

## Working children in Europe: a socio-legal approach to the regulation of child work

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# **Working children in Europe: a socio-legal approach to the regulation of child work**

## **Abstract**

Since the beginning of the 2008 economic crisis, reports of child work across Europe have increased. This article looks into the European Union (EU) legal framework that applies to children who work, and offers a socio-legal analysis of child work regulation more generally. In so doing, it considers the role of a range of factors relevant to the regulation of child work, including children's rights, cultural relativism, social constructions of childhood, empirical evidence of the benefits and harm of child work, and the different contexts in which children are found working. The article advances a justification for a restrictive approach in relation to child work in the European context, on the basis of legal, social, economic and cultural factors.

**Key words:** children's rights, child labour, child work, European Union, labour law, Young Workers Directive, cultural relativism, childhood

## **1. Working children, child labour and the European Union**

When the European Commission proposed a Council Directive, in 1992, on the protection of young people at work, it mentioned in the proposal's explanatory memorandum that there were around 2 million 15-year-olds working in the (then) European Community, according to the 1989 Eurostat labour force survey (Commission of the European Communities 1992: 47). Later in the 1990s, it was recognised that large numbers of children worked throughout all European countries, very often illegally and mostly in family and agricultural contexts (Europe 1996: 47). In the 2000s, children were still found to be working in the EU: in Portugal, for example, as many as 4.1% of children aged between 6 and 15 carried out economic activities, thus combining their school responsibilities with work ((coord.) 2003). Time has not helped to reduce these figures – if anything, it has increased them. Despite the lack of reliable data – a problem exacerbated by the innumerable, often young, children working in the informal economy, in domestic environments, in family businesses, and other undeclared activities – in 2009 in the EU 2.2 million children aged between 15 and 17 were formally recognised as working for pay, profit or family gain (Commission 2010: point 3.2.1). This figure could in fact be as high as 4 million, and even reach 7.5 million by adding those children under the age of 15 (al. 2007: 4). The economic crisis that started in 2008 has exacerbated this problem, with trade unions and the media reporting an increasing number of children dropping out of school too early and acting as sibling-carers, sex workers, farm workers, shop assistants for heavy work, and members of local mafias (as beggars, prostitutes or drug dealers) (Confederation 2011: ; Nadeau 2012). This trend has been confirmed by the Council of Europe's Commissioner for Human Rights, Nils Muižnieks, who has

made a clear link between child labour, especially in hazardous occupations such as agriculture and construction, and austerity measures in countries such as Cyprus, Greece, Italy and Portugal (but also in others like the UK) (Muižnieks 2013). Muižnieks has also asserted that governments need to be more proactive in monitoring the situation and using the 1989 Convention on the Rights of the Child (CRC) and the Council of Europe's European Social Charter (ESC) to prevent and remedy instances of child labour (Muižnieks 2013). A 2015 report by the EU Agency for Fundamental Rights also confirmed the existence of cases of children across Europe found on the streets begging, working in agriculture, in restaurants, as domestic workers and involved in criminal activities, often in contexts where there are no or limited labour inspections or any sort of legal enforcement (Rights 2014).

The reasons behind children entering the labour market are extensive and complex, and not exclusively related to economic factors. Generally, a range of cultural, economic, social, family and personal factors interact to lead a child to work, so 'the problem of child labor is based on a multicontextual set of complex variables that are structural to the societies in which it exists'. (Karunan 2005: 295-6) Child work may thus be a consequence of a set of macro-, meso-, and micro-level circumstances, which may include socio-cultural constructions of childhood, poverty, vulnerability factors, inadequate educational opportunities, the role of sources of authority (including family), capitalist and neo-liberal economic policies, precarious social security systems, gender roles, consumerist pressures, wish for greater financial autonomy and social status, personal enjoyment and future employment prospects, and the internationalisation of production (Lavalette 1994: 40 and 127; Morrow 1994: 140 ff; Bourdillon 2005: 146-7; Karunan 2005: 307-8; White 2005: 329; Bourdillon, Levison et al. 2010: 36 ff). Despite such a complex set of factors, it is important to note that, even in the European context, deprivation – associated with the mentality of employers and societal complacency – can lead to child work and limited governmental intervention (Eaton and Goulart 2009: 442). At any rate, such a broad and complex range of causes logically requires a holistic approach to tackle the instances of harmful work for children (Ebdon 2000).

One could be tempted to consider that, in the light of such widespread flouting of the child work regulations across the EU, such norms must be inadequate and hence should be relaxed to accommodate the current real experiences of children. That, it is submitted, would be unduly uncritical, though. Indeed, the fact that many children work illegally nowadays is not a reason to believe that the existing regulations should be removed and that children should be allowed to work; instead, the current state of affairs may well mean the opposite, i.e., the regulation of child work and the implementation of such regulation may need to be rendered more effective. To draw a parallel: one would not argue in favour of relaxing norms of criminal law protecting the safety of the individual, no matter how high the rates of homicide, manslaughter and grievous bodily harm become. Similarly, high rates of child work should not lead us to render the legal framework more flexible, but, instead, to look further into the causes, consequences and policy avenues in this context. This position seems to be more compatible with the 'welfare of all' that the European Social Model tries to achieve, i.e., to provide a 'safety net [that] includes preventing individuals from being mistreated at work, and providing them with a protection when they are sick, poor, or old [and young, I would add]. Such protection is fundamental to a civilised society.' (Barnard 2014: 4).

In this article I explore the regulation of child work at EU level – without losing sight of other legal sources of child work regulation, particularly the International Labour Organization (ILO) instruments – and consider a range of relevant arguments and factors to determine which approach EU Member States should adopt in this regard. In Section 2, I present summarily the EU legal framework on child work, and in Section 3 I discuss some fundamental definitional issues. In Section 4, I summarise the main traditional approaches to the child labour debate, and in Section 5 I expand on the relationship between child work regulation and children’s rights. In Sections 6 and 7, I look further into those rights usually invoked to argue in favour of greater flexibility in child work regulation, namely the rights to equality, autonomy, privacy and participation. In Sections 8 and 9, I offer an analysis of the role of cultural relativism and social constructions of childhood in relation to child work. In Section 10, I examine the position of children in formal employment relationships, including the range of benefits and harm that those relationships may entail. In Section 11, I look into the regulation of child work in non-formal employment relationships, and assert where the line should be drawn in relation to the intervention of labour law. Finally, in Section 12, I offer some concluding remarks, summarising why a restrictive approach to child work in the European context is justifiable and recommendable.

The discussion which follows will draw on evidence and arguments raised in global debates on child work, but the main perspectives and positions adopted will relate to the European context. Furthermore, the analysis will focus particularly on children’s rights, development and welfare – and to that extent will be child-centred – but will also rely on a range of other policy considerations, such as the value of education and the European socio-economic context. This is an important point: if the analysis were to be limited to a narrowly defined children’s rights perspective focusing on the child as an autonomous rights-holder (thus sidelining broader child-related legal principles and policy considerations), different and – I argue – poorer results would ensue, as a mere children’s rights approach to ethical issues (such as child work) only offers an incomplete view of the ethical aspects of children’s lives and may, in fact, be both theoretically and politically disadvantageous for children and adults alike (O’Neill 1992: 25). O’Neill rightly argues that the ‘view we get from the perspective of rights is not merely indirect, but blurred and incomplete’. (O’Neill 1992: 39) This is particularly the case, I believe, when the aim is to produce law and policy that wishes to take individuals as its centrepiece and achieve the most humane results possible for them. Indeed, as I have explored elsewhere, a legal system based solely on rights risks pitting opposing rights and their holders, fuelling a society of conflict and selfishness, and depriving debates of more radical and creative ideas of humanity (Ferreira 2016). Furthermore, the fact that children’s special vulnerability and powerlessness prevents them from being “‘free, equal and independent” agents of the social contract model’ (footnotes omitted) requires an analytical framework that goes beyond traditional rights frameworks (Dixon and Nussbaum 2012: 593). This approach also finds support in the feminist critique, which argues in favour of contextual, relational, experience-based, embodied, caring justice (West 1997: ; Cockburn 2005). Rights discourses thus need to be tempered by a range of other policy and ethical considerations, which is what I will do in the following analysis.

## 2. The EU legal framework on child labour

The figures and instances of child work across Europe inevitably make one wonder what the EU has done in this context. The importance of the EU in this context is obvious: several EU Member States clearly lack the will to improve labour standards and tighten regulations, as they have for a while followed a neo-liberal, deregulatory line of action, which sees a light-touch labour legal framework as a competitive advantage and beneficial to the (free market) economy (Tucker 2010: 101; Barnard 2014: 10 ff; Mangan 2015). One should not rely solely on domestic political forces to enhance the protection of children in such labour markets, as ‘the rise of neo-liberalism ... has unleashed market forces at the expense of regulatory protection’, supported by a ‘general trend ... toward a recommodification of labour achieved through a weakening of collective bargaining and minimum standards laws, both by formal amendment and by more indirect means’, and accompanied, amongst other things, by diminished enforcement and violation of contractual and legal obligations towards workers (Tucker 2010: 101). This has led in several developed countries, such as Germany, the UK and the USA, to ‘outcomes which might at one point have been thought unattainable [but] have been reclaimed as available ground by aggressive employer action in evading, avoiding and ultimately abandoning previously established legal and institutional constraints’ (Tucker 2010: 137). One must consequently shift attention to a supranational body with the competence to operate in this field and, hopefully, with the required social sensitivity and political will.

After the onset of the 2008 economic crisis, the European Commission has had the opportunity to express some concern about working conditions, exploitation and employability of children and young workers, namely with regard to traineeships (Commission 2013). Yet, the piece of legislation that remains the most relevant and promising in this context is undoubtedly the Young Workers Directive (Directive 94/33/EC of 22 June 1994 on the protection of young people at work, hereafter YWD). Indeed, one would instinctively place the YWD at the centre of any EU policy on children in the labour market (for an in-depth discussion of the YWD and a range of other EU labour law instruments which affect children, see (Ferreira 2015)).

The YWD imposes on Member States the obligation to protect children from economic exploitation and any work that may have a negative impact on their development or education. It sets the minimum age of admission to employment at 15, aligns it with the educational system milestones, limits working time to 40 hours/week and 8 hours/day, and bans night work for children. The YWD allows children from the age of 14 onwards to take part in combined work/training schemes and carry out light work (up to 12 hours/term-time week and 2 hours/school day, to ensure enough leisure and school homework time). The YWD also allows children to be involved in cultural or similar activities provided, amongst other conditions, that the activities in question are not likely to be harmful to the child’s safety, health, development or education. Finally, the YWD establishes several obligations that employers have in relation to child workers in the light of their vulnerability.

Some limitations can be pointed at in the YWD. First, the YWD does not apply to the provision of services or to self-employment. Second, Member States are allowed to exclude from the directive's scope of protection occasional or short-term work involving domestic service in a private household or non-harmful work for a family undertaking. Third, Member States are allowed to derogate on the basis of 'objective grounds' from the working time limits. Fourth, the night work prohibition may also be derogated from under certain circumstances and in certain fields. Fifth, a general *force majeure* derogation ground applies to working time, night work, rest periods and, in relation to children between the ages of 15 and 18, breaks. In the light of such limitations, I have suggested elsewhere the need to increase the material scope of the YWD, including by limiting the loopholes and the scope for derogation in this directive (Ferreira 2015). In the light of the competing arguments and range of relevant factors, it is important to justify more fully such a restrictive position. In order to do so, it is essential, first of all, to tackle fundamental definitional issues.

### **3. How should child labour be defined?**

Article 32 CRC enshrines the 'right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development', namely by establishing a minimum age(s) for admission to employment, regulating hours and conditions of employment, and providing for appropriate penalties or other sanctions to ensure effective enforcement. The crux of this norm is the notion of 'exploitation', however, exactly what 'exploitative' means has never been authoritatively defined and is thus open to discussion; the same applies to 'work', although it is consensual that 'work' is more encompassing than 'employment' (Swepston 2012: 20-1). This also derives from the relevant ILO conventions – Conventions No. 138 concerning Minimum Age for Admission to Employment (C138), adopted in 1973, and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (C182), adopted in 1999. The ILO has indeed played a key role in the development of an international legal framework to regulate the work carried out by children along the same lines indicated by Article 32 CRC, which found inspiration in the ILO's work in this field. Despite the adoption of C182, C138 remains the undisputed main pillar of the ILO's policy regarding child work (Bourdillon, Levison et al. 2010: 58), establishing minimum conditions regarding working ages, working hours, conditions of work and penalties for violation of child labour norms. The key message both at international and EU level is thus that children may work, but only after a certain age and under certain conditions.

The discussion below will rely on the notion that one may place any form of child work along a continuum between work that is entirely positive and beneficial to the child's physical and psycho-social (cognitive and emotional) development and well-being, at one end, and work that is in all ways damaging to the child's physical and psycho-social development and well-being, at the other end, with a range of work experiences in between that combine both positive and negative aspects for children

(Hobbs and McKechnie 2007: 226; Bourdillon, Levison et al. 2010: 161). When crossing a certain limit of potential or actual harmful effect on the child's physical and psycho-social development and well-being, the work turns from mere (lawful) child work into (unlawful) child labour. Despite the problems that exist with the notion of 'human development' (Bourdillon, Levison et al. 2010: 93), harm to a child's development remains the crucial concern in the child work/labour debate and thus needs to be its centrepiece. The fact that children's development constitutes one of the four CRC guiding principles makes it all the more relevant in any debate relating to children (Peleg 2012: 375).

This distinction between child work and child labour does not translate into languages other than English very easily, due to the fact that work and labour are commonly one and the same word, which leads authors and policy-makers writing in other languages to refer more commonly to child work that is unlawful or harmful and child work that is not. The child work/labour distinction has also been criticised by several authors (Lavalette 1994: 8; Hobbs and McKechnie 1997: 136 ff; Hobbs and McKechnie 2007). James et al., for example, criticise this distinction for entailing moral judgments, as if these were 'self-evident universals of an obvious and unproblematic kind' (James, Jenks et al. 1998: 110). Yet, this distinction is helpful in determining when a certain threshold of harm is crossed, thus triggering the intervention of legal regulation (Organization). Certainly, to determine when such a threshold is crossed, law and policy-makers need to make moral judgments about the potential or actual harm that certain forms of work may cause to children of certain ages and in certain circumstances. This is the work that law and policy-makers need to do and any law and policy-making requires some degree of moral judgment – obviously that cannot and should not prevent law and policy from being produced, even (or mostly) when the subject matter is unclear and problematic. Most importantly, refusing to draw the line between child (lawful) work and (unlawful) labour would be itself immoral, as it would allow harm to be caused to children, in violation of children's rights and the obligation of the relevant authorities to protect them. It is therefore legitimate to distinguish between child work and child labour (irrespective of that distinction not receiving everyone's approval), as long as the focus remains on the effect that work may have on a child, rather than on a particular form of work in abstract (even though some forms of work will be, in abstract, generally harmful – such as mining – or harmless – such as babysitting done by older children).

The definition of child labour thus relies on the harm that work may cause to the children's development, hence engaging the best interests of the child worker (Weston 2005: xvii). This allows one to shift the 'child labour' threshold towards more restrictive or lenient levels in the child work continuum. Child labour is admittedly a social construction (Lieten and Meerkerk 2011: 15), similar to childhood itself, as will be discussed below. How child labour is socially constructed thus varies throughout time and space, and has remained debatable, as I will now explore.

#### **4. Child labour: welfare versus autonomy, abolition versus regulation**

Scholars, activists and policy-makers have, in the main, approached the child labour debate from two points of view: the welfare/abolitionist and autonomy/regulationist approaches. It is important to point out from the outset that these approaches relate to child labour, hence to labour that – by definition – is somehow harmful to children’s physical and psycho-social development.

The welfare/abolitionist approach argues in favour of abolishing all forms of child labour, and in favour of promoting children’s education and socio-cultural development through other means (Bueren 1995: 264; Mizen, Pole et al. 2001a). The welfare approach – which one may regard as the logical consequence of the child protectionism movement (Hobbs, McKechnie et al. 1999: 198-9) – finds support in Article 32 CRC and the CRC emphasis on welfare and the best interests of the child (Article 3 CRC). The welfare approach finds extra support in the fact that reducing child labour also brings about broader socio-economic advantages for societies (further explored below), namely a better skilled labour force and higher socio-economic standards (Organization 2003: ; Buck, Gillespie et al. 2011: ; Muižnieks 2013). Moreover, the principle of evolving capacities (reflected in Articles 5, 12 and 14(2) CRC) and the arguably insufficient maturity and preparation of many children to face the difficulties of the labour market offer further strength to a welfare approach to child labour (on the concept of evolving capacities and maturity, see (Lansdown 2005: ; Ferreira 2008: 44)).

The autonomy/regulationist approach, instead, favours greater independence and range of choice for children, thus promoting children’s autonomy, defending their right to work, and concentrating on regulating their working conditions. Sharing great affinities with the child liberationist movement (Lavalette 1994: 13; Hobbs, McKechnie et al. 1999: 144), the autonomy approach allows children the possibility to work to satisfy their wish to be socially and economically independent, and contribute to their families’ income and well-being (Alston 1989: 36; Ochaíta, Espinosa et al. 2000: 25; Hanson and Vandaele 2003: ; Hanson and Nieuwenhuys 2013). Authors adopting this approach see the current legal framework as protectionist and welfarist (Stalford 2013: 875). The autonomy approach may be argued above all from the point of view of the child’s right to autonomy, privacy and participation (further discussed below). Children’s agency needs to be recognised in this context as well. As Oswell argues, children ‘are actors, authors, authorities and agents ... [and] as a class or group or collective of people have become more vocal, more visible and more demonstrable in ways that resonate across our contemporary world.’ (Oswell 2013: 3). The lack of the necessary socio-economic conditions to eliminate child labour completely is also generally used to justify the (at least interim) mere regulation of child labour, as opposed to its abolition. Finally, the lack of straightforward, historically linear and realistic solutions to abolish child labour completely is also used as an argument to favour regulation vis-à-vis abolition of child labour (Morrow 2010: 437).

Whilst the welfare/abolitionist approach would tend to emphasize the loopholes in the YWD and defend its strengthening, the autonomy/regulationist approach would tend to have the YWD focus on the worst forms of child labour and concede greater flexibility in other instances of child work. These two approaches have also been illustrated in relation to the Bolivian 2014 statutory amendment allowing children to work as self-employed from the age of 10 under parental

supervision and to work from the age of 12 for a third party. Whilst defenders of this law used the Bolivian socio-economic conditions, cultural traditions and children's rights to work and autonomy to justify the changes introduced, opponents of these changes invoked children's rights to health and to education, the child's best interests and the need to remove children from cycles of deprivation, to explain the inadequacy of the new norms (Moloney 2015: ; ILO 2016: ; Becker 2104).

This distinction between child labour 'welfarists' and 'autonomists' has, understandably, helped to frame the debates and facilitated the understanding of the positions adopted by key stakeholders. Moreover, it fits the more general labour 'commodification/decommodification or protection/liberalization dialectics [that] is constant and ineradicable in market societies' (Tucker 2010: 100), as one can identify strong affinities between the child labour 'welfarists' and the labour 'protectionists', and between the child labour 'autonomists' and labour 'liberalizers'. Yet, this polarisation has been, in the long run, very unhelpful. As White puts it, there has been a 'persistent, counterproductive, and largely unnecessary polarization between "abolitionist" and "protectionist" approaches to the problem of juvenile employment.' (White 2005: 322). Moreover, this polarisation corners debates into 'false choices' – in the sense that these are by no means unavoidable or even appropriate – between children-centred and adult-centred approaches and between work and education, for example (Karunan 2005: 313). Another dimension of these 'false choices' is exposed by the need to prohibit at least some sorts of work, even from an autonomy/regulationist perspective, thus combining aspects from both approaches. Children's right to work may well be recognised, but it is the terms under which that right can be exercised (in terms of minimum age, health and safety, minimum wage, etc.) that remain contentious (Lavalette 1999: 17-8).

The lack of straightforward, simple solutions to abolish child labour should not weigh heavily in this debate, as that would be simply giving into realities that may be undesirable on so many accounts. Nevertheless, a range of rights and policy-related arguments do need to be dissected and balanced in order to achieve a holistic and defensible view on this debate in the European context, which I will turn to now.

## **5. Child work regulation and children's rights**

The regulation of child work is sometimes presented in the literature as an interference with children's rights (especially in contrast with the broader scope of adults' right to work). It should be made clear from the start that this is not the case. In fact, regulating the involvement of children with the world of work is not only compatible with, but also essential to, the fulfilment of children's rights. This is the case both in relation to children's labour rights – when they do work – and children's rights outside the work context, such as the right to education (Articles 28 and 29 CRC), social security (Article 26 CRC), play (Article 31 CRC), health (Article 24 CRC), development (Article 6(2) CRC), etc.

Indeed, when children do work (within the existing legal framework), it is essential to ensure that their rights to, for example, participation, safety, equality and fair remuneration are respected. To protect children's right to education, play and health, however, it is necessary to restrict their right to work. This restriction can, in fact, be empowering for children, as it has the potential to allow them to gain academic or vocational qualifications, to develop a range of social skills and competences, fulfil their right to play, and to reach a certain level of physical and psycho-social development before needing to face the challenges and difficulties inherent to many labour contexts.

The rights to rest, play, leisure and culture seem to be 'often perceived as a luxury in comparison to other rights whose violations bear more cruel, visible and spectacular consequences [yet there is a] wide recognition in and outside child development circles of the crucial role that rest, play, leisure and culture have for the social, cognitive and personal development of the child.' (David 2006: 17). The rights to play and leisure are in fact linked – and can work as facilitators – of civil rights (Articles 13-17) and the right to participation (Article 12) enshrined in the CRC (David 2006: 24), as the time outside school and work is ideal for children to exercise their freedom of expression, thought and association, privacy, and access to information, thus empowering themselves. The Committee on the Rights of the Child (ComRC) has subscribed to this point of view, when expressing its concerns about the impact of child labour and domestic work on children's rights, in its General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), whose importance is usually underestimated by both adults and authorities (see paras. 4, 14, 26, 29, 33, 49, 57)(CRC) 2013b). It may be true that the importance that one places on children's leisure is determined by one's culture (Ansell 2005: 172), but in the European context it seems to be generally agreed that leisure is greatly valued by both children and adults, which justifies regulation of work practices (especially time) for all, including adults.<sup>1</sup> The conclusion that must ensue is that securing children's rights in non-work environments is not only compatible with securing children's rights in work environments, but also necessary and child-centred.

At any rate, as will be further explored below, adopting a child-rights centred approach in legal analysis does not mean necessarily giving priority to a child's rights claim (including a child's claim based on the right to work), as rights may be legitimately curtailed in the light of a range of other factors and evidence that needs to be considered. Indeed, broader child interests and policy priorities may considerably influence this debate. Firstly, the principle of best interests of the child prevents the legal system from abandoning children to their own autonomy, and instead recognises a gradually increasing capacity of children to exercise their rights that goes hand in hand with their increasing maturity (Tobin 2009: 590). Secondly, analysing any child-related matter only from a rights perspective is far from the best solution. To quote O'Neill, '[s]ince the whole point of appeals to fundamental rights is to "trump"

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<sup>1</sup> See, for example, Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (Working Time Directive), and the Sunday trading line of case law of the Court of Justice of the EU (for example, Case C-145/88 *Torfaen Borough Council v B & Q plc*, Judgment of the Court (Sixth Chamber) of 23 November 1989, ERC 1989-03851).

appeals to other considerations (eg, welfare, convenience, happiness), there is no denying that insistence on respect for fundamental rights is only contingently and at times not closely connected to good results.’ (O’Neill 1992: 25). Indeed, ‘the legitimacy of the discourse of rights becomes problematic when it aspires to become the sole or fundamental ethical category.’ (O’Neill 1992: 36); see also (Ferreira 2016). Furthermore, rather than limiting oneself to rights discourses, rights can often be protected more effectively by measures that may be classified as ‘welfarist’ or ‘protectionist’, as social protection against, for example, harm, poverty or exploitation enhances the basis for acquiring greater freedom overall (Lavalette 1999: 33-4).

O’Neill goes as far as to say that talking about children’s rights has more political costs than advantages, hence it becomes more advantageous to focus on obligations vis-à-vis children, namely when the obtaining of certain types of care or education is in question (O’Neill 1992: 25 and 35). Completely sidelining any ‘rights talk’ would be going too far, but I agree that focusing completely on children’s rights at the cost of neglecting a range of other factors can, in fact, bring more disadvantages than advantages for children themselves and their quality of life. As Lavalette rightly points out, the “rights discourse” is limited in its ability to “liberate children”, [and it] decontextualizes individuals from the social work and dislocates them from the social relation which structure and shape their lives.’ (Lavalette 1999: 17). In the context of child labour, this means that we cannot separate a child’s right to work from an employer’s ‘right’ to exploit children as cheap labour: whilst this does not mean dismissing rights claims, it does mean being aware of contexts and consequences of right claims (Lavalette 1999: 35).

Key amongst the factors to consider beyond a rights framework is the value of education. It has been universally recognised that education is essential to improve individuals’ future earnings, health and socio-economic conditions, as well as countries’ overall economic growth and socio-political environment, particularly when the educational system is equitable and appropriate to children’s needs (Ebdon 2000: 14-18). It has also been ascertained that education is key in breaking intergenerational cycles of, for example, poverty, illness, infant and child mortality and poor nutrition (Post 2010). The ComRC has thus rightly made a direct link between education and children’s development (Peleg 2012: 386) – one of the four CRC main principles, as mentioned above. Furthermore, it is acknowledged that educated children are more likely to be successful in the labour market, which brings individual, familial and societal benefits of an economic, health and overall quality of life nature (Fassa, Parker et al. 2010a: 255). One could counter-argue that this is placing too much emphasis on the future of children rather than their present, but in this regard, it is submitted, the advocates of the capabilities approach are right to argue that ‘we ought to support capabilities that will best promote a long-term future of full capabilities, given the particular social and historical context.’ (Dixon and Nussbaum 2012: 555). Similarly, Eekelaar argues that a child’s self-determinism may be limited when it may hurt the child’s self-interest, on the basis that the ‘purpose of dynamic self-determinism is to bring a child to the threshold of adulthood with the maximum opportunities to form and pursue life-goals which reflect as closely as possible an autonomous choice.’ (Eekelaar 1994: 53). Eekelaar reinforces this by stating that one must ‘suppose that presently incompetent children would wish to have choices made on their behalf which maximize their opportunities for making choices when they become fully competent.’ (Eekelaar 1998).

All evidence points to education being a very effective tool to promote ‘people’s real opportunities for functioning and choice’ by increasing one’s likelihood of employment and higher earnings, thus contributing to greater social justice and enhancing human dignity (Dixon and Nussbaum 2012: 557 and 582). I thus concur with Dixon and Nussbaum’s assertion that ‘[l]aws making education compulsory and banning child labor also help ensure that children in fact have the space and support necessary to develop [in a way that allows them to acquire adult choice-capacities]. And because ... children will ultimately attain full adult freedom, it does not denigrate them to impose such limits on their freedom in the interim.’ (Dixon and Nussbaum 2012: 576). This does not mean that any compulsory education system will do, as education needs to be responsive to individual children’s needs, preferences and goals (Eekelaar 1994: 58). Moreover, it is not only the formal system of education that can enhance children’s capabilities – all types of learning, including informal and non-formal learning, may contribute to that process, and should thus be promoted and valued. Yet, any learning should take place in an environment that does not entail undue pressure or risks for the development and well-being of children, hence the reasonability of restricting work under some circumstances.

Finally, a European vision of contract law embedded in social justice considerations also requires contract regulation to ‘prevent unfairness in the terms of contracts that disadvantage particular groups’ (Law 2004: 668), thus clearly encompassing employment contracts entered into by child workers. Indeed, social justice requires employment terms and conditions to be thoroughly scrutinised and subject to fundamental values related to societal fairness (Law 2004: 663). From such a perspective, and acknowledging the ‘network society’ in which we currently live, one could also construe a right of consumers to goods that have been produced without recourse to work that violates labour standards or fundamental rights, including child labour (Collins 2014).

So we should conclude that, overall, regulating child work is compatible with – and even necessary for – children’s rights, capabilities and well-being, and socially fair treatment more generally. It is still relevant, though, to scrutinise further the role of specific children’s rights in relation to child work regulation.

## **6. Child work regulation and children’s right to equality**

One could claim that the prohibition of discrimination on grounds of age that can be found in Article 21 Charter of Fundamental Rights of the EU may be more incompatible with rules that restrict children’s freedoms and rights than those of adults, specifically in the context of labour (Stalford 2013: 876). It is true that Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (the Framework Directive) can be used as a powerful tool in the EU context to complement the protection of child workers. Indeed, children and young workers are recurrent victims of discrimination in the world of work: they are victims of serious misconceptions and prejudices, they are more likely to be unemployed, and there is evidence of discrimination against

younger workers with regard to recruitment, selection, pay, training, promotion and pensions (in the UK context, for example, see (Age 2006: ; Sargeant 2010b)). Danish young workers in the retail sector, for example, report being placed at the bottom of the workplace hierarchy, feeling socially isolated, and being expected to work whenever needed (i.e., outside their usual working days/hours) (Frederiksen 1999). This is far from being an exclusively European problem, as the ‘[d]angerous conditions of working may thus be addressed [by the CRC Committee] but concerns such as minimum wage discrimination and discriminative union membership are rarely focused upon.’ (Nolan 2013). In the EU context, the Framework Directive has a role to play here, by prohibiting discrimination on grounds of age, including both direct and indirect forms of ageism.

Although the Court of Justice of the European Union (CJEU) has generally adopted a flexible approach with regard to Article 6 of the Framework Directive and the scope for justification of discrimination on grounds of age,<sup>2</sup> more recent cases have hinted at a stricter scrutiny of national practices.<sup>3</sup> Moreover, although the CJEU has not yet had the opportunity to deal with any case of discrimination against child workers, it has already determined that young workers’ interests, including in relation to pay and dismissal, fall within the scope of protection of the Framework Directive.<sup>4</sup> The potential of the Framework Directive and anti-discrimination provisions related to age, to protect young workers is confirmed by national case law, such as *Wilkinson v Springwell Engineering Ltd* in the UK, which concerned the dismissal of an 18-year-old for lack of experience, which in fact equated to a young age rather than lack of ability.<sup>5</sup>

Still, a crucial aspect of the discrimination against young workers – that of pay – remains largely unaddressed, and this may make children particularly attractive to (at least some) employers. Most European countries, including Belgium, the Czech Republic and the UK, apply lower minimum wages for young workers on the basis that it helps young workers (perceived as less skilled and productive by employers) to enter the labour market and, contradictorily, deters young people from wishing to enter the labour market and encourages them to remain in education (Sargeant 2010a: ; Rycx and Kampelmann 2012). Interestingly, evidence suggests that lower pay for younger workers has little bearing on the chances of employment for these workers and the reasons behind young people leaving education are too complex to be linked to a lower minimum wage (Sargeant 2010a). This indicates that lower minimum wages for younger workers should be thoroughly reconsidered, and the introduction of universal minimum wages should be considered seriously (Leonard 2002: 202). Pay, as such, is excluded from the scope of competence of the EU (Article 153(5) TFEU), so the only EU-wide means to deal with lower pay for younger workers – a

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<sup>2</sup> For example, C-144/04 *Werner Mangold v Rüdiger Helm* [2005] ECR I-09981; C-411/05 *Félix Palacios de la Villa v Cortefiel* [2007] ECR I-08531; and C-388/07 *Age Concern England v SSBERR*, [2009] ECR I-01569.

<sup>3</sup> C-447/09 *Prigge and others v Deutsche Lufthansa AG* [2011] ECR I-08003.

<sup>4</sup> For example, C-88/08 *David Hütter v Technische Universität Graz* [2009] ECR I-05325 concerned the determination of pay, C-555/07 *Seda Küçükdeveci v Swedex GmbH & Co. KG* [2010] ECR I-00365 concerned the calculation of the notice period for dismissal, and C-297/10 *Hennigs v Eisenbahn-Bundesamt* and C-298/10 *Land Berlin v Mai* [2011] ECR I-07965 concerned a national collective agreement providing for differences in basic pay according to age.

<sup>5</sup> ET/2507420/07.

form of direct age discrimination – is the Framework Directive. More thorough scrutiny is needed of all those practices and norms that, under the guise of favouring younger people’s education and promoting their chances of obtaining employment, somehow discriminate between them and older workers and use detrimental stereotypes. To do this, the legitimacy of the aims and the proportionality (including adequacy, necessity and strict proportionality) of the measures/norms used to achieve those aims should be tested thoroughly by applying Article 6 of the Framework Directive narrowly (as should be the case with any exception to a general principle).

The principle of equality and anti-discrimination statutory norms may not, however, be used to question a minimum employment age and other limitations on child labour, as all statutory instruments – not only domestic but also the CRC and ILO instruments – expressly establish that a distinction needs to be drawn between the forms of work with which children and adults can engage. This distinction is not only lawful, but necessary to ensure respect for the principles and rights of children enshrined in the CRC, especially the principles of protection and best interests and the rights to education, play and health. Furthermore, Article 6 of the Framework Directive clearly states that ‘Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary’, particularly in relation to access to employment by young and older people. Minimum employment ages, as well as default retirement ages and a range of other measures restrictive of one’s freedom to work and one’s rights at work, are entirely legitimate and lawful provided they are objectively and reasonably justified by a legitimate aim and strictly proportional.<sup>6</sup>

A more sophisticated analysis of equality in the context of child labour cannot fail to also note the socio-economic background of many working children in developed countries. Indeed, in the UK, for example, it has been found that higher poverty indicators are, contrary to what might be expected, inversely related to the proportion of working children (McKechnie and Hobbs 2001: 21), and children with only one parent and with families receiving Income Support are less likely to have a part-time job than other children (Middleton and Loumidis 2001: 28). In other words, the experience of work during one’s childhood/teenage years seems to be more closely related to middle class families, where parents may possess the necessary network to arrange for part-time work for their school-age children (Hobbs and McKechnie 1997: 91-2; McKechnie and Hobbs 2001: 21), leading some authors to increasingly link child work in developed countries to a ‘bourgeois’ ideology (Lavalette 1994: 219). Children from more disadvantaged socio-economic backgrounds seem to end up working in informal settings (outside formal employment relationships), for longer hours, and earning less per hour (Middleton and Loumidis 2001: 31). This mirrors the experience of working children (and their

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<sup>6</sup> Case C-388/07 *The Queen, on the application of The Incorporated Trustees of the National Council on Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform*, 5 March 2009, ECR 2009 I-01569; for a case particularly relevant to young workers’ rights see Case C-432/14 *O v Bio Philippe Auguste SARL*, 1 October 2015, nyp.

families) in the USA (Manning 1990: 189; Mortimer, Finch et al. 1990: 215; Phillips and Sandstrom 1990: 167 ff).

Consequently, although it may seem contradictory, *prima facie* discriminatory measures against children with regard to their access to the labour market are not only legally justifiable on grounds of legitimate social and employment policy objectives, but also, in fact, on grounds of the fight against structural socio-economic inequality affecting children. Indeed, by preventing children from entering the labour market and focusing, instead, on furthering their educational achievements, children will be in a much better position to overcome the socio-economic inequality entrenched in society (Ebdon 2000: 14-18).

## **7. Child work regulation and children's rights to autonomy, privacy and participation**

One may also legitimately question whether limiting the entrance of children into the labour market and disallowing work in family businesses under some circumstances does not unreasonably affect a child's rights to autonomy, privacy and participation. Indeed, one needs to recognise children as 'active social actors who can make a positive contribution, as children, to social development and change.' (Karunan 2005: 303). Evidence of this capacity in the context of labour are the child workers' movements in several regions of the world – for example, the National Movement of Working Children and Adolescents of Peru and the African Movement of Working Children and Youth (Bourdillon 2005: 144-5; Bourdillon, Levison et al. 2010: 142 ff) – which usually argue in favour of the right to work and the right to safe working conditions. This is part of a broader desire of many children to be involved in all aspects that affect their lives, which attests to their competency for self-advocacy and promotes their resilience and coping strategies (Grover 2005: ; Karunan 2005: 305).

These developments and arguments have contributed to the slow but steady replacement in scholarly work of the myth of childhood as an idyllic period in the lives of incompetent and immature human beings, with the myth of entirely capable and independent young persons. This is not only an inappropriate denial of children's limited capacities in many regards in the light of their biological and psychological features (further discussed below), but it is also in contradiction with both the recognised vulnerability and needs of children and the CRC principle of evolving capacities, even if vulnerability is a matter of degree and also affects adults (Larkins 2014: 8). Indeed, the CRC itself, reinforced by the 1996 Revised European Social Charter,<sup>7</sup> proclaims not only a set of rights (amongst which are the rights to autonomy and participation), but also a set of principles that include the principles of evolving capacities and protection of children in the light of their limited autonomy and

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<sup>7</sup> European Committee of Social Rights, *Defence for Children International (DCI) v The Netherlands*, Complaint No. 47/2008, 20 October 2009; *Defence for Children International (DCI) v Belgium*, Complaint No. 69/2011, 27 June 2011; Conclusions 2006, Article 7(10), Moldova.

particular cognitive, emotional and physical vulnerability, specifically in the field of work (Wihstutz 2011: 453; Dixon and Nussbaum 2012). As argued by Lansdown, the ‘concept of evolving capacities is central to the balance embodied in the Convention [on the Rights of the Child] between recognising children as active agents in their own lives, entitled to be listened to, respected and granted increasing autonomy in the exercise of rights, while also being entitled to protection in accordance with their relative immaturity and youth.’ (Lansdown 2005).

In reply to the recurrent suggestion of ‘liberationists’ and ‘regulationists’ that children should be allowed to work because (for whatever reason) they wish to do so, it is important to make clear that it would be dangerous to allow children to do all they wish and conduct policy-making accordingly: in an age where research participants’ views are often transformed into typifications of whole cultures and then translated into policies, it is essential to deconstruct such ‘ethnographic authority’, question its authenticity, and be aware of the power of the figure of children as a rhetorical device (James 2007: 265). More plainly put, ‘[w]hile children’s opinions about a range of issues which directly or indirectly affect their lives should be sought, children’s views or perspectives should not be prioritized over other sources of evidence.’ (Lavalette 1999: 17) Furthermore, simply prioritising children’s wish to exercise their autonomy and right to work without weighing other factors, interests, legal principles and the rights in question, would reflect a superficial approach to children’s rights, rather than a substantive one, in the sense adopted by Tobin (Tobin 2009: 601 ff and 625). This is not unduly curtailing children’s rights to autonomy and participation, as law only needs to allow children an active role – not an authoritative role – in determining their best interests (Tobin 2009: 591).

Even authors who are generally in favour of a very high degree of autonomy for children, such as Freeman, accept that children’s agency and decisional rights may be limited based on the need to protect children’s future capabilities (discussed in (Dixon and Nussbaum 2012: 560) Similarly, Eekelaar states that children’s ‘dynamic self-determinism’ should be ensured, but that ‘is far from a recommendation that decision-making concerning children should simply be delegated to children themselves.’ (Eekelaar 1994: 53). In the field of child work, this need to limit a child’s autonomy and decision-making power is further justified on the basis that ‘[c]hildren’s positive evaluation of their own occupation can be taken as an indicator of personal and cultural investment in coping with a familiar situation, *even when it is hazardous and exploitative.*’ (my emphasis) (Woodhead 1999: 33).

Only by striking a balance between all rights and principles in place can one reach justice in the regulation of this arena. The child workers’ movements themselves often specify that children should only carry out ‘light and limited work’, be able to exercise their right to play and leisure, and more generally be protected from working more than a certain number of hours in certain types of activities until they reach certain ages (Youth 2 December 2015: ; Lansdown 2005: 37). Although this is not dissimilar from what the current international and European legal frameworks aim to achieve, it is often ignored by those authors who place much greater emphasis on ‘liberationist’ claims. Most importantly, Dixon and Nussbaum rightly point out that limiting a child’s right or participation in an activity due to differences in ‘capabilities of the average child or teenager, compared to similarly situated adult ... need not send any message of disrespect, or exclusion, to any child

... A deferral [of access to certain rights] is likely to promote the long-term development of relevant capabilities for older children.’ (Dixon and Nussbaum 2012: 564-5).

In this context, it is also appropriate to recall the notion of ‘self-exploitation’, a notion developed by Chayanov and discussed by Bissell in the context of child labour (Bissell 2005). The notion of ‘self-exploitation’ is relevant in this context to the extent that ‘[p]arents and children knowingly put themselves in exploitative environments and do so out of a sense of duty to the family, to short-term needs, and to the compelling livelihood interests of family members’, simultaneously ‘mortgaging’ their future (Bissell 2005: 385-6). This is consistent with Lavalette’s contention that ‘[t]o simply assert that giving children access to wage labour would mark a significant step in their liberation from oppression is to ignore a number of features’, including the employee-employer imbalance of power in capitalist economies (even more marked with young employees), the impact of child work on other workers’ wages and conditions, and the inappropriateness of the work for the particular physical and psychological needs of children (Lavalette 1994: 13). Indeed, ‘[w]herever they work, children are likely to be paid less well than adults and have less power than adults to change their circumstances.’ (Leonard 2002: 195). The promotion of the right to participation and autonomy of children should not come at the cost of permissiveness towards harmful effects on the development and well-being of working children and complicity with exploitation carried out by families and employers.

Even authors in favour of a ‘socio-cultural discourse’ approach to child labour recognise that ‘some forms of work – including those that are accepted or promoted in local contexts, are chosen by children and bring some benefits – may constitute exploitation.’ (Abebe and Bessel 2011: 778). So, to consider children’s views on their work is simply ‘a valuable complement’ in policy-making (Woodhead 1999: 36) – it cannot be the end of the matter. The same way that limiting the contractual freedom of adult workers may eventually enhance their freedom and well-being by raising labour standards and working conditions (e.g., in the case of working time, health and safety, and night time work regulations), limiting children’s contractual freedom in the field of labour may in fact enhance the degree to which they will be able to eventually exercise their autonomy and right to participation. This is in no way holding those child or adult workers as ‘irrational, immature and inexperienced’ (Leonard 2004: 52) – it is simply a necessary and proportionate tool to achieve the well-being and safety of any worker.

At any rate, a balance needs to be reached and, to address that concern, space needs to be ensured in the lives of children to gain important social and personal experiences and exercise their rights to autonomy, privacy and participation, including outside of formal educational settings. It is submitted that such space is not dependent on formal labour/business structures. Working is not a pre-requisite for children to live their ‘social actorness’, as otherwise unemployed and retired adults would also be seen as lacking in their ‘social actorness’ – something that would be utterly inappropriate. Furthermore, making children’s social worth and family esteem depend on their involvement with the world of labour would be a reproachable view: it would make children have to ‘measure up’ to adults’ work expectations and would stigmatise those children who for some reason are unable or unwilling to engage in

paid employment or work outside the house or for a family business. Instead, children can live their 'social actorness', exercise their rights and develop their social and interpersonal skills and competences in other, non-labour settings, such as organised sports, volunteering with charities, being members of school clubs or youth political groups, participating in a range of associative activities, joining other extra-curricular activities and simply engaging with unstructured play time. In the labour context, after having reached the required minimum age and fulfilled other conditions to engage with certain types of work, children may also use their rights to freedom of association as trade union members. In both labour and non-labour contexts, children thus have plenty of opportunities to exercise their rights, including their rights to expression, assembly and association under Article 15 CRC (Daly 2016). It is submitted that within these parameters children are able to develop essential skills and competences, to contribute to the life of the family, community and society, and to enact their agency and citizenship, including in terms of negotiations of rules, construction of self, social contributions, enacting their own rights and challenging boundaries (Larkins 2014), thus being compatible with a 'human rights/child-centered approach' (Karunan 2005: 310). Simultaneously, this approach also protects children from undue pressures, risks and constraints from a work environment and employment relationship (even if at the expense of not obtaining an income).

Consequently, in the context of labour it is overwhelmingly accepted that it is legitimate to impose limits on the agency of children and their participation in the world of work. As rightly pointed out by Mizen, Pole and Bolton, 'there is a danger that the emphasis on agency can slip into an uncritical acceptance of children's ability to choose' (Mizen, Pole et al. 2001b: 38). One could also add that the fact that adults are generally recognised as having agency does not mean respecting and facilitating all their wishes and desires. So, 'the stress on children's agency alone is misplaced' and it is crucial to consider the children's work in the context of 'choice and constraint, freedom and necessity' (Mizen, Pole et al. 2001b: 53). Finally, one must not use children's vulnerability to justify the range of special protective measures and targeted socio-economic support offered to children (but not, or to a less extent than, to adults), whilst simultaneously arguing that children are in fact able to engage freely with the labour market – a consistent approach to children's policy requires the due consideration of children's vulnerability in the context of labour as well. This is what Article 32 CRC aims to do, by offering its protection from exploitation to all children – even those who have reached the minimum age of employment – in the light of children's vulnerability increasing the risk of work leading to injuries, exploitation or other detrimental effects to children's rights to health, education and development (Sweepston 2012: 19).

The key message, therefore, is that attention needs to be paid to all children's rights and principles involved in the child work debate, and a balance needs to be struck between those and other policy factors to determine the best possible legal framework. A rights-based approach does not obliterate the need to respect the CRC transversal principles, let alone the reality of children's vulnerability and immaturity in many respects (further discussed below). Although both vulnerability and immaturity gradually disappear throughout childhood, no amount of ideological or normative charge can completely delete them. Children possess the full range of rights enshrined in human rights instruments, further enhanced by those enshrined in the CRC, but the scope of those rights and their exercise obviously depends on the

actual stage of development and maturity of children. Furthermore, not ceding to all rights claims by children is entirely compatible with children's rights, as even a substantive rights' approach allows for reasonable restrictions to a child's rights (Tobin 2012: 12). Indeed, the 'emphasis on the participatory rights of a child ... serves to distinguish a rights based approach to matters concerning children from traditional welfare approaches', but even according to this model of participation 'the views of individuals are never considered to be determinative.' (Tobin 2011: 71).

In striking a balance between all relevant rights, principles and policy factors to determine the best possible legal framework, one thus needs to 'negotiate priorities or to accept compromises that are sensitive to the social, cultural, and material environment in which the rights are to be applied' (Bourdillon, Levison et al. 2010: 16), which leads on to the cultural relativism argument.

## **8. The cultural relativism argument**

It is important to address the fact that child work generally, and some forms of child labour more specifically, are still commonly accepted in many societies around the world, especially agrarian and early mercantile societies (Oswell 2013: 215). One cannot strictly speak of a North-South divide in relation to child labour regulation, as that would be too crude and would not reflect the differences that exist within developing countries due to socio-economic differences (James, Jenks et al. 1998: 103). Yet, the more common acceptance – or at least occurrence – of child work and child labour in many developing countries leads some authors to rely on what is usually referred to as the cultural relativist argument, i.e., putting it at its most basic, international human rights law needs to be interpreted and implemented taking into consideration local cultures. This purportedly should allow for a culturally sensitive legal framework, as opposed to a Western-imposed human rights regime. In relation to child labour human rights provisions, 'cultural relativists' frequently claim that, in developing countries, it is essential for children to work to transmit to them a set of essential skills and knowledge (Karunan 2005: 299-300), and that when no better alternatives can be offered to working children, depriving them of the possibility of working translates into depriving them of their, and sometimes their families', subsistence and sufficient means to access education (Bourdillon 2005). This argument has gained traction following some international interventions aimed at eliminating instances of child labour in developing countries, which have been severely criticised for leaving children worse off than before due to the lack of educational, social and economic viable alternatives (Okyere 2012: ; Stalford 2013: 883-4). Yet, the examples offered in this context – generally the case of the Moroccan girls working in the garment industry who were worse off once they were prevented from working (Bourdillon, Levison et al. 2010: 1 ff) – do not actually show that the substantive legal provisions are wrong per se, but simply that their enforcement should have been better thought through and accompanied by more extensive supporting educational and socio-economic measures (which should be legally enshrined as well).

Cultural relativist arguments are sometimes stretched so far that some authors even use them to justify the legality of almost universally condemned practices. The inadequacy of radical versions of cultural relativism is obvious in relation to issues such as female genital mutilation (Alston and Goodman 2012: 558 ff). Another issue in relation to which the cultural relativism argument has been used, and which is much closer to the child labour debate, is child soldiering. Despite being listed amongst one of the worst forms of child labour (Article 3 ILO C182), and being prohibited until the age of 15 by Article 38(3) CRC, child soldiering has become so widespread that it 'is the new standard rather than its ban' and child soldiers are viewed 'simply as malleable and expendable assets whose loss is bearable to the overall cause and quite easily replaced.' (Singer 2010: 95 and 107). Yet, authors such as Rosen condemn the international law norms prohibiting (or at least restricting) child soldiering as 'politics of age' and as using 'age categories to advance particular political and ideological positions.' (Rosen 2007). The language of 'complexity' and 'cultural variations' is used to justify lower levels of protection of children and greater flexibility in the recruitment and use of children in military conflicts. With the argument of fighting 'extreme protectionist constructions of childhood', Rosen suggests that children's agency should be fully recognised, hence allowing for the prosecution of children who carry out war crimes (Rosen 2007: 297). Although this may well be more compatible with local understandings of justice and blameworthiness (like flogging and haranguing of juvenile offenders (Rosen 2007: 303), it completely obliterates the purpose of protecting children and acting in their best interests, as intended by the CRC and other international instruments. Moreover, even if positive effects might be found in children's involvement with military forces, such as political awareness and individual empowerment (Rosen 2007: 299), the overall experience is condemnable and it should be avoided at all costs. Although there may be an element of volition and agency in children's soldiering, it should be society's duty to prevent the set of circumstances that may render that choice better than all others (hunger, lack of housing and education, exposure to lethal risks, etc.). More fundamentally, rather than being cultural products to be respected and protected, phenomena like child soldiering are socio-economic and political products to be combatted. As Twum-Danso states, 'the incorporation of thousands of children into conflicts across the [African] continent is not a result of African tradition or a dysfunctional notion of childhood in Africa; rather child soldiering itself is affecting culture' and is 'a matter of pragmatism, economics and demographics' (Twum-Danso 2003: 11 and 28). Much the same could be said about many other forms of child labour and work more generally.

Even if not in their radical versions, cultural relativism arguments remain problematic. On the basis of the need to protect local traditional and religious practices, harm to women, children and many other elements of society is perpetuated; under the guise of 'cultural sensitivity', domestic public authorities and private actors pursue traditions that violate international human rights standards to which those states have signed up (Alston and Goodman 2012: 538). Yet, as Marks suggests, human rights universality is not necessarily harmed by local cultures, because human rights discourses have always engaged with issues of proportionality and interpretation without losing their validity, 'cultures are not themselves uncontested bodies of thought and practice', and 'universal applicability never has been heard to entail uniform application' (Marks 2012: 5). Furthermore, full human equality and full human empowerment are not foreign, Western, imperialistic or

colonial impositions (Dixon and Nussbaum 2012: 585-6). This is confirmed by the increasing awareness in developing countries of the need to fight child labour and invest in education – an excellent example of this is offered by the work of Kailash Satyarthi, the Indian children's rights and education advocate who received the Nobel Peace Prize for his activism against child labour (Prize 2014). White – a (soft) cultural relativist himself, one might say – alerts us to the fact that we ‘should never allow concepts of culture and values to be hijacked by national governments; neither should [we] feel that problems are solved by giving precedence to “local” values.’ (White 1999: 142). Cultural relativism is only acceptable if used as a practical analytical tool that helps us remain sensitive to differences, respect the ways of life of others, and avoid pseudo-universalist notions – this means ‘a way of opening our eyes to the variety of human ideology and practice, but not a basis for legitimizing whatever we may see when we do this.’ (White 1999: 137).

Particularly with regard to children’s rights, although it is clear that the CRC needs to be implemented in a culturally sensitive way, it has been rightly argued that this degree of cultural accommodation should not be used to justify cultural or traditional practices that in fact harm children and violate their rights (Tobin 2011: 75). Indeed, even if space needs to be safeguarded for local democratic deliberation, ‘[w]hen we are concerned with children ... we may need to look more critically at local customs and norms – because we are dealing with a class of human beings that has too often been considered instrumentally, as mere extensions of the will and goals of someone else, rather than as ends in their own right.’ (Dixon and Nussbaum 2012). At the end of the day, as Alston argues in relation to children’s best interests, we need to ‘inject an element of specificity which will facilitate a much deeper appreciation of the complexity of the issues, at the same time as pointing the way towards approaches which involve neither the embrace of an artificial and sterile universalism nor the acceptance of an ultimately self-defeating cultural relativism.’ (Alston 1994: 2). If one is to use cultural relativism to depart from international human rights standards, then it should be to go beyond those standards, not to fall short of them.

More specifically in relation to child labour, regional human rights instruments such as the African Charter on the Rights and Welfare of the Child (Article 15) impose on Member States the obligation to protect children, both in the formal and informal employment sectors, from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development. This does not differ in any significant way from the ILO or CRC provisions on child labour. Moreover, even advocates of more lenient approaches to the regulation of child labour in the ‘global South’ recognise that ‘participation by children in the labor market is commonly against the free will and choice of the children involved’ (Karunan 2005: 299). It is also interesting to point out that it was an African country – the African Central Republic – that suggested adding a minimum employment age of 14 to the CRC, something that not even the ILO supported, as that sort of detail could be left to the ILO conventions and its Member States (Swepston 2012: 11-3). Finally, one should note that the Committee on the Rights of the Child consistently subscribes and applies the ILO conventions standards in relation to child labour (Swepston 2012: 17) and recommends their ratification and implementation (para. 57 (b) of General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)(CRC) 2013b); see (Gasson, Calder et al. 2015:

166)). The Committee thus endorses such standards and does not find them culturally insensitive or incompatible with local customs in any way. This is justified in the light of the flexibility already afforded by the ILO instruments with regard to the minimum ages for work and employment of different nature, in the light of differing degrees of socio-economic development of the ILO Member States (see Articles 2, 5 and 7 ILO C138).

Even if one does not wish to stretch cultural relativism as far as child soldiering, and although cultural relativist arguments are often abused and misused, some degree of cultural difference can arguably be accommodated within any human rights related debate, including the debate on child labour. So, why adopt a stricter, more ambitious approach in a European context, one that goes beyond the minimum standards imposed by the CRC and ILO instruments, instead of the view that accepts children as full ‘economic agents’ in the world of labour? Admittedly, any position adopted is socially, culturally and diachronically located. Even the notion of childhood is socially, culturally and diachronically located – as will be further explored below – so only a geographically and socio-economically determined approach to child work and childhood may be advocated at any given time. In the European context, child work became socially accepted and promoted from the seventeenth century onwards as a way of keeping children busy, to the point of becoming widespread across several industries by the nineteenth century (Cunningham 2005: 81 ff; Hendrick 2005). Yet, the terrible working conditions to which children were subjected prompted statutory initiatives in several countries to improve the conditions of working children, to some extent inspired by the anti-slavery movement (Heywood 2001: 121 ff; Hendrick 2005). Moreover, evolving economic, educational and psychological developmental models, spearheaded by figures such as Piaget and Ford, had a strong impact on how children as individuals and members of society have come to be seen in the North and West of the globe (Lee 2001). Without precluding a legitimate critique and scope for improvement of such models, the benefits for children’s physical/intellectual/moral development and well-being that derive from being withdrawn from factory environments and afforded longer and better education cannot be denied.

A more ambitious European-specific approach to child work is also preferable from the point of view of the right to (maximal) development, grounded in a combined interpretation of Articles 6, 12, 27 and 32 CRC (for a discussion of a context-specific application of this right, see (Ferreira 2011: 124-6; Mahgoub 2015). The right to (maximal) development has generally been considered a right especially of a socio-economic nature (as opposed to civil and political), and the CRC Committee has stated clearly that ‘States need to be able to demonstrate that they have implemented [economic, social and cultural rights] “to the maximum extent of their available resources”’ ((CRC) 2003: para. 7). In this context, Nolan points out that ‘[g]iven children’s particular vulnerability to violations of their ESR [economic and social rights] and the relatively severe impact that such violations may have on them vis-à-vis adults, one might argue that the delineation of a more extensive core obligation than that set out by [Committee on Economic, Social and Cultural Rights] is justified on the basis that children’s needs are more acute.’ (Nolan 2013: 272). This reinforces the need for a stricter and more ambitious approach in the context of child labour regulation in developed countries. It is also pertinent to point out that the autonomy/regulationist approach is mostly defended in literature focusing on

developing countries. It is therefore important to remain alert to the appropriateness (or lack thereof) of applying such literature and approach to countries (such as the EU Member States) with not only different socio-cultural contexts, but also more developed economies.

Let us use the right to education as an example. Whilst it may well be true that children in certain developing countries may actually need to work to have enough resources to attend school, the right to free education in all EU Member States is guaranteed at least until the age of 15 (Eurydice 2014). Even if one needs to consider costs beyond education fees, such as, for example, books, uniforms, transport and meals, and despite the increasing child poverty across most EU Member States (Research 2014), the existing social welfare systems secure the minimum resources to cover these costs, at least to the extent that allow children not to have to work to cover these costs themselves. Going one step further: in some societies it may well be considered that compulsory education until mid-adolescence (as in all EU Member States) is simply a waste of one's life and incompatible with that society's view of what a person should be doing at that age. One would, however, not attempt to make the argument that in Europe we should also be open to reducing the age of compulsory education to, say, 10, due to compulsory education being a 'moralistic' or 'childhood oppressive' phenomenon. With hindsight, the initial – and later (discussed in (Hobbs and McKechnie 1997: 21) – resistance to compulsory education in Europe was justifiably pushed aside (Lavalette 1994: 173), and questioning compulsory education nowadays is generally ignored in the light of the values and concept of childhood which European societies tend to favour, including a preference for better skilled and better paid work. Similarly, whatever shortcomings the current child labour framework may have, we should not remove the current restrictions or resist attempts to improve that framework. One should thus retain a sense of what we should be aiming at in the EU context, independently of what may be held appropriate or acceptable in other geographical areas and socio-cultural contexts.

A further example of the inadequacy of using cultural relativism arguments to justify falling short of international human rights standards can be seen in relation to the feelings of self-efficacy and resilience that children in developing countries may experience when they work and obtain adult recognition for that work (Bourdillon, Levison et al. 2010: 97 ff). Would it be appropriate to transpose that finding to the EU context to argue in favour of greater freedom for children to work? It is submitted that in the European context, due to the greater social and economic importance placed on education and skilled work, those feelings of self-efficacy and resilience can be more readily nurtured through an engaging educational system, school-work provision schemes, and extra-curricular activities, without any of the negative risks and impact of work outside these contexts, as will be explored at greater length below.

Yet another example relates to the fact that children in the 'global South', especially in rural and low-income countries, may be encouraged from an early age to learn tasks that will enable them to become efficient adults in terms of labour (Bourdillon, Levison et al. 2010: 102). Nonetheless, this would be for the most part unrealistic and inappropriate in the context of the 'global North', high-income countries, where one could only expect older children, in their teenage years, to be able to carry out tasks with any resemblance to the complexity of those tasks relevant in the current labour markets. Whilst home chores and family caring tasks may well

be learned from an early age, tasks generally relevant in the European labour markets require many more physical and intellectual skills than those that young children and even many younger adolescents may possess, so letting children work before their late teenage years would not prepare them for the labour market (I will return to this below).

Another argument somehow related to the cultural relativist approach to working children argues that we should focus on the worst forms of child labour, as regulated by ILO C182. It is clearly the case that the worst forms of child labour deserve priority and need to be urgently eradicated to avoid the range of consequences they often entail, including HIV/AIDS, lead poisoning and pesticide toxicity (Parker, Fassa et al. 2010: 104). Nonetheless, by focusing only on the worst forms of child labour, less pressure to eventually eliminate all forms of child labour and provide quality education may ensue. This is not to deny that the focus should be placed on harm, not on work itself, as indeed some forms of work are not harmful and can be carried out by children. Yet, it *is* harmful to children not to focus on all forms of involvement with the labour market that may be detrimental to their physical or psycho-social development. This includes harm to children's education, as insufficient educational attainment is likely to have life-long negative effects on a child's future.

In sum, any given society should afford children the greatest degree of protection, well-being and rights-enhancement that its socio-economic development allows, in a socio-economic and culturally appropriate way. Despite the still relatively differing levels of socio-economic development across Europe (including within the EU), the existing legal framework in the EU and its Member States reflects a strong belief in the sufficiency of the current levels of socio-economic development to afford a robust stance against child labour, including favouring strong educational and training policies to benefit children's future prospects (with collateral overall benefits for society at large). Indeed, even if child work appears to be wanted by some children, encouraged by some employers and tolerated by some parents, it is definitely opposed by trade unions and the legal systems of States (Qvortrup 2001: 103).

What the discussion above indicates is that children's economic and social agency can be shaped by age/development/European culturally-appropriate roles, provided the regulatory framework goes beyond international human rights standards, and does not undermine them. White thus rightly argues that the principles of (cultural) relativism are 'more usefully seen as tools of discovery and understanding rather than as grounds for legitimation.' (White 1999: 135). It may be true that the 'global North' perceptions of childhood and children's connection to work may be inappropriate to regulate child work in the 'global South' (Karunan 2005: 293), but the opposite is also true. Importing 'culturally sensitive' approaches into European debates to justify falling short of the CRC or ILO norms would be to succumb to the attraction of the romantic image of the healthy working indigenous child in exotic settings in developing countries. That would undoubtedly be culturally inappropriate.

## **9. Childhood as a social construction**

It is important to mention in this context another matter which is closely related to the cultural relativistic position, namely the recurrent mantra that ‘childhood is a social construction’, which has become the ‘theoretical orthodoxy’ of childhood studies (Wyness, discussed in (Alanen 2015)). As Alanen puts it, ‘[s]ince the 1980s at the latest, the popularity of constructionism has grown enormously in the social sciences and there are no signs that its growth is set to diminish, despite simultaneous increase of critical discussion’, and it has been ‘exceptionally successful’ in the social study of childhood (Alanen 2015: 149). The ‘social construction of childhood’ paradigm sees childhood as a phase in life that is shaped not only by biological and psychological factors, but by a range of social and political factors as well, so children in different social contexts experience different childhoods (Hobbs, McKechnie et al. 1999: 212 ff). It is undoubtedly true that childhood experiences vary greatly around the globe. Clearly, a balance between a ‘biological paradigm’ and a ‘social paradigm’ of childhood is the best suited to offer a sensible synthesis of biological, psychological, social and cultural components that shape childhood (Lavalette 1994: 147).

So, it may well be true that childhood is socially constructed and has a strong cultural dimension, but that does not say anything about the different ways in which childhood may be socially constructed. Are all ways in which childhood is socially constructed equally valid and positive? Arguments and authors using this mantra extensively seem to implicitly advocate a sort of amoral approach to all childhood related matters: as childhood is a social construction, it can be constructed in a myriad different ways, and no way of socially constructing childhood is better than another. This is consistent with a culturally relativistic approach to academic research, whereby all cultural practices are equally valid and acceptable. In short, no construction of childhood and no cultural practice should be the object of criticism or restricted by certain human rights or labour standards, as that equates to a Western-centric, culturally imperialistic oppression (Arce 2015: 309 ff). This, however, ignores that ‘what has been built [including human rights and labour standards] was probably built for some properly human reasons, which should be investigated before pretending they are unnecessary because unnatural.’ (Heinich 2010: 4).

As with the cultural relativism approach, the social construction of childhood approach is often used to justify practices and understandings that are far from justifiable. Bourdillon et al, for example, state that ‘[a] problem with ideologically driven ideas of childhood is a tendency toward moralism that overlooks the complexity of life.’ (Bourdillon, Levison et al. 2010: 92). Yet, the possibility of speaking about child work from a truly normatively and ideologically neutral position is highly unlikely, if not epistemologically impossible. As Myers rightly points out, defining child labour ‘is important because it is essentially political, posing an emotionally charged choice of social values and objectives.’ (Myers 1999: 22). Historical and social descriptions may abstain from value judgments, but the story cannot finish there, otherwise any social phenomenon – from domestic violence to racism, from paedophilia to forced labour – is simply abandoned to, and protected by, its own logic (Lavalette 1999: 21). Besides this, no academic or policy-maker is a morally neutral automaton; instead, one is always a moral agent no matter how much one may try to camouflage one’s moral or ideological inclinations. Moreover, there is inevitably an element of moral reasoning in any legal (adjudicative) process (Tobin

2012: 16), so how societies regulate childhood practices always entails some sort of moral judgment no matter whether a restrictive or liberal approach is adopted in relation to certain practices. Refraining from any moral judgment may seem appealing and culturally sensitive, but also means being an accomplice to practices and understandings that very often harm children's physical and psycho-social development and well-being. Should one also refrain from any judgment in those instances and fall into a sort of moral (and normative) nihilism? I am convinced that being 'amoral' in those instances is, in fact, being immoral. Academic work can be immoral if, hiding behind the curtain of cultural relativism or social construction of childhood, or succumbing to the 'complexity of life', one abstains from criticising practices that are indeed harmful to children.

Worryingly, the 'socially constructed childhood' argument is sometimes used to claim that '[a]s adults, we must bring into being a mind shift from traditional notions and values that we cherish about children as vulnerable and non-productive to a child-centered approach that is rights-based' (Karunan 2005: 302). This type of use of the 'socially constructed childhood' argument wrongly (even if just implicitly) opposes two aspects of childhood studies that, in fact, complement each other: children are both vulnerable (thus in need of protection and welfare measures) and also right-holders with agency (thus in need of access to justice mechanisms that vindicate those rights). If one justifies focusing on one aspect at the expense of the other, one is simply doing a disservice to the well-being of children and the justice to which they are entitled. As Bluebon-Langner and Korbin clearly state, 'while we increasingly look at children as having agency, they nevertheless are among the most vulnerable members of society and have particular needs for nurturance.' (Bluebon-Langner and Korbin 2007: 242). In sum, one needs to be conscious of the limits of social constructionism and the counter-productive impact that social constructionism may have on international children's rights and activism (-- 1998).

More fundamentally, the childhood social construction approach – like the child 'liberationist' agenda – seems to brush aside undeniable biological developmental differences between children and adults. It may well be true that '[w]e need to challenge traditional notions of childhood and child development that have become everyday cultural norms and practices in society' (Karunan 2005: 303), but that cannot be done at the expense of fundamental truths about the 'biological and physiological facts that constrain and shape children's lives, particularly in early childhood.' (Ansell 2005: 9). Indeed, social constructionism spuriously 'suggests that changes do not occur as a result of biological or natural processes; instead, it is a result of the differing ways in which meanings are constructed...' (Alanen 2015: 150). This radical position rightfully makes one wonder whether 'social construction' was once illuminating but is now blinding us, or, to put it more bluntly, 'as [social construction] became more radical, it also became more stupid' (Heinich 2010: 4). The truth remains that, due to a range of factors that include children's biological developmental characteristics, 'child dependence cannot be ended merely by social or political change' (Nolan 2011: 10). O'Neill reinforces this idea by reminding us that children's dependence 'is not a dependence which has been artificially produced (although it can be artificially prolonged); nor can it be ended merely by social or political changes, nor are others reciprocally dependent on children.' (O'Neill 1992: 38).

In the specific context of labour, the childhood social construction approach sometimes seems to forget things as elementary as the fact that '[c]hildren, by definition, are not yet fully mature in terms of their physical, psychological, and biological growth. In these circumstances there is greater potential that a health hazard faced by an adult would be multiplied in its impact on a child.' (Hobbs, McKechnie et al. 1999: 113). Instead, the children's rights agenda should go hand in hand with the principle of evolving capacities, not ignore it. It may well be true that childhood is not 'naturally' a life phase to be dedicated to education and leisure, but by the same token childhood is not 'naturally' to be dedicated to work. A childhood dominated by play and education is no more idealised or normative than a childhood dominated by helping in family businesses or working in agriculture from a young age. Whatever childhood 'should' be dedicated to thus depends on a mix of factors of psycho-physical developmental and socio-economic-cultural order, none of which can be sidelined.

Conceiving childhood as a period that should be dominated by play and education, instead of work, is often accused of being a Western notion. That is most likely not entirely the case: a 1997 global survey of nearly 200 NGOs and experts carried out by Radda Barnen (Save the Children Sweden) found out that, even if acknowledging the need for some children to work, a solid majority of the respondents believed that children should ideally dedicate their time mostly to educational and recreational activities (discussed in (Myers 1999: 23). Furthermore, there is not, actually, a 'singular coherent Western conceptualisation of either childhood or youth, but rather a number of discourses that are often seemingly contradictory and have their origins in different historical contexts.' (Ansell 2005: 10). A more sophisticated version of the 'new social studies of childhood' acknowledges that these new studies are themselves a normative social construct which may not be valid globally; more fundamentally, childhood is not purely a social construct, but instead is lived by real children, and this begs the question whether all conceptions of childhood are similarly tolerable (Prout and James 1997: ; Ansell 2005: 21).

Even if one recognises as unproblematic the idea that children experience childhood in different ways depending on their socio-cultural context, the fact is that the law in any given jurisdiction or geographical area needs to legislate for all children within its remit. Adulthood is surely similarly socially constructed, and that cannot prevent law and policy from being produced, including in the field of labour. Every worker will have a different socio-economic background and current context, and yet labour law needs to apply to all workers. Consequently, the fact that childhood may be socially constructed and that children experience childhood in different ways should in no way prevent child work from being regulated – it may simply require a greater degree of flexibility and the taking into account of a greater range of variables.

Finally, within the EU context, I fail to see why one should be in any way apologetic for advocating certain values and their translation into policies and law-making, if those values are much closer to the shared values in the European geographical space and do not violate those international human rights and labour standards that bind EU Member States. Literature on child labour contains disparaging allusions to a Western notion of childhood that entails caring and

responsible adults ensuring that children have a safe, secure and happy existence (Abebe and Bessel 2011: 767). I remain unconvinced that this notion differs substantially across the world, and cannot see why this would be in any way criticisable. It may be true that there is not a single society capable of ensuring this type of childhood to all children, but that does not mean that this type of childhood should not be what we should strive for, especially in a region such as the EU with the socio-economic resources that it possesses. In this sense, this article upholds an unashamed European-appropriate, normative approach, as opposed to a merely descriptive, allegedly amoral one.

## **10. Children working in formal employment**

Bearing in mind the framework delineated so far, it is now the moment to determine more precisely how children should engage with formal employment. When working in formal employment relationships, the family concern for the child's well-being may be brushed aside altogether and the focus on profit-making may dominate the business activity. In this context, children may be seen as a source of cheap labour, expected to work long hours and for little pay (Gasson, Calder et al. 2015: 162). In that context, '[a]lthough children may initially be happy to take on a little light work, once employed they can be pressured to work longer hours.' (Bourdillon 2005: 147). Further, one needs to recall the imbalance of power that exists between employers and employees in the labour market: if that imbalance is already obvious in the case of adult workers, child workers are even more at the mercy of employers' preferences and in need of the protection of labour law (Barnard 2014: 10).

The range of potentially negative consequences that may derive from working beyond a limited number of hours in a safe environment is very broad and depends on a wide range of factors (Bourdillon, Levison et al. 2010: 100-1). Edmonds points out that the 'feeling of invincibility that often accompanies adolescence may cause children to undertake more risk than adults would be willing to bear' and '[m]any serious hazards may have effects that go entirely unobserved or may not be attributed to their cause (i.e. work).' (Edmonds 2010: 49-50). Even authors who can be described as 'cultural relativists' and 'regulationists' admit that '[c]hildren are not in a position to establish empirically the long-term effects of different kinds of work, many of which are also not well understood by adults' (Bourdillon, Levison et al. 2010: 169), and that conventional evaluation research 'may demonstrate long-term toxic effects of hazardous work, of which young people themselves are oblivious.' (Woodhead 1999: 29-30). This is often the case due to the long latency period, i.e., the period of time between the exposure to the harm and the actual disease, of many illnesses that may be related to work; for example, some cancers have a latency period of 20 years or more (Parker, Fassa et al. 2010: 106). Most important, long-term consequences of child work such as illness and injury may contribute to the intergenerational transmission of poverty and a range of other externalities, which justifies government intervention (Edmonds 2010: 51-2). The Committee on the Rights of the Child endorses this view, by stating that '[c]hildhood is a unique period of physical, mental, emotional and spiritual development and violations of children's

rights, such as exposure to violence; child labour or unsafe products or environmental hazards may have life-long, irreversible and even trans-generational consequences.’ ((CRC) 2013a: para. 4). This reinforces the need for children’s rights to equality, autonomy, privacy and participation to be balanced with the negative effects of work that will be now be explored, so that children’s future capacity for autonomy may be maximised (Nolan 2013).

Nowadays, it is commonly recognised that the link between working and educational achievement is complex, in the sense that working does not always entail decreasing educational achievement. Some studies point to the risk of work leading to greater tiredness and sleep deprivation, which in turn affects children’s learning ability (Teixeira, Fischer et al. 2006). The key factor remains the number of hours dedicated to work: research indicates that children working beyond a certain number of hours will, in most cultural contexts, see their educational achievement be affected; yet, if working no more than five to twelve hours/week, children may not suffer any educational detriment and may even see their school results improve (Hobbs, McKechnie et al. 1999: 71; Quirk, Keith et al. 2001). It has also been found that the younger a child starts to work, the worse the impact of work is likely to be on educational attainment (Hobbs and McKechnie 1997: 113). High duration (long periods of time) and low intensity (small number of hours/week) work seems to have a less negative impact on educational achievement than high intensity work (more than 20 hours/week) (Mortimer 2007: 121). Moreover, although children with work experience seem to be more successful in finding a job when they leave school and earn more in the early years of their working life, in the long run it is the children with higher educational achievements who enjoy greater occupational success (Hobbs, McKechnie et al. 1999: 51). As Hamilton and Powers put it, it is ‘commitment to school [that] pays off at a higher rate in the long run than work experience.’ (Hamilton and Powers 1990: 259). Empirical work has also revealed parents’ concern with their children’s lack of ability to identify the long-term employment advantages they can reap from greater educational attainment (Gasson, Calder et al. 2015: 162). To sidestep completely the risk of work harming school work, one may favour work during school holiday time rather than during school time (Hobbs and McKechnie 1997: 109).

Child work has also been linked with increased consumption (or at least earlier initiation of consumption) of drugs and alcohol (Hobbs and McKechnie 1997: 106 ff; Hobbs, McKechnie et al. 1999: 7; Hansen, Mortimer et al. 2001: 126-7; Bourdillon 2005: 147). When working hours reach 20 or more a week (even for short periods of time), then substance abuse becomes particularly worrying; contrarily, high duration (long periods of time) and low intensity (small number of hours/week) work is associated with limited substance abuse issues (Hansen, Mortimer et al. 2001: 127).

More worryingly, the levels of physical and psychological stress on children who work are often underestimated. Overall, it is acknowledged that child workers have higher rates of occupational injury and death than adult workers, which brings enormous costs for both the individual children affected and society at large (Ebdon 2000: 30-6; Parker, Fassa et al. 2010: 112). In the German context, for example, Ingenhorst reports that a fifth of the children working consider their work psychologically stressful, a third consider it physically demanding, and half mention ‘unpleasant feelings’ at work (Ingenhorst 2001: 147). Moreover, although the

occurrence of serious injuries or health problems may not be very common in developed countries, parents and employers reveal a lack of awareness of the health risks which working children undergo (Ingenhorst 2001: 147). More generally, an estimated 20-30% of working children in industrialised countries suffer injuries at work, and many suffer particularly negative developmental effects when working in agriculture due to the machinery, heavy weights and toxic pesticides involved (Hobbs, McKechnie et al. 1999: 1). Moreover, children are also required to use machinery that has been ergonomically designed for adults – especially, but not exclusively, in agriculture, such as tractors and other farm machines – which entails great risks to children’s safety, due to fatigue, injuries and musculoskeletal problems (Hobbs, McKechnie et al. 1999: 77 and 114; Parker, Fassa et al. 2010: 112). It is also important to recall that organs such as the brain and lungs are still undergoing significant development during adolescence and even early adulthood, and are highly susceptible to harm during those periods (Parker, Fassa et al. 2010: 109). Similarly, adolescents may suffer injuries to ligaments and bone-growth plates – especially if they are going through a period of rapid growth – which may lead to long-term consequences, including unequal limb length (Parker, Fassa et al. 2010: 109-10).

Even jobs such as newspaper delivery – often seen as the most appropriate for school-age children – can in fact lead to serious physical harm due to the excessive weights that need to be carried (far beyond what adult postal workers are allowed to carry), and excessively early start times of distribution (Hobbs, McKechnie et al. 1999: 60). Lifting such weights may lead to harm to the skeletal development and symptoms that resemble degenerative osteoarthritis (Hobbs, McKechnie et al. 1999: 114). Newspaper delivery has therefore been described as ‘exploitative and ... [having possible] negative health and educational consequences for those involved.’ (Leonard 2002: 194). In a particular study involving children delivering newspapers in Belfast, the number of children with paid work suffering accidents at work doubled – from one out of four to two out of four – when ‘newspaper rounds’ were involved, including falls down stair flights, sore backs, sprained ankles, being run over by cars, falls off bikes, being attacked by dogs, and suffering cuts and bruises (Leonard 2002: 198). Such experiences led half of these children delivering newspapers to perceive their work as dangerous (Leonard 2002: 199).

More broadly, from a psychological perspective, it has been argued by several authors that employment may harm an adolescent’s transition to adulthood, due to the lack of time for interaction with peers, family and other social groupings, limited experimentation with other roles, interference with mental exploration, and lack of psychological maturity to deal with the money, independence and new social/work roles that employment brings (Hobbs, McKechnie et al. 1999: 230-1).

Another negative aspect of many children’s work experiences is the lack of relevance of the work carried out to the children’s professional aspirations or future work activities. In the US, for example, older children tend to work in sectors that do not offer them any socialisation or future work benefits (Hansen, Mortimer et al. 2001: 137). Although child work may increase future employment prospects in the years immediately after leaving school, the more work a child is involved with, the less academic attainment is to be expected, and the worse jobs and lowest pay is likely to ensue (Hobbs and McKechnie 1997: 105). Consequently, although children may often have positive experiences with part-time jobs, ‘[i]t is naïve ... to assume that

this will be the norm, without adequate evaluation of what it is that could make the experience potentially rewarding.’ (Hobbs and McKechnie 1997: 119). Finally, although teenage work may be considered relevant in terms of future employment in countries such as the USA, in other countries – including European countries generally – the transition from school to work is more clearly ‘institutionalized’, hence there are not such clear benefits in teenage work (Mortimer 2007: 121).

Although many parents seem to approve of teenage work (particularly in the USA, see (Phillips and Sandstrom 1990), empirical evidence has unearthed tension and conflict in the family environment due to teenagers spending more time at work, stress derived from having to juggle work and school activities, having less time for household chores, etc. (Hobbs and McKechnie 1997: 102 ff; Bourdillon 2005: 147). Admittedly, these are perhaps the least worrying consequences, as sooner or later children and young people will slowly acquire greater independence from their family members, something which is overall healthy from a psycho-social perspective although sometimes at the cost of some degree of (often transitional) conflict.

Although a review of the methodological validity of the studies carried out on child work is beyond the scope of this article, it should be acknowledged that causality relationships are not always clear, i.e., it is not entirely apparent whether, in some instances, the negative effects described above occur because of the work carried out or whether they occur because the children who choose to work already show an inclination towards those behaviours (Lavalette 1994: 18 and 130 ff; Hobbs and McKechnie 1997: 24 ff; Mortimer 2007: 120; Bourdillon, Levison et al. 2010: 123). This can be particularly the case in relation to educational attainment, substance abuse and conflict with family members, i.e., children who choose to work may already be more prone, for example, to be less dedicated to school, to abuse substances and to have interpersonal conflicts, irrespective of working. Yet, causality is similarly difficult to ascertain in relation to benefits from work experience, as higher rates of employment and higher earnings immediately after leaving school may be due to personal characteristics, not work experience during teenage years, and may at any rate be short-lived (for a review of relevant studies, see (Hamilton and Powers 1990).

In the light of all of the above, it is clearly very hard to argue in favour of giving children greater access to opportunities of work in such conditions and with such consequences. As Lavalette states, ‘[m]erely demanding a child’s right to work will not end this vicious circle [of exploitative relations using children as cheap labour], but could more firmly embed children within it.’ (Lavalette 1999: 40). Returning to the definition of child labour presented above, those work contexts and experiences that potentially or actually damage a child’s physical and psycho-social development and well-being should be prohibited. This necessarily remains an exercise that should be as context-specific as possible, at least as much as an abstract legal framework can be sensitive to specific contexts. Ideally, this would entail authorities assessing each individual case and determining if the child in question can carry out a particular type of work without detrimental effects to his/her physical and psycho-social development and well-being, on the basis of a capacity/harm-based approach (Bourdillon, Levison et al. 2010: 62 and 213; Stalford 2013: 880). Nonetheless, no matter how desirable and justifiable this approach may seem in the abstract, it is unrealistic to expect labour inspectorate authorities to have the resources

to carry out a thorough assessment of each child's physical and psycho-social level of development and the risks entailed by each type of work which a child may wish to carry out. Authorities across the EU already struggle to effectively monitor and enforce the current legal framework based on fairly straightforward minimum ages of employment and broad types of work activities (Calvo and Rodríguez 2007). Individual assessments, requiring specialised reports and expert advice, would represent an unbearable burden on already extremely stretched budgets (more generally, on the removal of fixed legal age limits, see (Lansdown 2005: 49 ff). Even if such an individual approach were economically viable, it would risk facilitating grave inconsistencies in the way in which authorities deal with child workers within any given jurisdiction. So, just as I have argued in relation to norms that should apply to children's tort and criminal liability (Ferreira 2008: 47 ff), the best compromise one can argue for is the setting of presumptive age milestones with regard to minimum ages of employment and, more generally, engagement with certain forms of work.

At any rate, the minimum age model is not incompatible with the capacity/harm model, as the minimum age model does accommodate different degrees of capacity and harm: both the ILO Conventions and the YWD already establish different ages for different types of work to prevent certain types of harm, and allow for the possibility of exceptions to many of the rules set out. Although this does rely on some degree of generalisation, that is inevitable in any legal norm – law is necessarily abstract and of general application, and unable to provide individually tailored solutions for each single child's particular circumstances. As Eekelaar acknowledges, although not ideal, some degree of 'objectivisation [in the sense of generalising about how to realise children's well-being] is inevitable and necessary.' (Eekelaar 1994: 58). Doing away with ILO C138, as suggested by Bourdillon et al. (Bourdillon, Levison et al. 2010: 213), or with the YWD, would represent a major regression for social legislation and children's rights and create a giant loophole in the protection and welfare of children – a loophole that would, it is submitted, be readily exploited by neo-liberal political and economic forces and by employers without scruples, as the British political debate suggests (Hobbs and McKechnie 2007: 230). It would be naïve to think that public authorities or corporations would be concerned about the welfare of child workers or react to concerns of child workers' organisations, unless a strong and clear legal framework is in place. Some form of minimum age regime thus remains the best (even if not perfect), realistic approach to protecting children from harmful work.

In any case, children admittedly make a contribution to their families' living standards (Middleton and Loumidis 2001: 33), so that needs to be taken into account when limiting children's possibility to work (either by changing the legal framework or enforcing it more effectively). This can be done by ensuring that a strong social welfare system is in place – including a comprehensive range of out-of-work and family financial and services support – to 'cushion' such limits to child work (Edmonds 2010: 53). Moreover, positive effects can also be ascribed to child work, including the socialisation for future (adult) work, increased autonomy and self-reliance, learning new skills and attitudes, and forming professional goals (Hamilton and Powers 1990: 251 ff; Hansen, Mortimer et al. 2001: 123 ff; Mortimer 2007: 119-120). Yet, one should also bear in mind that asking children about the benefits of the work they carry out may not be the most illuminating way forward, as 'very few people are likely to admit to regularly and voluntarily undertaking an activity for

which they can find no justification or which they feel brings no extrinsic benefits.’ (Lavalette 1994: 14-5). Moreover, perceived benefits may not materialise: research in the USA has concluded that, although teenagers believe their work experience will help them find employment when leaving school, extensive work experience in reality did not improve teenagers’ likelihood of being employed six months after high school graduation (Hamilton and Powers 1990: 255). In reality, work experience is only beneficial if limited in terms of number of hours, and if increasingly challenging, otherwise the scope for learning is quickly exhausted (Hamilton and Powers 1990: 259). In short, acknowledging some benefits from teenage work experience is a far cry from endorsing work experience without limits. Finally, the socialising effects of work may in fact mean that children are socialised into exploitative, inequitable and often gendered relationships, which then become the norm in the child workers’ minds, even when the nature of those relationships is in reality not positive or beneficial to those children (Abernethie 1998: 97).

In sum, it is important to find ways to protect children from the harmful effects of work without depriving them of the positive effects. Hence the suggestion made above to focus on organised sports, volunteering with charities, being members of school clubs or youth political groups, participating in a range of associative activities, and joining other extra-curricular activities. Besides this, as mentioned in Section 2, light work is already allowed by ILO C138 and YWD (starting from the age of 13 and 14 respectively), which allows older children to experience certain types of work in a lawful and safe way before finishing compulsory education, thus facilitating their transition into work and the acquisition of relevant skills. Further positive alternatives will be explored below.

## **11. Non-formal employment: where to draw the line?**

Both the ILO and the Committee on the Rights of the Child see the ILO instruments and the CRC as applicable to work broadly defined, thus wider than the notion of employment (Swepston 2012: 31). As this includes work carried out in the contexts of education, the family, informal economy and artistic/sports activities, we need to look in turn at those areas of work as well.

As seen above, a careful and restrictive approach to child work in formal employment relationships is preferable. Such an approach, however, should not preclude valuable vocational training or traineeship opportunities. Indeed, vocational training and traineeship programmes are the best answer for many children with no appetite or inclination to more academic curricula, and who should therefore benefit from an educational offer that should, in any case, prepare them for the labour market. This is certainly easier said than done, as one needs to acknowledge the ‘difficulty of institutionalizing the somewhat radical change in education bureaucracies that work-education combinations require’ (White 2005: 331). Yet, the truth remains that children’s experiences in school-connected work are more positive than in work unrelated to school; this includes internships supervised by school, job shadowing and a range of school-to-work programmes, as these opportunities offer children more

scope to have more initiative and responsibility, face greater challenges, and obtain greater satisfaction than in work experiences unrelated to school (Hansen, Mortimer et al. 2001: 130 ff). School-related work experiences are therefore much more rewarding, safe and relevant for a smooth transition between school and the labour market, than work experiences freely available in the labour market. As the quality of work experiences are essential to the outcomes of that work (Hobbs, McKechnie et al. 1999: 51), high-quality school-related work experiences should remain a policy priority and build on the efforts of the 1970s and 1980s to develop models that combined education and (non-exploitative) work, such as co-operative education and apprenticeships (Whitney 1999: 247; Bourdillon, Levison et al. 2010: 114 and 129 ff). Liebel is amongst those who highlight the importance of new models that combine work and learning, for example, through ‘production schools’ and other forms of entrepreneurial educational settings, which insert economic activities into the realm of schools, thus empowering children and supporting their harm-free and exploitation-free pedagogical and economic endeavours (Liebel 2007: 127 ff). Hamilton and Powers, and Stern et al., in their turn, suggest cooperative education, experience-based career education, community service and mentoring, as mechanisms to slowly build up teenagers’ skills in a safe and motivational environment (Hamilton and Powers 1990: 260; Stern, III et al. 1990).

Work in the family context is yet another crucial area of the child work debate. Care should be taken when allowing exceptions to the overall approach of limiting child work, as even when allowing children to only work in family contexts, one is potentially exposing children to situations of abuse of power, emotional abuse, and health and safety risks, including arduous and exploitative tasks (Lavalette 1994: 35). Traditionally, the ‘private realm’ has been left mostly untouched by labour regulation and social critique, which has allowed for the exploitation of children in work, in particular young girls working as servants (Gittins 1998: 64; Bourdillon, Levison et al. 2010: 156-7), immigrant children working in family shops from the ages of seven or eight (Song 2001: 59), and children working at home for piece rates in the textile and shoe industries (Eaton and Goulart 2009: 442). The protection of the private sphere (supported by a false dichotomy between public and private spheres) should not come at the price of completely excluding from the scope of labour law a range of activities (especially those connected to family businesses and relatives’ professional lives) that may prevent children from concentrating on school duties or important social activities (Larkins 2011: 451). One should thus not place too much emphasis on family autonomy and a supposed legal immunity of the ‘private sphere’.

Family agriculture businesses, in particular, are prone to competition and globalisation, which often leads to the use of work by all family members – including children – for long and intense periods of time. In this context, ‘children remain a vulnerable and exploited source of labour’ in farms, which have been found to be very unsafe places for children, including in countries such as the USA and the UK (Hobbs, McKechnie et al. 1999: 5-7; Parker, Fassa et al. 2010: 112). Idealised notions of farm work as a healthy activity – what Hindman terms ‘agrarian romanticism’ (Hindman 2011) – should thus be dismissed, as this type of work is in fact exceptionally hard and can have long-term life consequences, a situation that can be made worse because of the ‘private nature’ of family farms (Hobbs, McKechnie et al. 1999: 7; Lieten and Meerkerk 2011: 32). Landowners in several developed Western countries have historically put great pressure on parliamentarians to consider the

agricultural sector as an exception to child labour regulations (Hindman 2011); this historic legacy needs to be urgently reconsidered.

Admittedly it may sometimes be difficult to distinguish in practice between ‘family caring’ work and ‘family business’ work (Song 2001: 69). Yet, some children who work in family businesses have complained of a ‘loss of childhood’ and feeling obliged to help in their family businesses due to a ‘kind of binding and unspoken contract’, called the ‘family work contract’ by Song (Song 2001: 61). This work is often fuelled by feelings of guilt, imposed in the name of the collective needs of the family, and conducive to the children’s resentment against their parents (Song 2001: 65-7). More generally, although the Committee on the Rights of the Child has not yet produced a general comment on Article 32 CRC, it has used its General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31) to highlight that ‘millions of children are working as domestic workers or in non-hazardous occupations with their families without adequate rest or education, throughout most of their childhood.’ (see para. 29)((CRC) 2013b). Not enough has been done to address child work in such family (and more broadly domestic) contexts, and future reforms need to tighten the applicable regulatory framework. Enforcement of labour regulation is naturally much harder in such a ‘private realm’, but that is no justification, from a policy perspective, to abandon any effort to produce principle-guided legislation.

At any rate, it would be excessive to prevent children from contributing to their family’s life by, for example, helping out with light domestic chores or with caring for family members. Although domestic chores in one’s own home are not usually classified as work or an economic activity (Fassa, Parker et al. 2010b: 38), the sociology of childhood has increasingly made a point in including under the notion of ‘work’ a range of activities that children carry out, including school work and home/caring chores, thus ensuring the visibility of children’s contribution to families, society and economy (James, Jenks et al. 1998: 102 and 118 ff; Wihstutz 2007). That may well be appropriate from a sociological and economic perspective. Yet, although this sort of task may be referred to as ‘economy of care’ (Wells 2009: 94 ff), its ‘economic’ nature is not sufficient to bring those tasks within the remit of labour regulation. If labour law were to regulate that sort of activity simply because the word ‘work’ is used in such a loose way, that would certainly constitute an inappropriate intrusion of a legal field that has developed a range of tools for relationships of a completely different nature. Indeed, such tasks may be better seen – at least from a labour regulation perspective – as non-labour activities, to the extent that adults also carry out domestic chores and care for family members without anyone ever thinking that such tasks should be regulated by labour law.

Although domestic and caring chores fall disproportionately on female children, carrying out domestic chores has been held to lead to pride in one’s capabilities, to ‘prosocial behaviour’ (in the sense that it helps children develop a positive attitude towards other people), and to the development of strategies to solve problems, provided that children are offered structured goals and support (Hobbs, McKechnie et al. 1999: 119; Wihstutz 2007: 81). Moreover, ‘[t]his caring needs to be encouraged and nurtured if children are to value care-giving both during childhood and later in adult life.’ (Becker, Dearden et al. 2001: 70). This is not to say that law and policy should not be produced to address the often heavy burden placed on

children who care for relatives or carry out domestic chores, as these tasks may have a negative impact on children's well-being and psycho-social development, including injuries, stress and poor educational performance (Becker, Dearden et al. 2001). What it means is that any intervention in this field should not be in the shape of labour regulation, but instead in the shape of other forms of socio-legal intervention and support (namely that provided by social services), such as those mandated in the UK by the Children Act 1989 and Carers (Recognition and Services) Act 1995 (Becker, Dearden et al. 2001: 81 ff; Wihstutz 2011).

It is worth highlighting 'baby-sitting' as a particular activity often carried out by children within 'family contexts'. If done within a child's own family, it can be held to be a 'caring activity' (especially if unpaid, as it generally is); if carried out 'for profit' (as a paid activity), it is usually regarded as a provision of service (as opposed to employment). In both cases, 'baby-sitting' consensually falls outside the scope of child labour regulation (Leonard 2002: 192), and hence is lawful. This should not, however, be seen to mean that it is always an unproblematic activity. Besides reflecting the deeply gendered nature of child work due to being disproportionately carried out by female children, baby-sitting carried out by children raises serious legal liability and health and safety issues. This has led the UK Royal Society for the Prevention of Accidents to issue a charter for baby-sitting built on the premise that baby-sitters should be older than 16 and capable of coping with the responsibility inherent to the task (discussed in (Morrow 1994: 136).

The fact remains that one needs to draw clearly the line for the intervention of labour law into the work activities of children. Using as a criterion whether or not the work activity is carried out within a family context is inadequate, as exploitation can occur equally in both contexts. Similarly, whether or not the work activity is paid is not appropriate as a key criterion, as children may still (or even more) be exploited when the work is unpaid. The line should be drawn, it is submitted, where the activity is of a profit-making or professional nature. In other words, a child contributing towards the family's life by carrying out small chores or helping to care for a relative – generally called 'reproductive work' – should be held to be acceptable from a labour law perspective and not to require the intervention of this legal field (even if it may require socio-economic supportive intervention of some nature under certain circumstances, namely in relation to child carers, as seen above). Yet, being involved with the family's or anyone else's business or professional or profit-making activities – generally called 'productive work' – should be avoided unless carried out close to the end of childhood (on the distinction between reproductive and productive work in the context of child labour, see (Bourdillon, Levison et al. 2010: 28 ff). This is not to say that reproductive work is any less deserving of respect or is in any way inferior socially; it simply means that reproductive work is less appropriate as an object for labour law regulation, and the law should only aim to regulate child productive work. Reproductive work may still lead to harm (as various domestic and subsistence activities sometimes do), but rather than triggering the intervention of labour law, those incidents require interventions of other nature, including social and economic. Consequently, children are free to be 'economically active' to the extent that even reproductive work may be seen as having economic value (e.g., when producing goods for one's own use), but when engaging with 'productive work', children's activities should be carefully scrutinised and fall within the scope of child work

regulation to ensure that children's physical and psycho-social development is not in any way jeopardised.

By bringing a broader scope of activities into the scope of child labour regulation (including within the scope of the YWD), those activities are recognised as a form of labour. This does not mean that those forms of labour must always be prohibited, but they will at least be better regulated and be subjected to previous authorisation or inspection procedures by the labour authorities. This also means that the recognition of the children involved with those forms of labour as workers is enhanced, thus affording those child workers the protection of labour standards.

Even when only carrying out 'reproductive work', children remain productive members of society through their intellectual, educational, associative, social and caring activities – a sort of biopolitical productivity (Oswell 2013: 226-7), which does not require being exposed to the risks of profit-making, business activities. None of this denies or even diminishes the role of children as 'economic agents' in the European context, especially in late adolescence, which is observable through children's work as students and carers, for example (Pole, Mizen et al. 2001: 3). Indeed, education itself – and even extra-curricular activities – can be seen as work and economic production (of 'human capital'), which reinforces children's 'socially useful' and 'economically active' role (Qvortrup 2001: ; Levey 2009). Yet, completely blurring the distinction between all sorts of socially and economically productive activities with which children may engage is simply unworkable, both from an academic and policy-making perspective, thus constituting a mere distraction from what really matters (Liebel 2007: 126). Even more perverse is to go as far as suggesting that education itself is the form of child work that is criticisable (argued by Paul Close and discussed in (Morrow 2010: 438). As discussed above, in each geographical and cultural context, different activities may have different characteristics, benefits and disadvantages. Education, in particular, has undoubtedly much broader aims than simply 'producing human capital' in an economic sense, and any tendency to see education exclusively from a social utilitarian point of view should be resisted. So, 'divisions of labour', such as distinguishing between work in school/formal labour market/home and between non-productive/productive work, are entirely appropriate and necessary.

## **12. Conclusion**

Problematizing and contextualising the issue of child labour is a very valid endeavour from an academic point of view, particularly from anthropological and sociological perspectives. And perhaps, at the end of the day, what seem like opposing views are simply views from different perspectives and with different emphasis, but leading to very similar, if not completely equal, policy outcomes. Yet, the more one qualifies, relativises and nuances the issues in this debate, the more one muddies the waters and weakens the policy demands and adopted strategies. Any import of sociological findings into law-making requires careful scrutiny and critical thinking. Calls for children to be able to work as and when they consider it necessary may seem sensitive

to different cultures and particular experiences of children (Okyere 2012: 89), but such calls may well be counter-productive: they contribute to the normalisation of child work, do not help to eliminate harmful child work, do nothing to promote educational and other socio-economic rights of children, and overall may end up hurting children's well-being.

The literature on this topic is permeated by 'deconstructionist' efforts in a post-modernist avalanche that leaves no stone unturned (Lavalette 1999: 16), but also everything left to rebuild. Rebuilding is something that that same literature clearly does insufficiently, which reflects a lack of hope in better societal conditions for children. These trends may seriously undermine the efforts to protect children from lowering labour standards, which may in turn have negative effects on children's future well-being. Whilst large sectors of the social sciences may satisfy themselves with describing and understanding reality, law and policy-making are called upon to go beyond that and are required to consider ways to improve the legal system in existence wherever there is scope for improvement. Simply observing that reality is not how rules determine does not undermine the rules, as otherwise hardly any single norm in any given legal system would be left unscathed. Even if the social changes that legal norms try to effect may be slow or non-linear, that does not preclude the appropriateness of the policy – it may simply entail the improvement of the enforcement tools, the use of complementary mechanisms, and the adoption of a more holistic view.

What was once the 'conventional approach to child labour', i.e., advocating the restriction of child work and the abolishment of child labour, has, in fact, become sidelined and the 'poor relation' in the debate. The autonomy/regulationist approach is being progressively seen as the avant-garde approach to child labour and working children. The new dogma appears to be to advocate in favour of greater freedom of children to access the labour market (see, for example, (Karunan 2005). Yet this needs to be challenged as misdirected children's rights advocacy and as a misplaced emphasis on autonomy. It is crucial to remain critical of and alert to the potentially negative consequences of this new dogma. As Said has argued in relation to true intellectual pursuit, '[i]t involves a sense of the dramatic and of the insurgent ... It is a lonely condition, yes, but it is always a better one than a gregarious tolerance for the way things are.' (Said 1994: xv).

Even if the line of argumentation defended above may be out of synch with actual child work experiences, with an increasingly prevailing line of children's rights academic discourse, and with the labour policy deregulatory mind-set that currently dominates in some sectors, it is still very much consistent with child work norms enshrined in international instruments and domestic legal frameworks. This article thus does not necessarily wish to revolutionise the current state of affairs (if anything, simply strengthen it), but much rather counteract autonomist/regulationist tendencies in the European context. In sum, it is submitted that it is fundamental to go on arguing in favour of a satisfactory degree of regulation of child work that can ensure appropriate working experiences for those children who want them.

The discussion above in no way intends to camouflage the complexity of the child labour phenomenon; on the contrary, it addresses and engages with that complexity. Yet, complexity cannot foster complacency. This article intended to

confront the ‘moral high-grounders’ and the ‘laissez-faire acceptors’ (Bissell 2005: 396) in the EU-specific context and within a human rights and child-centred analytical and policy framework. To completely vindicate this approach, extensive empirical work and longitudinal research of children’s real work experiences (and not just opinions) across the EU Member States would be required. This may constitute the next step in the field of child labour studies in the EU, as the existing empirical data is far from sufficiently up-to-date or comprehensive.

At any rate, it seems to me that, if anyone wishes to suggest that children would benefit from greater access to different forms of work and formal employment (in extremis benefiting more from being in the labour market than in an educational setting), the burden of argumentation should lie on them to change the status quo, as that view lies much further away from the current regulatory framework than what is being argued in this article. This is not a matter of denying child work exists – it obviously exists – or denying the value of child work – it obviously possesses value to the children who work, their families, communities and society at large. It is a matter of balancing the value created (of whatever nature it may be) and the harm caused/value lost by children’s involvement with work. Rather than attacking regulation of child work as ‘the nanny state in action’, one should be wary of irresponsible deregulation that goes hand-in-hand with excessive neo-liberal economic practices.

In conclusion, this article has tried to achieve a fair balance between the welfare and the autonomy approaches, whilst admittedly adopting a position closer to the welfare approach (although this terminology is, at the end of the day, unhelpful, as discussed above). Most findings discussed above support such an approach and question the wisdom of societal tolerance towards child work. It is not about pitting some adults’ views on child work against some children’s wish to work; it is about society creating the legal and socio-economic framework that can offer every individual greater chances of fulfilling their potential. Until late adolescence, entrance in the labour market does not seem to be the most conducive means to the fulfilment of children’s potential – education and other means of socialisation do. Some may critique this approach as being ‘bourgeois’ (for following a ‘middle class paradigm’), but we have seen that in reality it is child work (not its restriction) that is close to the ‘middle class paradigm’ in the context of developed and capitalist countries; others may accuse the analysis above of being ‘unrealistic’, but passively accepting ‘reality’ without envisaging something better is unduly pessimistic; yet others may consider the proposals presented to be ‘paternalistic’, but ‘[t]here are good reasons to think that paternalism may be much of what is ethically required in dealing with children, even if it is inadequate in dealings with mature and maturing minors.’ (O’Neill 1992: 40). In reality, the arguments presented simply aim to provide children with the best legal framework possible to allow them to develop their physical and intellectual potential, in the light of the CRC principles and rights. Much more worthy of condemnation is to be the accomplice of families and businesses that see using (cheap) child labour as legitimately overriding children’s own best interests. It is imperative that we do not fall into a toxic sort of moral and normative nihilism, masquerading as realism, without any ambition to improve the status quo. It is particularly worrying that children’s rights discourses end up, willingly or unwillingly, being used to favour economic interests and employers’ profit margins, rather than children themselves.

Rendering EU child work regulation stricter and more ambitious is also defensible because, besides all the reasons discussed above, there are the socio-economic resources to do it. These resources may be insufficiently distributed or used in children's welfare, education and protection, but that is not to say that those resources do not exist; it just means that they need to be redirected to children's priorities. Poverty in Europe has increased amongst children since the 2008 economic crisis, and this has had serious implications for children's health, education and nutrition (Research 2014), but that is by no means inevitable. To compound the grave impact of the economic crisis on children, 'access to money [is] essential for the concrete forms of social interaction that now constitute an important, if not defining, element of the contemporary social relations of childhood.' (Mizen, Pole et al. 2001b: 54). This clearly points not only to the importance of retaining a strong welfare state, but also to the civic and public responsibility of offering economically accessible leisure and socialising opportunities to children and adolescents, in fulfilment of states' CRC obligations in the context of the rights to play, leisure and development. Moreover, ceding to child labour deregulatory pressures on the basis of a 'lack of alternatives' feeds into the authorities' and societal lack of motivation to create those alternatives, and removes any pressure to improve socio-economic and educational provision. As Dixon and Nussbaum highlight, a 'decent society' finds ways to protect people from having to face 'tragic choices' (Dixon and Nussbaum 2012: 584), such as between good education and subsistence. So, rather than using the economic crisis to justify children's need to work, one would do better to resist the dismantling of the welfare state and to place on authorities the responsibility to ensure that children have access to a social welfare and educational and social support system that is sufficiently inclusive, responsive and well-resourced to ensure respect for children's rights and obviate their need/wish to engage with harmful work. This is the essential message of this article, and to use Lessig's words, 'while one could quibble with details in the story, its lesson is too simple for any quibble.' (Lessig 1995: 994). As always, nothing is impossible, but everything depends on civic mobilisation and political will.

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