

Children's rights and adults' duties. Critical issues and future prospects

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Abstract

The essay aims at reconstructing today's debate on children's rights, highlighting how it has concrete epistemological repercussions on pedagogy itself, a knowledge called upon to historicise the prerogatives of children in their concrete environments of life, relationships and development, both formal and informal. In particular, the essay dwells on the critical elements that characterise contemporary society, with more and more rights but fewer and fewer children, and on the need for an integral ecology of the human being capable of ensuring full pedagogical sustainability for the culture of childhood. A new pedagogical vision, therefore, capable of rebalancing the protagonism of the child with the insurrogable function – of guidance, accompaniment and help – carried out by the adult.

Il saggio mira a ricostruire l'odierno dibattito sui diritti dell'infanzia evidenziando come esso presenti concrete ricadute epistemologiche sulla stessa pedagogia, sapere chiamato a storicizzare le prerogative dei bambini nei loro concreti ambienti di vita, di relazione e di sviluppo, formali e informali. In particolare, il saggio si sofferma sugli elementi di criticità che contraddistinguono la società contemporanea, con sempre più diritti ma sempre meno bambini e sulla necessità di un'ecologia integrale dell'umano capace di assicurare una piena sostenibilità pedagogica alla cultura dell'infanzia. Una nuova visione pedagogica, quindi, in grado di riequilibrare il protagonismo del bambino con l'insurrogabile funzione – di guida, di accompagnamento e di aiuto – svolta dall'adulto. Un progetto, questo, di lunga durata e contrassegnato da sfide impegnative che questo contributo mira a problematizzare nell'ambito della visione proposta dall'odierna pedagogia dell'infanzia.

Keywords: children's rights; 1989 UN Convention; childlessness; pedagogy; educational relationship

Parole chiave: diritti dell'infanzia; Convenzione Onu 1989; denatalità; pedagogia; relazione educativa

1. Rights-based knowledge for children's learning

The issue of children's rights is a pedagogically salient aspect of contemporary culture because it informs, at the deontic – ergo prescriptive – level, the regulation of intentional action within a given educational system, from its smallest and most implicit dispositives to more overt dispositives imbued with values and judgments. In other words, to cite Bertolini:

With regard to education too, affirming the need to view it as a right necessarily implies accepting that [educational] action is subject to specific and recognized limits, to avoid losing sight of, or even contradicting, its most fundamental *raison d'être* (Bertolini, 2003, p. 60).

Thus, the right to be educated establishes – via its nomodynamic apparatuses – a set of absolute prerogatives, which belong to a subject – the child – as a member of a specific category of persons who are all going through a specific developmental stage marked by specific and crucial existential needs. This differentiates the non-adult from the other subjects in the human *communitas*, who are senior to the child in terms of age, life experience and personological maturity. It follows that childhood is a relational concept: “One is always a child in relation to someone else who is also a child – a generation, a cohort of other children – or who is not a child: a youth, an adult, an elder” (Becchi, 2008, p. 43).

The identification of the child as a distinct anthropological category has been followed, with the advance of a mature juridical, pedagogical, and humanistic civilization (Macinai, 2007; 2013), by the ascription of certain prerogatives, enshrined as rights, which serve to position children within a given society by regulating the dialectical – and sometimes antinomic – relations between child-centred, adult-centred, and elder-centred perspectives. Indeed, as Norberto Bobbio has observed, the ascription of specific rights with a view to regulating inter-generational transactions within a society points up the need to revisit (at least as a regulative ideal) power relations that are otherwise constitutively biased in favour of the elderly (who possess the economic resources and the legal and political capacity to independently exercise their rights):

The part of the Declaration of the Rights of the Child where it is stated that children require special protection and special care due to their physical and intellectual immaturity makes it clear that children's rights are viewed as a *ius singulare* as opposed to a *ius comune*: the importance that is accorded to them is based on a specific application of generic rights, in fulfilment of the maxim *summ cuique tribuere* (Bobbio N., 1990, p. 23).

Finally, these rights (*of children*) go hand in hand with corresponding duties (*of adults*), which are distributed within the *societas* according to a radial hierarchy of responsibility (which extends outwards from parents to the educational community as a whole) and informed by the *principle of subsidiarity*, meaning that educational functions are fulfilled by juridically superordinate systems only when these are better placed to absolve such functions than are lower-level systems. In other words, the *empowerment* of families constitutes the primary level of intervention for the concrete exercise of children's rights from the perspective of an integral ecology of human relations. More specifically, respect for the principle of subsidiarity in public policy implies

-- not extending public services indiscriminately but only intervening in the absence of viable alternatives; -- implementing a policy of recognition and support for initiatives by families and small

social groups; -- ensuring that children's interests are represented when planning the social environments that concern them (Scurati, 1999, p. 143).

As we are keenly aware, education policies have not always evolved in keeping with these principles. First because in authoritarian regimes (or dystopias), the state has always reserved the unconditional right to intervene directly in the lives of children, regardless of the stated desires of their families; and second because children have traditionally been held back by the prejudice that they are incapable of self-preservation and therefore incapable of understanding and willing their own ultimate good (*the best interests of the child*). Thinking of the *child* as a *person*, therefore, has entailed overcoming a set of prejudices, including etymological ones, which conventionally defined the *puer* as one who cannot speak – who is *infans* – or as one who may speak but whose utterances are laughable (*bamba* – the fool). More generally, overcoming this etymological bias is intrinsic to the epistemological discourse on education, where pedagogy is conceptualised as a body of knowledge that is confined to the *pais*: a subject to be led, guided, and accompanied, without even being consulted about where he or she would like to go. This stands in contrast with the epistemology underpinning conceptualizations of *educational science*, which – by associating its ends and values with goals such as emancipation and autonomy – anchors educational action to the rights of learners by adopting practices that are fully sustainable, both ethically and methodologically, and, consequently, are implemented in harmony with the needs of the students themselves and of society as a whole. See, in this regard (by way of example) the definition of *pedagogy* proposed by Egle Becchi in 2008, which understands this discipline as

a body of knowledge that scrutinizes and guides educational action and expertise, which are underpinned by technical competence and aimed at producing lasting improvements in the conduct of subjects viewed as inexperienced; which has deontic value; is discursively organized via networks of categories that specify and facilitate the realization of this deontic mission; displays different levels of formalization across its various expressions (Becchi, 2008, p. 219).

A notion of pedagogy, therefore, intrinsically bound up with the notion of person, value and right.

2. The child as a subject of rights

When the child is *thought of as a subject of rights*, this poses the challenge, from an educational point of view, of how to shape a growth trajectory for a non-adult that is not merely other-directed by the desires of adults or moulded on the functional interests of society, but rather is custom designed for that specific person, with his or her inscrutable, noumenal subjective identity and unique and inimitable understanding of the world. In this regard, already at the legal level – a level that offers a less refined filter than the pedagogical level given that it is based on solely factual considerations – Article 147 of the Italian Civil Code appears to assign parents with the task of not merely guiding their children's development but also of interpreting their children's voices, stating that both spouses have “the obligation to maintain, instruct, educate, and morally assist their children, *while respecting their abilities, natural inclinations and aspirations*”. If, therefore, the children prove to be *capable and deserving* but the family is extremely poor, in keeping with the aforementioned principle of subsidiarity, the State is bound to step in to guarantee the right to education, including at the highest levels:

Capable and deserving pupils, even if they lack the financial resources, have the right to attain the highest levels of education. The Republic makes this right effective through scholarships,

allowances to families and other provisions, which must be awarded based on competitive procedures (Art. 34, Italian Constitution).

Children's rights, by virtue of their absolute nature, on the one hand override the principle of citizenship – they hold *erga omnes* – and on the other hand attenuate the notion of responsibility, nullifying it completely in the case of children under 14 years of age, who, precisely because of their peculiar developmental status, *in practice cannot be charged with a crime*. This diminished responsibility of minors does not affect their right to be heard in relation to matters that concern them, nor does it prevent them from exercising prerogatives such as the right to *representation* and *participation*.

With the ratification of the 1989 UN Convention by the member states, the theme of the rights of children has come increasingly to the fore. Nevertheless, even within the UN, critical issues have been flagged concerning the theoretical genesis of the rights listed in the convention. More specifically, the abstract nature of these rights risks obscuring a historicized and situated view of contemporary children, whose development is conditioned by the radically diverse life contexts that characterize the various regions of the world (Luciano & Madella 2022). Where poverty is endemic, for example, it is difficult to theorize a childhood understood essentially as a time of play and radically separated from the sphere of work (especially in human communities based on subsistence economies); where women's rights are denied, it is difficult to think of equal rights for boys and girls; and, indeed, even in the richest countries, children's rights need to be interpreted using conceptual and hermeneutic lenses that differ from the merely quantitative perspective brought to bear on primary needs. Already in the early 2000s, Scurati cautioned that children's lives were marked by extreme contrasts and the coexistence of the opposing logics of

abuse, violence, exploitation, malnutrition, exclusion, material, psychological and moral abandonment, and harmful precociousness and, at the same time, overprotection, an excess of food and gratification, the absence of frustration and opposition, systematic spoiling, audiovisual hyperstimulation, and precocious intellectual stimulation (Scurati, 2001, p. 39).

From the extremes of this profound imbalance, Scurati identified two emblematic ideal types: the *Tom Thumbs* of emigration, poverty, nomadism, wars, and diasporas of political refugees (the worlds of deprivation) are counterbalanced by the *Little Buddhas* of material and instrumental opulence (the worlds of excess). While the former suffer from a lack of stimulation and from social exclusion (and therefore require high-quality educational environments that can early contribute to compensating for their initial disadvantages), the latter are threatened by factors that stunt the appropriate development of their personalities and need the ecosystems to which they belong to be less artificial and the human relationships in which they are enmeshed to be more authentic and appropriate, and therefore more in tune with the demand for integrity that characterizes human persons and underpins their harmonious “constitution as integrated and distinct personalities” (Bobbio, 2021, p. 126).

Despite these critical issues, we have nevertheless been witnessing, in recent years, at least in the West, an extension of the culture of rights to children who are increasingly younger than the classic 19th/20th century child: already Montessori's (but also Korczak's) view of the child as a subject of rights encompassed preschoolers, young and very young children, with even newborns seen as eligible for education (De Serio, 2017). Today, therefore, we need to address the problem of how to extend the right to participation and expression – as well as citizenship – to even the youngest children, offering appropriate mediation and faithful listening so that their desires and preferences are not subordinated to adult interests or misunderstandings. At the same time, we are

called to develop opportunities for children to socialize, including at the pre-school stage, making sure to offer *quality* educational environments during a period when sensitive learning (especially in relation to language) is taking place in an institutional setting that is intensive and artificial in nature.

Finally, this progressive expansion of the culture of rights has seen the advent of the category of inclusion, a paradigm that represents the maximum extension of rights to any deontic case in point. Inclusion ascribes a broad set of rights to certain individual subjects: for example, the disabled child, the hyperactive child, and the autistic child are all subjects whose cases pertain both to the rights of minors and to those of “sick”, “difficult”, and “particularly vulnerable” persons. As such they require a difficult-to-attain balance between sustainability, the rights to care, participation, safety, and non-discrimination, and the rights of other children – for example peers – who are equally deserving of protection. Then there are others whose rights are joined with the rights of these subjects, especially those who directly care for disabled children in keeping with the prerogatives of natural law. For example, the parents of a disabled child have the right to support for their educational efforts and the right to help in accepting the narcissistic wound inflicted upon them by the scandal of “innocent pain” (Gnocchi, 1993, pp. 751- 770); they experience a feeling of *thrownness* that concerns both the present and the future (in the form of worry about “later on”) and that calls for back up in terms of pedagogically informed opportunities for re-creation, socialization, relief, friendship, and conviviality.

3. Shadows and forms of loneliness

Today’s pedagogical civilization, which is furthered and affirmed by modern and contemporary psychological and educational research, appears to unanimously endorse an *image of the child* (Luciano, 2017):

As an intrinsically valid and active being, a true interlocutor in its relations with the world, with adults, and with other children. [This image of the child] must be adopted as a cornerstone principle of any educational approach, the foundation and the positive common heritage of our educational civilization, and the basic foundation of the educational civilization of the future (Scurati, 1993, p. 19).

The emergence and popularization of this image of a child who is strong rather than weak seems, however, to counterbalance the ever-shrinking number of children in the contemporary West. In addition to economic factors, which condition the propensity to generate children, existential and cultural factors also structurally influence the decision to procreate and are currently exacerbating the phenomenon of falling birth rates (Pati, 1998). More specifically, a protracted adult-centred lifestyle seems to be correlated, on the one hand, with heightened cultural awareness of the duties and complexity of parenting, while, on the other hand, it is associated with a certain reluctance to make irreversible decisions that demand increasingly intense and long-term commitment, often well into adulthood, to a subject – the child – who is perceived as demanding, risky, and all-absorbing. This perception has dangerous implications, as observed by Alfredo Carlo Moro,

the blending of prolonged infantilization in some areas, a pervasive attitude of irresponsibility, and precocious empowerment in the most delicate spheres of human existence risks forming an explosive mix that can provoke severe suffering, unmanageable levels of “getting ahead of oneself”, and dramatically negative experiences that can profoundly mark the developmental process (Moro, 2006, p. 140).

Children with ever greater rights, expectations, and needs – the category of the “despotic child” dates back quite some time and has been mirrored by the emergence of the “helicopter parent” – coupled with progressively more inhospitable worlds on the verge of ecological collapse, seem to undermine *ad imis fundamentis* the very possibility of responsibly generating life and helping it to develop in keeping with its nature. As Donati puts it: “not having children means not exposing oneself, at least so one believes, to pain, risk, and responsibility for indirectly causing harm” (Donati, 1989, p. 142).

At a more general level, the codification of human rights by supranational institutions imposes a level of cogency and effectiveness that relies more on the *consensus omnium gentium* than on enforcement by national judiciary systems. This implies an optimistic view of both human relations and history, whereby the former seen as capable of promoting forms of distributive justice and international solidarity, and the latter as heralding, if not social progress, at least comforting and non-regressive projections of the future. Today, neither of these conditions appear to hold. On the one hand, due to the advancing culture of waste, closed borders, and national sovereignty, with the related exclusionary policies that undermine even the most basic ideas of civilization (such as the sacredness and transcendence of human life); on the other hand, due to the affirmation of an idea of time that is no longer thought of *kairologically* or progressively but rather as regressing to a zero point marked by environmental catastrophe (especially in the form of pandemics and nuclear holocausts) and therefore to the cancellation of any possibility of a future (Bobbio A., 2018, pp. 147-161; Bobbio A., 2020, p. 76).

This reduction in hope (and in *basic trust*, to use a term dear to Erickson) implies that fewer and fewer children are being generated, that more and more is being narcissistically invested in an ever-smaller number of children, and that childhood is viewed as a technical (or zoonotic or eugenic) matter, a *de-natured* and private state. This, in turn, bears repercussions at several levels:

- The decline of childhood as the preparatory stage for adulthood, due to the precocious selection of the deserving and the excellent, and unacceptable levels of frustration with the inevitable “anthropological waste” that stems from this classification process.
- Precociousness and a growing loss of spontaneity in children, as they are increasingly less buffered from the behavioural, aesthetic, affective, language, and expressive models of adults.
- The hyper-involvement of children in the adult world, as the grown-ups exploit children’s perspectives and oppress them with responsibility for choices, especially family decisions, which are beyond their ability to manage and assess but which they are nevertheless asked, if not forced, to take on.
- The induction of children into the logic of consumption, with the consequent other-direction of their desires and of the symbolic imagery that governs play and other related modes of primary creativity.

All these forms of *adulteration of childhood* are accompanied by a reduction in the range of independent action enjoyed by children, who are increasingly confined to settings that are hyper-controlled by adults and characterized by the ever more intensive prostheticization of bodies and the ever more extreme virtualisation of environments and human relationships. For some, this adulteration of the concept of childhood is also gravely undermining the relationship between adults and children, upsetting the balances that are constitutive of and that substantiate the educational relationship:

Neither childhood nor adulthood are perfect in themselves but rather they are reciprocal conditions of coexistence and life, each to be situated under the banner of responsibility towards the other. Altering this framework means complicating to the point of impossibility a relationship that is already by nature among the most difficult (Scurati, 2001, p. 16).

A similar analysis has been put forward by the French sociologist Gauchet who argues that, while for a long period, adults *could not see* children – meaning that childhood remained “undiscovered” – today:

Adults see themselves through children; they project themselves onto children, as a function of a difference that is recognized, even emphasized and exalted, yet is read through a prism that does not necessarily leave much scope for the truth of this difference. It is not clear whether children have really gained from this hallucinatory overinvestment, from this imaginary royalty to which they have been elevated [...] The adult vision of childhood that has now become established, given the incomprehension that it generates, acts as an epistemological and practical barrier to the educational enterprise (Gauchet, 2010, p. 7).

4. Conclusions

As I have attempted to illustrate, the opacity of the prism through which we view children’s rights diffracts, and potentially seriously compromises, our overarching pedagogical perspective by introducing aberrations and distortions that reverberate at multiple levels: from the intergenerational to the micro-pedagogical and institutional. Re-educating our gaze via the appropriate situating of the positions and postures of all the actors involved in educational phenomena thus represents the first step towards creating sustainable ecosystems that are suitable for all. Such a restructuring of our perceptual field will inevitably require a series of actions designed to enhance the worlds of both children and adults by compensating for the many forms of poverty afflicting the former and by investing in the formation of the latter, following a logic of empowerment and capability rather than models of command, which deprive natural educators of their implicit competence. Finally, interpreting the rights of the child with a view to historicizing them represents a critical and deconstructive – as well as epistemological and hermeneutic – stance that is to be encouraged in all those who are involved with children and their education; indeed, this is the only perspective that will enable us to restore an ethical and deontic bent to our everyday educational activity.

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