. This demonstrates the power relation between adult/child quite clearly.

However, that is not the route this essay will take.

Instead, I will argue that rather liberating children from childhood, it is adults who need to be liberated from adulthood. It would be misguided simply to claim that children are far more competent and self-sufficient than we give them credit for. Rather, it is the adults who are far less competent and self-sufficient than we give them credit for. To adopt this view we need a very different kind of legal and social system than we currently have, which can work for children and adults. But more on that later. First, we start by looking at the claim that children are vulnerable and the legal consequences of taking that view, before moving on to looking at the conception of adulthood and the legal consequences of taking that approach. Only then can we re-imagine a better approach, which I develop towards the end of the paper.

2 The Child as Vulnerable

The model of the child as vulnerable has a powerful hold of the legal imagination. Indeed, in a sense it can be seen as almost definitional: to be a child is to be vulnerable and in need of protection. As Norozi and Moen ([3], p. 81) explain:

children are viewed as those who are physically weaker, less well-developed, weigh less than adults. Children are considered those who need to get the developmental stages of secondary sexual features in order to be called an adult. Children tend to have less cognitive skills, intellectual abilities, less knowledge, less ability for reasoning. Children are deliberated as those who have less emotional maturity and less socially skilled. Children are contemplated as those with less competence in terms of life-skills and less expressive. Children are perceived as relatively in powerless position in relation to adults.

Annette Meyer [4] divides the alleged forms of childhood vulnerability into three categories: physical, social and structural. These are readily understandable. Physical vulnerability refers to the suggestion that children's bodies tend to be weaker and smaller than adults. Many adults can pick up a child; not many children can pick up an adult. The social vulnerability refers to the fact that children are said to lack the social skills, experiences and relational contexts to protect themselves from harm. The reference to structural vulnerabilities refers to the argument that children have limited access to resources such as transport, food and medical care, especially without adults to enable their access.

Of course, the construction of childhood is complex, and it would be misleading to suggest that vulnerability is the sole structure of childhood. Talk of children as posing a danger, for example, is one way in which children are perceived. Hence the protective measures for children often have two elements: protecting children from harm; and protecting adults from out-of-control children. Indeed, Anneke Meyer's argues that 'children and childhood function to explain and legitimize any practice or opinion as right while removing the necessity to provide reasons: children are the reason.' ([4], p.87). We turn now to explore how the vulnerability of children is played out in legal regulation.

2.1 The Legal Consequences of Child as Vulnerable

There are two primary consequences for the legal regulation of childhood, based on the image of the child as vulnerable. First is the claim that children need to be protected from harms because they are unable to look after themselves and lack the resilience to respond to harm when it occurs. Second, children need to be given the tools to escape from the vulnerability of childhood and reach a successful adulthood, marked by self-sufficiency and autonomy.

Protection from harm is most evident in the criminal law. There are a series of criminal offences which prohibit people acting towards a child in a particular way, when it is permissible to do so in relation to an adult. Regulations over the sale of

alcohol will be a familiar example. Protection is also evident in family law where Sect. 1(1) of the Children Act 1989 (England and Wales) establishes the welfare principle, meaning that in cases of disputes over a child's upbringing, the child's welfare will be the paramount consideration. There, we can see a privileging of children's interests. Indeed, to such an extent that if the interests of a parent favour solution A and the interests of a child favour solution B, then solution B must be chosen, even if solution B slightly favours the child but is very harmful to the parent. The emphasis placed on children's welfare may reflect the view that, if a court order causes a loss or hurt, children have fewer resources open to them than adults do.

The second theme is the need to prepare an enable children to access adulthood, by becoming autonomous and self-sufficient. This means that children have particular rights against the state or privileges in services that others do not have. The most obvious would be the right to education, which is generally seen as applying to children, but not adults [5]. These enabling rights can be justified in part by the state's need for children to develop into worthy adult citizens, but also because we cannot expect children to provide for such services themselves.

2.2 Critique of the Child as Vulnerable

As is well known supporters of children's rights must balance the tension between the rights of protection and autonomy. But, as just seen, the source of both of these rights is a vision of children as being particularly vulnerable, that being what distinguishes children from adults. However, there is much in the legal response to childhood vulnerability which is problematic.

First, the law is highly selective of the kinds of dangers that children face. Sexual abuse and physical harm at the hands of strangers tend to be emphasized. Yet the number of children who suffer sexual or physical abuse at the hands of strangers is tiny. Children are far more likely to be abused by someone known to them than by a stranger. Further, far more children are harmed by the environment or by social or economic harms; than are directly abused by an adult [6]. The 'vulnerability' depicted in the media presents the government as posing no risk to children: the risk is from individuals. The government is the protector of children from adults by promoting family life. Such views side-line the impact of socio-economic disadvantage on children and disguise the dangers of family life. In short, the vulnerability discourse misleads us over the nature and source of dangers to children.

Second, childhood is regarded as primarily about development to adulthood and so it does not see much good in childhood in itself. We will return to this theme later. Does a good childhood not involve play and wonder, for example, even if these may play little role in the child 'advancing' to adulthood?

A third objection to the developmental model is that it presents the child as passive in this process. That seems an oppressive and arrogant way for adults to treat children. Green claims the model 'positions the child as overwhelmingly and unidirectionally created by either society (socialization) or biological maturation and genetics (developmental psychology) or both.' ([7], p. 39) Children's role is to grow and make sure they do not do anything that inhibits their growth. The sense that

child might shape their own future or, indeed, shape the futures of those around them is ignored.

Fourth, the vulnerability presentation readily leads to unjustified paternalism, which endangers children. It suggests that adults have got things right and can set the agenda as to what children should aim for. Adults are presented as being in a position to protect children from the harm and to help them cope with any harms they befall. There is, as a result, a wide range of mechanisms that are designed to encourage children to become obedient. A sign of a mature child is that they have come to appreciate how little they know and will respect their elders and betters. So, obedience is seen as a sign of maturity and disobedience, a sign of immaturity. A child seeking to disagree with an adult cannot win. The mere fact of disobedience is indicative of immaturity.

A further danger of the vulnerability discourse is that the vulnerability discourse elevates the “innocence” of children. Hence, in the discussion of the horrors of child abuse, much is made of the sully of the innocence of childhood. That is, however, a dangerous approach. As Jenny Kitzinger argues, it is this very kind of language of innocence and purity which plays a role in fuelling the paedophilic imagination [8]. Further, she explains:

Innocence, then, is a problematic concept because it is itself a sexual commodity and because a child who is anything less than ‘an angel’ may be seen as ‘fair game’, both by the courts and by other men who will avail themselves of a child they know has previously been abused. ([9], p.77)

Ironically, it is vulnerability with its requirements that children obey adults, be protected; and have their innocence preserved, which renders children so vulnerable in the arena of sexual contact [10].

3 Adulthood

As already indicated adulthood is marked by image of the self which is independent, capacious and rational [11]. Legal rights and structures are shaped around that norm. Hence, the law emphasizes as key rights, autonomy, bodily integrity, privacy and liberty. Our right to be able to make our own choices over how to act, and to be subject only to those responsibilities we choose to take, are seen as central pillars of the economic, social and legal structures. The role for the law in such a model is to protect the individual from unwanted intrusions and to protect their liberty to pursue their own goals for their life. In short, rights are about keep other people away from you. Naffine writes:

We can think of human beings as discrete individuals, fully independent of one another and preferring it that way, because others cause worry: they pose a threat to property and personal security. Such nervous, self-isolating beings need law to keep others at bay. They do best—are most autonomous, even happy—when left to their own devices. This way of thinking about persons

may seem quite natural because it has been so influential in our Western liberal legal and political tradition ([12], p.124).

However, she explains that this image of the self is a caricature. No one can, in fact, survive without the practical, emotional, and psychological support of others.

A consequence of this legal norm is that special legal provisions have to be made for those who lack the “expected standard” of the adult. Hence, there are those for whom these rights are not appropriate, particularly those with impaired mental capacity or disabilities. Such people are often described as ‘vulnerable’ and that terminology is used to monitor, supervise and discipline them [13]. They lack those essential skills to direct their own lives and protect themselves, and so need others to do that for them. Children are classic examples of this category.

In the next section, however, I will suggest that this model of adulthood is misguided and by basing the law on a different set of norms we can find a legal response that works for adults and children.

4 A New Model of Personhood

We have so far seen that the law regards adulthood as marked by autonomy, self-sufficiency and independence. If, however, we start with a norm of vulnerable, interdependent, caring people then the nature of legal intervention becomes different. The law does not emphasize independence, liberty, and autonomy; but rather seeks to uphold mutuality, relationships and care. The significance of changing this image of the self is profound. As Susan Dodds argues:

‘Attention to vulnerability . . . changes citizens’ ethical relations from those of independent actors carving out realms of rights against each other and the state, to those of mutually-dependent and vulnerability-exposed beings whose capacities to develop as subjects are directly and indirectly mediated by the conditions around them.’ ([14], p. 501)

I suggest that a proper understanding of the nature of humans can lead us towards a new legal system that will work for all. Clearly that is a ridiculously ambitious task for this article. But I will start to outline what such a new system might look like. One that will work for both children and adults. It would need to recognise the key feature of human beings. This would start with a norm of vulnerable, interdependent, caring people. The importance of upholding and maintaining those relationships becomes the key role of the law. The law should not emphasize independence, liberty, and autonomy; but rather seeks to uphold relationships and care [15]. To develop this, I explore three aspects of the self [16].

4.1 Universal Vulnerability

In the legal literature it is the writing of Martha Fineman which has been most influential in relation to universal vulnerability. She argues:

The vulnerability approach recognizes that individuals are anchored at each end of their lives by dependency and the absence of capacity. Of course, between these ends, loss of capacity and dependence may also occur, temporarily for many and permanently for some as a result of disability or illness. Constant and variable throughout life, individual vulnerability encompasses not only damage that has been done in the past and speculative harms of the distant future, but also the possibility of immediate harm. We are beings who live with the ever-present possibility that our needs and circumstances will change. On an individual level, the concept of vulnerability (unlike that of liberal autonomy) captures this present potential for each of us to become dependent based upon our persistent susceptibility to misfortune and catastrophe. ([13], p.74)

The point here is that our nature is to be vulnerable. It is true that at different times and in different circumstances we may be more overtly in need of societal resources should not disguise the fact that we are in need of communal and relational support for all our lives [17]. We may be differently positioned within a web of economic and social relationships and this will impact on our experience of vulnerability and the resources at our disposal [18].

We might like to think we are self-sufficient and independent, but society has built up a wide range of structures and forms of assistance which disguise our vulnerability. We are profoundly dependent on others and social provision for survival. In a powerful article Kate Lindemann contrasts the emphasis that is paid to the “accommodations” that are put in place for disabled people, with the lack of appreciation of the accommodations for the able bodied:

Colleagues, professional staff members, and other adults are unconscious of the numerous accommodations that society provides to make their work and life style possible. ATM’s, extended hours in banks, shopping centres and medical offices, EZpass, newspaper kiosks, and elevators are all accommodations that make contemporary working life possible. There are entire industries devoted to accommodating the needs of adult working people. Fast food, office lunch delivery, day time child care, respite care, car washing, personal care attendants, interpreters, house cleaning, and yard and lawn services are all occupations that provide services that make it possible for adults to hold full time jobs. ([19], p. 502)

We thus highlight the facilities used to deal with the vulnerabilities of others, while overlooking the accommodations ‘we’ need to deal with our vulnerabilities. No one can get up to the second floor of a building without an accommodation. You might need stairs or you might need a lift, but we need something to assist us to get up there.

Mary Neal puts the argument for universal vulnerability in this way:

I am vulnerable because I am penetrable; I am permanently open and exposed to hurts and harms of various kinds. These two sources of vulnerability—reliance on others for co-operation, and openness to positive harm—

are simply two means by which I might come to experience suffering; thus, it is suffering, and the capacity for suffering, that is definitive of this negative aspect of vulnerability. The extent and intensity of my vulnerability at a particular moment, or with regard to a particular need or harm, may be affected by my age, my sex, my degree of capacity, my health, my social status, my wealth, and a variety of other factors. Nevertheless, even the least vulnerable human being is still fundamentally, and inescapably, vulnerable in the negative sense, since none of us can meet her basic needs and satisfy her core desires without the co-operation of others; and even the most capable adult is vulnerable to hurt and harm, both physical and emotional. ([20], p.21)

Not only is it in our nature that we are vulnerable. It is good that we are vulnerable. Vulnerability in childhood is seen as something that children should grow up and escape from. As David Archard has written:

‘There may be features of childhood but not of adulthood which are valuable, such as innocence, wonder and trust. There may, correspondingly be features of adulthood but not childhood which are valuable, such as experience and independence. It is also evident that there may be features of childhood but not of adulthood which are not valuable, such as dependence and vulnerability’. ([21], p.43)

I think such views are profoundly mistaken. Vulnerability and dependence are not only inevitable parts of humanity, as argued above, they are greatly to be welcomed. They are often virtues, not vices [22].

Our mutual vulnerability requires us to reach out to others to offer and receive help from them. The virtues of beneficence and compassion are encouraged and necessary. We have to become open to others and our own and other's needs. A recognition of our mutual vulnerability leads to empathy and understanding [23]. It creates intimacy and trust. It compels us to focus on interactive, co-operative solutions to the issues we address. It encourages creativity in finding new ways of overcoming our human limitations and requires a desire to accept others as they are. As Carse puts it: ‘Our vulnerability is inextricably tied to our capacity to give of ourselves to others, to treasure and aspire, to commit to endeavors, to care about justice and about our own and other's dignity.’ ([24], p. 48).

Vulnerability is essential to relationships. In entering a relationship with others this creates an understanding of trust, the assumptions of responsibility, and obligations of care. These things create a vulnerability: we are in danger of not meeting our obligations; we are at risk of others not meeting theirs to us. Our trust might be misplaced. The opening up of our natures creates a risk we will be taken advantage of, that private information will be used to harm us, and the risk of grief and loss. Yet relationships are good and beneficial. Our vulnerability, further, requires us to reach out to others to meet their needs and to have our needs met. These interactions are fulfilling and creative. Our very vulnerability provides us with the seeds for our growth through relationships with others.

4.2 The Caring Self

Once it is understood that humans are universally vulnerable the importance of care becomes obvious. Caring relationships are essential to our survival, to our understandings of ourselves, and to the things we value. As Feder Kittay writes:

A world without care would not only be a dismal world, it would be a world in which great harm would be done. A world in which nobody cared about anyone else would be a world in which needs of those who could not attend to their own needs (and that is all of us at some point in our lives) would be neglected. ([25], p. 168)

We reach then the position that our value lies not in ourselves as isolated egos but in our caring relationships. Mutual care is essential for the functioning society. As Joan Tronto writes:

Care is not a parochial concern of women, a type of secondary moral question, or the work of the least well off in society. Care is a central concern of human life. It is time we began to change our political and social institutions to reflect this truth. ([26], p. 10)

In failing to properly acknowledge care work, the law misses an important and inevitable aspect of life. Eva Feder Kittay wrote of our interdependence:

My point is that this interdependence begins with dependence. It begins with the dependency of an infant, and often ends with the dependency of a very ill or frail person close to dying. The infant may develop into a person who can reciprocate, an individual upon whom another can be dependent and whose continuing needs make her interdependent with others. The frail elderly person . . . may herself have been involved in a series of interdependent relations. But at some point there is a dependency that is not yet or no longer an interdependency. By excluding *this* dependency from social and political concerns, we have been able to fashion the pretense that we are *independent* – that the cooperation between persons that some insist is *interdependence* is simply the mutual (often voluntary) cooperation between essentially independent persons. ([27], p.xii)

In relationships of caring and dependency our interests become intermingled [28]. We do not break down into ‘me’ and ‘you.’ To harm a caregiver is to harm the person cared-for; to harm the person-cared for is to harm the caregiver. There should be no balancing the interests of the caregiver and the person cared-for: the question rather should be emphasising the responsibilities they owe to each other in the context of a mutually supporting relationship [29, 30]. It would require a recognition of care work as a central activity for any human community and one in which the community has a profound interest [31].

4.3 The Relational Self

Connecting the themes of our inherent vulnerability and the importance of care is the claim that the human self is profoundly relational [11]. People are in their very nature interdependent and vulnerable. It is through our relationships that our human selves are made [31]. We define and understand ourselves in terms of our relationships. It is our relationships that give our life meaning and constitute our identity. The story of our lives is told to, by and through those we interact with [32]. As Strathern explains:

The person is construed from the vantage points of the relations that constitute him or her; she or he objectifies and is thus revealed in those relations. The agent is construed as the one who acts because of those relationships and is revealed in his or her actions. If a person is an agent seen from the point of view of her or his relations with others, the agent is the person who has taken action with those relations in view. In this the agent constitutes a 'self' ([33], p. 273).

The law, therefore, needs to move away from a focus on the rights or interests of individuals, to seek to promote relationships. We cannot separate out the interests of children and their parents. The key question in any dispute can be, what intervention will best promote caring relationships [34].

5 The Significance of the New Model

Using the values of a vulnerable, caring, and relational self to base the law around would have many advantages. First, it would provide a vision for humanity which reflects our experiences and life throughout the life course, rather than the current emphasis on autonomy, liberty and self-sufficiency, which possibly resonate only with the experiences of a small section of part of the life cycle.

Second, it challenges the divisions that can be created between 'them and us': 'the competent and the not competent'; the adult and the child; the 'vulnerable and the non-vulnerable'. It means that in seeking intervention or protection we need to recognize our own fallibility, weakness and vulnerability to influence in determining what is the correct response.

Third, the focus on our universal vulnerability and need for care highlights how society in a variety of ways privileges some and disadvantages others. The normal use of vulnerability (that a person lacks the ability to look after themselves) locates the source of the vulnerability within the body of the individual. Indeed, they may even be seen as being responsible for the position they are in. Under universal vulnerability we see the different experiences people have of vulnerability, reflecting the allocation of resources and power in society.

Fourth this model emphasises our shared vulnerabilities. We are in our nature embodied people. Academics are, perhaps, particularly prone to elevate the cerebral above the physical, but there is no denying that the frailty of our bodies catches up with us all. We hide the vulnerabilities created by our bodies by emphasizing

the enclosed, controlled, bounded body [35]. This is most powerfully reflected, I would argue, in the claim that we own our bodies [36]. The truth is our bodies are in constant flux; profoundly leaky; deeply dependant on other bodies and the broader environment [37]. They are programmed to wear down and tire [24] And that is a key lesson from COVID. Our bodies are not separate, our health is not an individual matter. Our bodies are profoundly interconnected, as is our health.

Fifth, it creates a different image of the legal relationship between the individual and the state. Rather than seeing the obligations of the state as owed towards a few particularly vulnerable citizens to meet their needs, it acknowledges that the institutions and services of the state are used to meet the needs of all. The question then becomes the extent to which the state meets all of our needs and which needs it chooses not to meet. Martha Fineman argues the role of institutions is important:

This focus on institutions is to my mind one of the most significant aspects of the vulnerability analysis. Societal institutions are theorized as having grown up around vulnerability. They are seen as interlocking and overlapping, creating layered possibilities of opportunities and support but also containing gaps and potential pitfalls. These institutions collectively form systems that play an important role in lessening, ameliorating, and compensating for vulnerability. Together and independently they provide us with resources in the form of advantages or coping mechanisms that cushion us when we are facing misfortune, disaster, and violence. Cumulatively, these assets provide individuals with resilience in the face of our shared vulnerability. ([37], p. 252)

6 Children Under the New Model

Moving more specifically to look at how this impact on our understanding of children. I suggest the following:

6.1 Breaking Down Boundaries

First, we can see that the division between adults and children depends on and is reinforced by societal structures. There are a mass of social structures which push children towards a passive, non-autonomous role, and a mass of social structures which enable adults to live apparently independent and autonomous lives. These often go unnoticed and assumed as normal [38]. We might imagine, for example, that an adult can usually feed themselves, whereas a baby needs someone to help them. So surely that shows a notable difference in vulnerability. However, we all (or nearly all) need people to grow, distribute and sell food. Even those in the 'prime of health' are reliant on others for services, from public transport to the supply of energy and food. The dependence which is a core aspect of humanity is often unacknowledged [39]. Children are no different from adults in requiring education, food, services and support.

6.2 Vulnerability and Power

Rather than looking at the issues of children through a lens of vulnerability it would be more profitable to consider the issue of power. And not only the power of adults over children but the power that children can exercise over children. Jenny Kitzinger suggests if we replace the words vulnerability with oppression then we begin to get a more accurate picture of what is going on [40]. Some of children's vulnerability does not rest in the nature of childhood, but the use of power by adults. The use of power not only vulnerabilises children, it also creates the justification for its own use. The vulnerabilisation of children can distract from an appreciation of the power exercised by adults. The power is seen as a natural response to the vulnerability. It also disguises the power that children can exercise over adults. An appreciation of the common and interlocking vulnerabilities of adults and children can reveal what can otherwise be an unrecognised use of power. Further the assumption that adults are not vulnerable is used to pretend that adults have to accept responsibility for the social and economic position they are in and thereby to neglect the powers that impact on them.

6.3 Decision Making

Third, we can rethink the concept of welfare or best interests. At the moment, as mentioned earlier, legal intervention over children are governed by the welfare principle. An assessment is made as to what is in the best interests of the child. However, there is a complex debate over what welfare means, or in other words, what counts as a good life. Clearly there is a mountain of literature on this [41]. As mentioned earlier, one mainstream view is that childhood is a vehicle to reach adulthood. Aristotle saw children as imperfect, unfinished adults [42]. Todres summarizes well the popular image of childhood:

the dominant view of children today is that they are adults in the making – that is, dependent individuals who are not yet capable of mature and autonomous thought or action and who need to be socialized to conform to the world. ([43], p. 270)

A successful childhood is, on that view, one that produces a good adult. Decisions concerning children should be made primarily based on what will help to produce a successful adulthood. However this closes off important aspects of well-being. Charles Foster and I have suggested that 'wellbeing can only sensibly be defined by reference to the nexus of relationships in which humans exist. It can include the cultivation of virtues, such as relationship, the achievement of worthwhile goals, and the satisfaction of one's obligations.' ([44], p. 498). But these are values that good for everyone not just children.

Similarly, there has also been a rapid growth in the philosophical literature explore 'the goods of childhood'. This is the view that there are goods that are intrinsic to childhood itself. If accepted, it has significance consequences on how

we understand childhood. In fact, I think we can see many of the goods that are discussed in this literature such as the goods of wonder, play and imagination as goods for all.

But there is a further more fundamental challenge to the discourse of welfare of the child. That is that if we reject that the model of the capacious informed and rational person as the norm, respect for autonomy must fall, but so too must respect for paternalism. If we accept that we all, adults and children, have deeply flawed decision-making processes, the weight attached to our decisions is reduced, but so is any authority to make decisions for others. We take into account falsehoods; we are unduly influenced by others; we act in irrational ways [1]. We are all muddled, irrational, irascible, emotionally driven, incoherent thinkers and deciders. We are not slaves of our mind or rational thought or logic. We are creatures of blood, love, wildness and eccentricity. We are not the product of rational thought nor do we want to be.

If we see vulnerability and interdependence as at the heart of the human condition, then this would change how we would understand decision making [45]. It would no longer be about individual ideas of autonomy but taking care of each other together. As Wall puts it:

human rights would be understood as grounded, not in modernist ideas of autonomy, liberty, entitlement, or even agency, but in a postmodern circle of responsibility to one another. ([46], p. 523)

Such a model of rights would be suitable for both adults and children. As Wall expresses it, this requires a shift from 'individual autonomy' to 'interdependent responsibility'. Interdependent responsibility means:

Each of us belongs to interdependent networks of received developmental supports, imposed top-down protections, and active bottom-up opportunities for agency. Together, but not separately, these interlocking trajectories create dynamic societies capable of expanding human mutual responsibilities rather than contracting into exclusions and hegemonies. ([47], p.50)

Adopting such an approach would require a major rethinking of the law [16].

6.4 Child-Parent Relations

The law seems to indicate that parents should be using their legal position only to further the interests of children. The official legal position can certainly be questioned. First, it would be impossible for parents to exercise all of their rights in such a way as to promote the welfare of the child. That would be exhausting and unreasonable: a parent is entitled to some 'me time'! But even if a parent were utterly self-sacrificial and child-focused in every decision, there are issues where it is simply impossible to know what decision will promote the child's welfare: what religious upbringing a child has, if any; whether a child goes on holiday to beach A or beach B. It seems in such cases, at the very least, it must be acknowledged that parents

have an element of discretion. Family life cannot be assessed in terms just of one person's interests precisely because it is a communal form of living.

Brighthouse and Swift describe vividly how children are.

vulnerable to the decisions and choice making of their primary caregivers and, initially, wholly dependent on them for their well-being. Parents have the power of life or death over their children, and this is not, at least when the child is young, reciprocated. ([48], p. 92)

But that overlooks the vulnerability of parents [49]. The work of parenthood is exhausting. Parents will go to extraordinary lengths to look after children because 'that is what parents do'. That is no doubt why new parents are willing to go through the sleeplessness, toils and strains of the early years of parenthood. Yet, doing so renders parents themselves vulnerable. This insecurity felt by parents is influenced by the message reinforced by public bodies, including the government, about the significant impact of decisions of parents on children's welfare [50]. This message that parents are core to their children's welfare generates considerable pressure on parents. Where things go wrong, it is parents towards whom the blame is directed. This has all contributed to parents feeling that parenting involves acquiring and following the advice of experts. As Furedi puts it:

Getting advice – and, more importantly, following the script that has been authored by experts – is seen as proof of 'responsible parenting.' [51]

This is also reflected in 'hyper-parenting', where parents are going to excessive lengths to make the child the best possible child. Rosenfeld and Wise explain:

This is happening because many contemporary parents see a parent's fundamental job as designing a perfect upbringing for their offspring, from conception to college. ... That is why the most competitive adult sport is no longer golf. It is parenting. ([52], p. 17)

Parenting has become a highly competitive business [53]. I doubt there is a parent in the land who has not felt guilt that they are not doing the parenting job well enough. Poor parenting is blamed by the government for the course of dysfunctional children who, as they grow up, cause a host of social problems [54].

Much of the literature on contemporary parenting a merging of the identities of adult and child [55]. The parents' success is measured by how well the child performs by the standard measures. The concept of childhood agency or responsibility is lost. The powerlessness of parenthood is overlooked. The model of parenting that is commonly presented in the contemporary dialogue is of parents controlling, protecting and shaping their child.

Much of this hyper-parenting and competitiveness is badly misplaced for two reasons. First, the job of parenting is interactive and co-operative with a wide range of members of society. We should not see parents alone as having the responsibility of shaping their children [56].

Children care, mold, control, discipline, and cajole their parents, just as parents do their children. The misdeed of a parent seeking to genetically engineer or

hyper-parent their child is not just that the parent is seeking to impose a particular view of what is a good life on their child, although that is wrong. It is the error of failing to be open to change as an adult: failing to learn from children, failing to see that the things you thought were important are, in fact, not. It is failing to find the wonder, fear, loneliness, anxiety, spontaneity and joy of children, and to refine them for oneself.

The model of the parent who must ensure their child receives all possible advantages, and is constantly protected from any danger, reinforced by the law, is one that is overbearing and one that falls primarily on mothers. It is a model that fails to recognise the mutually caring relationship between parent and child, and reduces it to tasks that can be monitored and measured. The traditional model of parent as carer and child as recipient of care fails to acknowledge the ways that children 'parent' the adults in their life. Parenthood should not be about the doing of tasks for which one has been trained, with technological tools. It is not a job to perform with responsibility; it is a relationship. Should we not look for parents who are warm, kind, loving, understanding; rather than well-trained; equipped with technology and hyper-vigilant? This is not least because being a parent is not a skills set in the abstract. It is a specific relation to a particular child. It involves working out with them what will make a successful relationship. The child is not a project for parents to design and control.

These points are all the more apparent to those of us whose children do not fall into the conventional sense of 'normal'. The notion of parental control and responsibility for what a child is or does seems absurd in this context. The rule books are long since discarded and it is a matter of finding day-by-day what works or, more often, what does not work. Parents of disabled children come to know that the greatest success for the child will be a failure by the objective standards of any Government league table or examination board. But such social standards fail to capture a key aspect of parenting—children can cause parents to be open to something more wonderful, particularly when they are more markedly different from a supposed social norm.

7 Conclusion

Your legal rights and social position depend hugely on whether you are classified as an adult or a child. Underpinning that distinction between childhood and adulthood is the idea of children as being vulnerable and therefore in need of protection; while adults are able to look after themselves. Childhood is seen as a time for protection and preparation for adulthood. It is at the same time a precarious time: the child is seen as at risk to wide range of dangers; but also a precious one: the child is learning skills and having experiences which will have a profound impact on their adult life.

This paper challenges that distinction between children and adulthood. It does so by exploring adulthood and claiming that that is best understood as a time marked by vulnerability, care and relationships. That although we boast of our autonomy and rationality they are fiction: we are deeply ignorant, biased and irrational. So understood childhood has little difference from adulthood. A set of rights based

around a norm of vulnerable, caring and relational self is a set of rights that works for children as well as adults.

Declarations

Conflict of interest I have no financial or non-financial interests that are directly or indirectly related to the work submitted for publication.

Open Access This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence, and indicate if changes were made. The images or other third party material in this article are included in the article's Creative Commons licence, unless indicated otherwise in a credit line to the material. If material is not included in the article's Creative Commons licence and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.

References

1. Herring, J. 2021. *Law through the life course*. Bristol: Bristol University Press.
2. Cassidy, C., S.-J. Conrad, M.-F. Daniel, M. Figueroia-Rego, W. Kohan, W. Xiaolong, and T. Zhelyazkova. 2017. Being children: Children's voices on childhood. *International Journal of Children's Rights* 15: 1–21.
3. Norozi, S., and T. Moen. 2016. Childhood as social construction. *Journal of Educational and Social Research* 6: 75–81.
4. Meyer, A. 2007. The moral rhetoric of childhood. *Childhood* 14: 85–93.
5. European Convention on Human Rights, Article 2, First Protocol.
6. Herring, J. 2018. *Vulnerability, childhood and the law*. Berlin: Springer.
7. Green, L. 2016. *Understanding the life course*. London: Polity Press.
8. Kitzinger, J. 1988. Defending innocence: Ideologies of childhood. *Feminist Review* 28: 77–98.
9. Kitzinger, J. 2004. *Framing abuse: Media influence and public understandings of sexual violence against children*. London: Pluto Press.
10. Kincaid, J. 1998. *Erotic innocence: The culture of child molesting*. Durham NC: Duke University Press.
11. Nedelsky, J. 2014. *Law's relations*. Oxford: Oxford University Press.
12. Naffine, N. 2014. The liberal legal individual accused: The relational case. *Canadian Journal of Law and Society* 29: 123–152.
13. Fineman, M. 2009. "Elderly" as vulnerable: Rethinking the nature of individual and societal responsibility. *Elder Law Journal* 20: 71–96.
14. Dodds, S. 2007. Depending on care: Recognition of vulnerability and the social contribution of care provision. *Bioethics* 21: 500–524.
15. The Care Collective. 2020. *The politics of interdependence*. London: Verso.
16. Herring, J. 2020. *Law and the relational self*. Cambridge: Cambridge University Press.
17. Daniel, B., and A. Bowes. 2011. Re-thinking harm and abuse: Insights from a lifespan perspective. *British Journal of Social Work* 41: 820–836.
18. Diduck, A. 2013. Autonomy and vulnerability in family law: The missing link. In *Vulnerabilities, care and family law*, ed. J. Wallbank and J. Herring, 145–162. Abingdon: Routledge.
19. Lindemann, K. 2003. The ethics of receiving. *Theoretical Medicine and Bioethics* 24: 501–524.
20. Neal, M. 2012. "Not gods but animals": Human dignity and vulnerable subjecthood. *Liverpool Law Review* 33: 177–196.
21. Archard, D. 2001. Philosophical perspectives on childhood. In *Legal concepts of childhood*, ed. Julia Fiona, 42–57. Oxford: Oxford University Press.

22. Bedford, D., and J. Herring, eds. 2020. *Embracing vulnerability*. Abingdon: Routledge.
23. Kittay, F.E. 2011. The ethics of care, dependence, and disability. *Ratio Juris* 44: 49.
24. Carse, A. 2006. Vulnerability, agency and human flourishing. In *Health and human flourishing*, ed. C. Taylor and R. Dell'Oro. Washington DC: Georgetown University Press.
25. Kittay, F.E. 2019. *Learning from my daughter: The value and care of disabled minds*. Oxford: Oxford University Press.
26. Tronto, Joan. 1993. *Moral boundaries: A political argument for an ethic of care*. Abingdon: Routledge.
27. Kittay, F.E. 1999. *Love's labor: Essays on women, equality and dependency*. New York: Oxford University Press.
28. Shakespeare, T. 2001. The social relations of care. In *Rethinking social policy*, ed. G. Lewis, S. Gewirtz, and J. Clarke, 52–71. Bristol: Policy Press.
29. Clement, Grace. 1996. *Care, autonomy and justice: Feminism and the ethic of care*. Abingdon: Routledge.
30. Held, Virginia. 2006. *The ethics of care*. New York: Oxford University Press.
31. Gergen, Kenneth. 2001. *Relational being*. Oxford: Oxford University Press.
32. Purcell, Elizabeth. 2016. Disability, Narrative, and Moral Status. *Disability Studies Quarterly* 36: 1–19.
33. Strathern, Marilyn. 1998. *The gender of the gift: Problems with women and problems with society in Melanesia*. Berkeley: University of California Press.
34. Herring, Jonathan. 2013. *Caring and the law*. Oxford: Hart.
35. Perpich, Diane. 2010. Vulnerability and the ethics of facial tissue transplantation. *Bioethical Inquiry* 7: 173–196.
36. Herring, Jonathan. 2014. Why we need a statute regime to regulate bodily material. In *Persons, parts and property: How should we regulate human tissue in the 21st century?*, ed. Imogen Goold, Jonathan Herring, Loane Skene, and Kate Greasley, 213–224. Oxford: Hart Publishing.
37. Fineman, Martha. 2010. The vulnerable subject and the responsive state. *Emory Law Journal* 60: 251–312.
38. Peterson, Alan, and Iain Wilkinson. 2007. *Health, risk and vulnerability*. Abingdon: Routledge.
39. Vehmas, Simo. 1999. Discriminative assumptions of utilitarian bioethics regarding individuals with intellectual disabilities. *Disability and Society* 14: 37–53.
40. Kitzinger, Jenny. 1997. Who are you kidding? children, power and the struggle against sexual abuse. In *Constructing and reconstructing childhood*, ed. Adrian James and Adrian Prout, 45–59. Abingdon: Routledge.
41. Foster, Charles, and Jonathan Herring. 2018. *Altruism, welfare and the law*. Berlin: Springer.
42. Gheaus, Anna. 2015. Unfinished adults and defective children: On the nature and value of childhood. *Journal of Ethics and Social Philosophy* 12: 1–21.
43. Todres, Jonathan. 2014. Independent children and the legal construction of childhood. *Southern California Interdisciplinary Law Journal* 23: 261–299.
44. Foster, Charles, and Jonathan Herring. 2012. Welfare means relationality, virtue and altruism. *Legal Studies* 32: 480–498.
45. Clough, Bev. 2017. Disability and vulnerability: Challenging the capacity/incapacity binary. *Social Policy and Society* 16: 469–482.
46. Wall, John. 2008. Human rights in light of childhood. *International Journal of Children's Rights* 16: 523–541.
47. Wall, John. 2015. Why children's right matter. In *Giving children a voice: The transforming role of the family*, ed. Catherine Bernard and John Shea, 43–51. Newcastle upon Tyne: Cambridge Scholars Publishing.
48. Brighouse, Harry, and Adam Swift. 2006. Parents' rights and the value of equality. *Ethics* 117: 80–93.
49. Herring, Jonathan. 2019. Vulnerability and medical decisions concerning children. In *Parental rights, best interests and significant harms*, ed. I. Goold, J. Herring, C. Auckland, Imogen Goold, Jonathan Herring, and Cressida Auckland, 225–238. Oxford: Hart.
50. Lotz, Mianna. 2017. Parental vulnerability. *Nordic Journal of Applied Ethics* 11: 41–58.
51. Furedi, Frank. 2011. It's time to expel the 'experts' from family life. *Spiked*, 12 September 2011, www.spiked-online.com/newsite/article/11067#.Vqg1IiorLIU.
52. Rosenfeld, Alan, and Nicola Wise. 2011. *The over-scheduled child: Avoiding the hyper-parenting trap*. New York: St Martin's Press.

53. Fairclough, C. 2014. Intensive parenting and the expansion of parenting. In *Parenting culture studies*, ed. Ellie Lee, Jennie Bristow, Charlotte Fairclough, and Jan Macvarish. Basingstoke: Palgrave.
54. Furedi, F. 2014. Introduction. In *Parenting culture studies*, ed. Ellie Lee, Jennie Bristow, Charlotte Fairclough, and Jan Macvarish. Basingstoke: Palgrave.
55. Lotz, M. 2019. The real value of child-parent vulnerability. *Ethics and Social Welfare* 13: 244–262.
56. Herring, J. 2017. Parental responsibility, hyper-parenting, and the role of technology. In *Oxford handbook of law, regulation and technology*, ed. R. Brownsword, E. Scotford, and K. Yeung. Oxford: Oxford University Press.

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.