The World Bank's protection and promotion of children's rights

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The World Bank

1. Introduction: Evolution of children's rights

While some other legal systems have had from their inception separate sets of rules regarding children's rights,¹ it was not until the 19th century that childhood came to be widely recognized as a legal status requiring special measures of protection in many Western legal systems.² Early legal doctrines in Europe, such as the Roman "patria potestas" doctrine, treated the child as parental, usually paternal, property.³ "In early [Roman] law there was evidently little difference between son and slave, both being regarded as the property of the pater-familias to be disposed of as he wished".⁴ Only gradually, such notions were abandoned. English law recognized since the

¹ In particular, the Islamic legal system, Shari'a, has developed since the 7th century A.D. detailed rules on the legal treatment of children, including rules regarding the right of all children (boys and girls) to inheritance, their legal capacity to conclude contracts within certain limits between the age of seven and the age of majority, their right since birth to acquire possession, their right to guardianship, prohibition of marriage between those who shared breastfeeding from the same woman, etc. See, e.g. M. Khadduri and H. Liebesny, Law in the Middle East, Vol. I, 151–58 (1955); N. Anderson, Islamic Family Law, in International Encyclopedia of Comparative Law, Vol. III, Chap. 11, 161–65 (R. David et al. eds., 1983).

² See P. Alston, Children – International Protection, in Encyclopedia of Public International Law, Vol. I, 573, 574 (R. Bernhardt ed., 1992). In Western legal systems based on Roman law, the child's legal status developed that late because of the strong notion of parental authority according to which a child “belonged” to “its” parents or “its” family. Only gradually notions evidencing the emergence of a child’s legal status, e.g. of a child’s limited contractual and delictual capacity, were introduced reaching the degree of modern concepts of a child’s capacity etc. in the 18th and 19th centuries. See S. Stoljar, Children, Parents and Guardians, in International Encyclopedia of Comparative Law, Vol. IV, Chap. 7, 81–85, 94, 285–290 (R. David et al. eds., 1976).

³ See S. Stoljar, supra note 2, at 33.

13th century that “infancy or non-age” was “a condition which has many legal consequences” and that “the legal capacity of the infant is hardly if at all affected by the life or death of his father”.\(^5\) Social and political evolution led to recognizing the child as a legal person possessing both rights and duties, ultimately paving the way in the 20th century to the reference to children’s rights at the highest level within a country’s hierarchy of norms, i.e. in its constitution. While earlier constitutions such as the US Constitution of 1788, in particular its Bill of Rights of 1791, and the French Constitution of 1789 do not include references to children’s rights in their list of fundamental rights, most modern constitutions refer to children’s rights under a general or specific formula of rights and/or state objectives of child protection.\(^6\) Moreover, other modern constitutions contain at least indirect references to children’s rights in the form of a state guarantee of family protection.\(^7\) Where constitutions directly refer to specific children’s rights, those range from civil and political to social, economic and cultural rights.\(^8\) Virtually all modern constitutions


\(^8\) Civil and political rights are for example referred to in the constitutions of Belarus (1994) (Article 32(3) prohibiting torture and cruel treatment of children), Chile (1980 as amended in 1991) (Article 19(1) protecting the unborn’s right to life), Colombia (1991) (Article 44(1) protecting the right to life, the freedom of expression, and prohibiting child labor and child abuse), India (1950 as amended in 1992) (prohibiting child labor). Social, economic and cultural rights are mentioned in the constitutions of Brazil (1988 as amended in 1994) (Article 7(XXV) granting financial assistance to children up to the age of six years), Colombia (1991) (Article 44(1) granting health care, social security and cultural services), Croatia (1990) (Article 62 guaranteeing to create social, cultural, and educational conditions conducive to the realization of the right to a decent life), Malawi (1995) (Section 4 promoting conditions conducive to the full development of children to healthy, productive and responsible members of society), South Africa (1996) (Section 28(1) granting basic nutrition, basic health and social services), and Turkey (1982 as amended in 1994) (Article 58 protecting the youth from addiction to alcohol,