4

Heard but Unable to Speak

This chapter grapples with the disconnect between childhood as socially constructed and the child-rights identity as monist. More precisely, this chapter concerns the role of violence in creating childhood that the monist child-rights identity obscures since the social has no part in its construction. Childhood partly springs from a relationship between time, violence, and silencing, as well as love and care. The function of silencing in the making of childhood is present both when the child is being loved and cared for, and when there is violence and abandonment involved in the shaping of childhood. Ultimately, in both the loving and the abandoned child situations, silencing serves to maintain an adult-privileged position, allowing with impunity the reconceptualization of the use of violence against children, as either being done in the name of love or for the benefit of the child. The idea that harm and abuse are an act of love is a common misconception in the understanding of childhood, and silencing allows this misconception to remain unchallenged.

4.1 DENATURALIZING THE LINK BETWEEN VIOLENCE AND CHILDHOOD THROUGH SPEECH

To denaturalize the link between violence and childhood, one must go further than providing the opportunity for the child to be heard, and instead demand that the child to be able to speak. Far too much child rights advocacy stops at the right to be heard without taking the step into the freedom of speech; this is a significant blind spot in the advocacy of child rights. Even though the right to freedom of speech is established in the CRC, it is seldom invoked by child rights advocates, and it is not a guiding principle of the CRC. Instead of freedom of speech, it is the principle of the right to be heard that is the guiding principle of the CRC. The blind spot is connected to the way that

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the CRC constructs the child identity, as free from the social where violence has been diminished to the category of abuse, and an anomaly, instead of being understood as an intricate part of the construction of childhood itself.

Let us first begin with the distinction between the two provisions; the right to be heard on the one hand, and the freedom of speech on the other hand. There are two main provisions within the CRC addressing the possibility of agency through speech: article 12 on the right to be heard, and article 13 concerning freedom of expression. Article 12 is as already mentioned a guiding principle of the convention, meaning that each article of the CRC should be interpreted through the lens of article 12.[1] It reads, "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." The major weakness of article 12 as a justiciable right is that the scope of this right is dependent on the subjective assessment of someone other than the child and that there is no requirement that the derogation of this right should be established by law. Instead of the law regulating the meaning of the right in its concrete application, the scope is connected directly to another person's assessment of that child, without any qualifications establishing why and how this person has obtained this power of interpretation. For human rights in general, the child's right to be heard is an alien rights construction in that the scope of the right is dependent on not the right-holding person but on others' subjective assessment of the individual right holder's capacity. This is without any derogation being regulated through law and limited by objective criteria connected to the benefit of the society and community at large. The normal approach with rights is that they are the same for everyone within the same category regardless of any subjective individual assessment of the right holder's capacity. This is not the case with the child's right to be heard where the meaning is explicitly subjective and individual in its application.

Instead, as already addressed in Chapter 1, formal capacity is normally presumed, as expressed for example in the opening article of the Universal Declaration on Human Rights: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience." The

[1] For an analysis of the limitation of article 12 to achieve social transformation see Afua Twum-Danso Imoh, "Adults in Charge: The Limits of Formal Child Participatory Processes for Societal Transformation," in *The Politics of Children's Rights and Representation*, ed. Bengt Sandin, Jonathan Josefsson, Karl Hanson and Sara Balagopalan (London: Palgrave Macmillan, 2022).

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Universal Declaration does not limit the scope of the rights to the right holder's actual ability to reason, and whether that person, in fact, has a conscience as the article presumes. Instead the qualities are presumed to be present in every person, and it is this presumption that determines the scope of the right. With the CRC it is the opposite of how it works with the Universal Declaration: Instead of an abstract presumption of reason and conscience, the child's right to be heard is based on a concrete evaluation, an evaluation not guided by law. There is no regulation as to whom has the authority to make this evaluation about the scope of the right to be heard in the concrete situation. Further, there is no regulation as to how to evaluate the capacity and maturity of the individual child, or to determine to what extent the child's right to be heard should determine the outcome of concrete decisions concerning the individual child. It is this abstract presumption of both reason and conscience that creates the foundation for the fundamental freedoms at the core of all the UN human rights treaties apart from the CRC.

This is why child rights in comparison with general human rights are almost an upside-down regime. The subjective elements in child rights are not abstract formalized concepts but are to be understood as concrete individual qualities that determine the scope of the rights themselves for each individual child.

Article 13 is not a participatory right as article 12 is, but instead, as already mentioned, a traditionally constructed freedom of expression right. The purpose of article 13 is different from the purpose of article 12, and article 13 is constructed in line with the general norm for human rights on an abstract, objective ground. Its derogation must be made in law and must be necessary for a legitimate purpose: reputation of others, national security, public order, public health, or morals. It is therefore unclear how article 13 has become such an underused article in child rights advocacy when it, in several ways, is a much stronger right to rely on in the advocacy of children than article 12, which is deliberately subjective and does not require law for its derogation.

For a person to be able to exercise agency in one's own identity construction and expression is not only of ethical importance but also crucial for the life and health of children. I would say, especially children, because the social experience of violence against children is an intricate part of the childhood construction across cultures and regions. With violence comes silencing to prevent both exposure and to limit the resistance to the adult privilege of using violence against children. This is why it is important that children are not only heard but that they can speak, meaning that they are both free to say what they want and that what they express is to be understood as speech, and not only heard under adult discretion.

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4.2 TIME AND VIOLENCE

This, the question of violence, time, and childhood, first came to my attention in the early 1990s when Sweden had received a wave of unaccompanied minors, younger boys from Iran escaping the war between Iran and Iraq. These boys had experiences of war not only as civilians but also as child soldiers. This was a new phenomenon in Sweden at the time. The Red Cross was already well established in working with mostly adult torture victim survivors from Chile and the atrocities committed by the Pinochet regime. When it came to children, at least in Sweden, knowledge and experience were lacking on how to rehabilitate children who were not only civilian victims of war but who also as child soldiers played a part in committing atrocities against civilians themselves. The victim–perpetrator lines had imploded and so had time itself.

As members of its national board, we would receive regular updates on developments concerning the Save the Children Sweden Clinic, the country's first clinic treating former child soldiers. The clinic was faced with several challenges, one being that these children had been through experiences so horrible that any regular Swedish adult therapist they encountered would have a difficult time envisioning the horrors at issue. This was an anticipated challenge, but what was less expected was the way in which time and the young ages of the children themselves affected the course of treatment. A child soldier's experiences and formation challenge the normal timeline for the formation and development of a child. In this way, they challenge the concept of age in and of itself. The children, in some aspects, were much less mature than their age would suggest and, in other aspects, had seen and done things that not even adults could imagine. For example, a child might have missed formal education altogether and not be able to read or write and, similarly, have been deprived of play as a way of developing as a person. In contrast, the same boy could expertly handle a rifle, and the killing of a person would not faze him at all. The clinic developed and came to use drawing and painting as part of its therapy method. But this was not the only challenge. Another challenge turned out to be that these children had no memory of a time before the war, which meant that there was no period of time they could remember before becoming child soldiers. The norm for them, consequently, was the reverse of that which the adults treating them were focused on, a trajectory back to normalcy. For these children, the normalcy was war and death, and this journey into "normalcy" in the meaning of peace and life was impossible to imagine for someone never having experienced it or having been old enough to remember it. Thus, the therapy did not

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then become a trajectory in the direction of a reconstruction of a past but toward an unknown future without a model to imitate. For the adult therapist, it was a focus on a return to normalcy, and for the child, it was a step into the unimaginable. In that sense, the therapist and the child moved in opposite directions as a consequence of time.

At that moment, I could understand the aspect of time and memory, but not, of course, the experience of war, since I myself was just around the age of leaving childhood and entering into adulthood. I was still existing at this stage when you experience adult conversation to center around memories, memories of past events, memories of past encounters with people no longer present. As one ages, I have discovered, conversations become more and more about connecting the present with a past as a way of context and connecting then to imagine the future. I also had come to meet some of these boys in school. I knew a girl who was dating a boy from Iran who had been a child soldier, and she told me about his nightmares and his agony, and how helpless she was in trying to comfort him. She also told me about his addiction to heroin with its origin in being a child soldier and being given heroin to cope with the violence given and taken. Heroin addiction at the time in Sweden was not a commonly occurring experience among schoolchildren, and it had gone undetected by the school and social workers treating this boy as if he was a regular boy from the Artic Circle going through teenage problems. I still remember how she in a quiet voice told me what he had experienced and how she tried to comfort him, unable to make it stop hurting. Now, as a mother of a daughter older than this girl and the boy she was dating, I understand that it was a task far too big for her to resolve. There was no place within Sweden at that time where what the girl in her quiet voice talked about could be understood by any of the adults in her already quite tarnished adult world. The violence of war and the violence in the aftermath of heroin addiction and the harm all this caused her were never understood by her adult surroundings because that could not be conceptualized as childhood, and her boyfriend was a child.

A similar but a far less dramatic example from the same period is the fear over what was called "video violence," and looking back at this today, it seems a naïve innocence to worry about this problem at that time. At about the same time as Save the Children developed its groundbreaking clinic for child soldiers, it also released a report on the harm of video violence on children. This is the late 1980s and early 90s when Sweden had only two television channels, both State-run, and broadcasting only started at 5 p.m. with the children's show, on for half-an-hour to free parents up just long enough to get dinner ready. Today, it is easy to forget that the TV right from its beginnings, at

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least in Sweden, was treated as a form of babysitter, but a safe one because the State controlled it, and the children's program only lasted thirty minutes. Then came video – allowing individuals and even children to freely control what they watched, when and for how long. Save the Children Sweden concluded that video violence was harmful because children – unlike adults – did not have enough life experience outside TV (at the time, there was still a large part of the population that had grown up as children without a TV at all). The study argued that people who had a life before and outside TV could compare that which one sees on the TV with reality – that is, one can subordinate the TV content to reality – while instead, children would turn the comparison around and compare their lives with the content on the TV, and find that it was their life that was wrong and not the TV depiction. Today, the reality TV genre streaming through platforms might be seen as proving this study correct with respect to the role time plays in imploding the hierarchy between fiction and reality.

These two examples from the late 1980s and early 1990s are not in several ways comparable, but both speak to the interconnectedness between the concepts of childhood, time, and violence. They are symptomatic of how violence and childhood are made invisible because violence is not to be understood as something that happens to children (but did happen to the former child soldier) or alarmist fears are expressed that children are too innocent to be exposed to violence (such as video violence). In both instances, it is the perception of the child as innocent and untouched by life that is distorting adults' ability to grapple with the actual violence in front of them; as with the child soldier where the violence in his life was made invisible to adults because the horror of the violence and the role of the child in producing that violence went beyond the adult imagination of what a child is. This while the video violence became hypervisible and exaggerated because it appealed to the idea of preservation of the child as innocent. The idea of the child both created an underreaction to violence and an overreaction to violence, and I will argue in almost exactly the opposite way as I would have thought was needed.

For child soldiers, the fact that they were children was also the reason why they were recruited and targeted into armed conflict because children can be made to do things that adults cannot because social norms have not yet taken root in children. Children both normalize the acts of violence and do not fully grasp their consequences. In comparison with the national panic over video violence as treated in the report, the idea that children because of less life experience are more impressionable to violence played a part in both the child soldier recruitment and video violence fear, in the child soldier case by

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making the violence invisible and in the video violence case making violence hypervisible.

To me, the only sure way to alter this formation of the child – through time and violence – is to give the child agency to not only be heard but also to speak, for the child to not only be the object of actions but to also be the subject acting. This means that adults must not place themselves in a position of never acknowledging being wrong – as long as it is the adult that determines the meaning of what the child says – the adults also controls when the adults is right and when the child is wrong, if there is a disagreements between the two, but without ever having to acknowledge that there is a judgment in giving meaning to what the child is saying through adult interpretation. This is why the child might have the right to be heard but for the child to be able to speak the interpreting of what the child says cannot only rest with the adult hearing it. The main difference between article 12 – the right to be heard – and article 13 – the right to freedom of expression – is that adults determine the concrete meaning of article 12 in the individual case, and the meaning of article 13 is determined in abstract manner by the law. The right to freedom of expression, on the other hand, means that adults must admit that they might not agree with what the child says – and this, of course, means that even the benevolent child rights advocate might have a different opinion from that of the child for whom she is advocating, but this is speech nevertheless and cannot be filed as immaturity and without weight as article 12 permits adults to do. The speaking child is what monism in child rights has such a hard time reconciling because there is no place for unmitigated agency in the child-rights identity construction. A speaking child will force open the monism of its identity construction because it takes away the power of adults to weigh the value of what is being said before it is being considered as a right. A speaking child will make it necessary for adults to deliberate with the child even when they do not agree with each other.[2]

The role of violence in shaping identity is recognized by feminist scholars and critical race theorists, and this understanding of how violence and the threat of violence shape identities of gender and race makes it possible not

[2] Edward van Daalen describes a situation from 2017 in Buenos Aires at the International Labour Organisation's IV Global Conference on the Sustained Eradication of Child Labour, when he argues that children were not only unable to participate but that there was an active will to not have them participate in the deliberation of the Congress. See Edward van Daalen, "Could It Be That They Do Not Want to Hear What We Have to Say? Organised Working Children and the International Politics and Representation of Child Labour," in *The Politics of Children's Rights and Representation*, ed. Bengt Sandin, Jonathan Josefsson, Karl Hanson and Sara Balagopalan (London: Palgrave Macmillan, 2022).

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only to fight against the violence itself but to also alter its role in shaping identity. Violence is more than something that happens to children; it also shapes people for life. To be able to fight not only violence against children but also to resist the power of violence in shaping childhood, we first must recognize that violence is an integral part of the shaping of childhood, and I believe that the child's free and protected speech is one of the ways through which this challenge can begin.

4.3 THE HISTORY OF CHILD RIGHTS AND VIOLENCE

Children's rights and violence are not only theoretically linked, but they are also historically interlinked. The early laws in both Sweden and the United States regulating children were laws about protecting them from violent abuse: in the United States as early as 1874 and in Sweden in 1924.[3] Violence and children have always had a contradictory relationship. For instance, in many jurisdictions the law sees violence against children as a legitimate part of child-rearing. Often such violence is treated as a protected category for caregivers to use otherwise criminalized violence against children, for example, spanking, that if done to an adult, would be a crime of assault. Likewise, male circumcision if done to an adult, would be abuse and assault. On the other hand, child laws have primarily been focused on protecting children from violence while still turning a blind eye to specific types of child violence not entirely dissimilar to what we now term gendered or racialized violence.

Law when it comes to children and violence has been speaking with a forked tongue. Violence is sadly a part of many children's everyday life. Not only is violence in the form of abuse strongly linked to child regulations, but war itself has also been the catalyst for each of the major international child-rights agreements. The first international child declaration was adopted by the League of Nations in the aftermath of World War I. Eglantyne Jebb, founder of Save the Children, protested the victorious countries' treatment of German children. A set of principles for the protection of children was adopted by Save the Children in 1923 as a consequence of the war, to be adopted by the League of Nations the following year as the Geneva Declaration, the first

[3] It began in the United States with the case of Mary Ellen, a child being abused by her foster mother; see John E. B. Myers, "A Short History of Child Protection in America," *Family Law Quarterly* 42 (2008–2009): 449, 451; and in Sweden, it is the first welfare Act addressing childcare by the State; *Lag* (1924:361) *om samhällets barnvård* [The law 1924:361 on municipal childcare], entailing that every city had to install a childcare unit, a law that was in force until 1960.

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international child-rights instrument.[4] The second major child-rights instrument, the UN Declaration on the Rights of the Child, was adopted in the aftermath of World War II.[5] The drafting of the Child Rights Declaration was to reflect its close relationship to the Universal Declaration of Human Rights (UNHDR) adopted in 1948 by the United Nations.[6] The CRC as the third major child-rights instrument was adopted just weeks after the end of the Cold War.[7] All these instruments address the failure by adults to fulfill the primary responsibility of any caregiver of children – to protect them from harm, violence, and destruction.

4.4 TIME AND SUBORDINATION

The monist CRC definition of the child is based on age and, consequently, time. As discussed in Chapter 2, age under the CRC is a legal concept of one sort of time – the time that is measured by Earth's orbits around the Sun – not the effects of time. The effects of time is a different thing and more in line with other identity constructions. The effects of time upon a person is away of explaining socially constructed identities. The child is made from time itself, instead of the effects of time. The time itself as measured by the Earth's orbits of the Sun, and not through the ways in which the events that take place with the passing of time upon Earth shape identity. The child-rights identity differs drastically from other identities that are socially constructed. The ways in which time affects the shaping of personhood is one of the most neglected consequences of the child-rights identity construction under the CRC. This is not only a theoretical concern but something that affects children and the treatment of children under the CRC in concrete ways. The effects of time are more powerful on children than on adults, and it is also the effects of lack of time that lead to the recruitment of children into very harmful situations but conversely trigger the strongest urge to protect children from adults. Still, we have an identity construction in the CRC that is unable to take this aspect of childhood into the understanding of the child identity. Jonathan Todres and

[4] League of Nations, Geneva Declaration of the Rights of the Child, adopted September 26, 1924.

[5] UN Declaration of the Rights of the Child, adopted November 20, 1959, adopted November 20, 1959, General Assembly, Resolution 1386 (XIV).

[6] Draft Declaration of the Rights of the Child, The Economic and Social Council, Section C, E.Res.309(XI).EN (1950).

[7] The Berlin Wall fell on November 9, 1989 and the CRC was adopted on November 20, that same year. It was not until *perestroika* and *glasnost* that proper negotiations could commence in 1986.

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Shani King highlight how time itself affects the deprivation of specific rights during childhood and how it will have far more dramatic effects than during adulthood because of the way in which time is heightened in childhood.[8]

Freeing the child-rights identity from social construction is not to set the child free from the domination that can shape a person's life; it just places that domination outside its field of vision. The CRC child identity is deliberately based on an objective criterion in order to avoid the domination, stereotypes and biases prevalent in social constructions, even if domination is a shared experience for many children. In a similar manner, experiences of violence have shaped the child-rights regime but not the child-rights identity it created. Simply put, it is a question of how strongly one believes that the map can shape the landscape it is depicting. In legal terms, it is a question of how strongly one believes in the efficacy of law to bend and shape society and its structure and traditions.

4.5 TIME AND PLACE

Not only does time have its distinct role in the construction of the child-rights identity in years, but historicity takes on its own shape when it comes to the child, not as an identity but as a person affected by the shortness of time since birth. Time moves differently for a child than for an adult. We can all remember being young and how it was whole eternities between each birthday, and how the summer holiday lasted forever, while birthdays and summer vacations as adults seem to come at us and move by in a high-speed blur.

If you are very young, you might not be in a life situation where personal historicity will manifest as anything but nature, in the sense that you are being fed, put to bed, and bathed, but these will not be translated into a memory of events. When it comes to the wider context of time, in remembering non-routine events such as holidays and seasons of the year, time becomes part of one's understanding of social life, but even this might take a few cycles before maturing as a concept. These are, at all times, noted as uneventful routines, even if a meeting with grandparents is a nice event, it still takes place within a continuous time. When a person gets older, time as memories of the past and aspirations for the future will find its body within persons called children, but this does not change the identity construction itself; historicity lives within the perimeters of the identity but cannot shape or call it into question.

[8] Jonathan Todres and Shani M. King, "Children's Rights in the Twenty-First Century: Challenges and Opportunities," in *The Oxford Handbook of Children's Rights Law*, ed. Jonathan Todres and Shani M. King (New York: Oxford University Press, 2020), 720.

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Looking at time, Paul Ricoeur asked, "How can time exist if the past is no longer, if the future is not yet, and if the present is not always?"[9] The identity of the child sits in the soft spot of time without its history, a situation ahead of the past and "not yet" the future. There is a distinction between saying that childhood's purpose is to transition a person into adulthood and that the child as an identity is to be transitioned through. To say that the purpose of childhood is to lead to adulthood is to diminish the value of childhood and the value of the child itself, but to describe how all adults at one point were children is a statement of fact that binds all humans together into a universal construction. Childhood itself has its own meaning and importance, and persons classified as children are not lesser persons because they are not classified as adults.

4.6 THE SPLIT: THE PLACE OF RADICAL CRITIQUE

In *The Souls of Black Folk*, W. E. B. Du Bois posits a social theory of the making of the black identity that illustrates why it is necessary to establish whether the child-rights identity is its own regime, or if children are one part of the universality of all persons as discussed at the beginning of this book. Du Bois describes three crucial concepts. First is that the overarching shared value is the universal aspiration toward freedom. Second is that the structure of the color line exposes the shortcomings of the United States in living up to its ideal of freedom for all by still holding onto the social structures of slavery. As he states, "The Nation has not yet found peace from its sins."[10] It is the contradiction between the aspirations of the modern nation of the United States and the social reality of persons of color that Du Bois is able to confront the double standard of the nation and its history of slavery when he writes, "The problem of the twentieth century is the problem of the colorline."[11] The Swedish economist, Gunnar Myrdal, would echo Du Bois in his classical work *An American Dilemma*, where he concludes that there is a split in white Americans' conscience caused by an intertwined relation between the faith in all persons having equal value on the one hand and a belief in racism on the other. Instead of a double consciousness, he calls it the "American dilemma" and stems out of what he believes is a moral value of equality, and he calls the American creed, in contrast to how Americans live their lives upholding Jim Crow laws, which for Myrdal causes a split consciousness. Myrdal's

[9] Paul Ricoeur, *Time and Narrative*, vol. 1, trans. Kathleen McLaughlin and David Pellauer (Chicago: University of Chicago Press, 1984 [1983]), 7.

[10] See chapter 1, "Of Our Spiritual Strivings," in W. E. B. Du Bois, *The Souls of Black Folk* (New York: Oxford World's Classics, 2008 [1903]), 10.

[11] See chapter 2, "On the Dawn of Freedom," in ibid., 15.

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conclusion is that the American people will not be able to sustain this contradiction and one day will choose to align its society with the equality principle.[12]

Du Bois' third concept is how this structural contradiction constructs the black identity, by forcing upon people a double consciousness. This comes from an internalized conflict, to both embrace freedom and equality as the American creed, while the lived experience embodies what Du Bois terms "the negro problem."[13] This embodiment of a nation's contradiction of freedom and the color line in the everyday experience of subordination and abuse is also what ties individual black healing to a nation being able to finding its peace; it interlinks not only a shared history of slavery but a future of peace beyond the color line. To Du Bois, black identity is a socially constructed identity giving rise to an individually experienced double consciousness among black people, mirroring the paradox of a freedom-loving nation holding slaves.[14] It is this double consciousness and the exposure of the contradiction that will force change, according to both Du Bois and Myrdal.

How can one translate this process of socially constructing an identity to another setting where the identity is not socially constructed? Even Du Bois, when it comes to the child, seems to place her outside the color line; in fact, Du Bois seems to place the child in a time before she is subordinated by the color line, before she has become black. It is necessary to identify whether it is freedom and equality that guide the child-rights regime – if it is, then freedom of speech must be a foundation of child rights advocacy. If freedom and equality are not the center of child rights advocacy, but rather care and protection are, then the principles of the right to be heard and the best interest of the child are the given guiding principles. Because if it is the right to be heard and the best interest principle that are the overarching values of the CRC, then these cannot support the breaking open of a split between the concept of the child and the child's own agency – in that they are not principles that can challenge the concepts themselves, as neither the right to be heard nor the best interest principle recognizes the legitimacy of an agency that would contradict and split open the monist identity construction of the child, since the final scope of the rights themselves is dependent on the power of someone other than the child holding the right, in other words it is a question of scope not derogation of a right. If children do not have the power

[12] Gunnar Myrdal, *An American Dilemma*, vol. 1 (London: Routledge, 2017 [1944]).
[13] See Du Bois, *The Souls of Black Folk*, 14.
[14] See ibid., 136.

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to challenge and disrupt the smooth identity they have been given, how are we to explain social justice for children?

The monist child-rights identity construction with its individual focus renders disharmony and makes radical critique of its regime an impossibility. However, by taking a few steps back, one can see that there is radical potential in the monist child-rights identity, if we are willing to shift the field of vision from the individual claim of the child-rights identity to instead see the group identity construction through monism. In the words of Fred Moten when addressing the philosophical use of discontinuity as resistance: "It makes you linger in the cut between them, a generative space that falls and erases itself."[15] In this sense, the child-rights identity in its monist form might be an impossibility and an act of disruption, but only if it is possible to demonstrate the distance between what the CRC establishes as the child-rights identity and what the child herself declares herself to be.

This radical potential of child rights is too easily forgotten when children and child rights become equated with cuteness and helplessness or are vilified as bundles of violence as exemplified in Chapter 3. It is possible to level criticism at this monist view of child-rights identity that is akin to the subject critique Spivak directs toward Foucault and Deleuze. In Spivak's retelling of their conversation about the Maoist and workers' struggle, she calls these subjects monolithic and anonymous, which means that they are not able to recognize the actual lives of the persons they have created in their minds as categories and concepts of persons.[16] The child as an identity is a radical proposition because it theoretically cannot be explained in line with other identity constructions. The challenge is how to manage a transformation of monism into a bifocal identity critique where the child can launch a resistance and gain power over her own construction, when the child-rights identity no longer rests in the hands of only adults but is also embodied by children themselves and thus gains a new form of unity through its split of both time and self, bringing the bifocality of the child and childhood into the same body.

4.7 THE TIME OF HUMANITARIAN CRISIS

Unlike the fixed nature of the child-rights identity, the child as a person is constantly undergoing a temporal transformation: The child is not supposed to

[15] Fred Moten, *In the Break: The Aesthetics of Black Radical Tradition* (Minneapolis: University of Minnesota Press, 2003), 89.

[16] Esteania Peñafiel Loaiza and Gayatri Chakravorty Spivak, *Can the Subaltern Speak?: Two Works* (London: Afterall Books, 2021), 9.

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be the same child today as she was even a year ago as she is developing in harmony with her surroundings and, eventually, will one day no longer be a child. One single year of a child's life is seen as being so significant and transformative that a large part of society is organized around children from toddler age moving through one new grade in school every year – all the way until adulthood. Thus, the rights-based identity of the child remains fixed, yet unlike an adult, the inhabitant of the identity is herself transient.

To think of time and the child takes on a different dimension when one thinks of situations of harm and risk. In these situations, time creates urgency to act before the harm has become a part of the person without the possibility of challenging it through identity construction. Women and black people have been able to articulate how violence has been part of making their identity. By recognizing how violence has been part of shaping the woman and the racialized identity a language and a discourse have developed to counter both the violence and its purpose to designate through subordination a social hierarchy of categories of persons.

The role of time in the formation of the child is only further exacerbated in times of violence when the present is disrupted, the past obscured, and the future uncertain. Peace does not have a place in the memory of a child who has only lived through war.[17] If one has never experienced peace, it cannot exist within one's temporal memory; instead, war serves as the past, the present, and the future. In the context of narrating one's identity with recourse from the past, we can draw on Paul Ricoeur when he asserts that "expectation is the analogue to memory."[18] For younger children, there is no memory of a time of peace upon which to build an expectation of a return to the normal; peace or a nonviolent family becomes that unknown. To continue, Ricoeur writes, "by entrusting memory the fate of things past, and to expectation that of things to come, we can include memory and expectation in an extended and dialectical present which itself is none of the terms rejected previously."[19] In the case of the child refugee, there might be limited memory prior to armed conflict or before the journey to a new life in and out of refugee camps.

Without a past and only fragments of experiences to make up one's memory, it is difficult for the expectation of peace to take hold. This impossibility for a child to hold on to time is even more remarkable considering that it

[17] Ricoeur, *Time and Narrative*, 7.
[18] Ibid., 11.
[19] Ibid., 11.

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is only in early and the very late years in life that each year has such a dramatic impact on one's personhood and capabilities and relationship to the future.

Not only is violence part of constructing childhood in the private sphere but time also plays a distinct role for children living in a humanitarian crisis. Consider the experience of a child growing up in a constantly changing, insecure environment – an environment that presents damaging experiences that are then blocked out, so that the child is prevented from defining the formation of the self. These circumstances make it so much harder to create a memory and that also can help bring together an identity with a consciousness that is anchored in a body that matches its age. In these environments, the goal is to keep the effects of time and place away from freely forming the child, to be replaced by a conscious effort to help shape how memories of harm are to become a part of a child's life with the least possible harm, for the rest of her time on Earth. This is to prevent memories of harm from finding a place in a child's personhood and from informing her identity without control. Instead of wanting historicity to influence the development of the child, in times of war and humanitarian crisis the aim is to keep these damaging influences to a minimum of harm. Instead of letting time in, the focus is on keeping time out.

In contrast, in an environment that is nurturing and caring for the child, historicity is supposed to become a part of one's personal identity, a process essential to the formation of the core of self to develop into a person who is able to construct one's own individual and collective interests and agency. This process is called "child rearing," as it appears in Principle 6 of the Declaration on the Rights of the Child: "The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security." The fixed points in life that normally help orient the constantly changing and developing child are, in times of war and refugee crisis, in constant flux: "Moral and material security" is unavailable; the very atmosphere is impossible to maintain. This flux presents an additional challenge to defining yourself as an individual and to articulating your rights: the right to be seen as a full human and to know yourself as the full human you are now, not as you were one or two years ago. A child who is fourteen years old is very different from a child who is sixteen years old, the personal identity in childhood is a constant evolution, while the child-rights identity remains static until the age of majority when it ends. Not only is there a dissonance between how time works for the child-rights identity and childhood but also between individual identity and the child-right identity.

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4.8 THREE FORMS OF VIOLENCE

Violence is intimately linked to the origin of child rights as manifested in international law and already addressed at the beginning of this chapter when examining the relationship between time, childhood, and violence. This section addresses three forms of violence: (1) violence in war among adults as it affects children in a systemic, general way, (2) violence that is directed toward children in particular, and finally (3) violence in the name of love.

In times of war and armed conflict, violence affects children in ways that differ from its effects on adults for a variety of reasons. There is first the form of general, indiscriminate violence, such as bombs being dropped, violence that physically impacts children as collateral damage as it also affects adults. The effects might differ; for example, a child will have to live with the trauma and memories of war for the rest of her life while an adult will have experienced a time – before the war – that was not affected by such violence. Children will live more days and years with the memory of war than adults for the simple reason that they have more days to live ahead of them. A second form of violence is where its harm to children is strategic in the war effort itself. One such example is the effects of landmines. Landmines can be intriguing to young children, who can mistake them for toys.[20] Landmines are one example of violence that when it affects children also harms the whole community both in the actual war effort but also negatively affects the community's future recovery and its transition from a time of war to a time of peace. In this respect, landmines do longer-lasting physical and psychological damage to children. Landmines can be found in areas where children are important contributors to the family farm life as they help with chores, which is important for both the child and the family at large in these settings.[21] Amputation and the related physical injuries that prevent children from participating in providing for the family cause lasting mental harm.[22]

Violence that specifically targets children is in itself twofold: Not only are there forms of general targeted violence such as by landmines, but there are

[20] M. A. Hemmati, H. Shokoohi, M. Masoumi, et al., "Mental Health Disorders in Child and Adolescent Survivors of Post-War Landmine Explosions," *Military Medical Research* 2, no. 30 (2015), https://doi.org/10.1186/s40779-015-0052-3.

[21] The study assessing the effects of landmines on children living at the Iran-Iraq border found an increase in mental disorders among these participants when compared against rates in the general population. Hemmati et al., "Mental Health Disorders in Child and Adolescent Survivor of Post-War Landmine Explosions."

[22] Ibid.

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also forms of directed violence as well. For example, the recruitment of child soldiers is a form of directed violence, which takes advantage of the fact that a child is being recruited by adjusting the recruitment process to strategies that are most effective for enlisting children. The International Committee of the Red Cross (ICRC) has identified that children's need for security and protection as well as their lack of formal education all contribute as indirect factors in the recruitment of child soldiers. Other factors are family and friends who persuade the child to join or, alternatively, the absence of family, which can also push the child into the arms of the military.[23] This twofold violence means that guarding against violence and struggling to prevent violence wholly depends on the kind of violence affecting the child.

A third form of systemic violence that I want to address is the violence committed in the name of love, violence inflicted on children during a violent crisis by their own side, by the people that love them, making violence an expression of love. This is a form of violence that connects to care and power. An example borrowed from the literature is the character Beloved in Toni Morrison's novel of the same name. *Beloved* is inspired by the true story of Margaret Garner, an escaped slave. When Garner was captured, in 1856, she opted to kill her child instead of having the child sent back to slavery.[24] Building on this story, Morrison's main character Sethe kills her child to prevent her eventual capture and enslavement. This echoes W. E. B. Du Bois, who describes when, in the midst of his deep grief over the death of his son, at the same time he finds his son's death to be an act of liberation. Morrison's carachter Sethe goes further in her novel than Du Bois in his writing about how is deepest sorrow over his son's death describes the mixed feelings of one part of relief, that his son will never have to experience racism and the pain it causes. Sethe crosses the line from out of love as Du Bois express relief over that racism will not be able to touch his son, into the murder by the hands of the mother in protecting her daughter from the pains of slavery. The child, Beloved, later reappears in her house as a spirit. While Du Bois expresses the pain of not being able to protect one's child from the violence of racists in *Beloved* it is the mother murdering her child out of love. Examples from the real world of caregivers putting children in immediate danger, purportedly out of love and care, are multiple; for example, the American saying, "spare the rod spoil the child," is a perversion of parental love.

[23] Kristin Barstad, "Preventing the Recruitment of Child Soldiers: The ICRC Approach," *Refugee Survey Quarterly* 27, no. 4 (December 2008): 143–144.
[24] Pelagia Goulimari, *Toni Morrison* (London: Routledge, 2011), 81.

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A much closer and ongoing humanitarian crisis concerns unaccompanied minors fleeing to Europe, mostly from Afghanistan and Syria. What is not often discussed is that many of these children arriving at migration offices are today's Beloveds, castaways, and others' loved ones, who have been sent away by their families to find a better life and placed in danger in an effort to ensure their own and their families' future security. The child is sometimes sent away because of love, to protect the child from the abuses in the sender country, either from the State, criminal organizations, or sometimes male relatives who want to earn an income by selling a girl for marriage. At other times, the children are sent away to Europe to secure finances for the family in the sender country. These children are sent to Europe alone, unaccompanied by their caregivers, but often in the hands of smugglers, who take them through areas of war and through refugee camps via trafficking routes. These violent contexts that drive migration, trafficking and smuggling – which often take place under the auspices of "protection" – also make the child different from the adult: The child's exposure to violence and war presents an additional vulnerability toward those placed in charge of the law or custom to protect them because they do not as children have the power to refuse.

I do not believe that the only reason for condemning violence against children is its direct harm on the child. Violence against children should also be condemned the additional burden it places on a child to manage through adulthood too: To make a happy life for herself despite the violence is an additional burden to carry throughout a whole life.

In connection with these forms of systemic violence, the inevitability of dehumanization might be a question of perspective. From the perspective of Sethe, the escaped slave in *Beloved*, the question is not a choice between dehumanization or maintaining one's humanity, a question often left to white abolitionists and white slaveholders. To Sethe, the binary is between slavery and not-slavery, which leads her to choose her child's quick death over the child's life as a slave. Sethe kills Beloved to prevent the child's re-entrance into slavery, yet interestingly, she does not choose to kill herself but follows through on her own escape. From the perspective of subordinated people, subjugation is not necessarily a choice between humanity, dehumanization, or resisting subordination. The choice might rather be a question of whether to exist or not. It is, at times, a question of choosing between life over death or death over life, where in some cases, resistance is death, as for Sethe in the act of killing her daughter. Saidiya Hartman offers a historical perspective on similar choices made by people

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captured to be shipped off as goods across the Middle Passage.[25] Hartman describes how captured people, not yet categorically marked as slaves, made the similar choice of death over life to resist becoming someone's property. Jenny Edkins, referring to Primo Levi when addressing the concentration camps, writes, "just because resistance is impossible, it does not mean that the person who has drowned has no worth. To be outside relations of power, to be beyond resistance, that is to be one of the drowned."[26] What is telling in *Beloved* is that when Sethe chooses death for her child and life for herself, it is Sethe as an adult mother who makes the decision to resist slavery through the death of her child. Her daughter Beloved must reappear in the shape of a ghost, a thought without a body, one that can only exist in Sethe's mind. The child Beloved herself remains out of reach, out of touch, manifesting not as a body, but rather as a mind within another's body, unable to speak.

When I was sent away from my original country to Sweden by my caregivers I had no choice or agency in a decision that was to fundamentally shape me as a person from that moment on, a decision that transformed who I am and who coming generations to follow will become, shaped by both the pain it caused to be sent away, but also by the fact of growing up as a person of color in an increasingly racist Sweden – to forever belong to a racial minority at the bottom of the social hierarchy, but also appreciating the parts of my life I consider good, such as my friends and family. This in one way was an act of love, to save me from a life as a child born out of wedlock in my birth nation. However, I had no possibility of agency in a decision that has now made me into what I am. Instead of protecting me from harm in my native country, my caregivers decided to protect me by sending me away. This story half a century ago is similar to that of the unaccompanied minors that arrived in Sweden 2015: To live for the rest of one's life in a society formed by racial violence and discrimination.

Regardless of whether dehumanization is the process that makes systematic violence possible (Hannah Arendt) or it is considered the effect of systematic violence (Johannes Lang), it can be agreed that humanity is at stake in moments of systemic violence.[27] But the burden of humanity must rest on the perpetrator

[25] Saidiya Hartman has addressed this phenomenon in the history of the Middle Passage, see Saidiya Hartman, *Lose Your Mother: A Journey along the Atlantic Slave Route* (New York: Farrar Straus Giroux, 2008).

[26] Jenny Edkins and Véronique Pin-Fat, "Introduction, Life, Power, Resistance," in *Sovereign Lives, Power in Global Politics*, ed. Jenny Edkins et al. (London: Routledge, 2004), 9.

[27] On dehumanization as enabling violence, see Hannah Arendt, *On Violence* (New York: Harcourt Publishing Company, 1970 [1969]). For a developed argument for understanding dehumanization as an effect rather than cause, see Johannes Lang, "Against Obedience: Hannah Arendt's Overlooked Challenge to Social-Psychological Explanations," *Theory & Psychology* 24, no. 5 (2014): 649–667.

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and those who have the power to prevent violence, not on the victims of this violence. For these victims, systematic violence is more a question of being alive or not being alive, where resistance against violence presents either the choice of one's own death or engagement in a systemic critique of one's subjugation. Much as the rights-based identity of the child creates a glitch in time between a disavowed past and a future unable to take shape, the child also becomes a glitch between dehumanization and humanity when the child becomes a victim of harm and possible death as a choice made by adults.

4.9 THE SILENCING OF WAR

Speech in times of danger and war is often contested. Indeed, silence is often encouraged by patriotism and nationalism. It is in the context of war that the child's right to freedom of speech is first addressed by the United States Supreme Court as a civil right in the case *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). There the question for the Court was whether the Des Moines School District had violated their students' First Amendment rights in preventing some students from wearing armbands in symbolic protest of the Vietnam War. The school took this symbolic act of protest – wearing an armband – as a violation of an implicit patriotic duty to remain silent. The Warren Court held that the school district had indeed violated the students' First Amendment rights by prohibiting the armbands and thus preventing their peaceful protest.[28] It should be noted that the armband is a "silent" protest. Not only is acting on one's freedom of speech to protest in times of war seen by the State as dangerous, unpatriotic, and possibly treasonous, free speech can also challenge a "soft" version of silencing – namely, the silencing associated with civility, and often related to the importance of showing gratitude. In this view, refugees should be grateful for being granted entry into a country or for being provided protection in refugee camps; in exchange, they are meant to remain silent, to not complain.

Two important questions are raised in the reports to the Office of the United Nations High Commissioner for Human Rights (OHCHR) concerning how children's freedom of speech is protected in refugee camps. What right does a child have to free speech in a space where their speech is not actively facilitated? And how safe is it for children to protest against conditions within these camps without retaliation from the authorities providing them with shelter? This factor, the physical embodiment of the speaking subject, is

[28] Catherine J. Ross, *Lessons in Censorship: How Schools and Courts Subvert Student's First Amendment Rights* (Cambridge, MA: Harvard University Press, 2015).

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illustrated in the difference between the ghost of Beloved that can only manifest as the thought of Sethe, and the silenced female subaltern of Spivak. The Spivakian subaltern is embodied, capable of annunciation, to be heard but without the ability to "be understood when speaking."[29] To protect the child in the name of its identity when speaking freely allows for the opening of a split in the identity anchored within its thinking body and is to create a place in time: to move from being constructed by age to attaining a location to be anchored to the world.

4.10 MIND AND BODY

The CRC encompasses civil-political rights, socioeconomic rights, and humanitarian and refugee laws as noted earlier. In other words, the CRC not only covers every person under the age of eighteen years but also almost every situation of every child imaginable.[30] The treaty is applicable to a child of one day just as to a child of seventeen years, eleven months, and twenty-nine days of age. Accordingly, in each situation, choices must be made about which of the several articles within the CRC should be given weight and how much weight in any given application of a right. The intention is that the CRC should be applicable to every child's situation wherever the child is, instead of the child having to adjust to the CRC. The challenge for adults interpreting the CRC is to decide which rights to apply at any given moment, and the challenge to lawyers when it comes to the CRC is that the articles guiding the convention's application are often individual and contextual, instead of general and objective, which is what law is normally required to be. The individual child's best interest (article 3(1)) and the right to be heard based on the child's maturity (article 12) are supposed to guide the application of the rights, when the child's identity is abstract and universal. Therefore, the CRC in its concrete application is, on the one hand, entirely nonsubjective and hyperformalized with its use of age as the sole constituting factor of subjecthood, and age being completely delinked from society, but. on the other hand, the CRC is all-subjective in its application of a particular right with a specific child in a set moment.

It is not the child who determines how much weight should be granted to her opinion, or what is in her best interest, and this has no effect on the subject construction itself, only on how different rights and circumstances should be

[29] Loaiza and Spivak, *Can the Subaltern Speak?*, 101.

[30] Articles 24 (health) and 29 (the purpose of education) include elements of environmental concerns. The environment is an underrepresented concern in the CRC.

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weighted. This is how the child-rights identity lacks the duality that Paul Ricoeur associates with being a subject who both speaks and hears.[31] This is the duality that contains the ambiguity of being a person with both heart and mind, capable of making both good and bad decisions affecting both the self and others, shifting over time and place. This duality is absent in child rights. The monist child-rights identity in the CRC can only make responsibly good decisions because when the decisions are not good or responsible, they are immature and not to be taken into consideration in accordance with the CRC. This occurs because weight must be given to the decisions, based on maturity and best interest, and bad decisions are neither mature nor in the best interest of the child, they cannot be made by the child within the scope of the CRC. This places the child under a higher and different standard than the one for adults when it comes to the enjoyment of actual rights. Adults have their human rights to the fullest even when they might be held by a person that for one reason or another is not acting rationally because every adult benefits from the formal presumption of being rational. For a child, the substance of one's rights is determined based on whether what you will do with the said right is to be accepted as responsible and in your best interest, a rather unique form of right.

4.11 FREEDOM TO SPEAK

The CRC states that States parties are prohibited from using unlawful force against children: "[N]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."[32] In addition to prohibiting States parties themselves from using violence against children, the CRC obligates States parties to take measures to prevent private actors from using violence against children: "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence."[33] These specific provisions reflect the strictest norm in international law, the *jus cogens* prohibition against torture. Yet these provisions present a resounding dissonance between the stern voice of international law and that of lived experience and social reality. Children have been victims of torture and of degrading, inhumane treatment in times of previous wars, and those of today.

[31] Paul Ricoeur, "Philosophical Anthropology," in *Writings and Lectures*, ed. Johan Michel and Jérôme Porée, vol. 3, trans. David Pellauer (Cambridge: Polity, 2016 [2013]), 218.
[32] CRC, article 37(a).
[33] CRC, article 19(1).

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As articulated in article 13 of the CRC, children have a right to speak without fear of retaliation or punishment from States parties. This right to freedom of speech is especially important for children in particularly vulnerable situations, such as during armed conflicts or while living in a refugee camp, situations where the child's dependence on others is at its highest. These are moments when the adult obligation to protect children has failed and where the child's ability to speak freely might be their most important defense against abuse directed toward them and others. Adults should not be granted so much power over children as to both fail to do their job in protecting children and, at the same time, circumscribe a child's ability to protect herself by being able to speak freely about what happens to her.

For adults, the ability to speak freely is one of the most important forms of protection from violence. The power of freedom of speech is targeted by authoritarian regimes, which fear the free word. In uneven power relationships, where one party controls the military or has a monopoly on violence, it is free speech that can serve the weaker party's side. This is an important lesson from the civil rights movements. Against overwhelming State powers, these movements adopted a policy of nonviolence in which free speech served as an alternative tool against the overwhelming violence deployed by the State against the protestors. This obligation to protect the free word should also be a basic routine within the child rights movement itself. The movement should put in place measures to guarantee that the children encountered in its projects shall be able to speak freely and to critique the treatment that they encounter while in the care of the various projects sponsored by the child-rights advocates. The atrocities that took place under the UN flag, where children were being forced and recruited into the sex trade, is one such example where children's freedom of speech could have an important effect on the activities of the UN presence in a region.[34] Skye Wheeler has reported on the rapes of children under the UN flag taking place in Haiti, the Central African Republic and the Democratic Republic of Congo, and also taking place under the flag of the African Union in Somalia.[35] As a response to the reports of sexual abuse of children by UN employees, the UN has adopted measures to control and combat the abuse.[36] For adults to be able to commit

[34] Skye Wheeler, Opinion Contributor, "UN Peacekeeping Has a Sexual Abuse Problem," *The Hill*, November 1, 2020.

[35] Ibid.

[36] United Nations Action on Sexual Exploitation and Abuse, G.A. Res. 71/278; 71/297; Enhancing the Participation of Indigenous People's Representatives and Institutions in Meeting of Relevant United Nation Bodies on Issues Affecting Them, G.A. Res. 72/312; and Resolution to Prevent Sexual Exploitation and Abuse, G.A. Res. 73/302.

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sexual abuse against children, adults need access to these children; as a consequence, it is not simply an abstract theoretical debate when I critique the child rights movement for its lack of internal critique. The culture of infallibility is a dangerous culture to children and a movement. Yet freedom of speech has a value in and of itself, not only as a tool for bearing witness or mending a wrong. To speak is part of being human, a part of fighting violence but also of resisting its pernicious effects; so far, this has theoretically been done through the manifestation of time in the split between description, performance and agency – through the speaking subject.

4.12 CONCLUSION

The very existence of a child-rights identity is itself a radical theoretical suggestion, considering it is being made out of time and not matter. The challenge is to either develop the possibility of challenging the monistic construction of the child identity or opting to bring the child-rights identity into the duality of identities forged through a process of subjugation.

To create a critical theory of the child identity within its dual perspective will mean reassessing the role of time, especially when it comes to taking age as the sole constituting element of the child. This is a fundamental challenge to the child-rights projects since the adoption of the CRC. It is worth considering what the gains and losses would be in comparison with the current monist construction. Even if, at the end of the day, a monist child identity is preferred, at least its blind spots and costs would be examined, and hopefully, we would be able to develop the safeguards needed to limit the downside of monism.

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