Children’s Work: A Moral or Political Issue?

Joe Diorio

N. Ruth Gasson

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I. Introduction: Tolerance and Discourse

According to James Bohman,

If we regard the persons whom we tolerate as citizens, then we must as such also regard them as entitled to put forth reasons that are valuable from their perspective (2003, p. 758).

Bohman argues that toleration requires open communication among disagreeing citizens, who must take each other’s reasons for their views seriously and not disqualify them ex ante (2003, pp. 759, 764). Toleration demands that criticizing other’s views and reasons be conducted in ways that respect the intellectual sincerity of those who express them. Bohman writes that

Before a reason can first be seen as a reason and thus potentially as one that passes the critical scrutiny of all citizens, the perspectives of others and the experiences that inform them must be recognized as legitimate…The toleration of others’ perspectives is then part of recognizing them as equal members of a political community (pp. 764-65).
Not disqualifying the views of opponents *ex ante* is part of engaging with them as equals--however much we may anticipate disagreeing with what we expect others to say, we wait to hear them and consider their views fairly. Considering the views of others entails openness to the possibility that their arguments may convince us.

This paper draws on these ideas to examine two forms of rhetoric that we identify as ‘moralising’, namely, ‘rights talk’ and the ‘rhetoric of childhood’. We argue that these rhetorical forms are used in political discourse as *ex ante* blocks to the tolerant consideration of perspectives expressed by both adults and children which support children’s engagement in paid work. We believe that, while moralising rhetoric attracts enthusiastic support from people who want to improve human life, its moral certainty can blind its users both to the contentious status of its own assumptions and to the undemocratic force it can exert in political debate. Our aim is to illustrate how moralising speech can exert political power, using disputes over the employment of children as an example.

Adults who support children’s work are shamed for apparently disregarding the needs of vulnerable children, whereas the views of children who say they want to work are dismissed as immature. With respect to adults, moralising rhetoric condemns pro-work perspectives as blatantly wrong. With regard to children, who are not accepted as mature participants in public debate, any pro-work opinions which they advance are dismissed as ‘childish’ and unworthy of serious consideration. These rhetorical forms exclude contrary adult opinion from the scope of tolerance, and withhold credence from the opinions of the children.

Bohman does not apply his argument to children who, lacking status as full citizens, have no obvious claim to have their perspectives respected as equal members of a political community. The exclusion of children from political acceptance is
problematic. The United Nations Convention on the Rights of the Child (UNCRC), on which we will focus in this paper, emphasises participation rights for children in personal and social affairs, but nonetheless subordinates children’s perspectives regarding their own lives to the opinions of adults. Although for the purposes of the UNCRC anyone under the age of 18 is a child, who ought to count as a ‘child’ is at issue; different societies set different ages for activities such as voting, driving, and drinking alcohol, and these minimum ages often are contested. In New Zealand, for example, there are arguments to raise the current drinking age above 18, whereas in Australia there are moves to lower the voting age to 16. There is no obvious or universally agreed age at which people acquire the capacities to deserve toleration as citizens, and there is no evidence that all young people gain these capacities at a common age.

The UNCRC requires every nation to set a minimum age for employment. Many adults and children reject this requirement. Our intention in this paper is not to argue for or against allowing children of any specific age to work for pay, but to explore the exercise of social power through the use of moralizing rhetoric in the child labour debate, especially in Aotearoa New Zealand.

Bohman’s concept of tolerance is influenced by Jurgen Habermas’s normative theory of law. According to Pauline Johnson,

To Habermas….the legitimacy of the rule of law depends…on the institutionalization of those procedural norms, through which the private individual is recognized…as a potential contributor to those discursive processes through which the idea of the common good gains legal sanction (Johnson, 2001, p. 45).

The central point in this passage is the notion of the recognition of an individual as a “potential contributor” to debate; that is, as a person who is accepted in principle as potentially influencing public policy. We discuss two ways in which this acceptance
can be withheld in public discourse about children’s work: first, in rhetoric that defines the morally “correct” conclusion in advance of the expression and consideration of alternatives, and second, when children as a group are identified in advance of speaking as incapable of formulating mature views. *A priori* boundaries thus are drawn around the limits of legitimately contestable arguments, and the range of persons who can express such arguments. While neither Bohman nor Habermas consider these matters directly, we will extend their arguments to show how moralising rhetoric can suppress open public debate.

Habermas demands open political procedures in which speech is considered on its own terms, and not prejudged in terms either of its content or of the status or identities of the speakers. Women, non-property owners, slaves and minority group members historically were excluded from voting rights, for example, on the assumption that people of these sorts had nothing valuable to contribute to public decision-making. Similarly today, children’s views, consideration of which is demanded by the UNCRC (Article 12), contradictorily are discounted by other provisions in the same Convention which empower adults to assess children as incapable of forming sensible views about their own lives. The UNCRC demand for a minimum age for children’s employment echoes earlier opposition to women’s labour (see Ansell, 2005, p. 182).

In the current debate over children’s work, people who favour allowing children under 13 years—the age at which children are permitted by the International Labour Organisation (ILO) Convention 138 (1973, Article 7.1) to engage in light work which does not harm their health or development or prejudice their attendance at school—to enter paid employment often are dismissed as immoral:

* countries that are affluent enough to prohibit their children from earning money, portray this ability as
moral superiority by condemning, as inhumane, those who encourage children to do productive work (Bourdillon, 2000, p. 7; cited in Ansell, 2005, p. 173).

Given these perspectives, it is not surprising that the prevailing reaction to the fact that globally over 13 percent of children between the ages of five and eleven are economically active (ILO, 2002, cited in Ansell, 2005, p. 161) is one of moral outrage rather than open-ended discussion.

II. Moralising Rhetoric and Strategic Action

For Bohman, as for Habermas, tolerance demands that speech be addressed in its own terms, and that it not be shaped surreptitiously or influenced in advance by external forces. If people say in public what they have learned other people will applaud them for saying, or if they refrain from saying things which prevailing public discourse condemns as unacceptable, then what they say arguably is not their own speech at all. Habermas identifies this kind of speech as “distorted communication” and Iris Marion Young glosses this phenomenon as follows:

In opening the possibility that some consensus is false and some communication systematically distorted by power, I am not referring to consensus arrived at by excluding some affected people or that is extorted by means of threat and coercion….It refers to how the conceptual and normative framework of the members of a society is deeply influenced by premises and terms of discourse that make it difficult to think critically about aspects of their social relations or alternative possibilities of institutionalization and action (Young, 2001, pp. 685-86).

Moralising rhetoric has the potential to suppress critical thinking and to distort public discourse about children’s work. Assertions that children, as vulnerable people, have rights to be protected from working proclaim a moral ‘high ground’ from which supporters of such work can be shamed after they have spoken and silenced in
advance through fear of expressing shameful views. Assertions of the right of children to be prevented from working do not address the substance of contrary arguments, including evidence that a majority of employed children want to work, that many children object to legislation designed to protect them, that some children need to work to maintain a reasonable standard of living or to attend school, and that some children are employed in work that demands a level of responsibility from which they learn useful knowledge and skills (Ansell, 2005, pp. 172-73). Claims that children are incompetent to understand their own interests deny the legitimacy of their views about working. Asserting the moral right of children to be prevented from working shifts attention from these substantive issues to the rectitude of the persons who employ children or support their working.

These rhetorical manoeuvres shape the terms of discourse about children’s work. They signal danger to anyone considering speaking in favour of children’s employment, and influence the content of speech in advance of expression. Would-be advocates of children’s work may withhold their views from public disclosure, either because of self-doubt that what they were about to say must be wrong, or out of fear of expressing a perspective which has been condemned morally by ‘respectable’ people. These manoeuvres leave little space for open discussion.

The impediments to critical thinking identified by Young are exhibited in New Zealand in discourse about children’s employment which has focused on a reservation registered by the New Zealand government when it ratified the UN CRC. This reservation concerns Article 32.2 (a), which requires that “[state parties shall]...provide for a minimum age or minimum ages for admission to employment”. ¹

When a country ratifies the Convention, it is expected to pass any legislation required to comply with the Convention’s provisions. New Zealand’s reservation
argues that the rights included in Article 32 are covered by existing laws, and that setting a minimum age for employment would not be in the best interests of New Zealand children or their families. New Zealand also has not ratified ILO Convention 138, because that Convention also requires legislating a minimum employment age. New Zealand opinion is divided on this matter. Most young workers (11 -15 years inclusive) do not favour a minimum working age (Gasson, et. al., 2003), but non-governmental organisations that are monitoring New Zealand’s implementation of the UNCRC insist that a minimum age must be set. Action for Children and Youth in Aotearoa (ACYA) urges the Government to ratify ILO Convention 138, and withdraw its reservations to the UNCRC, stating that “...only when the Government has withdrawn its Reservations to the Convention can it be said to have ‘strongly supported and contributed to international efforts to strengthen human rights protections for children’ as it claims at paragraph 99 of its report.” (2003 p.104).

ACYA (2003) urges the government to consult with children and respect their views, but because it is certain that children’s best interests will be served by full acceptance of UNCRC Article 32, and by ratification of ILO Convention 138, it ignores the possibility that children themselves legitimately might not agree. Recent research suggests that the working patterns of young New Zealanders vary among ethnic and economic groups, and that the well-being of children and their families might be affected differentially by removal of the government’s reservation. Young European New Zealanders, and those from medium-to-high economic status schools, engage more frequently in paid employment than young people from indigenous Maori or minority ethnic groups and low economic status schools, but the former groups usually spend less time carrying out family chores. Work done by young people from Maori or minority ethnic groups and low economic status schools is more
likely to be unpaid and home-based; as such it is less visible and less likely to be affected by the proposed legislation. However, of those young people who work for pay, those from low economic status schools are more likely to contribute to family finances, whereas students from medium-to-high economic status schools tend to keep their earnings for their personal use (Gasson, et. al., 2003). If the goal is to improve the well-being of young workers in New Zealand, these and other issues, such as whether children should be enabled to join labour unions, should not be ignored. The rhetoric of ‘rights’ and ‘childhood’ distorts public communication about the employment of children by discouraging investigations of these issues because the UNCRC already has declared authoritatively that children should be prohibited by right from working.

Asserting that children must be prohibited by right from working transfers the debate over children’s employment from the political to what Chantal Mouffe calls “the moral register” (2005, p. 5), and denies the legitimacy of political debate over the issue. Since the issue has been ‘solved’ morally it no longer is appropriate to discuss it politically: immoral views do not merit public tolerance. Users of rights talk seem to assume that immoral perspectives can be identified independently of political debate. When conflicts arise over the policies advocated by the users of rights talk, they are viewed from these users’ perspective not as political disputes among equals but as crusades of good against evil. According to one source:

advocacy for many things that had previously been considered as needs and dealt with by Government programmes, the success of which often depended upon political considerations...can now be fortified by their inclusion as one of a larger number of human rights....Social reformers and human rights lawyers have defended individual children’s rights or pursued political or policy objectives deemed advantageous to children for many years. But with the [UNCRC] Convention the concern can now be regarded as
universal (United Nations Department of Public Information, 1995, p.5)

Rights talk often is used to intimidate and shame political opponents. In a review of Mary Ann Glendon’s book Rights Talk, Richard A. Epstein states that “people use speech as a club to intimidate or posture, not as a tool to teach and learn” (1992, p. 1106). This controlling use of speech as an instrument of power is incompatible with the tolerant engagement with the views of others advocated by Bohman and Habermas. Whereas Habermas sought to remove power from speech by ensuring that arguments should be considered on their own merits apart from the differing power positions of speakers, rights talk exerts power through speech by cloaking certain arguments in the garb of moral rectitude.

If children have a right to be prohibited from working, then it is wrong not only to force or allow them to work, but also to argue that they should be able to do so. Declaring a right seeks to close the argument by making the raising of alternative perspectives a moral error; rights talk preempts certain opinions in advance of their expression. Rights talk “colonises” other people’s thinking (Smith, 2002, p. 46) and suppresses divergent outcomes of individual moral deliberation: “once the moral justification for codifying human rights has done its work, moral considerations become redundant….we are absolved from the moral responsibility of having to choose” (Smith, 2002, pp. 49-50, 60). Rights talk deflects opposing views from receiving serious consideration, inhibits examination of alternatives, and reassures adherents that they are ‘thinking with the best’.

The moralising rhetoric of childhood does similar political work in debates over the employment of young people to that performed by rights talk. Anneke Meyer shows how a discourse of innocence and vulnerability erects a protective stockade around children which adults must defend for them. According to Meyer:
Being a child becomes synonymous with being at risk, hence risks to children are ever present and constant protection is required. As the ‘at risk’ status is rooted in the being of the child, anything can be identified and popularized as a risk to children (Meyer, 2007, pp. 92-93).

Once something—such as work—is identified as a risk to children, anyone proposing that children be exposed to that risk, rather than being shielded from it, can be criticised morally apart from addressing any substantive arguments they may offer. The rhetoric of innocent childhood, like rights talk, moves children’s work off the political agenda and into the domain of morality where ex ante judgments constrain debate. Asserting that innocent, defenceless children have a right to be protected from the depredations of greedy employers and the mistakes of foolish parents exhibits the speaker as a moral, caring and intelligent person who understands the nature and needs of children (Meyer, p. 102).

As distorting forms of communication, the moralizing rhetorics of rights and childhood constitute strategic actions to gain public support for a perspective in ways which do not rely on substantive arguments addressed to the issues at hand (Sinclair, 2005, p. 233). As Tom Sinclair has noted:

Strategic action…is a form of interaction with others which relies on institutional-intersubjective norms or resources (money or power) rather than agreement for its effectiveness as action (Sinclair, 2005, p. 230).

Strategic action seeks the public acceptance of a pre-defined perspective, whereas open communicative action aims to produce an as-yet undefined agreement. Strategic and communicative action both seek social agreement, but the former defines the substance of the agreement in advance and manipulates social interaction to achieve it. Jari I. Niemi argues that, for the strategic agent, the reasons why others agree to a desired proposition are irrelevant as long as they do in fact agree. Power, money, fear or shame may do the trick. Public agreement ceases to be pursued as an open and
unpredictable collaborative achievement (Niemi, 2005, p. 518). The strategic agent treats fellow social actors as if they were inert manipulable elements in the natural world (Niemi, 2005, p. 522). Niemi argues further that, in Habermas’s terms, strategic and communicative actions are mutually exclusive:

The speaker cannot simultaneously intend to reach an agreement and to exert influence on the addressee….if we are to understand agreement as an agreement, then it cannot be brought about through gratification, threat, manipulation, or deception as is the case with…strategic action (Niemi, 2005, p. 521). [check accuracy]

To the extent that expressions of opinions regarding children’s employment rely on moralising rights talk and the rhetoric of childhood, they cannot constitute tolerant engagements with the views and persons of their opponents as described by Bohman. Rather, they constitute attempts to reach outside the communicative political process and to draw into play the social power of self-identified right-thinking groups.

III. Children’s Rights, Needs, and Autonomy

The UNCRC accords children three kinds of rights: protection, provision, and participation (Roose and Bouverne-De Bie, 2007, p. 431). Protection and provision rights depend on adult power, sometimes exercised against other adults and sometimes against the expressed wishes of children. These rights protect children from negative influences and provide them with things which have been identified as in their best interests. Participation rights supposedly empower children to have a say in shaping their own lives.
When adult enforcement of children’s protection and provision rights conflicts with children’s own wishes expressed under their participation rights, the former normally prevail. While this is not explicit in the Convention, in effect the UNCRC established a hierarchy among these three types of rights: when they clash with adult views, participation rights come last and may have no operative force at all.

Article 12 (1) of the UNCRC provides that

State 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.

In a similar vein, the Handbook on International Human Rights (2003) published by the New Zealand Ministry of Foreign Affairs and Trade states that

the guiding principles of the [UNCRC] Convention are:

- the best interests of the child shall be paramount
- Non-discrimination
- The views of the child shall be respected

The right of expression is reserved to children who are capable of forming their own views. Adults decide which children have this capability, and children’s disagreements with adult views can be taken as evidence of a lack of “age and maturity”. While “the best interests of the child” are to be paramount, they are not determined by children, whose views are to be “respected” but not followed. Since children should be protected from their own immature opinions, their participation rights thus are subordinate to protection and provision rights. As noted by Manfred Liebel,

the criteria for maturity and development are arbitrarily laid down by adults, who think themselves developed, in order to legitimize and cement the dependence of the child. Subjective qualities found in the small child are generally devalued as an expression of immaturity that can be overcome by education (2004, p. 274).
Since children are not fully citizens, their views about their own lives can be dismissed \textit{ex ante} (see Jones, 2005, p. 358). According to Esperanza Ochaita and Ma Angeles Espinosa:

it should be understood that the child’s need to participate does not mean that children and adolescents can always act in accordance with their wishes. On the contrary, they need an environment that provides them with stable limits and norms...that may serve as an external source of self-control (2001, p. 317).

Ochaita and Espinosa assert that children have a right to the things they need, including formal education (2001, p. 315). They identify formal education as schooling, which presumably enables children to develop views worthy of adult consideration, and which they link to the promotion of individual autonomy: “\textit{formal education}, which takes place in the school, is absolutely essential for satisfying the need for autonomy” (2001, p. 318. Emphasis in original.). As needs, schooling and autonomy also must be rights.

Ochaita and Espinosa write about children’s needs as though they were objective facts identifiable by experts, rather than politically contested norms developed within particular socio-cultural contexts (see Komisar, 1961, p. 251).

Robert. Dearden pointed out that needs claims are normative statements which can neither be ‘discovered’ nor empirically refuted, since they indicate how things ought to be....conflicts of opinion may be expected here...and...since decisions may be involved, not just discoveries, we are bound to ask by what authority sociologists, psychologists and specialists of other sorts presume to \textit{settle} for us questions of need....although questions of need have an empirical basis, they cannot \textit{ultimately} be settled empirically for the norms presupposed have to be thrashed out by the non-specialist procedures of argument and debate (Dearden, 1972, pp. 52-53. Emphasis in original.).

Needs claims thus are contestable political statements, and this is most obvious when children are said to need something not strictly necessary for physical survival but
demanded by a particular form of life, such as formal schooling or personal autonomy.

The necessity of schooling and autonomy is contingent on the prior valuation and the economic availability of certain forms of life (see Pupavac, 2001, p. 102). The political contestedness of the value of autonomy, for example, was demonstrated in the reaction to the United States Supreme Court’s ruling in *Wisconsin v. Yoder* in 1972. The Court’s decision permitted Old Order Amish parents to keep their children out of secondary school in contravention of state law, because of fear that attendance would undermine commitment to the Amish way of life. This decision was attacked by liberal authors (Henley, 1979; Feinberg, 1992), and continues to be the subject of ongoing discussion (Mills, 2003; Prusak, 2008).

There is a large liberal literature which objects to any type of schooling, including religious schools, which seeks to induct children into a pre-determined form of life, rather than teaching them about many such forms and enabling them to choose one for themselves (e.g. Marples, 2005). This literature elevates choosing a life for oneself over living an unchosen life of value to oneself and/or to others. If children need autonomy, then on Ochaita and Espinosa’s account they have both a need for and a right to a type of schooling that will try to make them autonomous. Letting children work may interfere with their schooling and inhibit their development of autonomy. Work thus can be seen as a denial of children’s needs and a violations of their rights. According to Liebel,

> public discourse on children’s work today is marked by a high moral tone. When the media, or politicians of whatever persuasion, deal with the topic, they express unified indignation that such a thing still exists. Children’s work is regarded as backward, barbaric....(Liebel, 2004, p. 5).
Persons who promote forms of life and schooling that deny needs and violate rights are seen thereby to advocate immoral perspectives which should be disqualified ex ante from serious political consideration.

Rights claims acquire seemingly empirical foundations when they are linked to needs. Professional experts are accepted as the arbiters of needs, and when their statements of the needs of vulnerable children are reinforced by moral assertions that children have a right to have these needs met, powerful and potentially anti-democratic forces are exerted on public discourse. As Chandler notes,

human rights theorists seek to subdivide the will of the people to ethical or moral ends ruled over by a less accountable elite...Ethical decisions must, by definition, be non-democratic—not judged by popular will but by ethical ends—and therefore tend to be decided not by elections but by ethics committees of the “great and good” (2001, p. 87

If we accept that a fundamental justification for democratic process is that, when human views conflict, there is no independent authority that can resolve these issues on universally acceptable grounds, then we also should recognise that reliance on “experts” to settle politically disputed issues is problematic. Rather than providing an independent solution to political issues, experts are parties to the dispute.

IV. Choice and Value

Drawing on Amartya Sen’s (2005) analysis of human capabilities, Gerry Redmond echoes the liberal critics of Yoder and links living a life of value to choosing to live that life:

 capabilities are about how we can make use of our material possessions, or innate talents, and our environments in order to lead a life that we have reason to value...Capabilities are best described as the freedoms a person has to choose from a set of different
possible and desirable courses of action....Capabilities...are not only about minimum functionings but about freedom for a person to live a life that she values (Redmond, 2008, p. 69).

Redmond restricts the choice of a life to “desirable” lives, and assumes that a person will value her life if she chooses it. Whether any given life really is desirable is problematic, however—consider the divergent judgments of the fervent commitment of an Islamic *jihadist*—and a person may find little value in a self-chosen life, such as someone who chooses a religious life but spends it tormented by doubts.

Liberal writers commonly tie autonomy to rationality; ‘rational autonomy’ supposedly blocks the choice of foolish, destructive or evil forms of life. Whether any given choice counts as ‘rational’ or, indeed, whether it counts as ‘good’, can be contested. As Claudia Mills states, “there is considerable controversy in our culture over where to draw the line between morally and rationally acceptable and unacceptable options” (Mills, 2003, p. 503). Debates over whether pregnant women ethically can choose abortions, whether young people properly can choose to join military forces and place themselves under binding orders potentially to engage in death-dealing warfare, and whether legislators and judges ought to be able to impose capital punishment on convicted murderers, illustrate the contested nature of the boundary between morally and rationally acceptable and unacceptable choices.

We must distinguish among a person’s living a life that *we* have reason to value; choosing a life; and living a life that one values oneself. These phenomena are not necessarily congruent: we may have reason to value the life of a person who has not chosen that life for herself; a person may value her own life without having chosen it; a person may choose a life but not value it; and a person may choose and/or value her own life without others having reason to value it. People disagree about the value of choice, and this was the major focus of controversy following the *Yoder*
decision. However valuable many people think it to be, choice itself does not establish value, nor does value necessarily follow from choice. A person may live a life which has value, both to herself and to others, without having chosen that life. Hanan Alexander has observed that:

it cannot be denied that many people have come to lead very wholesome and worthwhile religious lives on non-rational grounds such as naive religious faith, the homes in which they were raised or an epiphany which led to conversion (Alexander, 2007, pp. 612-13).

Alexander’s point applies not only to persons who live unchosen religious lives of value to themselves and many others, but also to those whose unchosen lives arose from a lack of available alternatives or because they were raised unquestioningly to pursue public or military service.

Liberal writers deploy a Kantian conception of the person which demands that in order for individuals to be treated with respect they must be enabled autonomously to chose their own form of life. In this view people who have been taught heteronomously to live unchosen lives suffer violations of their rights, even if only good comes from their lives. This moral conception of the person, and the autonomous form of life which it enjoins, is politically contested. Reflecting on the Yoder decision, Bernard Prusak writes that:

the reason that proponents of the so-called liberal argument see educating a child for life in Amish society as unjust is the picture of the person that they operate with: namely, as essentially “unencumbered,” free to stand back from his or her ends and to elect a new course in life. If this is your picture of the person, then it is no wonder that you will think that....children who are taught from an early age that “self-will must be given up...to become children of God”—are not being respected as persons in their own right. But the picture of the person at work in these judgments is parti pris.... (Prusak, 2008, p. 284).
Theorists who see autonomy as an absolute right use this as an argument-stopper in political debate. Autonomy, and rights claims in general, are seen by their advocates as fundamental principles that are exempt from political contestation—political positions can be judged in terms of whether they facilitate autonomy and other rights, but these latter notions themselves supposedly are extra-political. As such, the parti pris quality of the Kantian concept of the person which Prusak notes is ignored. Autonomy and the other asserted needs and rights of children are advocated as moral truths rather than contestable political opinions. Children’s rights proponents see little or no possibility that they could be convinced by their opponents, who thereby cease to be accepted as equal but opposing participants in political debate.

Anne Alstott, for example, claims that there are certain underlying principles that guide the organization of our society. Individual autonomy is one such value: Many of our laws and institutions seek to make it possible for every person to live a life that is autonomous—a meaningful life of her own choosing....one central function of the state is to create institutions that ensure to every person the conditions of autonomy....Because children are human beings, they deserve developmental conditions that give them a chance to develop the capabilities that let them define and choose a vision of the good (2004, pp. 1949, 1951).

Alstott’s claim seems mistaken. Respect for individual autonomous choices may be fundamental to American society, but even in the United States individual autonomy, as a need derived from status as a human being, is not an underlying principle, as the Yoder decision demonstrated. The elevation of personal choice to the status of a human need and right, and the concomitant demand for choice-enhancing schooling, has been challenged by William Galston, who wrote that “liberalism is about the protection of diversity, not the valorization of choice”, noting further that idealising “autonomous choice...is in fact to narrow the range of possibilities available within liberal societies” (Galston, 1995, p. 521; cited in Prusak, 2008, p. 285).
Tolerance demands diversity, but the elevation of autonomous choice to a position of absolute value rejects all forms of life which themselves do not exalt autonomy.

V. Autonomy and Participation

The UNCRC does not use the term “autonomy”, but a number of its provisions are compatible with promoting autonomy. The Convention prohibits “any work that is likely to...interfere with the child’s education, or to be harmful to...physical, mental, spiritual, moral or social development” (Article 32.1). It requires compulsory primary education and expanded access to post-primary education (Article 28), and demands that education prepare children “for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples....” (Article 29.1 (d)). Children’s work thus is set up as an impediment to their individual development and social functioning.

Children are to have participation rights to freedom of expression, including to express views about matters affecting their own lives—provided they are “capable” of forming their own views (Article 12.1)—to be heard in proceedings affecting them (Article 12.2), “to seek, receive and impart information and ideas of all kinds” (Article 13.1), to freedom of conscience and religion (Article 14.1), and to freedom of association and assembly (Article 15.1). Children’s rights to be prohibited from working and to be compelled to attend school are absolute, whereas their participation rights are subject to the discretionary power of parents and guardians “to provide direction...in a manner consistent with the evolving capabilities of the child (Article 14.2).
Control of children’s lives remains in the hands of adults (White & Choudhury, 2007, p. 532). Since “age is a fundamental axis of social power” (White & Choudhury, 2007, p. 531), it is unsurprising that the rights of children to self-determination are constrained by adult power, and that behaviours such as school attendance and disengagement from work—which many children would not choose for themselves—are enforced. Despite the significant emphasis in the UNCRC on listening to the views of children, the writers of the Convention did not consult with children (Pupavac, 2001, p. 99; Jones, 2005, p. 338). This adult constraint of children’s agency is justified by the requirement that “the best interests of the child [as determined by adults] shall be a primary consideration” (Article 3.1).

Do adults underestimate the ability of children to determine their own interests (Tapp & Henaghan, 2000)? Research into children’s agreement to medical treatment and research participation is relevant to this question. This research distinguishes between consent and assent; and between agreeing to receive medical treatment and agreeing to participate in medical research. Both distinctions embody distrust of children’s abilities to make sensible judgments. Assent was introduced as a ‘middle ground’ for children and adolescents between giving fully informed consent to treatment or research participation, and having no input into the decision process. Assent gives a young person the opportunity to concur in decisions made about them by others. In the United States, for example, children’s assent is seen as desirable but not essential in the case of treatment, but as essential but not sufficient for participation in research (Miller, et. al., 2004, p. 256). This means that a child can refuse to participate in a research project, but cannot overrule receiving medical treatment that has been proposed by doctors and consented to by parents or legal guardians.
Assent does not require the level of understanding required of adults for giving informed consent (Lind, et. al., 2003, p. 506), but underage young people ordinarily are not given the opportunity to give informed consent—which entails the potential to refuse treatment. As Michael Freeman notes, “an elderly schizophrenic...can refuse treatment: an intelligent 15-year-old cannot. And treatment can be imposed on her using force if necessary” (Freeman, 2005, p. 212). This means that “a child can say yes to medical treatment but cannot say no” (Freeman, 2005, p. 211), and it raises fears that the demand in Article 12.1 of the UNCRC that “the child who is capable of forming his or her own views [be given] 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” will mean that regardless of their level of understanding children below the legal age of majority—whatever that is in the jurisdiction in question—routinely will have their views disregarded unless they agree with what is being proposed. Lind et. al. note that “if we allow adolescents to consent but not to dissent then that effectively gives them no decision-making powers at all” (2003, p. 507). Several writers argue for a case-by-case assessment of the competence of individual adolescents rather than a status-based approach which condemns all young people below a certain age to follow adult decisions (Lind et. al., 2003, pp. 508-09; Freeman, 2005, p. 212).

A review of empirical literature dealing with children’s competence to offer informed consent showed considerable variations in the differences among adults, adolescents and younger children. Of sixteen studies reviewed regarding associations between age and competence, nine showed no relationship, one found a positive relationship, and six had mixed results (Miller, et. al., 2004, pp. 277-78). While not conclusive, such studies do not support the widespread belief that adults necessarily
make more sensible decisions than adolescents or some younger children. If the right to determine the course of one’s own life has the fundamental importance attributed to it by liberal writers, we might expect a more discriminating instrument than age to be used to indicate which individuals had the competence to exercise such choice.

Age-based restrictions on consent, ostensibly to protect children’s best interests, are exercises of adult power. Status-based demands to exclude all children below a certain age from employment or to require them to attend school, similarly express the power of adults over children and their willingness to use that power regardless of what children themselves may think. As Freeman has written,

> it has always been to the advantage of the powerful to keep others out. It is not, therefore, surprising that adults should want to do this to children, and that they should wish to keep them in an often imposed and prolonged dependence which history and culture shows to be neither inevitable nor essential (2007, p. 7).

VI. Conclusion

We began this paper with reference to James Bohman’s concept of tolerance, and its requirement to treat both the persons and the views of others seriously in political debate. Our exploration of the use of the moralising rhetorics of rights and childhood shows that when these forms of discourse are deployed in public debates about the employment of children, they exert intolerant and anti-democratic force. These forms of rhetoric define acceptable points of view in advance of the expression of contrary opinions; they serve to shame people who speak against them, and they instill fear of being shamed on moral grounds into those who otherwise might express divergent views. These rhetorical manoeuvres restrict debate by inhibiting potentially discordant speech in advance of its expression, and by casting moral aspersions on
those who do utter dissident positions. Moralising rhetoric thus inhibits speech in advance, and withholds tolerance from dissenting speakers because their views are condemned as immoral and hence as unworthy of serious public consideration.

The panoply of rights talk, when applied to children, has perverse effects on children’s abilities to influence their own lives, despite the emphasis on personal autonomy in the liberal literature on rights, and despite the emphasis in international conventions on listening to children own views. Claims to promote children’s right to participate in determining their own lives are hollow given the parallel emphasis on the expert adult definition and enforcement of what are taken to be children’s best interests and needs. Despite the long-standing recognition of the politically contested status of definitions of needs, much contemporary literature dealing with the welfare of children still views their needs as empirically determined absolutes. Such absolutes are seen as beyond legitimate rational dispute. Children themselves are excluded from speaking in their own behalf in the name of the provision of their own needs and the protection of their rights by well-meaning adults.

Many children in the world work, and many working children want to do so. Should employment be closed to them as a matter of ‘right’ and on the basis of a presumptively accurate assessment of their needs? A number of distinct issues need to be teased out of this question. Do all children have a natural right to be prohibited from working, such that constraining laws should be implemented in every society? We believe not. Do all children need to be excluded from work in order to devote their time to schooling which promotes personal autonomy? Again, we believe not, but we also believe this is a matter where differing answers can co-exist without a ‘one size fits all’ rule needing to be applied. Are there forms of work which children should not do—even if these forms can be performed acceptably by adults?
Undoubtedly yes, but what these forms are depends on circumstances and the qualities of the children involved.

Judgments about children’s work are context bound and person specific. And it should be recognised that these judgments are the results of personal and social decisions, rather than objective truths; people facing similar circumstances can make differing assessments without necessarily committing moral errors. Debates about children’s work ought to be open and tolerant disputations, rather than closed in advance by moralising rhetoric.
REFERENCES


