

BEYOND THE MYTH OF CHILDREN'S RIGHTS: FROM AN INTERDISCIPLINARY AND CROSS-CULTURAL PERSPECTIVE

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Preface—Defining the Issue

Children's rights is a controversial concept. A typical example is found in the "Convention on the Rights of the Child," adopted in 1989 by the United Nations. The convention's catalog on the "child's right to autonomy," which adorns the whole of the final 1989 draft and symbolizes the spirit of our age, was the fruition of deliberations by the UN Committee on Human Rights under the bold initiative of the United States representative. Any discussion of the convention cannot fail to mention the influence America has had on it.

Since the convention came into force in September 1990, following ratification by the prerequisite twenty states, the number of state parties multiplied with unprecedented speed. Today, the number of state parties stands at 191, and the only country that has yet to ratify the convention, other than Somalia, is the United States.¹

This is indeed a curious state of affairs. In America—the voice of the philosophy and spirit of the convention at its drafting—a controversy emerged over the pros and cons of ratification that has yet to be resolved. The series of articles America invested so much energy in at the drafting process are the very ones that have incited the most heated opposition.

Exactly what is the significance of this development? What sort of problems are contained in the concept of children's rights, whose "lofty goals and high-sounding words" were embraced by the international community with such amazing speed?

There are two quite dissimilar varieties of children's rights: the right to protection and the right to autonomy. This paper will tend to focus on the right to autonomy as I examine the issues involved in children's rights from two directions. First, I will make a legal analysis with the material of the Convention on the Rights of the Child, and second, an analysis of points at issue from the standpoint of the psychological structure of the parent-child relationship. Through this process of orderly examination, I hope to uncover what we need to keep in mind and the approach we should take in the concept of children's rights in order to avoid the pitfalls it can engender.

Parental Authority versus State Paternalism—the First Paradox

The 1959 "Declaration of the Rights of the Child" proposed to be a declaratory guarantee of the child's right to protection. The concept of the child's right to autonomy that

appeared at the close of the 1960s was still undreamt of by the drafters of this declaration.

Incidentally, by tracing its drafting process, we discover that deliberations on the declaration proceeded in the midst of fierce opposition between subsidiary paternalism, championed chiefly by the United States and Great Britain, and the active state paternalism insisted on by former socialist countries such as Russia and Poland. More specifically, the socialist countries' insistence on a declaration that was legally binding and that would allow the state to intervene in the family relationship in the name of children's rights and to create state-run child welfare networks was strongly opposed by America and England, as we can see from statements such as the following:

Some countries held that the text was valueless because it imposed no legal obligation on Member States. That view had been mistaken.²

We could not support the U.S.S.R. amendment, since it implied that the state was primarily responsible for the welfare of the child, a view which we could not share. The main responsibility lay with individual men and women and it was only when they were found wanting that the state should intervene.³

That is, the free nations contended that protection and education of the child are fundamentally the province of natural parental authority, which should not extend to state law. The law should only be allowed to intervene in exceptional or subsidiary fashion in unavoidable emergency situations arising from the parents' incompetence or immorality. The outcome of the dispute was that the agreement passed the UN General Assembly in the form of a declaration that was not legally binding. This tells us that confidence in family autonomy and natural parental authority, an institution that predates the state, was still alive in the western world.

In the latter half of the 1960s, however, America became the first country to experience an attack on family autonomy and natural parental authority; their rapid decline—what is referred to as the dissolution of the family—does not need to be repeated here. Out of the process of the decline of parenthood emerged a new concept of the child's right to autonomy that was at once a result of the decline and an ideology of antipaternalism that furthered it. Twenty years after the declaration, what spurred the American representative, and the many NGOs, that participated in deliberations on the "Convention on the Rights of the Child" was

none other than a distrust of natural parental authority and the reaction against it that took American society by storm in the 1970s.

Now the American representative raced toward the new goal of the child's right to autonomy and of having the child's best interests guaranteed by the state. By now, the premise that the convention to come must be legally binding on state parties was so obvious as to leave no room for debate. The American representative presented one draft after another concerning children's civil liberties, which were formulated into Articles XII through XVI of the convention.

The child's right to autonomy inevitably transformed the character of the family, which had been an organic entity consolidated by parental authority. Article V speaks most eloquently of this:

States' parties shall respect the responsibilities, rights and duties of parents . . . 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.

Here the child is the subject that exercises rights independent of the parents. These parental rights of direction and guidance are no longer of the same order as the parental authority that preceded the state. This contractual image of the family, which such an order of rights and duties describes, differs from the organic entity of the traditional family image. Children given the rights of autonomy and deprived of the shelter of parental authority are now obliged to confront the law and the state directly.

What we should note here is the structural change imparted to the whole of the convention by incorporation of the child's right to autonomy. With trust in parental authority lost, the state no longer needed to abide by the subsidiary principle of intervention. In fact, the state was now the new savior that should protect the child's interests from parental authority—a duty that was by this time not a declarative and moral duty, but a legal one.

If we take a fresh look at the entire "Convention on the Rights of the Child" from this perspective, we are surprised to find that the states' responsibility toward the child's right to protection that was so delicately handled under the subsidiary principle in the "Declaration of the Rights of the Child" has been strikingly expanded and strengthened in scope and degree in the convention. Examples are found in Article XIX, which stipulates, "State parties shall take all appropriate legislative, administrative, social, and educative measures to protect the child from all forms of physical or mental violence, injury or abuse. . . while in the care of parents." The discreet approach taken by the state under the subsidiary principle is nowhere in sight.

Here we are able to clearly observe the legal dynamism by which the right to autonomy as a criticism of parental author-

ity breaks down the organic family entity into individual units, and conversely how the right to protection generates a powerful state paternalism. This is quite paradoxical. As a logical model, the aggressive system of the states' guarantee of the right to protection that emerged with the victory by the right to autonomy surely bears a close resemblance to an order by which the state could seize any one of its subjects, which the Western states—America heading the list—warned against continually during the drafting of the "Declaration of the Rights of the Child." Aren't we now confronting the paradox of a new brand of totalitarian state paternalism prepared in the name of autonomy and rights?

I have drawn a rough sketch of the "Convention on the Rights of the Child" adopted by the UN General Assembly just ten years previously. As I mentioned at the outset, the movement in America to promote ratification of the convention, now in concrete form, encountered fierce opposition from the grassroots community. The ratification procedure once got as far as signing to the United Nations in 1995, but an opposing resolution by the Senate Foreign Relations Committee has completely halted ratification for the time being. In a way, this is in itself a very dramatic story: Why, in America of all places, are such events going on? Here I would like to point out only that the United States, as the pioneer of the development of children's law in the twentieth century, is the very country that has experienced most intensively the significance and gravity of the conflict between organic human relations and right-based relations. I would like to quote a passage from a dissertation written in 1992 by legal scholar Dr. James Lucier that provided a theoretical foundation for the anti-ratification movement:

What is missing in the Convention is the underlying idea of rights for families. . . . By endowing the child with legal autonomy, that is to say, enjoying rights independently of the family, the new doctrine puts the family in the position of mere care-givers, bound to the observance of the child's rights.

Every child becomes the adversary of the parents, at least in the potential, and the adversary of brothers and sisters in competition for rights. . . . By destroying the human factor in human relationships, the advocate of autonomy, especially the autonomy of children, will create a society which lacks the principles of cohesiveness and common purpose necessary to its common existence.⁴

Lucier expresses quite succinctly the feeling of impending crisis that the legal concept of the child's right to autonomy would act as a frontal attack that tears down the human factor in parent-child relationships. It is this sense of crisis, more than anything else, that has prevented ratification in America, the home of the philosophy and spirit of the convention.

Here we need to examine the origin of the nature of the human factor in human relationships of which Lucier speaks. How does this human factor clash with the concept of chil-

dren's rights'? Let's take another look at this issue.

The Parent-child Relationship versus Children's Rights—the Second Paradox

The energy that upheld the child's right to autonomy that appeared in the 1960s arose from an antipathy to and distrust of the essentially vertical and paternalistic structure of the parent-child relationship. Through that energy ran the thread of emancipative passion embodied by those modern citizens who waved on high catalogues of civil rights and fought in the past against restrictions and constraints imposed by an absolute monarchy.

But is the parent-child relationship really a system that is constraining and subordinating in substance? We know intuitively that the essence of this relationship cannot be fully explained by legalistic vocabulary such as "parental right." In order to theoretically ascertain this intuition, however, we need to borrow the power of psychological insight. Here I will attempt to access this issue by employing the framework postulated by Japanese psychiatrist Takeo Doi whose book, *The Anatomy of Dependence*,⁵ made him known throughout the world.

Doi's research is based upon the concept of *amae*, a term denoting emotions and behaviors expressed by a child toward his mother, or anybody, for that matter, child or adult, in a similar situation. It is his main thesis that though the Japanese word *amae* has no equivalent in European languages its concept is universal. Let me quote some passages from his recent article:

Amae is a noun form of *amaeru*, an intransitive verb meaning "to depend and prestane upon another's love or bask in another's indulgence." It has the same root as the word *amai*, an adjective meaning "sweet." Thus *amae* can suggest something sweet and desirable. Perhaps what is most significant about the word *amae* is that it definitely links with the psychology of infancy, for we say about a baby that it is *amaeru*-ing when it begins to recognize the mother and seek her, that is to say, long before it begins to speak. Please note that *amae* here refers to the feeling of attachment that is observable. Later, when a child begins to speak, he or she will eventually learn that such a feeling is called *amae*. But that does not change the situation that the feeling of *amae* is something to be conveyed nonverbally.

Doi continues:

It must be clear from what has been said above that *amae* involves a certain psychological dependence, because one who wants to *amaeru* requires another person who senses one's need and can meet it. Thus *amae* is vulnerable and, being susceptible to frustration, it undergoes various transformations.⁶

In other words, *amae* is a concept that bridges depend-

ence and attachment, two concepts which are conceptually separate in English. A straight translation of this word into English is not possible. *Amae* is a word which was fostered by Japanese cultural and historical experiences.

As an example to demonstrate the universality of *amae*, Doi quotes one scene from *The Little Prince* by Saint-Exupery, a French novelist. The little prince comes alone to the earth and feels lonely. He meets a fox in the desert and wants to befriend him. The fox advises the little prince to tame him if that is his purpose. The little prince does not understand what "tame" means and asks what it is. The fox explains it is to establish ties. The little prince again does not understand what is to establish ties. The fox then describes it as follows:

To me, you are still nothing more than a little boy who is just like a hundred thousand other little boys. And I have no need of you. And you, on your part, have no need of me. To you, I am nothing more than a fox like a hundred thousand other foxes. But if you tame me, then we shall need each other. To me, you will be unique in all the world. To you, I shall be unique in all the world.⁷

Doi points out that this passage describes very well how taming involves attachment and dependence, and he indicates that the happy feeling that accompanies taming and getting tamed corresponds to *amae*. According to the Doi's theoretical framework, we may call the fundamental need that is working at *amae* as the *dependency need*.

The identification process that emanates from this dependency need, namely *amae*, plays a determining role in the child's psychological development. Certain restrictions imposed by parental discipline and teacher direction are necessary accompaniments to the child's freedom. Children endure punishment, obey orders and study their school lessons because *amae* is at work in the background—that is, the expectation that by identifying with parents and teachers, they will be accepted, sanctioned, and loved. To put it another way, they do these things in expectation of the joy that comes from gratification of the dependency need.

If we accept this as the psychological mechanism by which the child relates to the parent, then how should we understand the parent's role in this regard? It is, above all, to meet the child's dependency need. How effective a parent is in directing and instructing the child and obtaining the child's submission hinges on whether or not the parent is able to meet and gratify the child's *amae*. In addition, parental affection for the child grows within the process of this meeting. It is a dynamic process of emotional interaction. The essential point here is that without the asymmetrical parent-child relationship, such interaction is impossible. The very fact that the parent is a greater presence than the child is what enables the child to depend upon the parent. If parents ignore this vertical relationship and set up a friendship type of parent-child relationship by taking the egalitarian

approach and abandoning the child to spontaneity, the child will lose a receptor for its dependency need as well as a channel for growth.

Not only that, such an approach provokes a number of pathological phenomena. I will go straight to the point: parental authority is the foundation of trust that is created when the parent acts as the receptor of the child's *amae*, making it possible for the child to submit to that authority. It is not a constraining or subordinating system in the sense of modern legal thinking.

Looked at in this way, we realize that a child is not an acorn that will autonomously put forth shoots according to a personal program if only it is given water. Human relationships in which *amae* can operate are indispensable to a child's growth. Such asymmetrical relationships are the medium by which the child gradually finds a path to the formation of individual self. Doi suggests this when he writes, "Man cannot lead a human kind of existence without the experience of having belonged to something or other. In different terms, man cannot possess a self without previous experience of *amaeru*."⁸

As mentioned above, the adjectival form of *amae* is *amai*, which means "sweet." The fact that in Western countries "sweet" is often used in connection with the family—"home, sweet home," for example—would seem to indicate that the quintessence of the parent-child relationship transcends national boundaries and divergent cultures.

Now, let's come back to the legal discourse on the children's rights. It is my understanding that the "human factor in human relationships" that James Lucier talks about in his criticism of the "Convention on the Rights of the Child," refers to gratification of the dependency need and the intimacy and sweetness that arise from the emotional exchange involved. This is certainly none other than an account of the *amae* of which Doi speaks.

By now it should be evident that the concept of the child's right to autonomy acts as a frontal attack on the inherent nature of the parent-child relationship. First and most important, the philosophy of children's autonomy lacks insight into the fact that the child is not simply a little acorn that can grow autonomously, but that gratification of the dependency need by the parents is nourishment the child needs to grow.

Second, rights are, after all, a concept of modern law that emerged as a weapon to be employed in the settlement of disputes between individuals over conflicting interests. Rights are not prerequisite to interpersonal emotions and shared interests, if anything, rights tend to work as a factor that severs these, if I may borrow the words of Professor Mary Ann Glendon, modern man's nature obliges him to be the "lone rights-bearer."⁹ So in the name of rights, children's rights cut off the *amae* that is critical to the child's growth. I must say that herein lies yet another huge paradox that chil-

dren's rights inevitably generates.

I do not wish to be understood as suggesting that the concept of children's rights in itself is completely meaningless. The reality is that within the increasing complexity of modern society, parental authority has become dysfunctional and abusive, and we must recognize that there are many cases in which the child's right to protection is compelled to take on the role of an emergency fire brigade. Even in such cases, however, we need to remember the words of Josef Goldstein, that "law [and rights] may be able to destroy human relationships, but it does not have the power to compel them to develop."¹⁰ In other words, rights cannot be an Aladdin's lamp that brings happiness. What children need most is the *relationship* itself, not an isolated benefit conferred in the name of rights.

If we forget that law and rights have such limitations and think of the "Convention on the Rights of the Child" and its catalog as a "magna carta for children,"¹¹ we will be walking into the myth and fantasy of twentieth century that children's rights constitute.

Conclusion

We have taken a look at two aspects of the paradoxes raised today by the concept of children's rights. What should we look for in order to head off the dangers pregnant in such paradoxes? I want to conclude by searching for clues in terms of a reassessment of the image of modern man that lies behind the concept of the child's right to autonomy.

As I have mentioned, behind the concept of the child's right to autonomy is the surrealistic view of the child as "a little acorn that grows up autonomously." It soon becomes plain to anyone that this view, when illuminated by the light of ordinary everyday experience, is lacking in realism. It is no more than an idealization and romanticization of autonomy. Nevertheless, why is this concept so highly contagious that it is becoming a fixture in today's international conventions and conquering the western world? When we get to the bottom of the matter, we arrive at the modernistic image of man, dating from the eighteenth century onward, that regards complete autonomy in itself as a legitimate possibility and holds it up as the ultimate ideal. That is, the ideal depicts the individual as the "lone rights-bearer" who has cast off all restrictions and connections and is self-determining and self-contained. What props up this ideal is a passion for emancipation—to throw off the shackles that bind and thereby gain freedom.

The appearance of the child's right to autonomy that we are witnessing today is none other than a symbolic event that tells us that this ideal of modern man has finally reached down, two hundred years after the French Revolution, to the inter-mediating body positioned as the very basis of society—the family. In other words, human beings today, still possessed of a passionate emancipatory mindset, are now trying to push

this ideal of modern man onto tiny three-year-old tots.

It is at just such an historically critical point in time, however, that we are discovering through a fine and pragmatic analysis of the parent-child relationship the reality: that human relatedness steered by the dependency need is the condition which provides human beings with a road to self-definition. To borrow Dr. Doi's words again, "Man cannot possess a self without previous experience of *amaeru*."

However, does the fact that autonomy and dependence share such a complementary relationship only hold true in childhood? Is the dependency need something that people conquer so that it vanishes out of sight when they reach adulthood? Is the human being really such a dichotomous creature? I think most certainly not: A close look at ourselves reveals the dependency need, namely *amae*, albeit in changed form, operating implicitly wherever sound human relationships and interdependency have been formed in a society. In other words, the dependency need does not vanish, but takes on different form to sustain our autonomy.

Certainly the word dependence has, in general, a bad connotation and produces a negative reaction, especially in Western societies. It is because we are the child of modern age in history. But, let's reconsider. For instance, many of the participants of this conference are Christian. And a Christian is, by definition, a man or woman who prays. Now, is it possible at all for him or her to pray without a psychological dependence?

Eric Erickson, who is of the same school of Freudian theory as Doi, calls the fundamental sensation experienced within the mother-child relationship, and that corresponds to *amae* gratification, "basic trust." In this connection he states:

This bipolarity of recognition is the basis of all social experiences. Let nobody say that it is only the beginning, it passes, and it is, after all, childish. . . . In that first relationship man learns something which most individuals who survive and remain sane can take for granted most of the time. I have called this early treasure "basic trust."¹²

If we now return to the subject of modern social theoretical concepts and end with an understanding of human nature as I have described it, the historical position occupied by the issues we are confronting today becomes apparent. Modern society has started out with the binomial, confrontational framework of "freedom from restraint," and pursued autonomy, which materialized when connections and restrictions were thrown off, as an article of faith. As often as not, dependence and relatedness have been equated with humiliating subordination and inferiority, and therefore tended to be relegated to the subconscious. It is fair to say that modern society did not possess sufficient experience or vocabulary to positively evaluate human dependency. As a result, the ironic reality we are facing today is that autonomy dissociated from dependency leads to the impoverishment of that autonomy and eventually offsets it. Family

law scholar Bruce Hafen, who has been a member of this university, points precisely to this historical reality when he says, "The waning of belonging contributes ultimately to the waning of actual autonomy and meaningful individualism."¹³ To put it another way, when modern society drove the dependency need into the subconscious, it set into place the conditions for the phenomenon of family dissolution we are experiencing today.

The tasks imposed by modern legal and social theory also essentially boil down to this one point. That is, to borrow the phrasing of German philosopher Hans Meier,¹⁴ to release the concepts of human autonomy and freedom from an obsession with emancipation and one dimensional binomial confrontation held at the outset of modern society, and reconnect them to the dependency need and human relatedness that are the real supports of autonomy, and further, to bring them back into dynamic mutual association with our obligation to aid and support one another that is an extension of dependency need and human relatedness.

Needless to say, these are difficult tasks. But if we succeed in them we will have found the road that leads us beyond the dangers posed by the twentieth century myth of children's rights.

NOTES

1. Akira Morita, *The Historical and Philosophical Meaning of the Conversion on the Rights of the Child: Predicated on the Experience of American Children's Law*, unpublished.
2. General Assembly Official Record, A/C, 3/SR, 908, p. 12, 1959.
3. General Assembly Official Record, A/C, 3/SR, 911, p. 26, 1959.
4. James P. Lucier, *Unconventional Rights—Children and the United Nation*, Family Policy, Family Research Council, Washington D. C., Aug 1992.
5. Takeo Doi, *The Anatomy of Dependence: The Key Analysis of Japanese Behavior*, Kodansha International, USA, 1973.
6. Takeo Doi, "On the Concept of *Amae*," *Infant Mental Health Journal*, Vol. 13, No 1, p. 8, 1992.
7. *Ibid.*
8. Doi, note (5), p. 139.
9. Mary Ann Glendon, *Rights Talk*, 47, Free Press, New York, 1991.
10. J. Goldstein, A. Freud, A. J. Soinit, *Beyond the Best Interest of the Child*, 49–50, the Free Press, New York, 1973.
11. C. P. Cohen and H. A. Davidson (ed.), *Children's Rights in America: UN Conversion on the Rights of the Child, Compared with United States Law*, iii, American Bar Association, 1990.
12. E. H. Erikson, *Young Man Luther: A Study in Psycho-analysis and History*, pp.117–118, W.W. Norton & Company, Inc., 1958.
13. Bruce Hafen, *Individualism and Autonomy in Family Law: The Waning of Belonging*, 41, *BYU Law Review* No 1, 1991.
14. H. Meier, *Die Grundrechte des Menschen im Modernen Staat*. 71, Verlag A. Fromm. Osnabrück, 1973.