CHAPTER 1

Special Protection of Human Rights of Children I: History of Children's Rights

Dubravka HRABAR

ABSTRACT

Humanity has survived thanks to children, although they have been neglected and considered somewhat less worthy than adults throughout human history. In the earliest times, as recorded by written history, they did not enjoy any rights, not even close to that of adults. Children had no rights with respect to their parents or any third person. Antiquity was quite cruel to them; however, with the rise of Christianity, they became protected (at least) from being killed (with impunity). In the Middle Ages, their use value for society was recognised, and the bourgeois revolutions of the time strengthened this recognition by increasingly exploiting children. The Industrial Revolution considered children a free labour force to be used for generating capital. However, such pressure on the survival of children gave rise to initial ideas on the need to protect children; this referred to not only the prohibition of pernicious forms of work and working hours, but also the provision of education for them. The 20th century can be termed the century of children's rights. The first international, often non-binding, documents (declarations, proclamations, conventions) and movements emerged in that century. In conjunction with the ideas of progressive individuals, they led to an era when it would be unthinkable for children to have no rights. The entire course of establishing legal protection for children at the global level was quite slow, yet extremely important since it obliged states to treat all children equally, and these obligations broadened and deepened over time – starting from the number and type of children's rights to the establishment of binding legal norms instead of simple principles that existed in the early beginnings. Legal analyses of the Geneva declarations and conventions are a good indicator of how the concept of children's rights slowly but surely progressed together with the consolidation of human rights and awareness of the dignity of human beings and children as a dependent and threatened category of human beings.

KEYWORDS

history of children's rights, Greek law, Roman law, the Enlightenment, Industrial Revolution, international documents

Dubravka HRABAR (2024) 'Special Protection of Human Rights of Children I: History of Children's Rights'. In: Márta BENYUSZ – Anikó RAISZ (eds.) International Children's Rights. pp. 23–40. Miskolc–Budapest, Central European Academic Publishing. https://doi.org/10.71009/2024.mbar.icr_1

1. Children as a Value in Pre-Ancient Times

Children are the quintessence of the family, and the survival of the human race has always rested on their shoulders. The birth of children forms a family,[1] and their growth, development, and maturing enable the transfer of human knowledge and values from one generation to the next.

We can only speculate on the position of children in barbaric times since no written records exist about this period; thus, it may be assumed that care for children existed primarily for the sake of maintaining *Homo sapiens* and migrating hordes. A natural need thus prevailed to care for children, in the sense of ensuring their basic living conditions.[2] However, despite the fact that no family or future can be envisaged without children, their legal status remained unenviable for thousands of years, since many of them did not live long enough to reach adulthood owing to social reasons (poverty, food shortages, diseases, wars). Law, as a regulator of social relationships, is a reflection of the 'state of mind'; in other words, on a national level and in the course of history, the social values protected by law are clearly visible in the laws framed by a state.

The legal arrangement of the natural relations between parents and children, that is, the scope and extent of parental authority, the obligations of parents towards children, and the legal position of children in this relationship, is one of the clearest indicators the legal position of children. Analysing the legal position of children throughout history, especially in the family, can help answer the question of whether children, at a certain point in time, in a certain culture and geographical area, were considered worthy of protection. Independently of these personal, private relationships between parents and children, it may generally be concluded that the universal attitude of the state (regardless of its organisational form) towards children as legal subjects was negative in the course of history. What is astonishing is the circumstances under which humans lived one hundred thousand years ago, subsequently in antiquity, the Middle Ages, up to the modern age, and that some of them, although not many, managed to survive and bore the responsibility of continuing the human species on their shoulders. The course of history was slow and painstaking for children: from the Code of Hammurabi, where children were viewed as the property of

1 In this sense, the UN and European documents distinguish two human rights: the right to marry and the right to start a family. Marriage is a legal institution and a social relationship, forming the basis for building a family. Over the last decades, this includes extramarital and, at times, same-sex unions in the European legal area and some non-European countries. Nevertheless, worldwide, many countries continue to opt for traditional definitions and consider the child-parent relationship or a marriage between a man and a woman as the basis of family.
2 Hrabar, 1994, p. 25.

their parents and a means of retaliation,[3] to the child with many rights recognising him as a legal subject.

Early legal sources are extremely rare; however, one should mention the Ten Commandments, one of which states: 'Honour your father and your mother, so that your days may be long in the land that the Lord your God is giving you',[4] which influenced how children were subsequently treated[5] in the sense of being dominated by parents, especially the father. Furthermore, it also states, 'Whoever strikes father or mother shall be put to death',[6] and specifies the protection of orphans.[7] The early sources speak in a clear normative way of the parent-child relationship, but the emphasis is on children's duty to respect their parents. The New Testament paints a much gentler picture through the call of Jesus Christ on the value of children.[8]

2. Antiquity

2.1. Children under Greek Law

In terms of the parent-child relationship, one can observe Greek legal history – albeit fragmented into separate city-states with their own legal orders – through two segments: the meaning of the concept of *filia* and paternal authority. *Filia*, of which Aristotle speaks in *Nicomachean Ethics*, is a cohesive factor of the family. In the parent-child relationship, it manifests as the love that parents have for their children as being a part of them.[9] Therefore, care, feelings, attention, and gentleness towards children did exist in Antiquity, and one cannot state that attitudes towards children were wholly negative.[10] Put simply, the perception of children as human beings was different, given the social relations and cultural patterns of the time. The ancient *filia* is an unconditional feeling of parental giving,[11] without expecting anything in return. This interpretation of the parent-child relationship, in which *filia* is a natural state inherent to man, is what we interpret today as the natural law doctrine. Aristotle, as a representative of this school in Antiquity, interpreted *filia* through

3 It reads: '… if one superior man kills the daughter of another superior man, the killer's daughter is executed in punishment'; cf. Harari, 2017, p. 126.; or (195) 'If a son strikes his father, his hands shall be hewn off'. Cf. *http://www.general-intelligence.com/library/hr.pdf.*

4 Bible, NRSVUE, Exodus, 20:12.

5 In Exodus, there is a reference to the Death of Firstborns (11:4-8), the Consecration of the Firstborns (13:11+), and the Firstborns (Luke 2:22-24), which allows one to conclude that firstborn (male) children were especially valuable and deemed worthy of being sacrificed to the Lord.

6 Bible, Exodus, 21:15.

7 Bible, Exodus: 'You shall not abuse any widow or orphan' (22:22).

8 'Let the children come to me; do not stop them, for it is to such as these that the kingdom of God belongs' (Mk, 10:14).

9 Despotopoulos, 1975, p. 72.

10 This is how Philippe Ariès interprets this relationship, 1960. Allegedly, according to Ariès, the concepts of child, youth, and adolescence were considered 'immutable and for ever and always' cf. Veerman, 1992, p. 3.

11 Cf. Hrabar, 1994, p. 17.

the ancestor-descendant relationship, emphasising maternal *filia* as proof of the irrational, since it does not cease even when the child does not care for the mother.[12] The Greek family was patriarchal and, according to available sources, man, as head of the family 'ruled over his children like a king'.[13]

The second segment is the unconditional power that the father, as head of the family, wielded over his children in a way that he could dispose of the lives of his children. The man was the dominant being and the central figure of the family. Generally, children's rights were inversely proportional to that of the father's.[14] The greater the powers of the father, the more unenviable the position of his child. Spartan customs allowed the father to abandon his sick, feeble, or female child to beasts and predators on Taygetus, a mountain in the Peloponnese, by throwing the child into the abyss.[15]

2.2. Children under Roman Law

Roman law left more written traces on legal relations within the family, including that of parent-child relationships. The development of private ownership influenced the creation of the patriarchal family with pronounced male domination, including that of the father over other family members. Thus, under Roman law, the father's rights prevailed over his duties. The Roman *pater familias* possessed lifelong *patria potestas*, and in the early historical age, almost absolute power over his children and further offspring. The substance of that power reflected the legal relationship of the father with his own children.[16]

Within the framework of *patria potestas, pater familias* possessed *ius vitae ac necis, ius vendendi,* and *ius vindicandi*, legitimising his power over his children and third parties. *Ius vitae ac necis* (the right of life and death) was the father's right to impose the harshest punishment on his child (killing). Over time, this right weakened,[17] and to prevent its abuse, its exercise was subjected to the obligation to hear the family's council (*consortium domesticum*) and subsequently, the censor's remarks as well (*nota censoria*). This right was abolished *inter alia* on the grounds of humaneness in the Christian age (under Emperor Valentinian I in the 4th century). Thereafter, every killing of a child was considered murder.[18] *Pater familias* further had the right to sell his children (*ius vendendi*) *trans Tiberim*, into slavery or to a fellow citizen. In the classical age, sale of children became scarcer and appeared as fictitious sale for adoption and emancipation purposes. The practice disappeared completely in the Christian era.[19] *Ius vindicandi* was the father's right to demand the surrender of his child from persons who would detain the child. A tool for claiming the child was a *vindicatio*

12 Cf. Despotopoulos, 1975, p. 81.
13 Graber, 1893, p. 25 refers to Aristotle.
14 Cf. Hrabar, 1994, p. 25.
15 Hrvatska enciklopedija, 2021, p. 601.
16 Horvat and Petrak, 2022, p. 90.
17 On the father's power in Roman law cf. in more detail in: Wacke, 1980, pp. 205–210.
18 Horvat and Petrak, 2022, p. 91.
19 Ibid.

action, and in the classical period, this was *interdictum de liberis exhibendis et ducendis*, the legal institution that can still be encountered in present-day modern legislation.[20] In addition to these rights, *pater familias* agreement in principle was sought for the marriage of his child.

Children's rights did not exist under the Roman legal order, and children were considered persons *alieni iuris*; the Roman father exercised *patriam potestatem* in *his* interest, not in that of the children.[21]

3. The Middle Ages and Christian Thinkers

The early Middle Ages were characterised by the particularity of law according to tribal membership.[22] German or Teutonic law (5th to 9th century) was under the strong influence of the patriarchate in following the previous order based on Roman law[23] and, in some cases, by religious determinants. For succession purposes, distinction was introduced between legitimate (*full-born*) and illegitimate children.[24]

Commentators of medieval law, that is, feudal social and legal relations, point to rare legislative forms that were preceded by customary law linked to morality.[25] These are mainly collections of Teutonic law (*leges Barbarorum*), written in Latin with an abundance of Germanic elements, predominantly oriented towards criminal law, land relations, rural community, the position of the king, court proceedings, and, to a lesser extent, the family (more precisely marriage) and similar relationships.[26] There were absolutely no indications about the rights of children.

Feudalism, which developed subsequently and was influenced by the Roman Catholic Church and canon law, relied in the legal sense on many institutions of the Roman legal order, but prohibited infanticide, abortion, and child abandonment.[27] In that sense, one can consider this the legal beginnings of the child's right to life; however, such rights were certainly not guaranteed for the protection of children but only because murder was treated as a mortal sin. Another reason for the protection of

20 For example, the German BGB § 1632, the Croatian Family Act, art. 415.

21 Prokop, 1972, p. 12.

22 For example, Lex Romana Visigothorum (506 A.D.), Lex Visigothorum (642–653), Lex Burgundionium/Lex Gundobada (probably 483), Lex Salica (507–511), etc.; cf. Nuovissimo Digesto Italiano, Diritto intermedio, 1964, p. 875.

23 Cf. Prokop, 1972, p. 12.

24 Hrabar, 1994, p. 26. Under the customs and regulations of the time, the right of succession referred only in a few cases to female children; cf. Fischer, 1945, p. 37.

25 'Germanic peoples' – Encyclopaedia Britannica. Available at: https://www.britannica.com/topic/Germanic-peoples (Accessed: 23 March 2023)

26 Thus, for example, the Salic Law (Lex Salica) is hardly influenced by Roman law, and is primarily a penal and procedural code, containing a long list of fines (*compositio*) for various offences and crimes. It also includes, however, some civil-law enactments, among these a chapter declaring that daughters cannot inherit land; Available at: *https://www.britannica.com/topic/Salic-Law* (Accessed: 23 March 2023)

27 Canon law also governed issues of marriage, guardianship, and parent-child relationships.

children was non-religious (in the sense of their right to be born): they could become part of the workforce, and in this context, one encounters exploitative and authoritarian upbringing.[28]

The Middle Ages are quite dark with respect to child-adult relationships, including child-parent relationships. Researchers[29] hold contrasting views on the position of children in that period. Philippe Ariès[30] claims that in the Middle Ages, children were treated like adults[31] because of their generally short life span, whereas Patrick H. Hutton challenges the existence of a developmental connection between the mentality of children and adults.[32] One may agree with Ariès that 'children have gradually acquired more and more rights, received more enlightened rearing...'[33] Lloyd De Mause presents the so-called psychogenic theory of social change indicating that 'the evolution of the parent-child relationship constitutes an independent source of historical change'.[34]

One of the greatest philosophers and theologians of the Middle Ages, St. Thomas of Aquinas refers to the *Epistle to the Colossians* 3:20, constructing his analysis of the relationships between human beings through the relationship between the human being and God. In the *Epistle*, Paul the Apostle says: 'Children, obey your parents in everything'. He interprets it as saying *inter alia*:

> 'Wherefore servants are not bound to obey their masters, nor children their parents, in the question of contracting marriage or of remaining in the state of virginity or the like. But in matters concerning the disposal of actions and human affairs, a subject is bound to obey his superior within the sphere of his authority; .... a son his father in matters relating to the conduct of his life and the care of the household; and so forth.'

28 Thus, L. Stone, cited in Eekelaar, 1986, p. 161.

29 Ariès, Hutton, Wilson, Yudof, Stone, Dasberg, Le Roy Ladurie, and De Mause consider attitude towards childhood in psychological and sociological determinants. A legal status is only a consequence of such views on the child. Basically, this is a dispute over the issue of whether the historical development of the rights of the child is 'characterised by inevitability and chronological continuity' or whether this is a precipitate development.

30 Ph. Ariès, 1960, cited in Veerman, 1992, p. 4.

31 For example, in mid-12th-century Italy, Emperor Frederick Barbarossa formally guaranteed the rights and privileges of students – the right to education, freedom of opinion, speech, association. These were not classical children's rights since this was a somewhat older, but still young, population. Cf. Angel, 1995, p. 3.

32 Ibid, p. 4. Scholars like Verhellen state that in Western history, 'children did not exist as a "separate category"'; cited in Veerman, 1992, p. 10.

33 The same view is shared by Ph. E. Veerman. Another group of scholars share the idea that, over time, children had fewer and fewer rights categorising childhood as a separate status; cf. Veerman, 1992, pp. 5 and 8.

34 De Mause, cited in Veerman, 1992, p. 6.

He explains that the words 'in everything' refer to the field of the father's rights.[35] Consequently, the philosophical thought of Christian scholasticism of the 13th century rested on the father's domination over his children. Martin Luther denied parents' ownership of their children, saying that children belong to God.[36]

4. The Enlightenment

The 1641 *Massachusetts Body of Liberties* is one of the first documents recognising children's rights. There is a recommendation in it for parents not to choose spouses for their children, not to be unnaturally severe with them, and that capital punishment for children who do not respect their parents must not be executed before the age of 17. Likewise, children are free to complain to the authorities for redress.[37]

The Age of Enlightenment (17th and 18th centuries) in European cultural history was marked by different influences and interpretations of the world. It was opposed to the theocentric worldview; it relied on the freedom of the human being and their dignity and did not advocate subordination to authority.

Thus, in John Locke's thinking, one recognises 'the earliest attempt to constrain parental dominance', which denies the existence of parental right to dispose of the life and death of their children if they wish so, but endows children and adults with natural rights, which must be protected. Parents should prepare the child for freedom 'since it is God's will', as children are not the property of their parents, but of God.[38] Parents are obliged to '*preserve, nourish and educate their children*'.[39] However, Locke does not relinquish paternalism and children's obedience to their parents, regardless of the child's age. In his subsequent treaties, Locke introduces a developmental understanding of the child's nature with the objective of producing a rational man.[40] Locke distinguishes the mental capabilities of children from that of adults. From the position of the present day and considering age as interpreted by John Locke, we can see the beginnings of the child's right to express his/her views.

Another representative of the Enlightenment is Jean-Jacques Rousseau. Although his thoughts on children were sporadic, some authors claim that he advocates the preservation of the integrity of children in their growth and development and views childhood as a special place of innocence.[41] Additionally, Rousseau says: 'The child

35 Question 104, Obedience, Article 5. Whether subjects are bound to obey their superiors in all things? Thomas of Aquinas. Available at: https://www.newadvent.org/summa/3104.htm, (Accessed: 19 April 2023). Cf. Toma Akvinski (2005) Suma teologije, Zagreb: Nakladni zavod Globus.
36 Freeman, 2020, p. 19.
37 Freeman, 2020, p. 19.
38 Ibid.
39 Ibid.
40 Ibid., p. 20.
41 Ibid., p. 21.

was to be dependent on things, rather than people, because things belong to nature and cannot corrupt, and people belong to society and are, as a result, corrupted'.[42]

Sir William Blackstone was a respectable jurist in the Age of Enlightenment; he wrote in 1780 that parents are obliged to provide for, protect, and educate children. The first public pamphlet on children, titled *The Rights of Infants* (1797), was written by Thomas Spence. He emphasised protecting children from poverty and exploitation and advocated for the elimination of distinction between legitimate and illegitimate children.[43]

The French Revolution almost completely silenced the exchange of ideas on children until the mid-19th century. In this most radical period, attempts were made to put legitimate and illegitimate children on an equal footing and to expand education. However, the Napoleonic Code (1804) halted these efforts, and they were ignored for the next fifty years.

In the mid-19th century, John Stuart Mill advocated for a broad guarantee for the liberties of the human being; however, he explicitly deprives children[44] of the principle of liberty, which aligned with the 'orthodox opinion of the mid-nineteenth century'.[45] At the same time, after the Paris Commune, attempts were made in France to establish a league for the protection of children's rights.

5. Child's Rights Movements in the 19th Century and Child Labour

In the area of children's rights, legal systems during the Bourgeois Revolution and the Industrial Revolution were characterised by only a formal equality of all subjects and ignored children.[46] The Industrial Revolution brought workload for a large number of children. Very few countries established rules for the minimum employment age of children, their healthcare, and night work.[47] Paternal authority continued to dominate the parent-child relationship, and smaller interventions concerned certain duties towards the person and property of the child. From the aspect of social view of children, they were then considered useful members of society, which was the underlying idea of the 'child-saving movement'. This was also the time when the first juvenile justice appeared. However, children continued to be a 'convenient focus for public ills'.[48] It is in this sense that one should understand Karl Marx's engagement towards prohibiting child labour and recognising children's right to education, which he interpreted as a 'genuine social right of citizenship, because the aim of education

42 Ibid.
43 Ibid. p. 22.
44 He equates children with 'backward nations', that is, barbarians, especially in his work On Liberty; cf. Siogvolk, cited in Freeman, 2020, p. 23. and Stanley, 2017, pp. 49–72.
45 Freeman, 2020, p. 23.
46 Hrabar, 2016, p. 21.
47 Angel, 1995, p. 5.
48 Freeman, 2020, p. 24.

during childhood is to shape the future of adulthood'.[49] However, Marx opposed a complete ban of child labour and advocated 'restrictions with regard to working hours and compulsory education'.[50]

Nineteenth-century civil codes evolved towards greater protection of children and, to some extent, recognition of equal care of the father and the mother under the name of parental authority.[51] Legislative authorities increasingly allowed courts to intervene in cases of impaired relationships within the family.[52]

Among the many apologists for children's rights was Janusz Korczak,[53] a Pole recognised as an 'icon of children's rights',[54] who was polyvalent in the protection of children. He (a) emphasised the need for children to be loved and respected; (b) created a model of the first modern declaration on children; (c) established a children's parliament and elaborated on the concept of children's courts, and (d) published children's newspapers. He believed that children are integral human beings from the outset, rather than some sort of 'preparation' for adulthood. He deemed important the child's right to accept love and the right to respect, thereby establishing, in his own way, modern views on children's psychology and their growth and development. He advocated gentle paternalism (the so-called liberal paternalism) through the obligation of adults (parents) to teach, guide, train, restrain, temper, correct, admonish, prevent, impose, and combat children.[55] His ideas on children's rights align completely with present-day views on children as, among the child's rights, he recognised 'the right to respect, the right to live in the present ... the right to be him or herself, the right to make mistakes, the right to be taken seriously, the right to resist educational influence that conflicts with his or her own beliefs'.[56]

It is little known in scientific literature that the Declaration on the Rights of the Child (1918) was adopted after the October Revolution as a response to the Czarist pattern of children's education; however, the Declaration was never enforced as it was completely crushed in the Stalin era. The Declaration contained 17 principles: children were asserted as persons with their rights; ownership of children by parents, state, or society was denied. The Declaration announced the participatory right of children in making decisions that affect them 'being thus a precursor' of the right of the child to express views (as formulated by art. 12 of the United Nations Convention on Rights of a Child, UNCRC).[57]

49 Marshall, cited in Freeman, 2020, p. 24.
50 Vinković, 2008, p. 35.
51 Hrabar, 2012, pp. 13–30.
52 Bainham, 2005, p. 9.
53 For him and his work cf. more Veerman, 1992, pp. 93–105.
54 His real name was Henryk Goldszmit (1878–1942); he was a paediatrician, teacher, writer, and publicist. He was unknown until recently because he wrote in Polish. He perished in the Nazi camp Treblinka where he was brought together with children; cf. Freeman, 2020, p. 27.
55 Freeman, 2020, p. 28.
56 Freeman, 1992, p. 4.
57 Freeman, 2020, p. 30.

Child labour is one of the forms of exploitation of children because of their subordinate position.[58] Until the beginning of the Industrial Revolution in the 18th century, child labour was not recognised as undesirable or harmful. Moreover, the view of cultural anthropology, anthropology, and sociology on the status of children indicates that the child 'had the role of a helper in a community, or in the family in which it lived'.[59] Feudal societies were agrarian, and therefore, child labour was focused on helping in farm work and preparing for future independent work in adulthood.[60]

Capitalism strives to raise capital, and the issue of child labour imposes itself increasingly in the social sense. Certainly, this disproportion between the goal (capital accumulation) and means (child labour) raises the issue of the role of children and the need for their protection from exploitation. Children were engaged in the work process due to poverty, which was the principal cause of child labour, and 'a clear link between child labour and forced labour' can be observed.[61] Children worked for a major part of the day (at times 12 and 16 hours) as a cheap labour force in manufacturing. The Industrial Revolution had a growing need for labour force, making children ideal workers 'whether it be as producers in developing states or as economic dependants in industrialised societies'.[62] In the second half of the 19th century, the first pieces of legislation offering selective protection for children between the ages of 9 and 16[63] were introduced in Prussia, Denmark, Germany, Italy, the Netherlands, and Belgium; this protection did not include younger children. It was probably the unscrupulousness of engaging children in labour (from the age of 6 upwards), especially in hard physical work in factories and mines in inhumane conditions with no pay or minimum wages, that gave rise to thoughts about the future of a society that exhausts children beyond all limits. Social reforms implemented in Great Britain through a number of legislative acts also included child labour, improvement of their living conditions, and a ban on night work and employing children under the age of 9.[64] Although the process of protecting children from exploitation was long and slow, changes were the result of the negative implications of child labour and better social awareness.[65] The 19th century in Great Britain was marked by legislative acts aimed at revising working and age conditions for children's work and conflicts with employers who wanted to exploit the workforce to the maximum.[66] The fight against child labour

58 Van Buuren, 1995, p. 262.
59 Vinković, 2008, p. 23.
60 Ibid., p. 24.
61 Grgurev, 2016, p. 100.
62 Van Buuren, 1995, p. 262.
63 Grgurev, 2016, p. 102.
64 Vinković, 2008, p. 25, establishes a connection between the consequences of the Industrial Revolution and the adoption of protective labour laws.
65 Vinković, 2008, p. 26.
66 This is the so-called first Factory Act of 1802, followed by the Factories Acts of 1833, 1844, and 1878, the 1834 Poor Law, the 1903 Employment of Children Act, and the 1904 Prevention of Cruelty to Children Act. A number of different commissions examined child labour; for more, cf. Vinković, 2008, p. 28.

was marked by advocacy for children's education that necessarily resulted in a reduction of children in the workforce.

In France, prior to the Industrial Revolution, children's work in the family community was taken for granted, and in 1813, child labour under the age of 9 in mines was prohibited. Child labour was incompatible with education. Therefore, attempts were made, though unsuccessfully, to prevent child labour by passing several education laws (in 1833, 1840).[67] A special Child Labour Law (1841) regulated child labour differently with respect to age and working hours. It could be noted that even the laws that followed this strove, although with little success, to improve the legal status of working children 'as a sign of protective state intervention in the context of the development of a liberal order'.[68] These laws covered working children in the industry, however, not those in factories; night work, work with toxic chemicals, and work in mines was prohibited. In France, legal regulation of child labour was connected to the right to the education of children, decreasing birth rates, and high rates of child mortality.[69]

In the United States of America, in the state of Massachusetts, child labour was banned by a law in 1837; however, with the transition to factory labour, an increasing number of families, including their children, agreed to work in factories for wages, regardless of great inequalities. Children, like women, were a cheap labour force. Towards the end of the 19th century, workers' trade unions began to engage themselves on behalf of child labourers employed in hard physical and dangerous jobs, and whose numbers were growing.[70] Great strides were made in the early 20th century, when the minimum age for work in factories was set at 14. A special committee was established to draft a law (the 1916 Keating-Owen Act), which limited work to eight hours. A long-standing conflict between the North and South was reflected in the disagreement on child labour, which was advocated by representatives of the South. The ensuing years were marked by judgements of federal courts and the Supreme Court in favour of the unconstitutionality of similar acts. Then, in 1941, the Supreme Court ruled that the Fair Labour Standards Act complied with the Constitution of the United States.[71]

The International Labour Organization (ILO) has been focused on child labour since its inception. In 1919, the first two conventions were adopted (no. 5 on minimum age of children for employment in industry, no. 6 on night work of young persons in industry), which were followed by more conventions.[72] Relatively recent conventions that are important for child labour are no. 138 (1973) Minimum Age Convention, and

67 Cf. Vinković, 2008, p. 29.
68 Ibid., p. 30.
69 Ibid., p. 31.
70 Ibid., p. 32.
71 Ibid., p. 33.
72 Convention no. 7 on the minimum age of admission of children to jobs at sea, Convention no. 10 on the minimum age of admission of children to jobs in agriculture, and other conventions (nos. 16, 33, 58, 59, 60, 77, 78, 112, 123) governing individual other sectors.

no. 182 (1999) Worst Forms of Child Labour Convention. Although this Convention was not signed or was signed with a great delay by states with a high rate of child labour, it is significant because it established a link between the completion of compulsory education and the minimum age for employment, and created fundamental working standards (the so-called *fundamental convention)* for all the ILO member states regardless of whether the states ratified it.[73]

6. The 20th Century

In the normative sense, the 20th century is the century of children. Many states adopted documents on children's rights that are less known to the professional public, thereby contributing to the idea of the need to establish comprehensive global protection of children through the recognition of child-specific rights and their protection.[74]

The horrors of World War I left its mark on many children. In 1919, Eglantyne Jebb,[75] an Englishwoman, founded *Save the Children Fund* to help starving children in Germany and Austria. The financial success of the Fund encouraged her to launch an international children's movement, and thus, under the auspices of the British *Save the Children Fund*, the Swedish *Rädda Barnen*[76] *and the International Committee of Red Cross, the International Save the Children Union,* was established in Geneva in 1920. Subsequent years saw the activities of the Fund focused on the problem of hunger in Greece and Soviet Russia. Jebb realised that children need special rights, and thus, at a Fund meeting in Geneva, she submitted a brief document that proclaimed (some) rights of children and the duties of the international community. This document was adopted by the League of Nations in 1924 under the title Declaration of the Rights of the Child. Jebb focused on the principle of universality, whereby all children are entitled to their rights, regardless of nationality, race, religion, etc.

Disputes over child labour were prominent in the analysis of the status of children. One can claim that exploitation of children through their work was the driving force behind the fight for a better status and other rights of children. Following World War II, the issue of child labour was mentioned in Art. 10 Para. 3 of the International Covenant on Economic, Social and Cultural Rights (1966), which provided protection of children and youth from economic and social exploitation, and stated that

73 Grgurev, 2016, p. 103.

74 The USA was very active in the field. Thus, we note the Children's Charter by the US President H. Hoover (1930), the Children's Charter in Wartime (1942), the Declaration of Opportunities for Children (1942), the Children's Bill of Rights of the New York State Youth Commission (1949), the Japanese Children's Charter (1951), the Arab Charter of the Rights of the Arab Child (1983), the Declaration of the Rights of the Child in Israel (1989), the Declaration of the Rights of Mozambican Children (1979), the Charter on the Rights and Welfare of the African Child (1990); cf. Veerman, 1992, pp. 231–273. The same author refers to other so-called ideological declarations.

75 For Jebb's biography cf. Veerman, 1992, pp. 88–91.

76 It was founded in 1919 by Ellen Palmstjerna together with Elin Wägner, Gerda Marcus, and Anna Kleman.

individual types of child labour (e.g. jobs that are contrary to morality, health, or are life-threatening or harmful for normal development) should be punishable by law. States are also required to prescribe the minimum age under which paid child labour is prohibited.

7. The Geneva Declaration of the Right of the Child (1924)

In the early 20th century, recognition of children's rights was unsystematic and modest. International protection of children existed merely as indirect protection – when it is provided to 'persons', which implies children as well.[77] The first acts of international law devoted to the child were conventions on the prohibition of trade in women and children (1904 and 1910).[78]

Ideas about children's rights matured over time, and along the way, ideas and engagement of individuals (cf. *supra*) and social circumstances became crucial.[79] In this sense, the need for the protection of children through their rights was partial and focused mainly on those problems that children encountered at the time in concrete societies. The declarations of the rights of children were a reaction to social circumstances and, as a rule, they highlighted the principles related to child well-being[80] and did not constitute rights that would belong to children. They served as guidelines for public policies.

The Geneva Declaration of the Rights of the Child was adopted within the League of Nations in 1924,[81] soon after World War I left many child casualties in its wake. The Declaration makes more references to the duties of society towards children rather than towards the latter's rights, and emphasises 'the child's material rights'.[82] The introduction reads: '*mankind owes to the child the best that it has to give, declare and accept it as their duty that, beyond and above all consideration of race, nationality or creed*'. The call, considering the dependence of children, explicitly addressed adults, and this was emphasised in subsequent international documents. The beginning of what would later be called 'the best interests of the child', or the child's well-being and equality of all children of the world, was evident. The expression 'the best humanity

77 For example, the Geneva Slavery Convention (1926), treaties on the rules of warfare, such as the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), which aimed at the protection of all human beings without difference, including children, cf. Andrassy, 1976, p. 596.
78 Cf. Hrabar, 1994, p. 29.
79 Especially war and postwar, economic crises such as poverty, hunger, etc.
80 Veerman, 1992, p. 153.
81 For the steps that preceded its creation, especially as a result of efforts of Eglantyne Jebb, cf. Veerman, 1992, p. 155. The Declaration was originally adopted within the framework of Save the Children International Union, signed by all its members, and then, seven months later, adopted by the Assembly of the League of Nations and its 50 member states.
82 Freeman, 1992, p. 4.

can give' implies 'summarising those needs of children that must be met at any cost even during the times of serious economic pressures'.[83]

In just five articles, emphasis is laid on circumstances that can be translated into today's legal language: the right to development,[84] the right to survival, health, resocialisation, and rehabilitation and substitute care,[85] the right to protection from economic exploitation and restricted work conditions,[86] and the right to upbringing and all-round development.[87] The fifth principle ('the child must be raised in the consciousness that its talents must be devoted to the service of its fellow-men') is considered the most important and far-reaching principle since it reflects the system of values and norms.[88] Principle no. 3 is also interesting, giving precedence to a child in distress (when giving aid). It can be interpreted in the sense that children must always be *first*, and must take precedence.[89] It is possible, though not explicitly mentioned, that this principle includes refugee children and children of members of minorities, war-affected children, children with disability, sick children, and children in need of social security. Commentators of the Declaration at the time commented on the social conditions in which children live and believed, for example, that economic exploitation may also refer to prostitution and that education implies development of talents/capabilities, etc.

8. UN Declaration on the Rights of the Child (1959)

The Declaration on the Rights of the Child proclaimed by the UN General Assembly Resolution no. 1386 (XIV) is a step further in offering a more comprehensive protection of children and their rights and a revision of the wording of the slightly obsolete Geneva Declaration,[90] considering the changes that ensued in terms of healthcare for children and the understanding of the child's well-being.[91] For the first time, the Declaration proclaims freedoms and rights of children for the sake of achieving both their interests and those of society. In its ten principles, the Declaration directs states towards desirable conduct,[92] since this is after all a non-binding document.[93]

83 Veerman, 1992, p. 157.
84 Mentioned in the sense of 'the means requisite for its normal development, both materially and spiritually'.
85 Mentioned as 'the child that is hungry must be fed; the child that is sick must be helped; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured'.
86 'The child must be put in a position to earn a livelihood and must be protected against every form of exploitation'.
87 '… its talent must be devoted to the service of its fellow men'.
88 Veerman, 1992, p. 159.
89 Ibid., p. 158.
90 For proceedings preceding the adoption of the final wording cf. Veerman, 1992, p. 161.
91 Ibid., p. 161.
92 Hrabar, 1994, p. 31.
93 Therefore, these are principles, not articles. Cf. Ibid., p. 31 and Veerman, 1992, p. 168.

Its text consists of a Preamble and ten principles, which were the subject of negotiations and marked by certain controversies,[94] and in the end, by compromises. Principles can be grouped into three sets.[95]

Principle no. 1 refers to the ban on discrimination of the child on any basis, and does not refer to rights, but rather to the universality of other rights contained in other principles.[96] Principle no. 2 combines several aspects or elements as we know them in more recent international documents on children: special protection, possibility of physical, mental, moral, spiritual, and social development in freedom and dignity, and the best interest of the child as the paramount consideration. Protection meant here is unspecified, and therefore must include protection from physical and personality attacks.[97]

Principle no. 3 refers to the right to name and nationality. Discussions showed the diversity emerging from different cultures when it comes to name-giving (and surname); however, much greater discussion was on acquiring citizenship considering different national principles.[98] Nevertheless, with the principle so formulated, the intention was to transfer the responsibility for acquiring nationality to the child's representatives, since the child itself cannot apply to the competent bodies.[99]

Principle no. 4 deals with the child's social security, implying healthcare, protection of the mother and the child, special pre-natal and post-natal care, nutrition, housing, recreation, and medical services. In fact, even today, poor and rich countries differ with regard to how much of their resources they can allocate to children. Principle no. 5 provides for special treatment, education, and care for children who are physically, mentally, or socially handicapped.

Principle no. 6 focuses on the full and harmonious development of the child's personality that presupposes 'love and understanding' in the care and responsibility of parents, moral and material security, and the closeness of a mother for younger children.[100] Reference is made to the state's duty to care for children without a family and for those without adequate support, as well as support to maintain children in families with more children.

Principle no. 7 comprises rights to education, playing, and recreation. Education should be free and compulsory in the elementary stages with the aim of promoting the child's culture and development of the child's abilities, individuality, and moral and

94 During the drafting, disputes arose over different understandings of the child as an individual or as 'child of the State', the latter being advocated by the delegates of China and the USSR, diminishing the role of the family and parents as primary educators; cf. Veerman, 1992, p. 168.
95 Thus, Hrabar, 1994, p. 31; and Veerman, 1992, who distinguishes the so-called conservative mode and adaptive mode of four different subsystems: social, personal, cultural, and physical; cf. p. 180.
96 Veerman, 1992, p. 170.
97 Ibid.
98 Acquisition of nationality by *ius soli* or *ius sanguinis.*
99 Veerman, 1992, p. 171.
100 It specifies: 'a child of tender years shall not, save in exceptional circumstances, be separated from his mother'.

social responsibility in order to become a useful member of society. It also mentions the best interests of the child as the guiding principle in the treatment of the child by its parents and later by educators. Critics, and they were plenty when the Declaration was drafted and in the period thereafter, considered this principle quite vague.[101]

Principle no. 8 refers to children as persons who 'in all circumstances shall be among the first to receive protection and relief'. This does not exclude, for example, persons with disabilities or pregnant women, and the principle is applicable to cases of natural disasters and armed conflicts.

Principle no. 9 merges several situations in which children must be protected: in cases of their neglect, cruelty towards them and their exploitation, any form of trade, employment below the minimum age, and harmful effects on the child's health or education or doing things contrary to the child's physical, mental, or moral development.

Principle no. 10, the final one, refers to protection and prohibition of racial, religious, and other forms of discrimination. The child should be raised in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in consciousness of his devotion to the service of his fellowmen. As in defining other principles, in this case too, certain disagreements due to the lack of precision of the norm were noted.[102]

This Declaration attempted to bring to light everything that is necessary for the proper growth and development of children and focused on the universal protection of children. Therefore, its basic feature is recognition of children's rights as a special category of human rights.[103]

101 Thus, Veerman, 1992, has doubts about the meaning of the words 'general culture' and 'in the best interest of the child'; cf. p. 177.

102 For example, with reference to difficulties in defining how to implement education in the field of human rights, tolerance, peace, and development and how to interpret the duty to protect the child when certain practices give rise to discrimination.

103 Hrabar, 1994, p. 32; 1989, p. 871.

Bibliography

Andrassy, J. (1976) *Međunarodno pravo*. Zagreb: Školska knjiga.

Angel, W. D. (ed.) (1995) *The International Law of Youth Rights*. 1st edn. Dordrecht/Boston/London: Martinus Nijhoff Publishers.

Bainham, A. (2005) *Children, The Modern Law*. Bristol: Jordan Publishing Limited.

BGB, Bürgerliches Gesetzbuch (In der Fassung der Bekanntmachung vom 02.01.2002 (BGBl. I S. 42, ber. S. 2909, 2003 S. 738) zuletzt geändert durch Gesetz vom 22.10.2024 (BGBl. I S. 320) m.W.v. 26.10.2024 Available at: https://dejure.org/gesetze/BGB

Biblija (2011) *Knjiga Izlaska* Zagreb: Kršćanska sadašnjost.

Biblija (2011) *Knjiga Saveza* Zagreb: Kršćanska sadašnjost.

Britannica, The Editors of Encyclopaedia Britannica (2023) *Germanic People* [Online]. Available at: https://www.britannica.com/topic/Germanic-peoples/ (Accessed: 6 April 2023).

Despotopoulos, C. (1975) 'Sur la famille d'après Aristote', *Archives de philosophie du droit*, 20, pp. 382-397.

Eekelaar, J. (1986) 'The Emergence of Children Rights', *Oxford Journal of Legal Studies*, 6, 2, pp. 161-182; https://doi.org/10.1093/ojls/6.2.161.

Fischer Drew, K. (1945) *A Translation and Study of the Lex Gundobada or Burgundian Law. Code*. Master Thesis, Rice University, Available at: https://hdl.handle.net/1911/104644/ (Accessed: 6 April 2023).

Family act, Official gazette, Nos. 103/15, 98/19, 47/20, 49/23, 156/23.

Freeman, M. (2020) *Magna Carta for Children? Rethinking Children's Rights*. Cambridge: Cambridge University Press; https://doi.org/10.1017/9781316591468.

Freeman, M. D. A. (1992) 'Introduction: Rights, Ideology and Children' in Freeman, M. D. A., Veerman P. E. (eds.) *The Ideologies of Children's Rights*. International Studies in Human Rights, Volume 23, Dordrecht/Boston/London: Martinus Nijhoff Publishers, pp. 3-6; https://doi.org/10.1163/9789004482180_003.

"Germanic peoples" - Encyclopaedia Britannica, Available at: https://www.britannica.com/topic/Germanic-peoples. (Accessed: March 23, 2023)

Graber, V. (1893) *Prava djece s osobitim obzirom na brak, obitelj i nasljedstvo*, Zagreb.

Grgurev, I. (2016) 'Rad i socijalna sigurnost djece' in Hrabar, D. (ed.) *Prava djece – multidisciplinarni pristup*. Zagreb: Pravni fakultet u Zagrebu, pp. 99-118.

Harari, Y. N. (2017) *Sapiens – Kratka povijest čovječanstva*. Zagreb: Fokus komunikacije.

Horvat, M., Petrak, M. (2022) *Rimsko pravo*. Zagreb: Pravni fakultet u Zagrebu.

Hrabar, D. (2012) ‚Razvoj instituta roditeljske skrbi u hrvatskoj obiteljskopravnoj povijesti' in Rešetar, B. (ed.) *Pravna zaštita prava na (zajedničku) roditeljsku skrb*. Osijek: Pravni fakultet Osijek, pp. 13-30.

Hrabar, D. (1989) ‚Prava djece kao prava čovjeka', *Naša zakonitost*, 7-8, pp. 865-873.

Hrabar, D. (1994) *Dijete – pravni subjekt u obitelji*. Zagreb: Pravni fakultet u Zagrebu – Zavod za građanskopravne znanosti i obiteljsko pravo.

Hrabar, D. (2016) 'Uvod u prava djece' in Hrabar, D. (ed.) *Prava djece – multidisciplinarni pristup*. Zagreb: Pravni fakultet u Zagrebu, pp. 13-37.

Hrvatska enciklopedija, Tom 10 (2021) Zagreb: Leksikografski zavod Miroslav Krleža.

Nuovissimo Digesto Italiano, Diritto intermedio (1964) Torino: UTET.

Prokop, A. (1972) *Porodično pravo – Odnosi roditelja i djece*, Zagreb: Školska knjiga.

Stanley, S. (2017) 'John Stuart Mill, Children's Liberty, and the Unraveling of Autonomy', *The Review of Politics*, 79, 1, pp. 49-72; https://doi.org/10.1017/S0034670516000723.

Toma Akvinski (2005) *Suma teologije*, Zagreb: Nakladni zavod Globus.

Tomorad, M. (2014) *Hamurabijev zakonik* [Online]. Stara povijest.eu. Moderan magazin za staru povijest. Available at: https://www.starapovijest.eu/hamurabijev-zakonik/ (Accessed: 6 April 2023)

Van Buuren, G. (1995) *The International Law on the Rights of the Child*. Dordrecht: Martinus Nijhoff Publishers.

Veerman, P. E. (1992) *The Rights of the Child and the Changing Image of Childhood*. Dordrecht/Boston/London: Martinus Nijhoff Publishers.

Vinković, M. (2008) *Dječji rad u međunarodnom, europskom i poredbenom radnom pravu*. Zagreb: TIM Press.

Wacke, A. (1980) „„Elterliche Sorge" im Wandel der Jahrtausende – Zum Sorgerecht der geschiedenen Mutter nach römischem Recht', *Zeitschrift für das gesamte Familienrecht*, 27, 3, pp. 205-210.