

Children's Well-Being: Indicators and Research 8

Daniel Stoecklin
Jean-Michel Bonvin *Editors*

Children's Rights and the Capability Approach

Challenges and Prospects

 Springer

Children's Rights and the Capability Approach

Children's Well-Being: Indicators and Research Series

Volume 8

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Editors

Children's Rights and the Capability Approach

Challenges and Prospects

 Springer

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This book has benefited from the scientific meeting “Children’s Rights and the Capability Approach” held in Sion, Switzerland, on 5–6 July 2012, with the support of the Swiss National Science Foundation.

ISSN 1879-5196

ISSN 1879-520X (electronic)

ISBN 978-94-017-9090-1

ISBN 978-94-017-9091-8 (eBook)

DOI 10.1007/978-94-017-9091-8

Springer Dordrecht Heidelberg New York London

Library of Congress Control Number: 2014944133

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Printed on acid-free paper

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Foreword

This exceptional collection of papers is about the growing discourse on children's rights and the capability approach. My colleagues who contributed these fine chapters have done a splendid work in discussing various aspects in children's life by looking at them in a children's right or capability framework. In this short foreword I would like to add my personal thoughts on both frameworks and their contribution to our understanding of the "new" concept of children's well-being. Children's well-being is a desirable status in life referring to being happy and satisfied with one's own life. Well-being is also related to the fulfilment of desires, to the balance of pleasure and pain, and to children's living conditions and quality of life. Thus, well-being is related to individual preferences and opportunity structures. From a children's rights perspective that would mean that rights are implicitly creating opportunities for well-being, hence the freedom of choice becomes a crucial component of well-being. From a capability approach it is apparent that the same level of commodities and resources do not produce the same level of well-being for all individuals.

The sociology of childhood underscores two dimension or axes in the understanding of childhood and children that have their origin in the Greek philosophy that conceived the concepts of *being* (object or state) and *becoming* (change or development). These concepts refer to life as it is experienced in the present, and life as development towards adulthood.

Children's rights refer both to their rights in the present childhood and to their right to develop and "become" (realize their potentials) successful adults. We may view *being* as a state at a given point in time, and *becoming* as the unfolding of the life course along trajectories shaped by social structures and the agency of the actor. The sociology of childhood as well as modern advocacy of children's right have underlined children's right as citizens of the present, not only as beings underway to an adult positions. Yet, the two are interfolded in each other as for example, child labor may represent the theft of the child's present as well as of his or her future.

The relationship between being and becoming is in itself a part of children's well-being. The child who devotes endless hours every week for school work may lose out on leisure activities of play in childhood, but may gain in the future, and the

child that invests little in the school work may enjoy the moment but weaken his or her future well-being. The status and position of children have to be understood within the framework of the present, as description, and within a framework of life course and development, as predictions. The *total well-being* will therefore consist of both the well-being of the present, and the predicted well-being of the future.

Thus, well-being is a process; the understanding of the well-being of children requires a model that encapsulates the dynamics of present, and the dynamic relationship between the present and the possible future. The capability approach dominates the understanding of human development, commodities and resources both when it is related to the differentiated sets or combinations of utilities available to different children and as they relate to what the children are able to achieve with their resources. The child must be able to trade his or her resources for other valuable resources in given contexts. The level of well-becoming a child can achieve depends on the structure of the environment and his or her strategies and goals. Within such a framework, freedom to act and choose becomes a central issue; as well as the set or combination of the resources, and the relationship between the resources and the environment.

Capabilities refer to interaction and relationships, not only individual resources. The concept of capabilities is especially relevant to children's well-being because their movement through the life course produces new contexts assigning new values to resources and commodities, and because socialization is understood not only as the evolving of capacities (as IQ or economic or cultural capital) but as the evolving of capabilities. The concept of capability is bridging development at a societal level and socialization and self-realization on the individual level. Children's well-being in a capabilities approach will therefore be based on subjective as well as objective components, and be anchored in a matrix of being and becoming, in the experiences of the moment as well as in the capacities for development. It seems we can define well-being, as a state, as a process and as a development.

That the capabilities framework and the children's rights approach influenced our understanding of children's well-being illustrates their significance. Thus, the new concept of children's well-being includes two axes. The first is about children life course, both as the cognitive and social dimension of development and as the relationship between the present and the future. The second is about experiences, freedom and rights. Freedom is not only related to the economic and political participation as such, but to children's development, competence and life course.

Well-being is a relationship, not just a status and it is not only a reflection of level of income or consumption. Values and references are likely to vary with cultural framework and historical period. The context defining values and well-being changes not only because of historical changes, but because the factors producing well-being at one age level do not necessarily do it at another level. An ideal environment for the four-years old may not be ideal for the young teenagers, and contexts may provide different conditions related to social groups and gender. At the core of all analysis of children's life and development is that there is a developmental relationship between today and tomorrow; the conditions of the present influence further development. This implies that factors of children's

well-being have to be understood within a different framework than related to other age groups.

Both the capability approach and the children's rights framework provide such a tool to better understand children's well-being. Combining these two approaches and the discourse between them is a promising step forward in our understanding of children's well-being. This collection of papers takes us one step forward in this crucial route. It contributes to the growing discourse and to our better understanding of the relations between these two dominant contemporary approaches. But most important – it takes us a few steps closer for a better understanding of children's well-being.

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Chapter 1

Introduction

Jean-Michel Bonvin and Daniel Stoecklin

Children's rights have hardly been analysed in terms of the capability approach (CA), which was developed by Amartya Sen (1999) and Martha Nussbaum (2000), and many other scholars. This book is among the first attempts to bridge the two, and it appears after a few contributions to this endeavour (Biggeri et al. 2010, 2011; Dixon and Nussbaum 2012). First of all, we want to clearly establish how we see the relation between children's rights and the capability approach. Children's rights and the capability approach are not of the same nature: children's rights are a social reality and the capability approach is a perspective to reflect on it. According to Sen and also to Nussbaum, the capability approach is a way to operationalize formal freedoms (entitlements), and hence children's rights.

Therefore, the capability approach is used to inspire us on dimensions to look at when it comes to implementing formal rights as the ones contained in the UNCRC. It attracts our attention to the fact that there is a gap between children's formal liberties (rights) and their real freedom (capability). The question is then how individual and social conversion factors act as facilitators, or on the contrary as obstacles, to the transformation of formal entitlements into real capability. Dixon and Nussbaum emphasize that "rights are not fully secured unless the related capabilities are actually present: otherwise rights are mere words on the paper" (2012: 561). They insist that special kinds of policies, or more widely conversion factors, are needed to guarantee each and everyone's access to a list of capabilities considered as fundamental to the recognition of human dignity. In their perspective, children have specific relevance in this regard and there are reasons to provide them

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with special priority programmes, due to their vulnerability on the one hand and to the cost-effectiveness of measures designed for children on the other hand. In this book, we seek to further explore this perspective in two ways: first, to examine in detail what is specific about children; second, to identify more precisely the individual and social conversion (or conversely: obstruction) factors facilitating or impeding the transformation of rights into capabilities in the case of children. We thereby seek to make a significant step forward in the understanding of the link between children's rights and capabilities, as well as their effective implementation.

The contributors of this volume address the conditions allowing the transformation of specific children's rights into capabilities in settings as different as children's parliaments, organized leisure activities, contexts of vulnerability, children in care. They also tackle theoretical issues linked to children's agency and reflexivity, education, the life cycle perspective, child participation, evolving capabilities, and citizenship. The volume highlights important dimensions that have to be taken into account for the implementation of human rights and the development of peoples' capabilities. The focus on children's rights along a capability approach is an inspiring perspective that researchers and practitioners in the field of human rights should explore.

To gauge the importance of this new path, we invite readers, within the scope of this brief introduction, to first consider the capability approach and then the main perspectives regarding children's rights. We will then see how the field of children's rights can benefit from this approach and this will allow us to situate the contributions to this volume. This will bring us to identify the main challenges, and how the contributors see and tackle them. The prospects will become clearer when the reader arrives to the conclusion, so we will substantially dedicate our conclusion to the prospects of a capability approach to children's rights. We therefore consider that the book is not just a collection of papers that one might read in disorder. The order of the chapters, although it is not bound to a dissertation-like argument, is nevertheless arranged along a thread that helps situate the relevance of the capability approach as a new way of grasping children's rights. This journey begins now with an introduction on the capability approach.

1.1 The Capability Approach

The CA insists that the yardstick for assessing human development should be the real freedom people have to lead a life they have reason to value (Sen 1992, 1999; Nussbaum 2000). It thereby demarcates itself from strictly growth-based models insisting on GDP level as the main criterion for human development. Two key distinctions are at the core of the capability approach and its combined focus on opportunity freedom or well-being freedom on the one hand, process freedom or agency freedom on the other hand (Sen 1993, 2002).

First, resources or commodities are not equated with capabilities: as a matter of fact, an equal distribution of goods, services, cash or in-kind transfers, etc. does not necessarily translate into an equal distribution of capabilities. The ability of people to convert the possession of such resources into capabilities or real freedoms to live a life they have reason to value, depends on individual and social factors, e.g. physical or mental abilities, etc. on the one hand, social norms, available policies, socio-economic opportunities, etc. on the other hand. Nussbaum calls these internal and external capabilities (Nussbaum 2000, 2011), while other proponents of the CA use the terms S-capabilities (skills) and O-capabilities (options) (Gasper 2003). Whatever the designation used, the focus is on the necessary presence of individual and social parameters that act as facilitators for the conversion of resources or commodities into capabilities. Hence, public action in favour of the development of capabilities should not stop with the provision of resources (such as the cash benefits paid by the welfare State), but also encompass these conversion factors. This calls for a situated public action, insofar as these conversion factors will not be the same for all categories of people. Therefore their identification, for each target group as well as in each and every country with its various socio-economic settings and cultural backgrounds, will require a specific task. With regard to this point, there is disagreement among the two main proponents of the CA: while Nussbaum insists that a list of essential capabilities should be drawn in order to orient the work to be accomplished at national or local level (she thus endorses “a partial theory of social justice”), Sen suggests that the identification of relevant capabilities and conversion factors should be entirely left to the initiative of local actors. This point of disagreement should, however, not occult the wide-ranging agreement about the relevance and importance of the issue of conversion factors and the necessity to go beyond so-called resourcist approaches that focus only on resources and neglect such factors.

Second, capabilities do not coincide with functionings, i.e. what people are and what they actually do. Indeed, two people displaying the same kind of functioning may well enjoy a very different level of capabilities. Therefore, what should be centre stage in the capability approach is not the peoples’ actual functionings, but their real freedom to choose between valuable alternative functionings: in other words, opportunities (their quantity and quality) matter more than outcomes or facts. In such a perspective, public action is expected not to gear people towards precise behaviours or outcomes, e.g. in accordance with dominant social norms, but to empower them toward the autonomous choice of a life that is valuable in their eyes. All forms of paternalism, though benevolent they may be, are to be questioned in this framework that emphasizes people’s autonomy in their choices.

Hence, the CA insists on both of these dimensions: people should be provided with real opportunities, which extends beyond resources and formal rights; they should be left autonomous in deciding about the way they want to use these opportunities and not be constrained toward compliance with specific norms or official directives.

With regard to the situation of children, the CA perspective raises many controversies: is process freedom, i.e. the second dimension outlined above, relevant for

them? Should they not be provided with extensive opportunity freedom in the first stage, while process freedom would be granted only when they eventually become adults? In this debate, all extreme positions are of little use: indeed, children do not enjoy the same degree of agency as adults and therefore cannot be provided with the same measure of process freedom; all the same, they cannot be confined in the position of “becoming adults”, thus having to expect this age before enjoying any degree of process freedom. Thus, the dichotomy between “no process freedom for children” and “full process freedom for children” does not help. An insightful contribution in this respect is that of Biggeri et al. (2011) and their concept of ‘evolving capabilities’. During early childhood, external capabilities provided by caregivers or informal human relationships play a central role, but with the passing of time children get access to a more extensive set of internal capabilities, which significantly influences their situation. The concept of “feedback loops” is used to describe the dynamic process, whereby resources and external capabilities provided at T0 will impact on the internal capabilities enjoyed at T1 and will therefore require an adjusted action in favour of the development of the children’s capabilities and some (increasing) space left for process freedom. Human development must then be conceived as a dynamic and complex process, where resources and individual and social conversion factors constantly interact with feedback loops reshaping the capability set of the child at every stage. Therefore, the most appropriate combination between opportunity and process freedom cannot follow on the divide between children and adults, but needs to take account of this dynamic process. This is also a major challenge for the effective implementation of children’s rights, as will be presented in the next section of this introduction.

1.2 Children’s Rights

The status of the child has considerably evolved with the adoption by the United Nations of the Convention on the Rights of the Child (UNCRC 1989). The State parties to the UNCRC recognize the child as a rights holder and must therefore grant him/her protection, provision of services and effective possibilities for participation. The latter are supposed to be favoured by rights contained in the UNCRC that are considered as “participation rights”: the right to be heard (art. 12), the right to freedom of expression (art. 13), the right to freedom of thought, conscience and religion (art. 14), the right to freedom of association and peaceful assembly (art. 15), the right to privacy (art. 16), the right to have access to information (art. 17), and the right to participate freely in cultural life and the arts (art. 31).

The right to be heard is considered the masterpiece for child participation. The first paragraph of this article reads as follows:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (UNCRC 1989, art. 12.1)

It is the masterpiece of participation rights, because, among these rights, art. 12 (the right to be heard) is also a general principle: this means that it is not only a substantial right but also a procedural guarantee in the implementation of other rights. As an example, let's take education: the right to education (art. 28) is to be implemented with regard to children's opinions (both as a group and as individuals) about education, and the authorities should provide a space where these opinions can be expressed (like for instance school councils). Art. 12 is therefore a general principle that is transversal to the implementation of other rights. It is one of the UNCRC's four general principles, the other ones being the principle of the best interests of the child (art. 3), the principle of non-discrimination (art. 2), and the principle of protecting the child's life, survival and development (art. 6).

With the principle of the consideration for the child's opinion (art. 12), we see that participation rights are closely linked to protection and provision rights. Several authors underline that protections and provisions can improve when children's participation is fostered. And this in turn only happens once children's agency is acknowledged (Freeman 2007: 18). This is the point where children's rights can be bridged with the debate about children's agency within the sociology of childhood, to which, in our view, the capability approach brings a great contribution because there is a very close connection between the implementation of this general principle and the understanding of children's agency. The relationship goes in both directions. Empirical observations of the extents and limits of children's influence over social structures in various fields and contexts inform us about the challenges of implementing the child's right to be heard. And, reversely, a thorough analysis of art. 12 UNCRC (Zermatten and Stoecklin 2009) reveals how much the different elements contained in it presuppose that children have, or should be allowed, a growing agency. Let us briefly examine these elements and how we can connect them with the debate on children's agency in the sociology of childhood.

First of all, art. 12.1 UNCRC is concerned with the child's "own" views, which actually raises the question of where agency is situated: is it located in the relationships social actors have among them, or does it already start with one's own reflexivity? The authors in this volume address this issue by situating the child's capability both in the relationships (notably Baraldi and Iervese, Liebel, Dahmen) and in the actor's reflexivity (notably Stoecklin and Bonvin, Robin), but there is no clear opposition. Rather, it can be suggested that the dialogues within individuals (inner-dialogue) and among them (social relations) are retroacting one on the other, and it would actually be misleading to end up in a "chicken-egg" debate over which one is determining the other.

Already on this first point, we can clearly show the necessity to make a distinction between the subject of rights and the social actor (Stoecklin 2014). Actually, the formation of "own views" that are expressed in a socially recognizable discourse is a culturally acquired competence. The social actor is acting in a pragmatic way which derives from experience (James 1910; Dewey 1910), allowing adjustment of thoughts, expressions, and lines of conduct, through interactions with others (Weber 1968). The child's competence of building views that

would be socially considered as mature is in fact actualized through interactions. Actually, social interactions in specific contexts always shape the expression of “own views” and this is where the capability approach comes in: the evaluation of one’s maturity is therefore bound to mutual adjustments, such as being able to recognize the points of views of others and being open to information (Sen 2009). Eventually, it is hard to think of an opinion that would be absolutely free of influences conveyed by the opinions of others. Participation is itself the process whereby children acquire the capacity to build their “own views”, and therefore the implementation of art. 12 UNCRC should build on sociological observations around this complex issue.

Art. 12.1 UNCRC is also concerned with other elements that involve rather large sociological debates, namely on how views are expressed (freely), the range of matters on which these views are expressed (all matters affecting the child), the consideration that is given to these views (due weight given in accordance with the age and maturity of the child), and, most importantly, who is forming the views (the child who is capable of forming “own views”). There are two elements of this article that put some restrictions according to the capacity of the child. However, the criteria are implicit: the formulation “*the child who is capable of forming his or her own views*” leaves open the question of how we assess this capacity. The consideration given to these views “*in accordance with the age and maturity of the child*” also does not specify the criteria to evaluate maturity. While the CRC sets no age limit on participation rights, one clearly sees that implicit restrictions are left to the assessment of decision-makers. A challenge is therefore to make the criteria as transparent as possible, because they are all too often left to decision-makers’ discretion. How “free” is the building of one’s views at different ages and in different settings? As we know, expression and recognition are interdependent: a discourse can be recognized only if it is expressed in such a way that it can be socially shared. It is eventually the consideration for the child’s reflexivity that is at stake. Processes allowing to take seriously into account what children express are of crucial importance. They are especially interesting to observe when it comes to children suffering from a stereotyped definition of their situation and consequent stigmatisation, like for instance “street children” (Aptekar and Stoecklin 2014).

The second paragraph of art. 12 is concerned with administrative measures that are needed to guarantee the right of the child to express one’s views:

For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. (UNCRC 1989, Art. 12.2)

This is the opportunity to be heard, which is a crucial component of the child’s capability to express one’s views, and this opportunity is linked to the procedural rules that frame judicial and administrative proceedings. It is important however to underline that “all matters affecting the child” are not to be reduced *stricto sensu* to matters that directly affect a particular child, but in a larger sense as more general issues that also affect children as a group. Therefore, the civil freedoms of children

that are called “participation rights” (CRC art. 12–17 and 31), and of which art. 12 is the central pillar, involve more than formal proceedings. They encompass broader and informal social processes, not reducible to the formal administrative system. The difficulties with the transversal cooperations that are needed in the formal system, at national and local levels, to truly respect the child’s right to be heard, cannot be divorced from the broader picture of what we might call the “culture of participation” that is more or less present and that evolves along very complex social dynamics.

Children’s rights therefore are best studied from an interdisciplinary angle, whereby the sociology of childhood, developmental psychology, legal studies, pedagogic sciences, and other relevant disciplines, are mobilised to highlight specific and complementary dimensions of the worldwide challenges that appear when children are considered as holders of rights. Hence, what we might call the “sociology of children’s rights” cannot really exist without engaging in a dialogue with other disciplines. This dialogue necessarily involves some common ground to build on, a paradigm that may transcend the epistemological, theoretical and methodological frontiers. Can we call the capability approach such a paradigm? This question can be best answered when scholars have sufficiently tried to integrate the CA in their own thematic and disciplinary fields and when they eventually see whether this approach helps the interdisciplinary dialogue that is necessary to fully embrace and comprehend the very huge and complex issue of children’s rights.

Since we have applied the capability approach to assess the implementation of article 12 in the field of organized leisure (see Stoecklin and Bonvin in this volume), we found that the approach is particularly relevant to come closer to an operational definition of agency. This has led us to organize a scientific meeting in July 2012 in Sion, Switzerland, where we have invited colleagues to elaborate on children’s rights from the perspective of the capability approach. Most of us start from and build on the sociology of childhood, and the debates within this field have inevitably given the flavour of this book. We therefore must briefly situate these debates as they help better situate the specific challenges in applying the capability approach in the field of children’s rights.

As Hanson et al. (in this volume) underline, the children’s rights movement, beginning with the twentieth century (Veerman 1992), preceded academic recognition that children have rights that has emerged only round the time of the adoption of the UNCRC in 1989. The first period of research was mainly dealing with philosophical arguments for and against children’s rights, and on legal issues about the applicability of these rights. The “new paradigm in childhood studies”, also called the “new social studies of childhood” claimed that “generation” should be added to other distinctive categories like class, gender and ethnicity (see notably James and Prout 1990; Qvortrup et al. 1994; James et al. 1998).

1.3 Features of the New Social Studies of Childhood

As Alanen summarizes, the sociology of childhood is built around “*the ways in which childhood is socially constructed and reconstructed in relation to time and place*” (Alanen 2011: 147). This underlines the historical and cultural variability of the definition of childhood, and therefore the task of social scientists is, according to Alanen (ibid.), to unveil the often “hidden” political definition of children that creates assumptions about children that become naturalized over the years.

The universality of childhood and the diversity of children’s real lives are difficult to reconcile. Some authors (Allison James, personal communication; Hartas 2008) advise to use the plural form “childhoods” when speaking of the particularity and diversity of the experiences made by children, and the singular form “childhood” when speaking of children’s life course position. Hence, “childhood” is only a social construct, or a “word” as Bourdieu said about “youth”. But the opposition between lived “childhoods” and the socially constructed period of life one calls “childhood” is probably a false debate, as “childhood” has no existence as such if it is reduced to the only dimension of a time frame. What is actually referred to when people speak of “childhood” is an assemblage of core elements of dominant social representations which are historical constructs. It is a conjunction of diverse and equivocal images and projections of both adults and children regarding what *they* would see as a specific sphere (or realm) that in *their* views characterize children. The opposition between “childhood” as a universal stage in life course, and “childhoods” as a diversity of life experiences is therefore misleading. First of all because any experience is primarily subjective and the different ways in which children experience their worlds cannot be named “childhoods”: this would mean that we conflate subjective experiences with objective things (childhoods). Subjective experiences can only become an intersubjective reality (an “object”) if they are externalized in such ways that they can be recognized by others and aggregated as a concept, and this is possible only if the subjective experience is mediated by a social process. What is understood under the term “childhood” is the result of a mediation process through which individual perceptions and expressions are conceptualized.

Therefore there is no “childhood” if there is no mediation of particular subjectivities. We may say that “childhood” is an intersubjective construct. Therefore, the concept “childhoods” could only be valid if we mean by this the different intersubjective constructs, or different particular ways of defining “childhood”. With a focus on the social construction of childhood, proponents of the “new sociology of childhood” have developed a critical view on children’s rights. Claiming that diversity must be taken into account, some scholars held that the child portrayed implicitly by the UNCRC is a Eurocentric construction. The proto-adult conception of children, as *becomings*, was then heavily criticized and replaced by the consideration for children’s being and their own views, which many authors illustrated in different fields, from child labour to street children and many other situations.

The emphasis on the social construction of childhood has brought up the necessity to observe their agency (James and Prout 1990; Archard 20004; Qvortrup et al. 1994; Corsaro 1997; Sirota 2006). But, as we have suggested (Stoecklin 2013), agency still seems to be mostly used as a slogan and it does not yet represent an operational concept constructed along an explicit theory of action. This has probably something to do with a reaction towards the former psychological dominance in childhood studies. Consequently, the “social turn” tends to situate the limitations of children’s agency merely in the social structure and power relationships (Stoecklin 2013: 446). It forgets the other side of the coin that the CA identifies as the individual skills.

Therefore, by trying to identify the bi-directional links between social opportunities and individual skills, the CA has much to offer to the new sociology of childhood. It is relevant to consider children as “social actors who are not only shaped by their circumstances but also, and most importantly, help shape them” (James et al. 1998: 123). However, “few studies actually respond to the crucial question of how children of different ages and in different settings shape their environments” (Stoecklin 2013: 446). By criticizing “proto-adult” conceptions of children (Matthews 2003), by which only small forms of adult maturity are recognized in children, the new paradigm in childhood studies was certainly right. But the critique of developmental psychology probably went too far and, forgetting the personal evolutive competences and the fact that their limitations can result not only from social but also from individual parameters, the approach ironically became a new norm. A paradox is there. The critical position, to see children as *beings* and not *becomings*, fostered another normativity, which sometimes contemplates children’s agency as attached to them (as much as to adults), as if this would give children more recognition. By contrast, the capability approach helps situate agency as a reality constructed in the relationships between individuals. When agency becomes a slogan, it is like a tree that hides the forest of children’s capabilities. It seems rather difficult, if not impossible, to make a genuine non-normative critique, as critique in itself involves a value-oriented perspective. It would therefore be advisable to recognize the inevitably normative position from where one speaks or writes in order to circumscribe it to the best extent, which still seems to us the most appropriate way towards objectivity since Max Weber’s (1968, 1992a, b) discussion of axiologic neutrality.

1.4 Beyond the Pitfalls of the New Social Studies of Childhood: A Capability Approach to Children’s Rights

By contrast, the UNCRC and the CA assume their normative character and do not claim to be beyond normativity. Indeed, as underlined by Hanson et al. (in this volume), both the children’s rights contained in the UNCRC and the capability

approach are normative and prescriptive as they promote social arrangements and policies that are meant to enhance respect for people's dignity. Meanwhile, both approaches explicitly acknowledge their respective normativity. Nevertheless, their status is different. The UNCRC is a legally binding instrument, whereas the capability approach is a paradigmatic perspective. The latter can serve as a theoretical account of children's rights, as is claimed by Dixon and Nussbaum (2012). According to these authors, the CA is an emerging theory based on the idea of human dignity and it helps explain why it makes sense to recognize a range of rights for children, both in the UNCRC and in national constitutions, with due respect to children's welfare needs because of their vulnerability but also to their agency (Dixon and Nussbaum 2012: 552–553). It is because of human frailty, all the more so regarding children, that “the State has an obligation to ensure that all persons have access to a life worthy of human dignity” (Dixon and Nussbaum 2012: 549).

But what is dignity? The signatories of the Universal Declaration of Human Rights (UDHR) merely make a declaration of intention agreeing that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. The UNCRC in contrast is legally binding, and it also refers to the notion of dignity in its preamble: “Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world (...)”. Thus we can consider that the peculiar definitions of rights contained in the UNCRC are a specification of what “a life worthy of human dignity” could be. Dignity would therefore encompass general principles (including the right to life, survival and development, the right to non-discrimination, respect for the views of children, the requirement to give primary consideration to the child's best interests in all matters affecting them), civil rights and freedoms (including the right to a name and nationality; the right to freedom of expression, thought and association; the right to access to information; the right not to be subjected to torture), family environment and alternative care (including the right to live with and have contact with both parents; the right to be reunited with parents if separated from them; the right to the provision of appropriate alternative care where necessary), basic health and welfare (including the rights of disabled children; the right to healthcare, social security, childcare services and an adequate standard of living), education, leisure and cultural activities (including the right to education; the right to play, leisure and participation in cultural life and the arts), and finally special protection measures (covering the rights of refugee children, those affected by armed conflicts, children in the juvenile justice system, children deprived of their liberty, and children suffering economic, sexual or other forms of exploitation).

But if all these “entitlements are held to be required by the notion of a life worthy of people's equal human dignity” (Dixon and Nussbaum, p. 567), then how should we consider Nussbaum's list of central human capabilities? It is debatable whether these ten capabilities (Life. Bodily health. Bodily integrity. Senses, imagination, and thought. Emotions. Practical reason. Affiliation. Other species. Play.

Control over one's environment) are to be seen as a parallel list of entitlements or as another sub-grouping of the ones already contained in the human rights treaties. Clark and Ziegler (in this volume) underline that Nussbaum's aim is not to impose a normative framework on individual conduct but rather to identify "general prerequisites for various versions of leading a good life" that would need to be adapted to the diversity of contexts where people live. Andresen and Gerarts (in this volume) also stress that the capabilities included in Nussbaum's list can only develop if they are nurtured and, consequently that human dignity, equality and freedom (of choice) should be seen as guidelines towards the universal ethics of equal opportunities. The challenge here is how these dimensions of the "good life" are negotiated. Moreover how children can be included in this discussion.

The issue here is not to attempt at escaping or erasing any form of normativity in order to reach what should be interpreted as a kind of objective truth about the definition of children's rights or human dignity. Indeed, such an attempt would be doomed to failure, as normativity is an inherent part of such debates. Rather, what is pursued is a negotiation between the various possible normativities about these issues, in order to reach acceptable solutions for the concerned actors in every specific context, i.e. solutions that will allow them to lead a life they have reason to value. A key feature of normativity in this framework is its incompleteness: it does not claim to give a precise rule in all cases, on the contrary it constantly strives to leave enough space for negotiating rules and rights at situated level.

Therefore, looking at children's rights using a capability approach invites to situate normativity where it really stands. It is not because it speaks of the "good life" that the CA would be imposing dogmatic and therefore condemnable approach. The CA is a normative approach but its normativity stands at another level. It is situated in a position where one looks at individuals leading "the life one has reasons to value". The normativity included here therefore coincides with the valuation of differences and the respect for individual preferences.

Applying a capability approach to children's rights is a relevant way to consider children's rights as a construct involving both individual and social dimensions. We believe that the authors in this volume have made a substantial contribution to children's rights and/or the capability approach. In doing so, they bridge the analysis of the social construction of childhood, and more precisely the sociology of children's rights, with the considerations over children's agency that the capability approach can help better observe.

1.5 Children's Rights Approached in New Ways

Taking a capability approach to highlight children's rights opens new ways that are both interesting and challenging. Recent developments show a growing interest to integrate the capability approach (CA) in the field of the children's rights (CR) studies. Reciprocally, children's rights are a major issue for the development of the capability approach. Children's rights can be seen as formal resources or

entitlements. Consequently, the gap between formal liberties (rights) and real freedom (capability) can be more precisely explained in terms of individual and social conversion factors.

The editors of this volume have organized a scientific meeting that took place on 5 and 6 July 2012, at Institut Universitaire Kurt Bösch (IUKB), in Sion, Switzerland, with the support of the Swiss National Science Foundation. Representatives of these two fields of studies converged with the aim to cross-fertilize their perspectives. The focal point of this starting dialogue lies in the identification of conditions allowing transform formal rights into real freedom or capabilities. The book presents the participants' contributions as well as supplementary invited papers and reflects the most important challenges and prospects that emerge from this dialogue. The volume highlights important issues that have to be taken into account for the implementation of human rights and the development of peoples' capabilities. The focus on children's capabilities along a rights-based approach is an inspiring perspective that researchers and practitioners in the field of human rights should deepen. The scientific meeting held in Sion was among the first attempts in this direction and the present volume is an invitation to continue and broaden this dialogue. A short overview of the contributions gives an idea of the wealth of dimensions involved in this debate.

Mario Biggeri and Ravi Karkara (Chap. 2) highlight relevant relationships and synergies between the capability approach (CA) and the human rights approach (HRA). This is especially interesting in the case of children. They try to see whether equity, participatory and life cycle perspectives allow to analyse and to translate these relationships into practice. They underline that both CA and HRA are opportunity-oriented approaches, which facilitates the combination of these two slightly different perspectives. While the HRA focuses on deprivations, the CA analyses the causes of the lack of freedom. Moreover, the authors underline the important policy implications that can stem from the positive synergies between children rights and the capability approach.

Claudio Baraldi and Vittorio Iervese (Chap. 3) explore how communication systems and interactions can facilitate children's agency. They focus on the processes and factors that convert children's ability into capabilities and functionings. They use Conversation Analysis and Social Systems Theory to highlight these processes and factors. Analysing data on interactions in educational settings, they show that these are produced in adult-children interactions and demonstrate how the facilitation of children's agency in the interaction can be a potential social conversion process. They show how different forms of facilitation promote opportunities for children's agency and hence children's rights to participate in decision making.

Manfred Liebel (Chap. 4) holds that a crucial point revolves around the conditions that are necessary for children to make use of their rights. While children are entitled to human rights regardless of their capacities, the concept of 'evolving capacities' is understood in different ways: some view the child's growing agency as a precondition for the use of rights while others see it as a result of a learning process. Liebel takes another position. He uses a contextualized concept of

children's rights whereby the subjective capacities are connected with the social prerequisites that foster children as wilful rights holders. The author proposes the notion of "evolving capabilities" to refine the concept of capabilities that are diversely elaborated in the Capability Approach. He uses Brighouse's (2002) concept of "agency rights" to qualify all the subjective rights contained in the UNCRC, and not only the participation rights, as long as these rights are "re-conceptualized in such a way that they might become an entitlement or instrument in the hands of children". He discusses whether the Capability Approach can contribute to transform the rights contained in the UNCRC into "agency rights", that is to let children reach and influence these rights.

Sabine Andresen and Katharina Gerarts (Chap. 5) show how recent approaches in childhood studies proceed along a paradigmatic shift from adult well-becoming to child well-being. Children's rights can therefore be used to study children as autonomous actors situated in the here and now. The authors adopt a sociology of science perspective which allows them to look at childhood studies in terms of educational science. Focusing more systematically on the relation between well-being and well-becoming, they use the Capability Approach and its theory of the "good life" to analyse empirical data, namely children's own childrearing concepts, and children's concepts on freedom and the "good life". They see children's own views as an important perspective for the development of the Children's Rights Approach.

Dominique Golay and Dominique Malatesta (Chap. 6) observed children's councils in Switzerland. They raise fundamental questions regarding child participation when considering how these devices provide social recognition. The authors use three major theories of social justice, Sen's capability approach, Fraser's theory of social justice and Honneth's theory of recognition, in order to see whether children's councils can be valuable means to implement the right to freedom of expression (art. 13 UNCRC) and the right to be heard (art. 12 UNCRC). Basing on a qualitative research on children's citizenship in the city of Lausanne, they discuss the conditions of children empowerment. They identify two kinds of children councils according to the goals followed by the professionals. The city-oriented type of council involves children's participation and citizenship education directed towards formal procedures such as voting. The second type, which they identify as child-oriented, focuses on children's experiences and expectations. They finally compare how differently these two sets influence children's social recognition.

Daniel Stoecklin and Jean-Michel Bonvin (Chap. 7) explore new ways of conceptualizing children's citizenship and participation through the capability approach applied to children. On the basis of qualitative research conducted in Switzerland and in France in the field of organised leisure activities, they identify several conditions that allow converting the child's right to be heard (art. 12 UNCRC) into effective participation. They highlight four sets of factors: economical, political, organisational and personal. Along these dimensions, they identify two ideal-types, namely the bottom-up participation and the top-down participation, and underline the sequential aspect of participation as a process. Using an original tool, the "actor's system", they show why children's reflexivity

is a major converting factor. This model is helpful in capturing and reflecting the recursivity of experience. The results contribute to the theoretical model used in the capability approach and to the sociology of action. They also enrich the theory of child participation.

Stephan Dahmen (Chap. 8) addresses the strong focus on children's agency that is found in the recent developments within the discussion on children's rights as well as in the new sociology of childhood. According to him, the view of the child as a social and political actor, as well as the rhetoric of *being*, can be considered a new "theoretical orthodoxy", stressing children's autonomy. Its side-effect is an overly optimistic view on children's agency, overlooking important inequalities. The author looks at the capability approach as more appropriate to situate these inequalities within the space of youth and childhood. He suggests that the capability approach provides a hyphen between prescriptive treaties (like the UNCRC) and descriptive-analytic approaches (like the sociology of childhood and youth). He analyses the differences in children's agency within the transitions from school to work and highlights the role of the State for their access to citizenship rights. He ends with considerations on how the capability approach might foster new venues of childhood and youth research.

Didier Reynaert and Rudi Roose (Chap. 9) ask how agency, while a fundamental notion in both the frameworks of children's rights and the capability approach, can be understood and supported in order to guarantee children's human dignity. They consider the historical and socio-cultural structuring of childhood and use the notion "youth moratorium" or the "institutionalised youth land" to situate children's agency within a "strong egalitarian individualism" based on the idea of personal responsibility. They suggest that the capability approach is a departure towards a more ambiguous position regarding children and that the framework of children's rights and the framework of the capability approach could gain from an understanding of children's agency that acknowledges interrelationship and solidarity.

Pierrine Robin (Chap. 10) shows how the child protection policy in France still regards children as objects to be protected rather than as subjects of rights. The French Child Protection Reform Law sets out a number of specific rights for children living in care, such as the right to take part in the assessment process. This corresponds to the new status of children in care since the adoption of the UNCRC. However, the author identifies a huge gap between the formal rights of the child and the opportunities for children to actually exercise them. Her empirical study shows that the context is marked by constrained and descending participation. She analyses the interdependences and complementarity of individual features and social opportunities in decision-making processes in care. She also concludes that participation can be approached as a non-linear, cumulative and retroactive process.

Zoë Clark and Holger Ziegler (Chap. 11) assess the role of the family and the State within the UNCRC. They focus on some children's rights in relation to parent's rights and duties, and show how the UNCRC has an (implicit) normativity as regards the family and how it consequently entails certain power relations within families. They critically address these normative foundations and refer to the

capabilities approach and feminist considerations on social justice to show that the UNCRC favours a reduced approach to child welfare. They challenge the expectations towards the UNCRC as an instrument that would really favour child participation and children seen as agentic subjects of rights.

Karl Hanson, Michele Poretti and Frederic Darbellay (Chap. 12) discuss distinctions and overlaps between the normative ambitions of both children's rights and the capability approach. When situating recent developments and critical enquiries in children's rights studies, they look at links between rights, emancipation and interdisciplinarity. Building on discussions about child participation, they present the results of an interdisciplinary research project on priorities in international children's rights advocacy. Their intention is to explore how children's own conceptualisations of their rights are recognized. They use for this the notions of "living rights" and translations and analyse their material to further explore what these insights can tell about the capability approach. They find that since the 1990s the iconography of victimhood mobilized by child rights advocates has evolved, using 'the child victim of violence' to replace 'the street child' as the dominant icon on the international agenda (Poretti et al. 2014). They address tensions between normative and empirical realms and advocate for giving equal consideration to competing social practices as a way to provide equal access to the production of universality. It is in this way that they see children's rights studies and the capability approach as mutually enriching.

Irene Rizzini and Danielle Strickland (Chap. 13) depict the progress in the field of children's and adolescents' rights in Brazil and Mexico, the most rapidly developing nations in Latin America. Although both nations are committed to human rights ideals, there are many obstacles that impinge on the full enforcement of laws and treaties. The authors suggest that the strategies developed in Brazil to promote youth participation, specifically the Children's Rights Councils, should inspire Mexico to increase their involvement in the efforts to promote their own rights. The gap between the legal framework for children's rights in Mexico and the concrete actions to make rights truly respected remains rather wide, especially regarding street children.

Stoecklin and Bonvin's conclusion finally identify the main prospects raised by these contributions. They especially focus on three main issues: individual and social conversion factors, participation and agency, and finally the vulnerable and competent child.

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