

Universalism, Embeddedness and Domination: An Analysis of the Convention on the Rights of the Child

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Abstract: The international community agrees that protecting the needs and interests of children is a fundamental endeavour. However, the road through which this should be achieved is less clear. Should universal norms guide how children's rights are implemented? Or should children's rights be adapted to the particular social environments and cultural traditions in which children are embedded? This article takes the International Convention on the Rights of the Child as a starting point to analyse a fundamental philosophical conflict between universalist and embedded approaches to global justice. It explores the diverging interpretations of and critiques to the universalist and embedded commitments in the Convention, and develops an in-depth analysis of the benefits and harms that both positions may have on the child population. It argues that, despite the seeming opposition between these two positions, they share a common concern with protecting children from cultural domination. This commonality allows the article to devise a reading of the Convention that can aspire at universality while being receptive to the embedded claims. It considers that the best road to overcome this conflict is through the direct inclusion of children within the decision-making process.

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1. Introduction

The International Convention on the Rights of Child (CRC) (UNGA 1989) stands as the lighthouse which guides discussions on how to address global justice for children. Consensus exist both in the academic literature and in public policy on the priority that should be given to protecting children's rights. Children should be safeguarded from harms that threaten them; they should be provided with the resources required for their subsistence; and they should have access to the opportunities that will allow them to develop properly. A fundamental debate, however, regards the definition of the appropriate normative commitments required to achieve this. Should universal standards be imposed in order to ensure that all children receive the same treatment? Or should the CRC be flexible enough for it to account for the diverse conceptions of the good and of justice across the globe? This article explores universalism and embeddedness as the two main approaches that intend to address this issue: it analyses how the CRC's principles commit to these approaches, and the problems that may arise from their implementation.

A tension between *universalist* and *embedded* interpretations of children's rights pervades the commitments of the CRC.¹ The first claims that protecting children's rights requires universal standards, as a mechanism to counter threats that come from cultural environments which may be hostile to children's fundamental interests. The second argues that children's rights must be embedded into particular social public cultures, and that universalist approaches threaten this by imposing a foreign understanding of childhood which may not comply with its

¹ By 'universalist', I mean the defence of principles that apply to all equally. It assumes that all individuals (in this case children) have certain needs, interests and requirements that do not vary depending on their culture, socio-economic position, religion, race or gender. By 'embedded', I mean approaches to justice that consider the particular social environment as playing a fundamental role in determining the needs and interests of different people (in this case children).

interpretation in different social environments. I will argue that a common normative concern pervades both approaches: namely, the need to tackle problematic sources of *cultural domination*.² While universalism appeals to the threat of individuals being dominated by their domestic cultural environments, embedded approaches fear that universalism imposes a conception of justice tainted by the cultural bias of (Western) hegemonic powers. By framing both normative positions as being primarily concerned with domination, we can devise alternative routes to define what children's rights require at the global level, whereby abolishing one of the core conflicts that affect the issue.

This tension between universalist and embedded approaches is not particular to the CRC; it pervades the debates on the applicability of human rights in general, and the appropriate normative principles that should ground global justice. Although the conflict between universalism and embeddedness in the CRC mirrors to a certain extent the debate on human rights (see Talbott 2005), I show that there are certain particularities in the case of children which make the tension between these two approaches even more difficult to address. The fact that childhood is, to a great extent, a stage of dependence and vulnerability complicates the assessment of an appropriate normative solution. I argue that both approaches share a common elemental concern with the potential threats of *cultural domination* towards children. The article claims that a commitment to tackle domination demands, beyond protecting children as passive recipients of benefits, to include them in the deliberation procedures as active agents in their own right.

Section 2 introduces the universalist and embedded commitments of the CRC; Section 3 explores and responds to two of the most common critiques to the universalism in the CRC (Western colonialism and cultural abstraction); Section 4 explores concerns with the opposite

² By 'cultural domination' I mean the process through which the values, meanings and customs of a hegemonic social group become the norm, forcing less powerful groups to abide and submit to its normative prescriptions.

approach, highlighting how embeddedness may enable problematic forms of domination by the state and private actors; Section 5 considers their common concern with domination, and explores the potential inclusion of children in the deliberation procedures as a mechanism to overcome the tension. Section 6 concludes.

1. Universalist and Embedded Commitments of the CRC

Protecting children from domination pervades the normative concerns of the CRC. Both universalist and embedded approaches to the CRC appeal to ensuring that children are not threatened by the imposition of a dominant group's conception of the good and justice when implementing their rights. They appeal to protection from domination, however, from different angles: while universalism intends to protect children from domination occurring within the domestic sphere, embeddedness intends to protect children from domination occurring at the international level. A brief introduction to how the CRC appeals to both universalism and embeddedness in its principles can be useful to guide the later critical evaluation.

1.1 Universalist Commitments

Universalism in international legal documents can be understood in two ways: as universalism in scope, and universalism in content. Universalism in scope implies a normative commitment to include every child as a subject of its prescriptions, "without discrimination of any kind, irrespective of... race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." (CRC, Art. 2.1). It points, in short, to an agreement on the non-discriminatory implementation of the Convention to all children.³

Universalism in content concerns the advocacy of *universal principles and prescriptions* that

³ The CRC defines a 'child' as "every human being below the age of 18 unless under the law applicable to the child, majority is attained earlier." (Art. 1).

apply to all children globally.⁴ Four structural universalist commitments in content exist in the CRC: recognition of children as right holders (CRC, Preamble; see also, Clark and Ziegler 2014, 213; Milne 2015); the primacy of the child's best interests (CRC, Art. 3, 9, 18, 20, 21, 37, 40), children's rights to survival and development (CRC, Art. 6, 18, 23, 24, 27, 29, 32); and children's freedom to participate and have their own views taken into consideration (CRC, Art. 9, 12-15, 17, 23, 31).

These four universalist principles are considered as absolute minimal conditions that all states must ensure for all children within their territory (Milne 2015; Hart and Brando 2018). The reason why universalism frames these principles is the CRC's commitment to equality. The fact that children are in no way responsible for the place they were born, their socio-economic status, or the political decisions made by their governments, makes the permissibility of treating them unequally fundamentally unjust (Macleod 2007). There seems to be no valid justification for a Muslim girl in northern Nigeria to be treated (as a matter of right holding) any differently from a white British boy in London with regards to the protection and promotion of her basic interests. Children are not (to a very high degree) responsible for most of the disadvantages that life throws at them, and promoting a universal set of goals that ensure every child's equal treatment is one of the CRC's structural objectives.

1.2 Embedded Commitments

The CRC is one of the human rights instruments most responsive to cultural variations in its implementation (Alston 1994, 7). Since the Preamble, "the importance of the traditions and cultural values of each people for the protection and harmonious development of the child",

⁴ It must be noted, however, that the CRC restricts its commitments to children within the jurisdiction of the parties to the Convention. Thus, children living in the United States, only country which has not ratified the CRC, are not directly included (Boyden and Hart 2007).

this commitment to embedding children's rights in their social realities is clearly enshrined. The CRC identifies fundamental values and common concerns, while delegating its implementation to each state. A core role is given to "the child's ethnic, religious, cultural and linguistic background" (CRC, Art. 20.3) as part of the basic conditions for her just treatment. Children are not seen as "blank slates," nor as abstract entities evolving in a socio-cultural vacuum; they are socially constructed and embedded beings, whose traditions and cultures are an inherent part of their own identities (White 2002, 1098).⁵ So, even if a Muslim girl in Nigeria deserves equal treatment to a white British boy in London, the mechanisms through which this equal treatment is achieved vary depending on their diverse social and cultural environment.

A normative commitment to embedding children's rights implies that, even if universalism in scope and content ought to be ensured, it must do so while being sensitive to the diverse ways in which it may be achieved. A simple example: while every child has a right to have her development and interests protected by adult guardians (Art. 5, 18), the Convention does not restrict this to a particular interpretation of family life: while in the West, a parental structure may prevail, in various regions of Africa or Latin America, this protection may encompass the larger family unit, the tribe or the community as a whole. Universal principles must be "domesticated" into different socio-political environments to limit global hegemonic actors from dominating how children should be treated in particular settings (Sloth-Nielsen 2008).

2. Universalism as Cultural Domination

A core critique of the universalist commitments of the CRC (and of human rights instruments in general) is its wrongful construal of what it interprets as universal principles. Critics argue that the CRC fails because it enables the imposition of dominant conceptions of 'childhood'

⁵ For a detailed justification for the socially embedded understanding of childhood see James and Prout (1997), James et al. (1998), Qvortrup (2005) and Jenks (2005).

and children's rights in settings in which they do not apply. This critique has been raised in two ways: as Western imperialism, and as cultural abstraction. I address each of them separately.

2.1 Universalism as Western Imperialism

A major critique of human rights instruments in general, and of the CRC in particular, is that they reflect the ideals and normative commitments of a Western socio-political paradigm (Donnelly 1984; 2007). Through a discourse of 'universalism', dominant political powers impose their own values and norms on the rest of the world.

The critique follows a communitarian understanding of justice (Walzer 1983; Sandel 1998), arguing that cultural traditions should be free to define and follow their own internal normative principles; human rights instruments, such as the CRC, fail to abide with this due to their blindness to the diverse values and norms in non-Western societies (Lee 1994). As argued by Singapore's Minister of foreign affairs at the World Conference of Human Rights in 1993: "recognition of the ideal of human rights can be harmful if universalism is used to deny or mask the reality of diversity" (Wong 1993). Universals are, from this perspective, vessels of cultural domination through which the West disguises its own values and norms as if they were "universal values and norms" (Valentin and Meinert 2009, 227).

A Western conception of the child and of children's rights is illegitimate as a source of authority for the varied cultural realities across the globe, and for the diverse constructions of childhood in different societies. Childhood is an idea that varies across cultural traditions, and some fundamental aspects of what being a child entails are strongly conditioned by the context in which children live (Brems 2002, 32). The critique claims that moral and political values *should only apply within cultures that endorse these same values*.⁶ The CRC's 'universalist' principles, in this respect, can and should only be applied in societies that affirm and endorse

⁶ For an overview of this position see Talbott (2005, Ch. 3).

them. A pluralist and inclusionary protection of children requires their embedding into local realities. Promoting only one version of what childhood is mistreats those societies in which childhood is seen through a different lens.

The critique of Western imperialism, however, suffers from two flaws: it is effective only against *false universals* rather than against the normative commitment to universality as a principle; and, second, even if it is interpreted as a critique to universals *tout court*, it fails to account for the diversity of values *within non-Western societies*.

The first point is relatively straightforward. The concern with Western imperialism is not an attack on universal principles *per se*, but rather on the imposition of false universals disguised as universal values and norms. If there is widespread ratification of the Convention,⁷ and if the values and norms prescribed by the CRC are not unilaterally imposed on cultures who do not endorse them,⁸ then the problem of Western imperialism cannot affect the CRC. A critic might still argue that, regardless of universal ratification, the CRC is still a tool of Western imperialism: the fact that diplomatic practices are framed in an asymmetric bargaining system in which politically and economically powerful states dominate the agenda, makes the

⁷ As is the case. The United States is the only recognised state that has not ratified the Convention; Somalia and South Sudan were the last to ratify it in January 2015 (UNTC 2018). The U.S. has argued that ratification could undermine the state's sovereignty within its borders due to the socio-economic obligations it imposes (The Economist 2013).

⁸ This is also the case. Ratification of the CRC is voluntary, and even when ratified states are permitted to emit declarations and reservations which limit the scope of their obligations to enforce the Articles which they do not endorse. See UNTC (2018) for the full list of reservations, and Schabas (1996) for a critical analysis of their impact. Since 2014 an Optional Protocol on Communications Procedure (ratified by the General Assembly with resolution 66/138 of 19 December 2011) has entered into force in which individuals can appeal to right violations; it applies, however, only to signatory states.

“voluntariness” of ratification questionable (An-Na'im 1994); weaker states may be pressured into agreeing with the West's agenda in order to not lose out on the economic and diplomatic advantages that come with it. One can concede to this point, however, without having to concede to the invalidity of universality as a basic normative commitment. If pressures to comply are indeed an issue in the international arena, this is a reason to revise the procedures and mechanisms through which deliberations take place, while not denying the value of reaching “true” universals through less asymmetric and dominating decision-making mechanisms at the UN level.

If the prior response does not stand because (let us assume) the universal commitments enshrined in the CRC are indeed endorsed and promoted by Western values and norms, I believe that this would not necessarily disqualify them from *also* being labelled as universal. Simply because some of the principles enshrined in the CRC happen to be endorsed by (part of) the West, does not imply they are inherently against non-Western values. The binary assumption that ‘Western’ and ‘non-Western’ values are opposed risks simplifying the diversity of values within both Western and non-Western cultures. That hegemonic groups across the world disagree does not imply that all communities represented by these hegemonic groups disagree also (An-Na'im 1994).

Feminist theorist Uma Narayan, for example, has criticised the assumption that a person who defends a stance that does not follow the *status quo* in her own (Indian) society has necessarily a “Westernised” conception of the good (Narayan 1997, Ch. 1). The labelling of certain values as “Westernised”, she argues, is used as a rhetorical device by dominant elites within many non-Western societies in order to maintain control over the social and political values within their territory (Narayan 1997, 22). This demonization of “Westernised” values enables the silencing of dissenting voices within a society by discrediting their beliefs as “colonial brainwashing”.

The West/Non-West strict binary used by critics of universal values, ignores the diversity *within* a tradition or culture, assuming a neat division of values across territorial spaces.

As Amartya Sen has defended (2006; 2009, Ch. 6; 2015, Ch. 3), the fact that dominant interpretations of “Asian values” follow certain authoritarian political versions of Confucianism,⁹ we cannot simply infer from it that the whole of the East-Asian population follows these same precepts (Sen 1997, 36). In the same line, just because the West has defended tolerance and liberal principles during the last couple of centuries does not entail that there were no times when these same liberal principles were considered as dissenting opinions within the West (Sen 2006, Ch. 5).

Within every culture there are clear discrepancies over what a child is and what her fundamental interests are; this applies not only to non-dominant voices within non-Western societies, but to the West itself. The views of a feminist Indian on women’s economic and political rights probably coincide more with those dominant in Western societies (i.e. female enfranchisement or property rights) than with the dominant culture within her own state. Similarly, the views on child-rearing of a conservative and religious U.S. citizen may be more in line with the position of various dominant cultures in the Muslim world than with the more progressive views in his own country. It is fundamental to understand the difficulty of labelling certain political and moral values as necessarily enclosed within a defined territorial space; the diversity of sources that construct the identity of an individual (her gender, her socio-economic class, her personal history and experiences) can transcend this territoriality, thus making suspect

⁹ “Asian values” refer to an understanding of justice that emphasises social harmony, collective well-being, and the central role of the family and the community in politics (see Lee 1994). It opposes the assumption that the individual is the main claimant of rights, and was famously defended during the World Congress on Human Rights in 1993 by Mahathir Mohamad, the Prime Minister of Malaysia, and Lee Kuan Yew, former Prime Minister of Singapore. It led to The Bangkok Declaration (AS REG 1993).

the claim that universalist values (such as the human rights discourse defended in the CRC) are exclusively Western (Appiah 2005, Ch. 1; Sen 2006, Ch. 3, 4).

2.2 *Universalism as Cultural Abstraction*

Even if the Western imperialism critique does not necessarily stand, another route may complicate the CRC's commitment to universalism: the fact that it requires *cultural abstraction* in order to construct universal principles. The critique is simple: universalist conceptions of 'childhood' and children's rights cannot address the reality of children's lives due to its inclination towards abstracting from diversity in order to achieve universality. Any appeal to universal normative principles requires such a radical abstraction from the subject of analysis (in this case children) that makes its prescriptions incompatible with the real subjects to which they are supposed to apply.

Abstraction of principles can lead to ambiguity and difficulty in their enforcement and implementation. The best example of the problems that derive from abstraction in the CRC relates to the "best interests" principle (Art. 3) (see Alston 1994; An-Na'im 1994; Freeman 1997; 2007a): when a decision can affect a child (negatively or positively), argues the CRC, her best interests must be taken into account and given relevant consideration. The implementation of the "best interests" principle can be relatively straightforward when a child's life or basic survival are in danger. In most other scenarios, however, it does not offer useful guidance. Evaluating whether the best interests of the child are being met in a certain situation depends on who interprets their interests, which interests are evaluated, and to what extent are children's own views considered.

Different cultural environments may interpret the principle differently, leading to opposing understandings of what justice demands (Elster 1989, 134ff.; Alston 1994, 5; Brems 2002). Take, for example, the ambiguity when applied to the case of the right to education: a liberal

theory (i.e. Feinberg 1980), would interpret a child's best interest as having her future autonomy rights protected; for a republican theory, a child's best interests would be tied to ensuring her future inclusion in the public sphere; in an orthodox religious society, a child's best interests would be tied to learning and following the fundamental precepts and dogmas of her tradition; some states may consider that shielding children from corrosive influences would be in their best interests; while others could interpret that promoting a child's contact with various influences, allowing her to experience risks is in the best interest for her development. It has even been claimed (by the Taliban in Afghanistan and Pakistan, or by the Boko Haram in Nigeria) that not going to school is in the best interests of girls, as education corrupts their mind and makes them less desirable as wives in the future (interview quoted in Spring 2000, 69).

The abstract and vague construction of the "best interests" principle appeals to a universal commitment to children's well-being; however, its very nature as an abstract construction leaves too much space for dominant groups to take control over its content. This type of universalism as abstraction can become a source of cultural domination "by allowing the particular experience and perspective of privileged groups [within each society] to parade as universal." (Young 1990, 10). It appeals to universalism as a principle, but its operationalization fails to sustain this commitment.

3. Embeddedness as Cultural Domination

The value of embedding the CRC in the socio-cultural realities of diverse childhoods plays an important role in determining which universalist commitments should be implemented and which should not. Three rules of thumb derive from the previous critique to universalism in the CRC: first, the social context must play a role when assessing the interests of children; second, to beware potential sources of cultural domination that may arise from wrongfully construed universals; and, third, to understand that children's interests can be protected through various

routes. But, just as with universalism, embeddedness cannot be taken at face value; just as universalism can be a source of cultural domination, a commitment to embeddedness can enable and perpetuate forms of domination as well (Sen 1998). Two relevant concerns have been raised: embedded commitments may enable domination of vulnerable individuals by hegemonic domestic groups; and, second, embeddedness may perpetuate inequalities and harms to children in the private sphere. I explore them separately.

3.1 Group Priority and Domination

A first concern with embedding children's rights is its potential to give normative priority to the group (in this case the dominant conception of the good within the group) over the individuals within it. That is, embedded commitments can enable the prioritisation of the interests of the hegemonic groups, while disregarding those of the less powerful individuals.

Many societies give a prominent role to the *duties* of children towards their cultural tradition, family, or clan, and to the position of elders and the community as hegemonic sources of authority. Defence of this hierarchical understanding of the status of children has been raised by East-Asian critiques of human rights discourses (for the debate see Sen 1997), and by regional legal instruments such as the African Charter for the Welfare and Rights of the Child (AFCH) (OAU 1990), which emphasises the relevance of children's duties to uphold their traditional culture and to respect their elders (AFCH, Art. 31).¹⁰ This conception of children (and individuals in general) as being, primarily, bearers of duties towards their community and its traditions can have its problems: it transforms the debate from one in which children are ends in themselves, to another in which they are, to a great extent, means for the perpetuation

¹⁰ For this discussion see Lloyd (2008) and Kaime (2009). The AFCH is a much more complex document than my brief mention of it allows to grasp. My use of it as an example here is not intended to diminish its value in any sense, but a thorough assessment of its potential is outside the scope of this paper.

of their cultural tradition, their community's values and the will of their elders (Dwyer 2003, 448). In a sense, this can manifest itself as domination by the elders towards the child population.

Granting a paramount role to the community on top of the individuals who comprise it, supposes homogeneity of will and value within societies, and assumes that collectives always work in the interest of the least powerful. This may be true in some instances, but it does not necessarily correlate with the reality in many societies. First, assuming homogeneity *within* societies seems as corrosive as assuming homogeneity *across* societies. Even within the same community, the needs and interests of children are too diverse to stipulate a single conception of the good, and its enshrinement may enable as much domination within societies, as certain false universalisms do among societies.

Cultural domination by hegemonic groups within communities is especially relevant in the case of children whose gender, social class, or minority status leads to unequal treatment (Young 1990, 10-12; Ncube 1998a). Embeddedness can be read as prescribing the dominant group's conception of justice and the good as exclusive, while delegitimising the manifestations of internal dissent as wrong and as alien. Take, once more, Uma Narayan's position as a feminist in the Third World:

seeing the perspectives of feminist daughters simply as symptoms of our "Westernization" and as "rejections of our cultures" fails to perceive how capacious and suffused with contestation cultural contexts are. It fails to see how often the inhabitants of a culture criticize the very institutions they endorse. It fails to acknowledge that Third-World feminist critiques are often just one prevailing form of *intracultural* criticism of social institutions. (Narayan 1997, 9).

If the objective is to treat children (and individuals in general) in accordance with their own interests and value systems, then the vulnerable (and all non-dominant) groups who dissent from the dominant values ought to be taken as manifestations of the cultural tradition as well. As Seyla Benhabib notes (2002, 32), diversity of value both within and across cultures is more

“a matter of the degree and extent of divergent belief systems”, rather than a culturally divided ‘us’ (who have our own values) and ‘them’ (who have theirs). People’s identities vary much more within societies than territorial majority cultures allow us to see. If the prevailing conception of the good is assumed as encompassing the whole population, the problem of domination which affects some universalisms, arises with embedded commitments too (An-Na’im 1994, 63, 67).

Relying on the hegemonic value systems of local (and usually male) elites cannot (and most surely will not) protect the interests of many individuals who do not ascribe to the dominant group, or who would not be benefited from allowing the dominant group to impose their moral guidelines (Khader 2016, 131). Take the case of Malala, a Pakistani girl who had the good luck of having a father who fostered her autonomy, her opinions, and who valued her as deserving the same treatment as her brothers. Neither her nor her father are ‘Westernised’ in any meaningful sense: they are both committed believers of Islam’s principles, they follow the customs and traditions of their Pashtun community, and even though their political beliefs and their interpretation of the Quran differ from those of the dominant voices in their country, the source of these beliefs grew from the values and customs of their own local environment. They were persecuted (and nearly killed) for their beliefs by the Fazlullah’s Taliban, dominant moral authority of this region of Pakistan at the time, while the political authorities of the country “turned a blind eye” to the violence carried out by these militias (Yousafzai 2013, 100; Haqqani 2005).

What are we to say to Malala and her father if we subdue to the view that morality in their society demands female submission to male authorities, that girls should not go to school, and that all dissent is labelled as “Western” and should be punished? What are we to say to the Nigerian girls in Chibok who were kidnapped by Boko Haram because they were going to school to become ‘Westernised’? And what about all African women who are opposed to female

genital mutilation? Defendants of embeddedness cannot turn a blind eye to these silenced voices: if embeddedness aims to protect pluralism and respect for diverse conceptions of the good, then it must account for the heterogeneous voices trapped behind apparent homogeneity. In short, we must respond to domination *within* cultures in the same way that we respond to domination *among* cultures (Freeman 1995).

Leaving interpretative space for embedding the CRC's principles in local customs is a relevant concern, but it should not take domestic cultural values as a given. Just as universalism may be a weapon of cultural domination that allows powerful states to decide over children's interests, embeddedness may enable hegemonic groups within states to impose their own conceptions of the right on vulnerable populations in their territory. Embedding the CRC's principles should not imply giving priority to hegemonic groups over the individuals to which they apply.

3.2 Delegation to the Private Sphere

The CRC delegates responsibility over children to the state and the family (Art. 5). Not only does the CRC enshrine states as the primary duty-bearers for how its principles should be implemented, but it also devolves much of the responsibility from the *public* to the private sphere (White 2002, 1098). The problem with delegation to the state has been highlighted in the previous section: it may enable cultural domination of minority groups by hegemonic ones; let us now look at the problems with delegation to the private sphere.

Despite that Article 2 clearly defines the state as the primary duty-bearer over children within its jurisdiction, the general tendency in the CRC is to delegate this responsibility to legal guardians (in any of its manifestations), entrusting them with most of the responsibilities to uphold the rights in the Convention (see Art. 5, 14, 18 as examples). The state plays, thus, the role of legal binder and institutional support to families in the promotion of children's rights

(Brems 2002, 29-30). In an ideal scenario, delegation of responsibility to the family fosters the pluralist commitments in the Convention, leaving interpretative space for diverse ways of child-rearing and nurture to develop within the domestic sphere. In practice, however, it encounters three structural issues: first, it relies on the assumption that the family can ensure children's protection from (non-extreme) forms of harm; second, it ignores the sources of domination that exist within family structures; and it neglects the outcome inequalities among children from families in different socioeconomic conditions.

The family is a core social institution. The loving and affectionate bonds created by family ties can be a major source of protection and promotion of children's well-being. I do not intend to deny the relevance and value of the family in safeguarding children's rights. However, we must not be blind to the ways in which it may encroach rather than promote children's interests (Archard 2004, 14-15; Freeman 2007b, 11). We cannot take family affection for granted; we cannot idealise the parent-child relationship as always taking the best interests of the child as a priority; and we cannot assume that treatment within the family is inherently just and egalitarian (see Okin 1989, Ch. 2, 6; 1999; Archard 2004, Ch. 11). Despite its benefits, the relation of care from parents to children within the family establishes itself as a "hegemonic relationship" in which the parents possess "the moral high ground", justifying all sorts of parental control over the child and her life (Jenks 2005, 40). Children are always a vulnerable party within the family; the asymmetry of power and the child's subordination to the authority of her parents are an inevitable characteristic of her dependent condition (Ncube 1998b; Archard 2004, 122).

Children's "natural" dependence and subordination within the private sphere is almost generally unquestionable. However, granting special authority to their guardians over safeguarding of their rights may impose even more dependencies and asymmetries within the family structure (Dwyer 2003, 447). Assuming the best intentions from the part of parents, the disadvantages that arise from children's subordinate position may lead to conflicts between the

family's interests, other conceptions of the child's interests, and the child's own view of her interests.¹¹

This conflict is especially relevant as it can enable unequal treatment for some children based on socioeconomic status, gender or ethnicity. The devolution of authority and responsibility of the CRC to the family limits the chances of its principles being enforced, allowing the reproduction and transference of disadvantages and inequalities from parents to children (Gaitán Muñoz 2010; Archard 2004, 156). Deferral to the family, compounded with the inevitable variation in the resources and capacities of parents to sustain their children, makes the CRC toothless in ensuring the equal treatment that it endorses (Clark and Ziegler 2014, 228). In a certain sense, deferral to the family excludes many children's rights matters outside of the public realm, as if children's rights were a matter of public regard only in cases where most extreme harms arise (Clark and Ziegler 2014, 225-226; Archard 2004, 158). As Gaitán Muñoz argues:

As a consequence of the implicit agreement between society, family and state, the children's situation depends on their parents' cultural and social position as well as on their capability to earn money in a segmented labour market. The more the parents are well positioned, the more children enjoy a decent standard of living. In contrast, the worse the situation of the parents, the worse is that of the children as well. (Gaitán Muñoz 2010, 47).

The disadvantages generated from unequal familial situations should be a matter of concern to the CRC. Public authorities should take a more active role, one that goes further than just "assisting and supporting" parents and children in extremely urgent situations (Gaitán Muñoz 2010, 46). If much of the burden is relegated to the private sphere, then equal treatment of all children will be a highly unlikely (if not an impossible) goal.

¹¹ For an overview of the conflict between the family, the state and the child in the African continent see Himonga (2008).

4. Domination and Inclusion

While the embedded commitments of the CRC question the viability of universalising its principles, its universalist commitments highlight important flaws in the way embeddedness may be implemented. Behind their seeming opposition, however, lies a common core that unites both views, and which allows me to consider a unified critique and solution to their tension. Both universalist and embedded commitments are grounded on a concern with the potential sources of *domination* of a vulnerable social group in the hands of a dominant social group. Iris Marion Young defined this as “the universalization of a dominant group’s experience and culture, and its establishment as the norm” (Young 1990, 59). I wish to explore how the threat of domination is a basic concern for both positions, and how it may lead to a common solution.

Universalism in the CRC is criticised due to its alleged tendency to enable the domination of relatively powerless cultures and national groups by the global economic and ideological powers. Embedded commitments are criticised for their perpetuation of cultural domination of relatively powerless minorities and social groups (be it linked to religion, gender or age) by a dominant moral and/or political elite within a territorial entity. The concern on both sides is the same: *the CRC enables the perpetuation of a dominant conception of the right and the good at the expense of the views and values of vulnerable groups*. It could be argued, thusly, that the difference between universalist and embedded critiques is merely one of *scale* rather than content: universalism enables the imposition of a dominant conception of children’s rights to the rest of the *global* population; while embeddedness enables the imposition of a dominant conception of children’s rights to the rest of the *cultural/territorial* population.

However, an amendment in our conceptualisation of ‘embeddedness’, ‘universalism’ and their relation may be fruitful in overcoming the tension. Embeddedness should not imply accommodating universal principles to their interpretation by the dominant voice within each

political culture; and universalism should not imply the imposition of “external” or abstracted standards within domestic settings. Principles are not static and absolute entities. They transform and evolve as the value-systems of different societies come into contact; they are receptive to external influences; they grow and develop through mutual deliberation and understanding.

Value-systems and social cultures should work as inclusionary and dialogical entities capable of contesting others and contesting themselves, rather than blockading within their walls as monolithic and atemporal entities. The discussion should not be about how to allow the maximum possible space for each society to keep their own standards without being coerced into universal standards; but rather, how to achieve the highest possible standards, while not imposing external principles on local communities. The difference, in this respect, is between *flexibility* of universal principles, and *transformation* of universal principles (Brems 2002). Flexibility is the unidirectional adaptation of universal standards within particular settings; transformation, on the other hand, points towards the inclusion of the claims deriving from particular settings into the universal framework (Brems 2002, 23-24).

In this line of argument, it is relevant to look at Abdullahi An-Na'im's approach to universality and relativism in human rights. An-Na'im's proposal stands on two basic ideas: the necessity of diversifying *internal discourses* (within each social setting) and of diversifying *cross-cultural dialogues* (among different social settings) (An-Na'im 2010). The objective is to make the definition of universalism and embeddedness *porous* to each other. Both have their flaws, but both have the capacity to overcome them by allowing substantial contestation to develop within and among them.

A basic problem that affects substantial inclusion of perspectives lies in the dynamics of power relations both within and across cultural groups (An-Na'im 1994, 62). Domination of a hegemonic group over others can affect both the cross-cultural and the internal dialogues.

Powerful states (generally portrayed by the West) have tended to impose their own agendas on the rest of the world through human rights instruments that create a ‘false’ or ‘colonising’ universal monism that does not necessarily represent the global population; thus, abetting domination of powerful states over weaker ones. Within states, however, the same unilateral imposition of a society’s culture is imposed by the moral, political and economic elites of a country to the rest of its population, creating, again, a ‘false’ embedded monism. Monism at any of the two levels is harmful; it allows one state to impose standards on others, and it allows elites within states to impose standards on the rest of the population. Taking diversity seriously requires looking at cultural values, social practices and moralities as never conclusive nor final; it requires having them “open to challenge, reformulation and refinement” (An-Na’im 1994, 64; see also Mendieta 2009).

If universalist and embedded commitments indeed have a common normative concern with domination, tackling this threat directly (at all scales) may be a potential path to address the tension. In the case of children, this is a particularly difficult task to achieve; children’s vulnerability and dependence on others makes them prone to domination by the adult population in general. Regardless of the scale we analyse, the position of children in our socio-political world is inevitably one of an asymmetric power relation: whether it is at the local, national or global level, it is the adult population who always chooses how children’s rights should be conceptualised, and how their interests should be safeguarded. Adults bear full control over the interests and rights that should be granted to children, while children do not have a sufficiently recognised status to press their claims (Nolan 2011; Peleg 2013). We are, thus, left with the same problem that concerned Uma Narayan regarding the subjection of women: both universalists and localists are fighting for which of two dominant groups should have the authority to impose their moral and political views on a vulnerable one, while not necessarily empowering the latter to overcome its plight (Narayan 1997, 18).

Focusing the critique at a particular level of domination from which children should be protected misses the opportunity to grasp the full breadth of the problem; namely, *the inherently asymmetric position of children vis à vis adults* (Brando 2018, Ch. 9). By looking at the problem as one of potential domination by the adult population to the child population (as a whole), the standard solutions presented in the debate prove to be insufficient. Whether it is the United Nations, a state government, or the family who has decision-making authority regarding ‘a child’s best interests’ fails to address the core source that affects children’s status as equal members in our society: the asymmetry of power between children and adults at all scales of decision-making. An inclusive process of contestation and reformulation that leaves space for non-dominant groups to press their claims and interests is, thus, required. It is precisely the assumption of the inevitability of children’s dependence on others to make decisions for them which demands revision (Lee 2011, 19). Enabling spaces in which children themselves are empowered to defend their own interests and needs can work as an important step in the right direction. By including children directly in the decision-making process, the asymmetric power dynamic which pervades both purely universalist and embedded approaches, may be overcome.

Inclusion of children in the deliberative process has recently started being a priority commitment of UN bodies dealing with questions of children’s rights. In 2002, the UN General Assembly established a Children’s Forum in which representatives of child-led organisations from all over the world discussed the priorities that the UN should follow regarding their rights (UN 2002). More recently, the UN Committee on the Rights of the Child drafted the first General Comment (21. On children in street situations) with the collaboration of children (UNCRC 2017): instead of imposing its particular interpretation of the CRC, the Committee gathered the claims and views of over one thousand children of all ages from child-led organisations all over the world in the drafting of its General Comment. This could be read as a successful embedding of the universal principles of the CRC into the realities and best

interests of street children. A relevant case at the domestic level is the Code for Children and Adolescents put into force by the government of Bolivia in 2014 (*Ley 548 Código Niño, Niña y Adolescente 2014*). Children from varied socio-economic circumstances and from different cultural traditions within Bolivia all gave their input and comments to the legislation that would guide the implementation of their rights. By introducing the perspective of a wide array of children (different age, gender, socioeconomic and cultural status), legislators were able to account for the diverse realities, views and needs of the child population of the whole country, especially those of the most vulnerable children (from indigenous communities and child workers) (Liebel 2015). Instead of unilaterally imposing on children a particular interpretation of their rights, the Bolivian government deliberated with children themselves, drafting a Code embedded in the plural interests of the Bolivian child population, while promoting a universal commitment to their protection.

5. Closing Remarks

The moral of the story is that neither universalism nor embeddedness by themselves can carry the solution to how children's rights should be conceived and implemented, as both can be tools of domination, and both can be fertile depending on the way they are interpreted and used. While universals may impose a conception of 'childhood' and of children's rights that alienates many children and their interests from their local reality; an embedded commitment that exonerates communities from justifying the values and restrictions they impose on their child population may lead to tolerating dominating and corrosive practices. The inclusion of the voice of children can help overcoming the problem of domination at any level of decision-making.

This article explored how the universalist and embedded commitments of the CRC have been interpreted, and how they can both benefit and threaten children's interests. A commitment to both universalism and embeddedness is fundamental for the appropriate protection of children's

rights. However, their potential corrosive effects must be accounted for, so to ensure that they do not incur more harm than benefit. I argued that understanding the underlying concern of both positions as one with protecting children from domination can provide routes beyond their assumed opposition. If domination is the core concern, then the direct inclusion of children in the decision-making bodies is a fundamental mechanism to ensure that their rights and interests are protected.

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