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The Rights of Queer Children

The Denial of Children's Sexual Agency in the Convention on the Rights of the Child

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Abstract

The ratification of the United Nations Convention on the Rights of the Child (CRC) has long been hailed as a major event in the realisation of children's human rights, combining the need for protection with a desire to grant agency through recognition of the evolving capacities of the child. Yet the idea of children's agency as articulated in the CRC excluded sexual identity and expression, and ushered in an incomplete emancipation for LGBTIQ children; children who are gender non-conforming; and children whose sexual expression otherwise conflicts with heterosexuality – hereafter *queer children*. I argue that while the CRC granted children agency in terms of rights to expression, thought and conscience, it denied children sexual agency. Queer children's political agency is intimately connected to sexual identity and agency, because unlike their heterosexual counterparts, queer children's identity and expression is sexualised while, at the same time, they are excluded from adult, identity-based movements.

Keywords

sexuality – agency – CRC – sexual agency – victim – innocence – state – LGBT – international law – constructivism

1 Introduction

The ratification of the United Nations Convention on the Rights of the Child (CRC) has long been hailed as a major event in the realisation of children's human rights. Combining the need for protection with a desire to grant agency

through recognition of the evolving capacities of the child, the CRC compelled states to codify children's rights. Yet the idea of children's agency as articulated in the CRC excluded sexual identity and expression, and ushered in an incomplete emancipation for lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) children; children who are gender non-conforming; and children whose sexual expression otherwise conflicts with traditional, monogamous heterosexuality—hereafter *queer children*. The CRC was a ground-breaking treaty when it came into force, enshrining important protections for children and establishing children as international rights-holders, but it presents children solely as victims of sexual violence, and fails to articulate child sexuality as a fundamentally important aspect of children's lived experiences.

Constructed through moral panics and by a particular constellation of social actors, the child found in the CRC was desexualised in an effort to ensure her safety and freedom from abuse and exploitation. This paper begins with the story of how the desexualised child of international law came to be, as told through the confluence of three historical moments with consequences for child rights governance: the gay rights movement and its rejection of paedophilia, the feminist movement and its fear of child predators, and the drafting of the CRC – all events that took place roughly in the same time period, in the 1980s and early 1990s. Moreover, the child in international law, as a legal subject classified by age alone, served the bureaucratic, administrative and governing needs of the modern state, but also resulted in the silence on children's sexual rights and gender identity in international human rights law. This silence on child sexuality in international law has had a disproportionate impact on queer children. While some states have embraced children's sexual rights, including many Northern European states, most have not. Nowhere is this silence on children's sexuality more evident, however, than in spaces of child rights governance, especially in the dearth of intergovernmental organisations (IGOs), nongovernmental organisations (NGOs), and national human rights institutions (NHIs) that address the sexual agency of queer children.

In this paper, I argue that while the CRC granted children agency in terms of rights to expression, thought and conscience, it denied children sexual agency. This exclusion may be of little consequence for children whose identity and sexual expression conform with heteronormative expectations, but for queer children, this was a major omission. Queer children's *political agency is intimately connected to sexual agency*, because in contrast to their heterosexual counterparts, queer children's identity and expression is sexualised while, at the same time, queer children are excluded from adult, identity-based movements.

2 Moral Panics and Gay Liberation

Western culture has long struggled with the nature of the child. Veering between tropes of innocence and malevolence, historical constructions of the child reflected other cultural preoccupations, including the role of women and the future of the nation and empire (Sen, 2005). Efforts to protect vulnerable children from predators coexisted with interpretations of children as lustful, corrupting and in need of strong parental influence to guide them toward an adulthood free of vice (Thomson, 2013). These competing constructions resulted in efforts to limit or manage children's knowledge of sex as a means of channelling their behaviour toward the formation of productive adult citizens (Richardson, 1998: 83; Hawkes and Egan, 2008: 196; Egan and Hawkes, 2009: 393). Valerie Lehr draws a historical distinction between the "savage youth" and the "civilized adolescent", a distinction that depends on the rejection of sexual pursuits and a focus instead on developing qualities of "reason and true morality" (2008: 206). The interest in girls' sexuality extended to the very young, including "girls not long out of infancy", according to Gail Hawkes and Danielle Egan (2008: 195). "Gendered sexual danger", they argue, became normalised, and the need for surveillance of young girls became accepted (2008: 195).

The modern legal and cultural investment in children's sexual innocence began in the 1970s and 1980s. In the United States, the mobilisation of Radical Feminists and the Religious Right is a good case to review here, although other scholars have presented cases of Great Britain and Australia (Lehr, 2008; Hawkes and Dune, 2013). Radical Feminists in the West began to connect child sexual abuse and violence against women to larger structures of patriarchy and oppression. They rejected the notion that the greatest threat of sexual violence came from outside the family, and instead argued that the family was the central location of sexual abuse, especially the sexual abuse of girls. For these feminists, the vulnerability of children and the danger of abuse by older men must result in the denial of any ability to consent (Angelides, 2004: 148). Radical Feminists relied heavily on tropes of childhood innocence to advocate for stronger laws and greater protection for children.

Radical Feminist concerns converged with arguments emerging from the U.S. Religious Right, a social and political movement that was organising and responding to the emerging sexual liberation movement in the 1970s and 1980s. The Right's opposition to sexual liberation became mainstream when they discovered in the late 1970s that their issues had "mass appeal" (Rubin, 1984: 273–274; Thomson, 2013: 177). A Radical Feminist focus on the dangers of rape and pornography spoke a similar language to the Right's arguments

against pre-marital sex, abortion and homosexuality. Both movements focused on children in their campaigns, with feminists targeting the sexualisation and abuse of girls and the Right targeting the growing social acceptance of what they viewed as “sexual deviance” and the decline of the traditional American family. These debates continue today, with some feminists concerned with the premature sexualisation of tweens and teenage girls (Egan and Hawkes, 2009: 390), and the Right preoccupied with virginity, family and traditional gender roles. Boys have not been spared: the risk of their sexual abuse is seen as a threat to the future of masculinity and “future manhood” (Hawkes and Egan, 2008: 196–7).

Nuance in these discussions might logically have fallen to the growing gay liberation movement, but the movement had its own child problem. Since at least the 1970s, some gay men (especially) attested that they had had meaningful relationships in their late teens with older men, and that these types of relationships were of value both to the parties involved and to gay culture. Pederasty rights – as it was known then – would play a minor but meaningful role in the sexual revolution’s impact on the nascent lesbian and gay rights movement. It is worth noting, however, that the gay rights movement and (what is now known as) the pro-paedophilia or paedophile advocacy movement have historically operated within the same spaces and discourses, although it would be a gross exaggeration to say that the majority of gays and lesbians supported the cause. Throughout the 20th century, in Europe and the United States, some gay rights groups embraced a view of intergenerational sex as one of the many freedoms that a sexual revolution should make possible; in some organisations, paedophiles were considered a ‘subcategory of homosexuals’ (Paternotte, 2014: 268). This is not to argue that the issue was uncontroversial, but rather that there was a vibrant debate about the role of minors, the age of consent, and children’s sexuality taking place within the movement (Thomson, 2013: 171–179; Paternotte, 2014: 269).

This changed in 1993. That year, the International Lesbian and Gay Association or ILGA earned consultative status with the United Nations Economic and Social Council’s (ECOSOC) NGO Committee, a status that allowed it greater access to U.N. facilities, diplomats and important meetings. ILGA was the first “homosexual” organisation granted such status, which was highly coveted by its membership who sought greater visibility for lesbians and gay men¹ and the persecution they faced in their respective countries. One year later, U.S. Senator Jesse Helms waged a campaign against ILGA because of pro-paedophilia

1 Bisexual and trans rights were not systematically included in campaigns until later in the decade.

groups within its federation, among them the North American Man/Boy Love Association or NAMBLA.

In response to accusations of paedophilia and threats by the United States to cut aid to the United Nations, ILGA was suspended from ECOSOC in 1994, despite its expulsion of pro-paedophilia groups from the ILGA federation. In 1995, ILGA changed its mission statement to include adherence to international law, including the CRC, but this was not enough to win readmission to the NGO Committee of ECOSOC (LaViolette, 2007: 633). What followed was more than a decade of exclusion of LGBTIQ organisations by the NGO Committee as conservative states blocked efforts to re-admit them. Only in 2006 did an LGBTIQ NGO receive consultative status; ILGA would not regain consultative status until 2011.

The fallout from the controversy was a major schism between pro-paedophilia organisations and mainstream gay and lesbian rights organisations. The presence of these groups in the movement and the very public backlash against them resulted in the widespread official disavowal of paedophilia by gay rights groups, a process complete by the mid-1990s. Importantly, this rupture within the movement was part of a general trend toward identity politics, in which gay rights groups focused on issues that were 'seen as intrinsically homosexual' (Paternotte, 2014: 273). This shift occurred at roughly the same time that the CRC was drafted, opened for signature, and came into force, codifying a "child" as a person under the age of 18. It was a period when concerns about child sexual abuse in the United States and elsewhere were prominent in public discourse. Advocacy for the sexual agency of children by LGBTIQ NGOs (such as for a right to sexual expression by queer children) was the collateral damage of this rupture.

Discourses of childhood innocence and protection foreclosed any discussion of sexual agency because of the perception of imminent threat to children, and the consensus resulting from these discourses rendered any efforts to confront them 'at best naïve and at worst collusive' (Hawkes and Egan, 2008: 196–7). Yet moral panics, such as those involving the perceived epidemic of sexual abuse of children in the 1980s and 1990s, are not uncommon. British sociologists first studied moral panics in the 1970s, and found that they emerge when a 'condition, episode, person or group of persons' is defined as a social threat (Chenier, 2012: 180; Cohen, 1972: 1). These "Folk Devils" are seen as the cause of the problem or social condition and, as Jeffrey Weeks has argued, 'sexuality has had a peculiar centrality in such panics' (2012: 20). Egan and Hawkes argue that moral panics about child sexuality, in particular, tend to be 'a metaphor for larger social disquiet around issues of cultural insecurity' (2009: 392). The threat of the paedophile requires 'constant scrutiny of child behaviour (for

signs of abuse through inappropriate sexuality), constant cloistering of children inside homes to protect them, and the widespread distrust of strangers' (Robinson, 2013: 51; Angelides 2004).

The response to these moral panics has been to create law, both nationally and internationally – including anti-pornography, anti-trafficking, and statutory rape laws – that reflects a rigid understanding of child sexuality.² According to this understanding, child sexuality can only consist of inappropriate and premature child sexualisation, and in the laws that reflect this conception, the “pedophilic gaze” is central (Adler, 2001: 289). Child protection law is based not on children's capabilities, but on paedophile desires. Through its productive capacity, law has created a subjecthood grounded in victimhood. Drawing on Michel Foucault, Elise Chenier argues that the promulgation of the stranger paedophile is produced and reproduced not to repress children, but to manage them (2012: 181). Here, in the creation of the child as sexual victim, is the *production* of child sexuality (Chenier, 2012: 181).

While the alliance of Radical Feminism and the Religious Right on some issues has been taken by some as evidence of the merit of their political and legal legacy, it is nonetheless problematic. Kathryn Abrams suggests that to focus on male sexual coercion as the primary source of women's experiences is to ‘tell a partial, and potentially injurious, story’ and one that obscures ‘the ambiguity and variety of women's sexual engagements’ (Abrams, 1995: 305, 310). Applying Abrams' arguments to views on children's sexual agency raises the question of whether the orthodox view of childhood innocence and vulnerability does not paint all children with the same victimised brush.

3 Children and Agency

According to Michael Ignatieff and Amy Gutmann, agency is the ability to act, or the ‘capacity of each individual to achieve rational intentions without let or hindrance’ (2001: 57). As such, agency is based on the model of the rational man, without dependencies, social connections or relationships. Such an agent may direct his path without the complexities of family ties or social and economic obligations. By these interpretations, sexual agency is thus the ability to consent, to express a sexual and gender identity, and to engage in sex. Agency, according to Abrams, must include ‘the ability to *develop* and *act* on

2 Adler (2001) offers a good example of anti-pornography laws that emerged as a result of moral panics.

conceptions of oneself that are not determined by dominant, oppressive conceptions' (1995: 306).

Children's right to sexual agency, identity and expression diverges markedly from adult rights and capacities. For adults, the right to sexual expression and gender identity is found in a variety of international legal texts mostly related to privacy, but also found in provisions related to expression, identity, health and the right to be free from violence and discrimination. Article 12 of the Universal Declaration of Human Rights states:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) states:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

The article further states that everyone has the right to protection in law from interference or attacks on this basis. According to Mindy Jane Roseman and Alice Miller, there have been "concerted" efforts since the early 2000s to use human rights law to require states to grant sexual rights for adults (2011: 317). These efforts are framed largely as 'rights to material conditions to live with dignity, as well as to freedoms from interference' (2011: 321). Key to the progress of sexual rights for adults in international law has been the work of NGOs, which have been at the 'forefront of issuing normative sexual rights statements, and have grounded them in international human rights' (2011: 338). While no international treaties explicitly protect sexual orientation and gender identity, individual treaty bodies have made some meaningful advances, especially the Committee on the Elimination of Discrimination against Women and the Universal Periodic Review of the ICCPR.

Relatedly, the CRC also protects privacy in Article 16 § 1:

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

However, there are two issues that make the progress of sexual and gender rights in international law possible for adults and difficult for children: First, the right to privacy in the CRC is understood within the context of parental rights. The report of the Working Group on the CRC in 1988 suggested:

The idea of including civil and political rights in the draft convention to reinforce the protection of children was strongly supported by several participants. However, the legitimate rights of parents and tutors should be safeguarded, the balance between rights of children and rights of the family should be preserved and the wording of the article should be in line with the Covenants (United Nations, 1988: para. 37).

In particular, the concerns of delegates centered around education, guidance and the family as well as the need to delimit certain rights based on a child's "evolving capacity" (Detrick, 1999: 276–277; Tobin, 2019: 598). Article 5 of the CRC was drafted 'in part, to allay the concerns of these delegations', recognising that a right to privacy could impair relationships between parents and children (Detrick, 1999: 276–277; Tobin, 2019: 565; United Nations, 1988: para. 56–59). Article 5 states:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

After the inclusion of Article 5, delegates sought clarity on the terms "arbitrary" and "unlawful", terms for which the U.N. Committee on the Rights of the Child, in subsequent years, would seek to provide guidelines (Detrick, 1999: 277; Tobin, 2019: 553–554).³ Second, advances in adult sexual rights and rights to sexual expression and identity have come about through the campaigns of a very active and well-organised network of LGBTIQ NGOs. These same NGOs have historically ignored the issues of sexual orientation, expression and gender identity in the context of children, as discussed, although this is changing (ILGA, 2016; ILGA, 2018a; ILGA, 2018b).

3 John Tobin argues that Article 12 of the CRC (the right to expression) is also critical when understanding how children exercise their right to privacy (2019: 554).

While the final version of the CRC left space for a counterhegemonic narrative affirming children's right to sexual expression and identity, the convention ultimately formalised the view of the child as a sexual victim even as it promoted the child to rightsholder. For example, Article 14 reads, 'States Parties shall respect the right of the child to freedom of thought, conscience and religion', and Article 15 attests, 'States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly'. In these articles, we see the construction of the child as agent, as capable of independent thought and political action.

This construct of the child agent is incongruent, however, with the construct of the child denied sexual agency. While the CRC affirms children's political agency, the treaty only understands sex in the context of violence or exploitation. Article 2 protects children from discrimination on the basis of sex, and Articles 35 and 36 protect children from forms of exploitation and trafficking, but it is in Articles 19 and 34, which directly address sexual exploitation and abuse, where the child as sexual victim emerges most clearly:

Article 19:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 34:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Two observations here are important. First, the only mention of sex in the CRC is in these articles, with the exception of Article 2 and the Optional Protocol

to the CRC on the Sale of Children, Child Prostitution and Child Pornography.⁴ In articles 19 and 34, children are constructed as exploitable, vulnerable to inducement or coercion, and susceptible to gross manipulation. These articles reinforce the idea of a universal childhood in which all children are innately nonsexual. Additionally, they stress the obligation of states to protect children from abuse, corruption and exploitation.

Second, there is 'some support for an autonomous claim around certain aspects of sexual rights' (Roseman and Miller, 2011: 343 footnote 123). Subsections "a" and "b" of Article 34 describe *unlawful sexual activity* and *exploitative use*, phrases that would result in extensive debates within the working group of the CRC. China and the USSR both objected to the term *unlawful*, because they could 'hardly imagine that children's sexual practices could be lawful' (Detrick, 1999: 593–594). China, in particular, opined that there 'could be no exploitative use of children in sexual practice which was not unlawful' (United Nations, 1987: 85; Detrick, 1999: 593–594). It was the Netherlands that persuasively argued that the inclusion of the words *unlawful* and *exploitative* were necessary, supported by the United Kingdom and Australia, which cited their own legal ages of sexual majority at 16 (United Nations, 1987: 86, 87). France and the Netherlands argued that the objective of the CRC was not 'to regulate the sexual life of children but rather to combat the sexual exploitation of children on the basis of concrete examples' (United Nations, 1987: 88). The U.S. delegate emphasised the importance of the distinction between sexual exploitation and abuse, arguing that the latter had a more commercial association (United Nations, 1987: 87). The Yemen delegation sought to change the language to 'all forms of using of children in sexual practices', a change opposed by the Netherlands (United Nations, 1987: 87). Ultimately, the USSR and China backed down and agreed to the terms *unlawful* and *exploitative use* (United Nations, 1987: 88). That the terms *unlawful* and *exploitative use* remained in the Article seems to suggest that the drafters concluded that lawful sex was possible, and that sex involving children could be something other than exploitative or abusive. The main point of agreement was on the age of consent, as the drafters concurred that while childhood ends at the age of 18, children could consent in many countries at a younger age. Age of consent would become a particular flashpoint for gays and lesbians, who used disparities in ages of consent for homosexuals and heterosexuals in early campaigns for sexual rights (Waites, 2005: 47–53).

4 The Optional Protocol emphasises state obligations to protect children from specific forms of exploitation such as prostitution, trafficking and pornography.

4 The CRC and the Universal Child

Through 54 articles, the CRC produces a very specific type of child subject that embodies certain contradictions, a child subject that is vulnerable, at risk, *and* rights-bearing. Most importantly, as the most ratified convention in the corpus of international human rights law, the CRC expresses a global consensus on the child *and* on the role of the state and the international community in ensuring her rights. The language employed in human rights law does more than describe a collection of rights, it is 'culturally productive' (Merry, 2009: 385), creating subjects of law whose rights and protections are shaped, supported and limited by the interpretation of code.

It is worth noting that the CRC was not the first act of child rights governance. The Western state began to regulate childhood as early as the 16th century, focusing at the time mostly on laws punishing vagrants, beggars and thieves (Linde, 2016: 87). By the 19th century, there was growing interest in Europe and the United States, and in the colonies of the British and French, to protect children from exploitation in employment and from child abuse and disease. Laws developed with a focus on the best interest of the child in Western states, trickling into colonial societies in abridged form throughout the 19th and 20th centuries. As the 20th century progressed, the modern state took increasing control over children's lives, regulating everything from the number of vaccinations they require to the time spent at recess in school (Linde, 2016: 159–163).

Through this process of state consolidation of control over children's lives, the state became the guarantor of children's welfare, both usurping and conscripting the church, family, school and other institutions to build and maintain a specific image of the child and of childhood (Linde, 2016: 31–35). By *state*, I mean the modern, Western sovereign state that developed from the Peace of Westphalia. Although states have different capabilities and intentions, they tend to have similar administrative structures and legal systems; they interact with international law in a similar fashion through the ratification of treaties and compliance with international norms. Studies have demonstrated isomorphism across state policies and law, including law addressing children (Meyer *et. al.*, 1998; Lechner and Boli, 2005; Meyer, 2007; Linde, 2016). This is not to say that all states protect or violate the human rights of children in the same way. Rather, the *state* is a rhetorical tool – it functions *as if* it were a singular entity in international relations.

The consensus embodied by the CRC was dependent upon a universal childhood, one that transcended race, gender, nationality, ethnicity, culture and wealth. Again, by *universal*, I do not mean that the child or its childhood were

empirically universal, but rather that the child was treated as *if it were* universal through the language in the CRC and the child rights governance regimes that emerged in response to its ratification. The universality of the child in the CRC was created not only to identify general problems of childhood found everywhere – abuse, exploitation, neglect – but also to prescribe a specific solution to these problems, *state governance*. The universal child was stratified by age and would experience developmental stages that reflect her “evolving capacity”, progressing through these stages over time (Schmidt, 2010: 256).

5 Queer Children and Sexual Agency

The CRC codified this idea of the universal child and its relationship to the modern state, and efforts to protect her through national, regional and international institutions proliferated. These IGOs, NGOs, NHIs, states and laws make up a diverse child rights regime and a complicated system of governance. Perhaps unsurprisingly, the queer child and her rights and protections have largely escaped the regime’s attention. The assumption of universality that undergirds much of international children’s rights law is one of the major critiques of children’s human rights. While the universal child is enshrined in international and national law, the interpretation of children’s rights is not ‘uniformly comprehensible locally’ (Balagopalan, 2013: 135–136). This is precisely where institutional child rights governance on sexual agency would be useful. Philip Ayoub, in a comparative study of LGBT activism in Europe, has argued that some NGOs serve as intermediaries, translating international norms for domestic audiences and connecting local actors to international and transnational actors (2016: 34). Yet these processes of norm brokering simply do not apply to issues of child sexual agency because LGBTIQ NGOs have historically avoided issues of child sexual identity and expression.⁵ Norm brokerage on

5 In 2016 and 2017, my research assistant, Nicauris Heredia, and I conducted a content analysis of the websites of international, regional, and national NGOs affiliated with the three major LGBTIQ NGOs – ILGA, Allied Rainbow Communities (ARC), and OutRight International – to document the prevalence of campaigns on children’s sexuality, expression, gender identity and sexual agency. Through an examination of 433 websites in seven global regions, the agendas of NGOs were coded for the presence of *any* campaigns related to children.⁵ Additionally, I interviewed 28 activists from ILGA, ARC and Outright and many other smaller regional and national NGOs to complement the content analysis and historical case studies. In our review of global LGBTIQ websites, only 19 NGOs out of 433 address child sexuality *in any context*. These findings suggest a profound and telling silence on children’s sexuality as an issue in the domestic environments of local or regional NGOs associated with the three major NGOs.

issues of sexual agency for children could serve as an important type of child rights governance because it would 'mediate diffusion' and assist with framing messages successfully (Ayoub, 2016: 37). Increasingly, the Committee of the CRC is addressing discrimination and violence against LGBTIQ children (Office of the High Commissioner, 2015), but while addressing discrimination is an important part of human rights for queer children, the issue (a right to freedom from discrimination) is different from an affirmative right to sexual agency.

While the CRC's construction of children as nonsexual applies to *all* children, there exist cultural spaces where children who exhibit sexualities and gender identities that conform with hegemonic sexual expression and identity can experiment: dates, dances and family courtship rituals allow for degrees of heteronormative expression where, traditionally, queer expression and gender non-conforming identities are censored, shamed, forbidden or tainted by fear. Hawkes and Egan stress that cultural efforts at 'proper sexualisation' were designed to guide children toward socially sanctioned adult heterosexuality (2009: 198–199). In many ways, socialising children to normative heterosexuality marks a return to postwar preoccupations with heterosexuality and heterosexual development, as discussed by Mary Adams and her work on Canada (1999: 169, 171–2).

The CRC's selective construction of child agency, in which the child is a political – but never sexual – agent, is untenable. The irreconcilability of the competing facets of this construction is most clearly embodied in the queer child. Heteronormative ideas of sexuality, sexual expression, and gender identity are the hegemonic framework and context that queer children must function within and navigate (Egan and Hawkes, 2009: 394). Like queer adults, queer children must negotiate resistance, accommodation and conformity. But unlike queer adults, age stratification excludes children from participating in an identity-based construction of sexuality in most states (Angelides, 2004: 154). This is important because while the CRC explicitly grants rights, including the right to free expression, in a manner consistent with the child's evolving capacities, the queer child is not able to 'present itself according to the category "gay" or "homosexual"' because these are '... categories deemed too adult, *since they are sexual*' (my emphasis) (Stockton, 2009: 5–6). Children are assumed to be heterosexual, but because this presumed identity comports with broader societal expectations, it is not sexualised or viewed as sexual (Stockton, 2009: 6). It is the queer child, then, that is widely denied both political agency (as a consequence of cultural homophobia), and sexual agency through the foreclosure of avenues for the formation of sexual identity. While the CRC does not explicitly deny political agency to the queer child, it is silent on the issue of sexual

agency. If political agency for queer children cannot be understood apart from sexual agency, then for queer and gender-nonconforming children, the right to political expression that the CRC provides is a meaningless entitlement. It is agency in name only.

6 Innocence and Its Outcomes

The age-based system that strictly delineates childhood from adulthood, codified in the CRC, hinders children's ability to create, foster and nurture sexual expression and gender identity apart from heteronormative expectations. This is not to say that children do not mature and develop from infancy to adulthood; rather that the meanings attached to the different stages of childhood are socially constructed. For Kerry Robinson and Cristyn Davies, the most important construction is that sexual maturity is the boundary between childhood and adulthood, before which sexual identity is seen as nonexistent (or not tolerated) and after which, it is widely assumed (2008: 224).

A social and legal commitment to childhood sexual innocence has many consequences as well as performative functions for child rights governance (Angelides, 2004: 152): First, a lack of sexual agency keeps children ignorant of sex. Laws, parents and schools largely decide whether and in what form children will be educated about sex. Hawkes and Egan argue that 'the acquisition of "knowingness" must be properly managed, and always it is linked to and moderated by the role-model status of heteronormative adulthood' (2008: 196). The most dangerous knowingness of all is awareness of homosexuality. Knowledge is controlled by gatekeeper adults who permit children pieces of sexual knowledge within a dominant framework of heterosexual marriage and monogamy. Within this paradigm, sexual knowledge is dependent upon a developmental view of the child, where a knowing child is one that is 'dangerously precocious' (Heinze, 2000: 18). Children are denied sexual agency, identity and expression in part because they are denied access to knowledge and information that would enable them to make decisions and formulate identities. Again, access to sex education varies across states, but it is the *managing* of information by the state, parents and schools that is the constant.

Second, the danger of children's sexual victimisation trumps the value of empowerment. The limiting of children's agency to acceptable choices, specifically, heteronormative sexuality, is reminiscent of Sally Merry's "ghost of imperialism", where 'unsupportable choices are those that have been defined as intolerable within a modernist, secular consciousness' (2009: 390). For Merry, the objective of international human rights law is to 'prevent the action, rather

than to remove barriers to choice' (2009: 391). Specific sexual and sexualised activities are outlawed in the privileging of paternalism over empowerment (Merry, 2009: 400). As Kate Millett poignantly stated, 'Sex itself is presented as a crime to children' (1984: 218).

Third, childhood sexuality is defined by the adult gaze and, more specifically, by the paedophile's gaze, according to Christine Piper (2000: 27). State governance of childhood sexuality and sexual expression is framed and formulated as a response to the threat of the abuser, demonstrating our shared commitment to the most vulnerable in our society. A child's sexual agency is limited not by her abilities, but by her risk of exposure and vulnerability to abuse (Egan and Hawkes, 2009: 391). Child policy and legal advocates, driven by a developmental view of childhood, are 'always trying ...to get their concept of delay to come out right' but the ability to find 'just the right amount of delay proves elusive' (Stockton, 2009: 37). Rather than interrogate the power disparities between adults and children, we debate the universal age at which *all* children will have the ability to consent.

Fourth, and most importantly, children's sexuality is a matter of public interest (Foucault, 1978: 27–30). Foucault called this the 'pedagogization of children's sex', a process that began in the 18th and 19th centuries in Western societies (1978: 104). The modern state's interest in regulating society focused most intensely on the child, developing around questions about the nature of children's sexuality and efforts at protection. The state looked to the family as both the key source of child protection as well as the greatest perpetrator of child abuse and exploitation. The 19th century, especially, saw a rapid proliferation of laws protecting children. Today, a preoccupation with the premature sexualisation of children, most especially, the premature sexualisation of girls, unites unlikely allies across the political spectrum, and represents a continuation of the moral panics of the 1980s and 1990s. Moral panics thus continue to shape and limit our shared ideas of child sexuality.

Sexual agency is limited in other ways as well. Positivist law, for example, is based on the exploration of legal truths (or legality) through the scrutiny of legal texts or codes within pre-existing categories (Moran, 2000: 103). Leslie Moran asserts that this practice of textual analysis developed out of monastic tasks of religious commentary (2000: 99). The continued tradition of this "black letter" scholarship' limits the possibilities of legal development and empowers the 'productive aspects of law, the way it functions not only as prohibition but also as discourse', according to Adler (2001: 320). Relatedly, Adler argues that the process of 'transforming ... sex into discourse' does not merely change the nature of sex, delineating certain kinds of sex as deviant, but actually produces sexuality; that is, in the process of legislating sexuality, it became 'not only the

target of the discourses that surrounded it; it also became their product' (Adler, 2001: 327–329). Applying this discursive construction to childhood sexuality, the 'legal strangeness' of the child becomes clear (Stockton, 2009: 16).

In the CRC (as in many national laws), the child is produced as a legal subject that needs 'protection more than freedoms' – even protection *at the cost of* freedom (Stockton, 2009: 16, 65). The legal production of childhood sexuality 'pathologizes the sexual subjectivity of children', according to Egan and Hawkes (2009: 392), and denies what Abby Wilkerson argues is a 'basic human right to sexual autonomy' (2002: 33). Importantly, there are a handful of states that have sought to make space for child sexual agency, expression and identity in recent years. IGLYO, the International Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Youth and Student Organisation, tracks, for example, inclusive education, finding great disparities in issues such as discrimination against LGBTIQ students across Europe. Malta, the Netherlands, Norway, and Sweden rank the highest in inclusive education measures, while Armenia, Russia, Latvia, and the Ukraine (among others) rank lowest (IGLYO, 2018). Only four countries – Malta, the Netherlands, Norway, and Spain – allow for the self-determination of gender recognition for those under the age of 16 (IGLYO, 2018).

The goal of human rights advocates, according to Alice Miller, should be to view '... sexuality as an aspect of social justice (in redressing and transforming unequal distributions of power)' (1999: 291). Through exposing these 'operations of oppression', Miller argues, sexual rights can be enacted that address the needs of diverse individuals with diverse sexualities (1999: 291–2). Such an inclusive legal framework could be implemented without compromising worthy and well-intended efforts to protect children. Exposing the silence on children's sexual expression and identity within the CRC and other forms of child rights governance does not undermine the social, cultural and legal accomplishments of the document, but rather identifies a social injustice and seeks to protect and empower all children.

7 Conclusion

The 30th anniversary of the CRC encourages us to celebrate the victories achieved and contemplate the victories unrealised with regard to children's rights. The denial of sexual agency, expression and identity is a violation of children's human rights, contradicting the lived experiences and capacities of some children. These contradictions are most keenly felt by queer children, who are denied opportunities to explore and develop sexual identities or to access safe spaces for experimentation within cultural boundaries. Queer children must construct counterhegemonic narratives of agency, consent,

expression, identity and liberation, narratives much at odds with the ones offered by international law and child rights governance. Meaningful socio-political changes in sexual and gender-based oppression will take more than new optional protocols, expanded interpretations, and sustained attention by the child rights regime; it will require a broad, new understanding of the child, her identity, expression, agency *and* her relationship to the modern state.

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