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The Globalization of Childhood:
The international diffusion of norms and law against the child death penalty

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Abstract

International law on children's rights, in important ways, usurps state authority over the ideology of childhood, establishing complicated and exacting standards that all states should adopt. The international community's enshrinement of children as rights holders and consolidation of power over the boundaries and standards of childhood mirrors international consolidation of authority over human rights in general after World War II, as the international community increasingly became the arbiter of acceptable treatment of citizens by states. In this paper, I argue that a globalized model of childhood that emerged after World War II was important to the development of the international system, serving to consolidate power and legitimize international institutions and order. I further examine the growth of this globalized model of childhood, one codified today in international law and developed primarily in Europe and the United States in the late 19th and early 20th centuries and diffused from these points of origin throughout the world. The paper uses the development of domestic and international law forbidding the death penalty for child offenders as a point of entry into the study of childhood, children's rights and the international system. It investigates the mechanisms of diffusion for the norm against the child death penalty and identifies three principal mechanisms of norm diffusion based on the findings of case studies and their types of law; colonial influence; temporal period of abolition; and participation in international legal regimes and institutions.

Keywords

Diffusion, International law, norms, children's rights, children, childhood, globalized model of childhood, death penalty, social constructionism

Introduction

When we speak of children in the field of international relations, we tend to speak of them as war victims, child soldiers and child laborers. They have been the bystanders, beneficiaries or casualties of the changing international order in the post-World War II era. Children inhabit a specific narrative in global society, their image invoking ideas of innocence, vulnerability and the need for protection. As a result, children became the symbols of many international institutions devoted to advancing human rights and democracy around the world in the last few decades of the 20th century, yet they have been largely absent from the international relations literature itself.[i]

I seek in this paper to theorize children as a historically important part of state consolidation and international order and as worthy recipients of greater attention in the field of international relations. I examine the development of domestic and international law forbidding the death penalty for child offenders as a point of entry into the history of children, childhood and the international system. I argue that the widespread process of state consolidation that took place in the late 19th century and throughout the 20th century—a process whereby the state began to regulate large swaths of civil and private life, including children's lives—was aided by the development of the 'global child,' a figure that required steadily increasing levels of protection by the state, and later, by the international community. These protections were extended even to the least sympathetic children, those who committed the most egregious crimes, making the diffusion of norms and law about the child death penalty particularly illustrative of wide-scale state consolidation around the world. Protections for child criminals over the last century and a half were also illustrative of international consolidation—or the merging of disparate sources of

authority over children into more centralized international institutions, such as the United Nations Children's Fund or UNICEF.

For society to protect infants, toddlers, youth and even teenagers who pose no physical threat to the community at large,[ii] there is little public controversy or debate. For society to protect child offenders whose crimes if committed by an adult could result in the death penalty, however, is far more expressive of a common construction of children and childhood. The abolition of the death penalty for child offenders—a ban found in 96 percent of states at the end of the 20th century—is therefore a bold policy position, suggesting that the boundaries of childhood are inviolable and that there is nothing that a child can do, no crime too brutal or too violent, to revoke the protection childhood affords.

In this paper, I argue that a globalized model of childhood that emerged after World War II was important to the development of the international system, serving to consolidate power and legitimize international institutions and order. I further examine the growth of this model, one codified today in international law and developed primarily in Europe and the United States in the late 19th and early 20th centuries and diffused from these points of origin throughout the world. Regarding the abolition of the child death penalty, norms and law forbidding the penalty for child offenders were specifically advanced by the British and French colonial powers. I present in this paper my dataset consisting of dates of abolition of the penalty and thereby explain the process by which a specific construction of childhood emerged, spread through bureaucratic methods of state organization, and was globalized. Yet in tracking the development of a global or universal model of childhood, I do not suggest that the model is found everywhere, only that it was and is presented to world society *as if* it were universal, as though it applies to all, regardless of locality or context.

Although the global diffusion of a specific construction of childhood is compelling as both a historical study and political exercise, why should international relations scholars care about the evolution of childhood in society or about the international diffusion of norms and law protecting children? In an age marked by terrorism, international war and economic turmoil—a period when security and economic matters would seem to trump all other issues—why should we concern ourselves with children and international efforts to protect them? I suggest that we should not underestimate or give short shrift to the dramatic social promotion of childhood over the last century and a half. Children were re-imagined and redefined from the legal property of their fathers to internationally protected and even 'sacrilized' citizens of the international community—their position enshrined in dozens of international legal texts and in national law (Cunningham, 1995; Zelizer, 1994). The transformation of children from legal nonentities into a distinct, cloistered and highly protected class was remarkable, challenging and ultimately serving to alter many of the core precepts of law and social organization in societies around the world. In effect, the promotion of childhood triggered such profound changes in family structure and state organization that by the end of the 20th century, legal distinctions between children by race, class and gender were discarded in favor of a universal model of children's rights.

The state of the field

Unlike other social sciences that focus attention on children, international relations has yet to fully theorize the position of children and the development of norms and law about childhood in global society. Children are largely absent from the international relations literature apart from the child conflict[iii] and child labor literatures[iv] and more recently from the emerging body of literature on child citizenship.[v] The children in these literatures are mostly victims—of war, poverty, abuse and neglect. Relatively little has been said about children as rights holders or

about the role that ideas about children and childhood have played in the shaping of international order. Important work in recent years has begun to remedy this exclusion, especially research identifying a link between norms and law about childhood and power in the international system (Lewis, 1998; Pupavac, 2001; Watson, 2006; Van Bueren, 2011; Fass, 2011). This paper is situated within this discourse. It seeks to reveal the importance of the construction of children and childhood to the development of the international system after World War II, and specifically considers the impact of children as rights holders on the process of state consolidation and on international institutions.

On the broader topic of children in general, sociological institutionalists argue that childhood is a social construction, one that has been built (and continues to be built) on a global scale. This view is consistent with that of scholars in international relations and law, constructivists and international legal theorists included, who contend that citizens and legal subjects are constructed over time (Adler, 2002; Barnett, 2005; Hopf, 1998; Keck and Sikkink, 1998; Onuf, 1989; Onuf, 2002; Zimring, 1982). There is strong support for the argument that childhood is a social construction because its meaning has been understood differently at different times and places. Moreover, attitudes or moral positions about the nature and capabilities of children have likewise varied markedly.

Despite these varied constructions, a body of international law has developed that prescribes a detailed model of childhood and the ideal experiences of children, including the delineation of children's needs and the requirements for a healthy, safe, productive and successful life as global citizens. This model has several defining features, including the immaturity, vulnerability and reduced culpability of children (biologically, psychologically, intellectually); the upper age limit of 18 years; and a relationship between the state and the child

in which the state assumes responsibility for the child's welfare. Consensus on this model evolved and eventually could be found in many areas of law, including those governing access to primary school education and protection from exploitative labor practices. Although differences remain *in practice*, the position of children *in law* is remarkably similar around the world. An important aspect of this universal model is the lesser standard of culpability for children and their exclusion from adult criminal penalties.

This overwhelming consensus on the meaning and boundaries of childhood did not always exist, however. Childhood is a historical construct developed over centuries. Before the 19th century, children were afforded little, if any, *legal* protection from abuse, neglect and exploitation. In many parts of the world, there were no age-based limits on criminal penalties such as the death penalty. In some states, including the United Kingdom and states that share its legal heritage, children as young as seven could be executed if intent or *mens rea* could be demonstrated; this was true in the United States well into the 20th century.[vi] Yet by the century's end, almost all states had either ended the death penalty for all crimes and all offenders or limited the penalty to those 18 years and older. How did this dramatic historical transformation take place? How did the position of children in society evolve from one in which children were legally indistinguishable from adults to one in which they were a separate, distinct and protected class, shielded from familial and state abuse? How did this particular construction of childhood come about?

Indeed, by the end of the 20th century, a predominantly Western idea of childhood—characterized by the age parameters of birth (or conception)[vii] to 18—had become an international idea, one that included protection from adult criminal penalties, and principally from the death penalty. This is not to suggest that all states have adopted this norm and no longer

execute child offenders. Indeed, there have been several holdouts in the 21st century: China, the Democratic Republic of the Congo, Iran, Iraq, Saudi Arabia, Sudan, the United States, Pakistan, Nigeria and Yemen. All of these states, including the United States, have been at odds with international human rights law in general (Moravcsik, 2005). At the present time, only two of these states (Iraq and the United States) are considered to be compliant with international law regarding the child death penalty.

Finally, this is a study of childhood, not of children *per se*. Although the idea of childhood reflects beliefs about children, the terms are not synonymous or coterminous. The idea of childhood includes certain understandings about the nature of children, their morality, their potential, how they should be raised, and what environment fosters their development. As states consolidated power over children and increased regulation in multiple areas of their lives over the course of the 19th and early 20th centuries, the state became the principal arbiter of the appropriate treatment of children. The result of state consolidation was the emergence of one model of childhood, one standard, one idealized, globalized—and increasingly scrutinized—period of human life.

Methodology

When a state chooses to restrict its application of the death penalty, it can do so in many ways: First, it can limit the penalty by abolishing it for classes of people, such as women; second, for types of crimes; third, by age, such as for children or the elderly; and fourth, for all crimes and all offenders (general abolition). When a state chooses this route—general abolition—it can be difficult to pinpoint the motivation behind the policy change. In contrast to abolition for child offenders only, the motivation behind general abolition may be less clear or unknown. However, since general abolition applies to children, the outcome is the same: The state has stopped

executing children. My study therefore includes both states that abolished the penalty altogether and those that abolished only for child offenders, albeit in different ways. To analyze the legal diffusion of the norm against the child death penalty, I first had to compile its history. I created three datasets. First is the list of states that abolished the death penalty for all crimes and all offenders (general abolition). Second is the list of states that abolished the death penalty for child offenders *only*, regardless of whether they would later abolish the penalty outright. This second list required the identification of the date of the case or code by which states *first* excluded child offenders under the age 18 from the death penalty. I looked at national penal and criminal codes in the 19th and 20th centuries and examined the development of death penalty jurisprudence as it (most commonly) narrowed over time to apply only to adults convicted of violent (and usually deadly) crimes. These national laws express a key characteristic of the modern idea of childhood, namely, that age is an identifier of childhood, and that childhood is bound by age limits. In particular, these laws employ the age 18 as the upper age limit of childhood, the *modern* point of demarcation between children and adults. At this age or above, criminal offenders may be treated as adults and become eligible for adult penalties. The cases and codes included in this second list employ the age limit of 18 in their death penalty statutes, without qualification such as *mens rea*. Primary source material was used where possible, insofar as it (or a reliable translation) could be found in French, Spanish or English. Some legal codes are simply not available in American libraries, thus limiting the research.

Third, I compiled the complete universe of cases that includes the dates when states first abolished the death penalty for child offenders *plus* dates for general abolition, minus any duplication. If, for example, a state abolished the penalty for child offenders in 1933 and then abolished the penalty outright in 1965, as happened in the U.K., only the 1933 abolition was

counted. Altogether, this third dataset consists of 143 states since the mid-19th century that either abolished the death penalty specifically for child offenders under the age 18 or banned the penalty for all crimes and all offenders. The dataset is presented in Table 1 below. It was also from the smaller dataset (states that abolished only for child offenders) that I drew my cases, since this type of abolition conveyed a particular intention regarding children and their protection from adult criminal penalties.

TABLE 1: LIST OF STATES THAT ABOLISHED THE DEATH PENALTY FOR CHILD OFFENDERS UNDER THE AGE 18, WITH DATES OF ABOLITION IN LAW; WHERE (G) MEANS GENERAL ABOLITION OR ABOLITION FOR ALL CRIMES AND ALL OFFENDERS

VENEZUELA (G)	1863
SAN MARINO (G)	1865
COSTA RICA (G)	1877
BRAZIL (G)	1882
ECUADOR (G)	1906
FRANCE	1906
URUGUAY (G)	1907
COLOMBIA (G)	1910
PARAGUAY	1914
PANAMA (G)	1922
TRINIDAD	1925
ICELAND (G)	1928
UNITED KINGDOM	1933
MAURITIUS	1935
ITALY	1941
LEBANON	1943
DENMARK	1945
JAPAN	1949
JAMAICA	1951
GRENADA	1953
HONDURAS (G)	1956
TUNISIA	1956
ETHIOPIA	1957
NIGERIA	1959
AZERBAIJAN	1960
GHANA	1960
KUWAIT	1960
UKRAINE SSR	1960
ARMENIA	1961
NEW ZEALAND	1961
TANGANYIKA	1961
MADAGASCAR	1962
MONACO (G)	1962
USSR	1962
TANZANIA	1964
UGANDA	1964
SIERRA LEONE	1965
ALGERIA	1966
DOMINICAN REPUBLIC (G)	1966
GAMBIA	1966
CAMEROON	1967
KENYA	1967
AUSTRIA (G)	1968

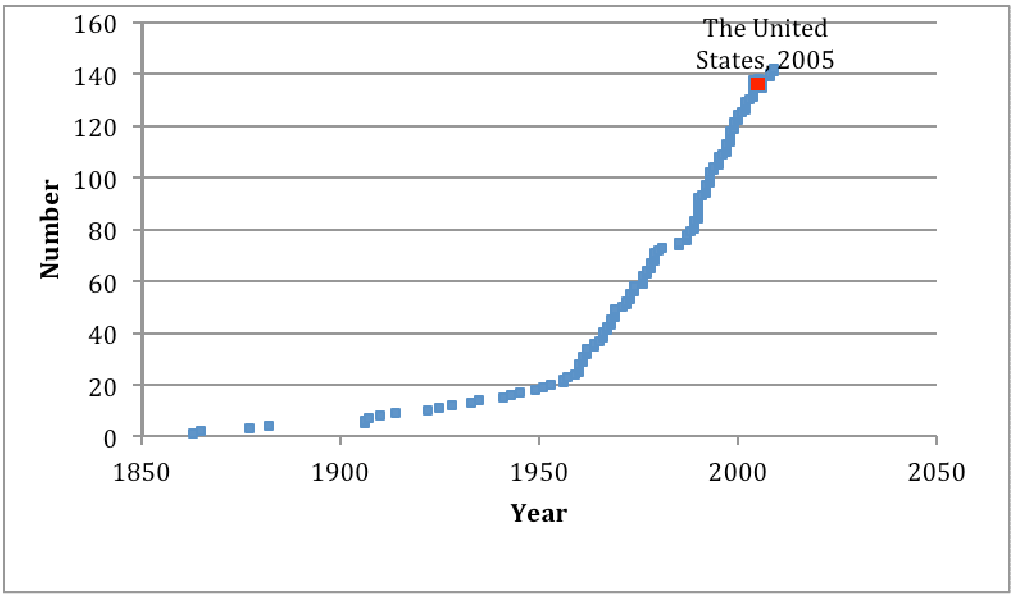
BULGARIA	1968
JORDAN	1968
BELARUS	1969
BENIN	1969
POLAND	1969
VATICAN CITY STATE (G)	1969
ISRAEL	1971
FINLAND (G)	1972
SWEDEN (G)	1972
AUSTRALIA	1973
CZECHOSLOVAKIA	1973
HUNGARY	1973
EGYPT	1974
IRAQ	1974
SYRIA	1974
BAHRAIN	1976
PORTUGAL (G)	1976
UNITED ARAB EMIRATES	1976
YEMEN PEOPLE'S REPUBLIC (SOUTH)	1976
ALBANIA	1977
RWANDA	1977
CONGO	1978
NETHERLANDS	1978
ROMANIA	1978
LUXEMBOURG (G)	1979
NICARAGUA (G)	1979
NORWAY (G)	1979
SRI LANKA	1979
COOK ISLANDS	1980
CAPE VERDE (G)	1981
SINGAPORE	1985
VIETNAM	1985
GERMANY (G)	1987
HAITI (G)	1987
LIECHTENSTEIN (G)	1987
SOUTH KOREA	1988
BARBADOS	1989
CAMBODIA (G)	1989
SLOVENIA (G)	1989
TUNISIA	1989

ANDORRA (G)	1990
CROATIA (G)	1990
CZECH REPUBLIC (G)	1990
IRELAND (G)	1990
MOZAMBIQUE (G)	1990
NAMIBIA (G)	1990
SAO TOME AND PRINCIPE (G)	1990
SLOVAK REPUBLIC (G)	1990
SOUTH AFRICA	1990
MACEDONIA (FORMER YUGUSLAV REPUBLIC) (G)	1991
ANGOLA (G)	1992
FORMER REPUBLIC OF YUGOSLAVIA	1992
PERU	1992
SWITZERLAND (G)	1992
GUINEA-BISSAU (G)	1993
MYANMAR	1993
PHILIPPINES	1993
RUSSIA	1993
SEYCHELLES (G)	1993
SLOVAKIA	1993
UZBEKISTAN	1994
ZIMBABWE	1994
DJIBOUTI (G)	1995
MOLDOVA (G)	1995
NORTH KOREA	1995
SPAIN (G)	1995
BELGIUM (G)	1996
GEORGIA (G)	1997
INDONESIA	1997
NEPAL (G)	1997
TANZANIA	1997
CANADA (G)	1998
ESTONIA (G)	1998
LATVIA	1998
LITHUANIA (G)	1998
TAJIKISTAN	1998
TIMOR-LESTE (G)	1999
TURKMENISTAN (G)	1999
UKRAINE (G)	1999
COTE D'IVOIRE (G)	2000
INDIA	2000
MALTA (G)	2000
BOSNIA-HERZEGOVINA (G)	2001
CYPRUS (G)	2002
MONTENEGRO (G)	2002
SERBIA (G)	2002
ST. VINCENT AND THE GRENADINES	2002
THAILAND	2003
BHUTAN (G)	2004
GREECE (G)	2004
SAMOA (G)	2004
SENEGAL (G)	2004
TURKEY (G)	2004
LIBERIA (G)	2005
MEXICO (G)	2005
USA	2005
ARGENTINA (G)	2008
UZBEKISTAN (G)	2008
BURUNDI (G)	2009
TOGO (G)	2009

According to constructivists in international relations, norms have lifecycles consisting of stages of emergence, acceptance and internalization. The emergence period is distinguished from the internalization period (or period of widespread adoption) by a stage of rapid acceptance or support for the norm. This acceptance period is commonly called the *cascade*, when large clusters of norm adoption are observable (Keck and Sikkink, 1998).

The norm abolishing the death penalty for child offenders had two cascades—two periods of rapid adoption—as captured in Figure 1 below. The second cascade is larger than the first, with more states adopting the norm and a higher rate of adoption.

FIGURE 1: THE NUMBER OF STATES THAT ABOLISHED THE DEATH PENALTY FOR CHILD OFFENDERS, BY YEAR[viii]



Beginning in the 1960s, a first cascade of countries outlawed the penalty for child offenders (either by limiting the penalty to those 18 and older or by abolishing it outright—see Table 1 above on the two paths to abolition). This trend was driven by the rapid decolonization that took

place around the globe at this time, as almost half of states that abolished during this period were recent colonies or trustees. Following a brief pause in this abolitionist trend, from 1982-1984, the second cascade began in 1985 and ended in 2005. The data suggests that the period after 2005 can be thought of as the late period of norm diffusion, or the period when the norm abolishing the child death penalty has been widely adopted or institutionalized. Even though more states could ban the child death penalty, by the late period, the norm had successfully cascaded and been enshrined as international law.

From the smaller dataset of states that abolished the death penalty solely for child offenders, I selected case studies according to the time period in which states abolished, taking into account geographical diversity and colonial history. The history of childhood outside of the West is a grossly under-researched area, which, when compounded with another under-researched area (the child death penalty), results in many hurdles to accurate historical information. Accordingly, my choice of case studies (especially those of former colonies) was also based on the availability of material. These case studies include *early adopters*—states that abolished between 1863 and 1959—(Ethiopia, France, Japan, Tunisia and the United Kingdom); *first cascade adopters*—1960-1981—(Algeria, Kenya and Tanganyika/Tanzania); and *second cascade adopters* and *laggards*—1985-2005—(China, Pakistan and the United States).

With the datasets collected and the norm's lifecycle mapped, I then organized these states into categories by dominant mechanism of diffusion—or the mechanism to which the norm's adoption can be principally attributed. I determined these mechanisms of diffusion based on the findings of my case studies and their types of law (common, civil, religious), colonial influence, temporal period of abolition and participation in international legal regimes and institutions. Through the case studies, three mechanisms of diffusion became evident:

1. *Principled activism:* Primarily domestic (but also cross-national), principled actors petitioned states for changes in law and for policies of child protection.
   Cases: France, Japan, Pakistan, the United Kingdom and the United States

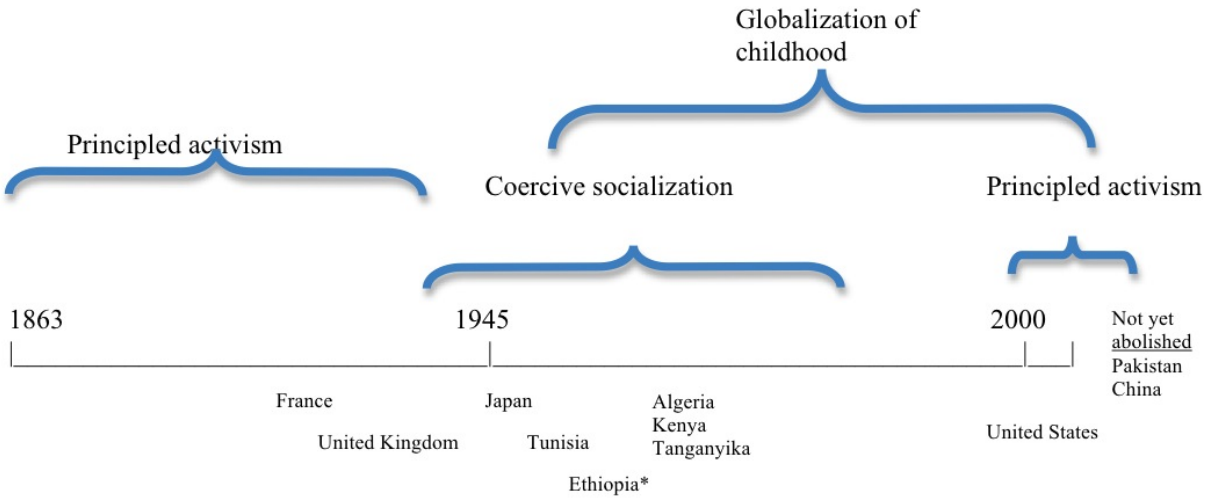
2. *Coercive socialization*: British and French colonialism led to the forced adoption of child protection laws in some colonies and to the legal acculturation that followed.
   Cases: Algeria, Japan, Kenya, Tanganyika/Tanzania, Tunisia

3. *Globalized childhood*: Western norms about children in terms of age, development, maturity and competence became a universal model applied to children in all states, economies and cultures after World War II. This model derived its authority from the natural sciences and later from the social sciences and international law.
   Cases: China, Pakistan, the United States

In addition, there was one outlier, Ethiopia, that underwent a process of 'voluntary socialization,' whereby the country's leaders enthusiastically invited Western legal scholars to draft laws that included restricting the death penalty to those 18 and older, as discussed in more detail below.

Although the mechanisms listed above correspond roughly with the temporal periods of early-, cascade- and late-period adoption, this paper is organized by mechanism of diffusion. This method offered a more efficient way of presenting the findings, as the temporal spread of the norm does not explain its processes of diffusion: Different mechanisms of diffusion were evident in abolitionist countries across periods. Furthermore, there was no period—early, cascade or late—that was associated with a single mechanism of diffusion (See Figure 2 below). Some mechanisms were more commonly found in certain periods, however; for example, the influence of colonial law was greater during the cascades (1960-2005) than in any other period.

Figure 2: Case studies by date and mechanism of diffusion



*Ethiopia is an example of 'voluntary socialization,' as discussed in the text above.

As Figure 2 demonstrates, principled activism was important in both the early and late periods of the norm's lifecycle.

Finally, the paper traces the model of childhood as it diffused internationally through *law*—specifically, criminal law addressing child offenders, usually those convicted of murder or rape. Legal diffusion may be different from other types of diffusion. Law gives us important information about a state's attitude toward children by revealing the parts of childhood the state chooses to regulate. The exclusion of criminal offenders from the death penalty based on age sends a powerful message of protection for children, as the ban applies to all children, murderers and rapists included.

The Child and the State

The abolition of the death penalty for child offenders under the age 18 was part of a larger and longer-term trend of law and policy reform to protect children. The protection of children *in law* first emerged in the West around the 16th century—in the form of regulation of

poor and vagrant children as well as laws governing apprenticeships in England—but protections greatly increased both in force and scope in the 19th and 20th centuries.[ix] This reformist trend was in turn part of a broader pattern of humanistic reform in Western societies that also produced a specific type of liberal state following the Enlightenment (Cole, 2005: 273; Donnelly, 2003). The goal of the liberal state was national progress, defined principally by economic growth (and driven by the harnessing of available resources for profit and gain), and, eventually, by a higher quality of life for the state's citizens (Meyer, 2004: 43).

A global trend in national policies toward progress and justice naturally shaped the application of the death penalty. Types of torture accompanying the penalty were limited in the West in the latter half of the 18th century (Hunt, 2007: 76), and death penalty reform began in earnest in the 19th century, as many states, especially in Latin America and Europe, abolished the penalty for all crimes and all offenders. States also began to limit the penalty by age in the 19th century. As discussed above, in the United Kingdom (and in states that inherited or were influenced by its legal system), the penalty was limited to those older than seven years of age, or 14 if *mens rea* could not be demonstrated. Many states in Europe, especially, raised the age of eligibility for the penalty to 16 by the early 20th century, as did many colonies of the United Kingdom and France.

A new wave of colonialism in the 19th and early 20th centuries demanded a broadening of the idea and application of rights from the national to the universal in order to confer legitimacy on the colonialist enterprise (Pagden, 2003: 177-178). Nineteenth-century colonialism was justified under the guise of spreading 'civilization' and 'civilized' culture; a prelude to this effort was a return to thinking of rights in terms of the laws of nature, such that cultures that did not exhibit the same norms or customs held by 'civilized' people could be "dispossessed by those

who do" (Pagden, 2003: 183-184). The result was that rights could only be understood within the context of 'civilization,' as defined by the Europeans, and by a particular political order, representative government (Pagden, 2003: 190). This trend toward universalism was still limited, however, by citizenship in a state. As such, the laws of nature could be applied to the colonies, via the expansion of colonialism, but the colonized themselves had no say in the matter.

The dual goals of progress and welfare were made explicit in the colonialism that defined the period: British and French colonialism were justified on these pillars. Empires would acquire colonies and (ostensibly) prepare them for entry in the global market, while harvesting their resources to enrich themselves. These empires also felt a duty to expose their colonies to cultural 'enlightenment' though the imposition of Christianity and metropolitan customs, norms and values. This was the civilizing mission, and it involved children in important ways, as will be seen.

Death penalty practice provides an interesting lens through which to examine colonialism's civilizing mission. The British, for example, used the death penalty in their colonies to instill fear and the rule of law. But apart from the Mau Mau rebellion—when an anti-colonial force in British East Africa rose up against the British in the 1950s—they were careful to distance themselves from the act of capital punishment (Hynd, 2008: 416). The British were sensitive to criticism of the death penalty and its savage nature and sought to sanitize it through reforms, even while complete abolition was being sought at home (Hynd, 2008: 417). These pressures originated from the metropole, or mother country, because "those who believed themselves to be civilized had a duty not to behave towards 'backwards' or 'barbarian' peoples in a cruel and 'inhuman' manner" (Pagden, 2003: 191). In other words, the British had to walk a fine line between fear and charity.

It was precisely this unsustainable conflict between the need to instill fear and to demonstrate imperial benevolence that led both to the demise of the British Empire in Africa and to the protection of children. Both the British and French empires felt growing pressure from their citizens to do more for the people of the colonies, and this pressure especially concerned young girls who were in 'moral danger.' Compulsory marriage, genital mutilation and child marriage upset metropolitan sensitivities and ultimately forced colonial governments to intervene in traditional and family law, something they had long sought to avoid. (Stoler, 1989; Stoler, 1992; Burton, 1998; Grier, 1994; Fourchard, 2006). Colonial intervention in family law further inflamed tensions between the colonizers and the colonized. After World War II, colonialism was widely seen as morally bankrupt, and its rapid disintegration meant that a new international order was needed, one based on human rights that could be ensured against states or regimes.

The liberal state and the child

The development of a liberal state devoted to national progress and the welfare of its citizenry was aided by the promotion of the natural and social sciences in the 19th and 20th centuries. The emergence of a professional class of scientists as well as a preoccupation with objectivity through scientific methods in the 19th century drove efforts toward progress in the liberal state (Bloch, 2003; Daston and Galison, 1992). These experts claimed the ability to separate the normal from the abnormal, the desirable from the undesirable, and the moral from the amoral (Bloch, 2003: 16). As a result, a single standard of normality emerged that allowed states to develop national policies to ensure the 'normal' and to address the 'abnormal' child.

In delineating a class of persons, the idea of childhood fostered by Europeans and Americans was co-constitutive of ideas about how children should be treated. As concerns were raised by child advocates (increasingly in the 19th century but also much earlier) about child

abuse and neglect, the state intervened. The new interest in child welfare validated and institutionalized ideas about childhood as a vulnerable period of life when children need protection, structure and guidance. Protection came in the form of statutes that outlawed neglect and abuse; structure and guidance were provided by educational institutions, reformatories, industrial schools, church, and, decreasingly, places of employment.

State institutions were established to determine the extent of abuse and neglect and the required manner of state intervention. Abuse and neglect, however, were difficult to gauge without benchmarks. Child advocates, quick to use science to inform their actions, encouraged and supported the attention paid to children by science. Doctors established guidelines for nutrition, hygiene, welfare and psychological well-being (Baistow, 1995: 22; Hendrik, 1997: 12). Social scientists developed curricula; investigated the effects of child labor, abuse and neglect; and advanced theories about children's distinct nature. Developmental psychology, in particular, "offered new, scientifically constructed indices by which 'normal development' could be quantitatively as well as qualitatively distinguished from the 'subnormal' or 'abnormal.' " (Baistow, 1995: 26-27). These guidelines progressively became part of the dogma of childhood as competing norms, especially those not legitimized by science, were discarded.

In line with theories of agentic constructivism,[x] standards of behavior toward children evolved as ideas about childhood evolved. One of the principal ideas that developed in the West in the 19th and early 20th centuries was that children were less culpable for the crimes they commit and should not be given adult penalties such as the death penalty. As scientific methods to study children were applied outside the West, the model of the globalized child began to gain purchase. Western studies of children in the periphery provided support for the contention that all children experience the same stages of development, and have the same requirements for

good health, education, leisure and need for labor restrictions (Bloch and ebrary Inc., 2006; Burman 2008; Sen 2004a, 2004b, 2005, 2007).

Eventually, a single standard of childhood was constructed predominately in the West—the standard of a globalized child with the same needs, abilities, desires and limitations regardless of citizenship. Yet the idea that childhood is a social construction says little about how it came to be the particular social construction enshrined in state and international law today or about how a specific aspect of the model, such as reduced culpability, came to be integral to our understanding of children's capacities. Sociological institutionalists have argued that since all states share the goal of economic progress, they are highly susceptible to new ideas about how best to achieve this progress (Meyer, 2004: 43). A focus on children as a tool of development became common in the 19th century, as states such as the United Kingdom recognized a connection between children's health and the ability of the empire to win wars (Baistow, 1995). The interest in children and childhood also served the goal of progress, as educating and caring for children as the future heirs of the nation came to be seen as a sound investment in the stability and prosperity of the state. By the 1960s, a focus on children as a key part of national development had become global wisdom.

Children were also a tool of empire, as missionaries, travelers and scientists used Western ideas about children and families to measure the " 'civilization' and 'culture,' and the 'nature' of primitive families and childhood in exotic places" (Bloch, 2003: 16). According to Marianne Bloch, in her research of curricula, studies of children in the colonies and other cultures outside the West "produced 'new' types of 'advanced' and 'progressive' knowledge about childhood, the family, and schooling" that resulted in the discovery of "universal truths" about children and their development (Bloch, 2006: 8). Satadru Sen has shown in his studies of juvenile orphanages

and reform schools in 19th- and 20th-century India that the children in government facilities became the subjects of countless studies and experiments designed to identify the core, natural, universal child by separating the child from his or her racial identity (Sen 2004a, 2004b, 2005, 2007). In a study of the British in Nigeria, Laurent Fourchard argues that the establishment of the Social Welfare Office in 1941 created juvenile delinquents as a distinct group of criminals (Fourchard, 2006: 115). The colonial administration and judicial system in Nigeria actually "legislated 'juvenile delinquency' into existence" (Fourchard, 2006: 116). Moreover, the construction of juvenile delinquency and the preoccupation with the 'moral danger' of young girls was not unique to Nigeria or even to the British colonies, as "special judicial machinery for the 'treatment of juvenile offenders' was also established" in the empires of the French, Belgians and Portuguese in the 1940s and 1950s (Fourchard, 2006: 116).

By the 20th century, the idea of childhood diffused to the colonies was age-specific, meaning that it was not defined by behavior, rite, ritual, race, class, status or gender, but rather by age. The age 18 became widely accepted as the upper age limit of childhood in criminal codes after World War II, and this boundary was extended to areas of child protection even outside criminal matters. The model of childhood that took shape after World War II was not initially one that bestowed many rights upon children, but rather one that imposed duties upon adults. Children were, however, crucial to national identity, considered vulnerable and in need of care, and were increasingly seen as less culpable for their actions than adults.

The acculturation of colonies to Western legal and political systems, carried out most extensively by the French in Algeria, included an inherent logic of state consolidation over citizens, including children. Laws prohibiting the child death penalty were commonly found in criminal codes, and the British took the lead in standardizing criminal procedures and sanctions.

At independence, many former colonies had laws prohibiting the death penalty for child offenders under the age 18. These colonies maintained after independence, at least initially, the state organizational structure they had inherited, including the prohibition of the child death penalty and other protections for children. Many even increased protections for children in the first few decades of statehood. These states had internalized aspects of the colonial state model that not only recognized the validity of children's protection, but also could not imagine a solution to issues of child welfare outside of law. They were, in effect, socialized to predominantly Anglo-French ideas of child protection (including protection from adult criminal penalties) and to the role of the state in guaranteeing it.

The widespread standardization of the treatment of young criminals by the British (especially) helped cast the model of childhood that would form the basis for the international children's rights regime in the second half of the 20th century. The same connection between children's welfare and civilization, made explicit in the British and French colonial enterprises, was used by international governmental organizations (IGOs) and international nongovernmental organizations (INGOs) to promote a particular type of development that emphasized a single, common standard for children's education, health and welfare, a standard that came to include the norm against the death penalty for child offenders.

Stages of diffusion

The following sections will present the primary mechanisms of diffusion for the norm against the child death penalty: principled activism, coercive socialization and the globalization of childhood. This section also discusses laggards, or states that were able to resist or reject the norm.

Principled activism

The emergence of the norm against the death penalty for child offenders was the result of efforts by child advocates and death penalty opponents in a handful of countries in the 19th and 20th centuries. The movement was especially strong in the United Kingdom, where norm entrepreneurs served as ministers in government, social workers, intellectuals, scientists and lawyers, although I found comparable evidence of early activism in France, Japan and the United States. These norm entrepreneurs advanced ideas about children's vulnerability, reduced culpability and need of care. As described above, these conclusions about children were justified by scientific studies on the nature, characteristics and capabilities of children, studies that diagnostically separated 'normal' from 'abnormal' childhood and legislated accordingly.

Concern for the treatment of child offenders was part of the broader humanistic trend toward progress and justice, since children represented the future of the nation as well as reflected its sense of compassion and its regard for the welfare of its citizens. Reforms for children in the United Kingdom, for example, came out of state reforms that limited the authority of the monarchy and the ruling class, and prescribed change in numerous aspects of society, including its penal system.

Although principled activism for children was present in all of the cases, it was especially important for early and late adopters. Some late adopters like the United States and Pakistan required additional late-stage activism against the child death penalty to bring these states into compliance with international law and the global, codified model of childhood.

In the U.S. case, the combination of two mechanisms of diffusion—principled activism and the globalization of childhood—is attributable to the United States' unique history of child

protection efforts. Under the leadership of child advocates, the United States became a laboratory for the development of norms of child protection in the late 19th and early 20th centuries, especially in the area of juvenile justice, before losing ground as the 20th century progressed (Linde, 2011). The pattern of U.S. diffusion then came full circle, with a new generation of domestic activists emerging late in the 20th century to pressure the United States to comply with the international norm against the child death penalty. These activists successfully leveraged the global model of childhood, which included the ban on the penalty for child offenders.

Coercive socialization

The colonies of the British and French underwent a process of 'coercive socialization,' whereby norms, legal principles and rubrics of state organization were diffused to the colonies. The British and French established bureaucracies that administered colonial law and drafted and enforced public policy based on their own legal principles. These laws and policies specified the relationship between the state and the child, one that would include criminal sanctions. In the four Middle Eastern and North African case studies (Algeria, Kenya, Tanzania/Tanganyika, and Tunisia), I found four steps of coercive socialization that were not necessarily linear: First, the British and French colonial powers built bureaucracies that allowed them to efficiently achieve their goals. These goals varied among the colonial powers and colonies, but they were primarily the goals of progress (wealth accumulation) and justice (*mission civilatrice* or white man's burden).

The second step of coercive socialization was a form of legal imperialism, whereby the British and French enforced laws derived from their own legal systems in which *individuals* were the central legal subjects. As stated above, the British were especially motivated to develop a single criminal code and procedure throughout their colonies. French colonial law was much

more complicated. It varied to a far greater extent by colony, time period, offence and offender. In some cases, French law was applied directly to the colony; in others, there were a number of different legal sources for a particular area.

Third, child law and policy developed, straddling disparate areas of law, government and custom. Invariably, these laws and policies dictated a paternal relationship between the state and the child that would eventually (in many former colonies) usurp parental, tribal or community power over children. Law governing children's lives developed primarily in two areas: criminal law and family law. Restrictions to the death penalty by age were typically found in criminal codes or criminal procedure codes and, with a brief lag of a few decades in some cases, eventually reflected the penalty's age limit in the metropole. Family law mandated birth and death registrations and regulated marriage, divorce and child support. Although both the British and the French were hesitant to impinge upon family law, both empires eventually did so to some degree.

Fourth, colonial society was socialized over time to the goals of the British and French colonial powers (to the twin goals of progress and justice), to the method of state organization (bureaucracy), and to other predominately Western legal values and principles. These societies were thus socialized to the authority of the state over children and to the various protections and guarantees that state authority entailed, prohibitions of the child death penalty among them. Evidence for socialization is found in the choice by many colonies to continue the protections for children begun under the empire, and even to increase them upon independence. Although some countries, such as Tunisia and Tanzania, would eventually revoke some of these protections, this reversal would not come until later.

One case study, Japan, had some similarities with the colonial cases. Under occupation after World War II, Japan reformed its criminal law based largely on its occupiers' Anglo-American legal system. The occupation period resulted in an unprecedented number of legal advisers that set out to reconstruct the Japanese state and reshape its legal practices (Chen, 2003: 52-53). Although different in circumstances from the colonial cases, Japan's acculturation to Anglo-American legal norms (but not the common law system) was nonetheless coercive. Although the child death penalty had at the time only been abolished in the United Kingdom and not in the United States, Japan's abolition of the penalty corresponded closely with child protection trends in the West in general and served as a continuation of child protection efforts from Japan's pre-war history.

Coercive socialization through law and state organization is not the typical way we understand coercion or socialization in international relations. Legal coercion is different from military force or economic aid. Law imposes a society's values, dictates legitimate and illegitimate behavior, creates social units and levels of authority, and, to a degree, establishes the agency of actors within the system by recognizing (or failing to recognize) their legal status as individuals (or groups) with a given identity. In my study, I found that the British and French colonial powers established an identity for children apart from that of their parents, kin, clan, religion and even gender in Algeria, Kenya, Tanzania/Tanganyika and Tunisia. The legal category 'child,' as a Western construction, was universal and applied equally (in law) to all children below the age 18 in these colonies. Although law as a type of coercion may seem less distasteful or violent at first blush than other forms of coercion, it can be more powerful than an occupying force. By defining and organizing social relations in the Western image, colonial

powers socialized the colonies in a way that dictated, to a large degree, their structure and characteristics after independence.

As mentioned, there was one anomalous case study, Ethiopia, which was similar to the cases of Algeria, Japan, Kenya, Tanzania/Tanganyika and Tunisia. The mechanism of diffusion in Ethiopia can best be thought of as 'voluntary socialization,' whereby the state enthusiastically and proactively sought out Western aid in the development of its legal system. The post-war period was a vibrant time of legal development in Ethiopia, with the drafting of the 1955 Constitution and six additional codes in the 10 years that followed. All of these codes were either crafted by foreign lawyers or "inspired by foreign sources," including British, French, Indian, Israeli, Italian and Swiss sources (Vanderlinden, 1966-7: 257; Fisher, 1969: ix). The penal code, which included the ban on the child death penalty, was drafted by a Swiss jurist, Jean Graven, and had numerous foreign influences; large parts of it were based on the U.S. Constitution (Franklin, 1961: 267).

Through colonialism and the diffusion of Anglo-French law, legal systems and principles, children were given a place in the state order as individuals. State authority over children usurped parental, clan, kinship or tribal control and created children as legal subjects that were equal to one another under the law throughout the state. As these laws and policies created child subjects in the image of the metropolitan child, the beliefs of child advocates, international aid workers and development specialists that *all* children possess the same nature, needs and characteristics were confirmed. This growing consensus on the common nature of children reinforced the efforts of international institutions, such as UNICEF, to make children a prominent part of development initiatives and inspired the movement for international children's rights that would begin in the 1970s. Former colonies of the British and French thus entered an

international system in which the only legitimate model of statehood was the Western liberal model that created children as legal subjects, advanced the notion of a universal childhood, established the state (and increasingly, the international community) as the rightful guardian of children's interests, and affirmed the role of the rapidly developing international community in promoting and securing children's welfare.

Globalized childhood

In the second half of the 20th century, the globalized model of childhood—based on the consensus on children's universal vulnerability, limited culpability and need of care in several areas—became more complex and specific. The diffusion of this model of childhood occurred on many levels. First, an increasingly global community of child advocacy and a set of norms protecting children emerged through early-20th century efforts by organizations such as the League of Nations and the Save the Children International Fund, eventually finding sure footing in the United Nations, especially within UNICEF. The agency was the single most important actor in the promulgation of Western norms about children and childhood throughout the world, especially in developing countries after World War II. Established in 1946 primarily as an aid organization, UNICEF expanded its mission to include campaigns focusing on health, sanitation, education and child care, eventually adopting a comprehensive child approach that looked at multiple areas of child development. UNICEF and these other organizations were central to the internationalization of childhood, promoting Western norms of child welfare through their development efforts.

Second, world conferences, meetings, special sessions and summits, some sponsored by the United Nations, were also key to diffusing a global model of childhood to states. These prestigious and influential events "display world culture under construction" (Lechner and Boli,

2005: 84). These meetings and events became common in the 19th century, but since World War II, they have taken on a more symbolic, prominent and global role, offering an authoritative stance on a wide range of issues relevant to international institutions (Lechner and Boli, 2005: 84). Through the mobilization, organization, assessment and follow-up they entail, U.N. meetings, in particular, have become a type of "secular ritual," expressing a global consensus on global matters (Lechner and Boli, 2005: 89). The most important meeting on children in the last 50 years was the 1990 World Summit on Children, corresponding with the 1990 Convention on the Rights of the Child (CRC). At this summit, the largest assembly of world leaders ever convened (at that time) participated in what was heralded by UNICEF as a "dramatic affirmation of the centrality of children to our common future" (UNICEF, 2002).

Finally, the growth and increasing complexity of international law have gradually produced a still expanding and ever more detailed model of childhood, one that is in fact *globalized*. Three declarations and one convention about children were drafted during the 20th century: the 1924 Geneva Declaration, the 1948 Declaration on the Rights of the Child, the 1959 Declaration on the Rights of the Child and the 1990 CRC. Each of these legal texts offers a view of the model of childhood as it then existed and reflects contemporary ideas about children and the role of the state and of parents (and, in the case of the 1990 CRC, of the international community) in ensuring children's welfare. These documents provide a window onto the shifting boundaries and growing substance of a global model of childhood.

Of the four declarations and conventions *specifically addressing children*, only the CRC prohibits the death penalty for child offenders. Yet other conventions and treaties also ban the penalty for those under 18: The first international treaty to ban the execution of some child offenders was the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time

of War. Article 68 states that "protected persons" who commit their crimes when they are younger than 18 cannot be given the death penalty. Additionally, the International Covenant on Civil and Political Rights (ICCPR) also bans the penalty in Article 6. In examining one aspect of the globalized model of childhood—justice and punishment—it is evident that protections for children under the law greatly increased in the 13 years between the 1976 ICCPR and the 1990 CRC, while the age parameters of the norm of abolition for child offenders remained the same. The model of childhood advanced by the CRC was also significantly more detailed, complex and wider in scope than previous attempts to enumerate rights and protections for children.

Although children and childhood became a new focal point of international human rights efforts in the last half of the 20th century, the issue of the child death penalty remained obscure until Amnesty International and its American chapter (along with other national and international NGOs) took it up in the 1980s and 1990s. Amnesty International's campaign against the child death penalty was international, but it focused its resources on the United States, although China and Pakistan (two other case studies for this project), among other states, were also targeted. Employing a moral authority derived from its legacy as a champion of human rights and harnessing the legitimacy of the emerging children's rights regime, Amnesty and others were able to put the issue of the child death penalty on the international human rights agenda.

The 1990 CRC began a period of intense international consolidation of authority over childhood, as international law and the institutions established to monitor it came to be viewed as the definitive authority on the treatment of children by the state. All states in the international system have ratified the CRC except for two, the United States and Somalia.[xi] The convention's nearly universal ratification indicates global acknowledgment of a model of childhood that all states should adopt.

The late 20th and early 21st centuries were the setting for a dramatic contestation between state sovereignty and international law prohibiting the child death penalty, as laggard states, such as the United States, China and Pakistan, struggled between resistance to and compliance with international principles. While both China and Pakistan have accepted the norm's legitimacy through the ratification of international treaties and the passage of national legislation, domestic factors, such as incomplete birth registration and lack of full control of territory, hinder full compliance. In the U.S. case, the increased citation of international and foreign law in Supreme Court decisions contributed to the United States' vulnerability to international pressure, as did the escalating rebuke of the United States by U.N. agencies, diplomats, NGOs and other nations and the successful campaigns at the U.S. state level that helped to create a national consensus on the issue. The United States abolished the penalty in 2005 in the U.S. Supreme Court case *Roper v. Simmons*. In the cases of Pakistan and the United States, late-stage principled activism reinforced global pressure to end the child death penalty.

Importantly, international law itself concerning children's rights now often serves as the sole justification for bringing states into compliance with the global model of childhood and standards of child welfare. Just how quickly that model and the body of law that undergirds it have grown in such a short time is plain. In the early years after World War II, international efforts targeting children were justified as emergency relief—on the basis of children's physical needs for proper nutrition, sanitation, vaccines, etc., needs supported by studies in the natural sciences. As international efforts expanded in the 1960s and 1970s, the child was increasingly linked (now by the social sciences) to the development of the nation and to the ushering of states into the international community as economic partners. With the growth of the international

children's rights regime in the 1990s, there is no need for further justification to protect children. Children are rights holders, and international law alone serves to justify attention and assistance.

Conclusion

International law on children's rights, in important ways, usurps state authority over the ideology of childhood, establishing complicated and exacting standards that all states should adopt. Although international law concerning children lacks an enforcement mechanism, it nonetheless serves as a means of confronting states about their child policies and forces them to address these norms as they participate in international institutions. The international community's enshrinement of children as rights holders and consolidation of power over the boundaries and standards of childhood mirrors international consolidation of human rights in general after World War II, as the international community increasingly became the arbiter of acceptable treatment of citizens by states.

Although I am certain that the idea of childhood did *not* originate in the West, as at least some type of recognition of the differences between very young children and adults appears to be common across cultures, it is evident that numerical, age-based legal norms about children diffused globally from the West. The British and French, in particular, advocated and enforced legal norms against the child death penalty in their colonies. These norms expressed ideas about the nature of children that formed the basis of a model of childhood. This model, characterized by the immaturity, vulnerability and reduced culpability of children (biologically, psychologically, intellectually), by the upper age limit of 18 years, and by a relationship between the state and the child in which the state assumed responsibility for the child's welfare, became the international model found in the CRC and advanced by U.N. organs such as UNICEF.

After World War II, children fast became part of the civilizing rhetoric of the international community, and the momentum of the postwar zeitgeist helped to spread protections for children, even though international law was slow to develop in this area. An international children's rights regime began modestly with the series of conventions and declarations about children and with the ICCPR in the 1960s and 1970s and was then bolstered and broadened in scope with the ratification of the CRC in the 1990s. The development of rights and protections for children in international law meant that states no longer had complete control over the way children were treated. Childhood was now an international idea. In a very real way, the state was divested of full authority over children since state policies and practices were now seen as a legitimate international concern.

The shift in authority over children from the state to the international community marked the completion of a greater and more gradual pattern of divestment from the father, who was sovereign of the family, and the tribe, to the state and finally from the state to the international community. This power over childhood is ideological**.** By articulating standards of childhood, the international community assumes the power to define childhood, which includes identifying areas of protection, setting the scope of protections, identifying violations of those protections and establishing processes of adjudication when violations occur. This postwar pattern, whereby the international community took ideological control over the content, scope and measure of human rights norms and principles, created the modern rights regime, a body in progress of legal norms that includes the prohibition against the child death penalty.

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Endnotes

[i] In recent years, a number of scholars have begun to examine the role of the child in international relations and have made important contributions to the field. Please see the 'state of the field' following this section.

[ii] The 1990 Convention on the Rights of the Child defines a child as "every human being below the age of 18 years." Teenagers can be children (below the age of 18) or legal adults (18- and 19-year olds). The age limits of the child death penalty varied over time and between states, ranging from age 7 (in early common law systems) to age 18. See endnote v below for the differences in minimum age in the American judicial system.

[iii] See for example Achvarina and Reich, 2006; Brocklehurst, 2006; Carpenter, 2000; de Berry, 2001; Faulkner, 2001; Hicks, 2001; McEvoy-Levy, 2006; and Thompson, 1999.

[iv] See for example Canagarajah and Skyt Nielson, 2001; Chowdhry and Beeman, 2001; and Myers, 2001.

[v] See for example Bartholet, 2011; Bohman, 2011; Earls, 2011; James, 2011; Rehfeld, 2011; and Van Bueren, 2011.

[vi] As late as the 1988 U.S. Supreme Court ruling in *Thompson v. Oklahoma*, some U.S. states did not have a minimum age for the death penalty. As such, the minimum age for the penalty was taken from British law as seven or 14, depending on the demonstration of *mens rea*. No U.S. state codified seven as the minimum age, although some states set their age limits younger than 14 at the time of the *Thompson* ruling: Indiana set its minimum age for the penalty at 10; Mississippi's minimum age was 13; and Montana's was 12. Arizona, Delaware, Florida (if the defendant had prior convictions), Oklahoma, Pennsylvania, South Carolina, South Dakota and Washington had no minimum age at the time of the *Thompson* ruling. Sources indicate there was no minimum age by statute for Idaho or Utah, either. No executions of children under the age 13 were recorded in the United States in the 20th century. (Amnesty International, 1991: 64; Bedau, 1997; Seligson, 1986: 5)

[vii] Some predominantly Catholic countries argue that life begins at conception. The beginning of childhood is therefore still a contested part of the model. See Van Bueran (1998) for a more detailed discussion of this issue.

[viii] In Figure 1, I include both abolition of the death penalty in general and abolition of the penalty for child offenders.

[ix] In Britain, see the 1536 Apprenticing of Parish Poor Children (27 Hen. VIII, c. 25); the 1562 Apprenticeship under the Elizabethan Statute of Artificers (5 Eliz., c. 4); the 1572 Poor Law Act (14 Eliz., c. 5); the 1601 Further Provision for Apprenticing Pauper Children (43 Eliz., c. 2); and the 1661 Poor Relief Act (13 & 14 Car. 2, c. 12).

[x] Also referred to as liberal constructivism

[xi] The youngest state in the system, South Sudan, has yet to succeed to the CRC at the time of this writing.