CHILDREN’S RIGHT TO PARTICIPATE

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The Convention on the Rights of the Child

- Commissioned by U.N.G.A. on motion of Poland in 1979 (Int’l Year of the Child)
- Drafted by a working group operating by consensus
- Approved unanimously by the U.N. General Assembly in 1989; entered into force in 1990
- 194 states parties; 2 non-party signatories (Somalia & USA); 2 non-signatories (Kosovo & South Sudan)
Optional Protocols to the CRC

- Optional Protocol on the Sale of Children
  - Adopted in 2000; entered into force in 2002
  - 167 parties, including USA

- Optional Protocol on Children in Armed Conflict
  - Adopted in 2000; entered into force in 2002
  - 155 parties, including USA

- Optional Protocol on a Communications Procedure
  - Adopted in 2011; entered into force in 2014
  - 10 parties (Albania; Bolivia; Costa Rica; Gabon; Germany; Montenegro; Portugal; Slovakia; Spain; Thailand)
Overarching Rights in the CRC

• The right to full and harmonious development of the child’s personality (to be somebody); e.g.,
  – The right to birth registration, a name, a nationality, and a unique identity
  – Access to education, cultural experiences, and mass media
  – The right to a standard of living adequate for development
  – The right to education compatible with the development of the child’s personality to its fullest potential and with the preparation of the child for responsible life in a free society

• The right to personal security

• The right to grow up in a family environment embraced by a supportive community
Children’s Right to Participate: The Rights to Express Opinions and Be Heard

Article 12
1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
What Art. 12 Says and What It Means

**Article 12: Official language**

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

**Article 12: Implied language**

1. States Parties shall assure that the child has the right to express his or her views in all matters affecting him or her. The weight given to those views in decision making about the pertinent matters shall be dependent on the child’s age and maturity. [As children become older and more mature, their views shall be given greater weight.]
Illustrative Contexts for *Participation*

- “...All interested parties [surely including the child] shall have the opportunity to *participate* in the proceedings [in re separation of a child from his or her parent(s)] and make their views known” (art. 9, sec. 2)
- Children may “engage” in recreational activities and “participate” in the arts and other cultural activities (art. 31)
- Governments must “facilitate active *participation* in the community” by children with disabilities (art. 23, sec. 1)
Children’s Rights to Form Opinions, Express Them, and Be Heard

- Freedom of expression, including the right to seek, receive, and impart information through any media of the child’s choice (art. 13)
- Freedom of thought, conscience, and religion (art. 14)
- Freedom of association and peaceful assembly (art. 15)
- Freedom from arbitrary or unlawful interference with privacy, family, home, or correspondence; right to protection of honor and reputation (art. 16)
- Freedom of access to mass media from international sources (art. 17)
The Challenges

- By 2003, the Committee on the Rights of the Child had expressed concern about implementation of Art. 12 in reviews of reports from each of more than 150 countries, often multiple times
- Requires development of new democratic norms in fundamental social institutions; requires a re-ordering of generational relations
- Declining trust of government and belief in the capacity of one’s neighbors to make a difference have been in dramatic, long-term decline, especially among young people
- Requires attention to both what is done and how it is done
The Importance to the Child of the Right to Participation

- Moral significance: signal of respect for personhood
- Benefits to the child
  - Autonomy, privacy, and honor (and mental health)
  - Greater “maturity” in judgment: requires “cascading” experience; compare epidemiological evidence on child injuries (“learner’s-permit” model)
  - Improved personal and collective efficacy
The Importance to Society of the Child’s Right to Participation

- Democratic socialization (cf. Tyler’s research on why people obey the law and why they cooperate)
- Paradoxically, greater compliance (for example, with health care)
- More valid information, in relation to both individual children and classes of children
- Promotion of tolerance for diverse opinions
Issues in Interpretation

• The distinction between autonomous decision making and freedom of expression

• The relationship among parental autonomy, family privacy, and child participation

• The potential conflict between the right to participation and the right to protection
  – When the child may be unwise
  – When giving opinions is dangerous
  – Teaching about tolerance by permitting (and prohibiting) intolerance
Issues in Interpretation (cont.)

• Children’s right to participation in the context of their age and maturity
  – Under Art. 12, age and maturity are relevant to how opinions may be heard but not to whether they should be heard
  – As a general matter, competency is or should be minimally relevant to child policy
  – Toward an “evolving” standard: Learner’s permits as an example

• The societal limits on the excise of children’s right to participation
Children’s Perceptions of Limits on their Right to Participation

• Young children often do not perceive real choices, even when the intent is to recognize children as meaningful participants.

• However, developmental research also shows that children become politically aware at a much younger age than is often assumed.

• But experience in the legal system usually does not enhance understanding of legal concepts (e.g., rights).
Norms and Structures: Building or Transforming Institutions to Support Children’s Participation

- Rights-based education
- Education of adults about children’s rights
- Voices (and consultants) for children
  - Designated supportive adults
  - Ombudspersons for children
- Rights-sensitive legal architecture; e.g., modification of standards of care
- Access to existing forums and creation of new forums
- Use of the mass media
- Empirical research
Youth Participation in Improvement of Public Health: An Illustration


Child Participation Should Become a Way of Life, Not a Program

• The central issue is not whether we should treat children like adults but instead whether we should treat them like people—and whether we should do so routinely in everyday life

• See generally U.N. Committee on the Rights of the Child, General Comment No. 12: The Right of the Child to Be Heard (2009)
Where, after all, do universal human rights begin? In small places, close to home—so close and so small they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in, the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

—Eleanor Roosevelt