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## **Vulnerability should not eclipse agency: Children's perspectives on their own lives.**

Lundy, L. (2025). Vulnerability should not eclipse agency: Children's perspectives on their own lives. In T. Haugli, & M. Martnes (Eds.), *Perspectives on Children, rights, and vulnerability* (pp. 31-49). Scandinavian University Press. <https://doi.org/10.18261/9788215069500-25-03>

### **Published in:**

Perspectives on Children, rights, and vulnerability

### **Document Version:**

Publisher's PDF, also known as Version of record

### **Queen's University Belfast - Research Portal:**

[Link to publication record in Queen's University Belfast Research Portal](#)

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## 2. Vulnerability Should Not Eclipse Agency: Children’s Perspectives on Their Own Lives

Laura Lundy

**Abstract** Drawing on research with children, this chapter suggests that children are not inevitably vulnerable, but that adults’ perceptions of that – often different from children’s own – can work to render them vulnerable and/or undermine their enjoyment of their human rights. It also questions whether an approach that conceptualises both adults and children as vulnerable might impact children differently and disproportionately, displacing the dedicated gaze on children’s rights and interests, reinforcing existing paternalistic responses to children, and undermining their ability to shape and inform their own lives.

**Keywords** children | rights | participation | vulnerability

### 2.1 INTRODUCTION

Children’s vulnerability is one of life’s givens – at least in the eyes of adults. I begin every one of my Master’s classes in children’s rights by asking my students to identify what it is that they think distinguishes children from adults, posing the question: “How are children and adults different?” Year after year, one of the top answers is that children are more vulnerable than adults. I have also asked the same question to children many times, and not once has a child said that the major difference is that children are more vulnerable than adults. This might be expected, since “vulnerability” is not a word that is usually part of children’s vocabulary, but nor do they identify the key features of vulnerability, such as susceptibility to harm. Just as adults define children in a deficit, children, in return, do the same to adults. In fact, they often feel sorry for adults on account of, *inter alia*, our worries, work, responsibilities, ageing bodies, closeness to death, and apparent lack of time to play and have fun.

In this chapter, I will explore the relationship between vulnerability and children’s rights further, with a particular focus on children’s own perceptions of their

risks of harm. I begin by tracking its role in international child rights law historically, from being a primary impetus in the origin of children's rights (translating into a plethora of "protection" rights) to its current articulations within a modern children's human rights legal framework, and in particular the way in which it has engendered a steady and ongoing stream of scholarly discussion on its relationship with children's autonomy (or so-called "participation" rights).<sup>1</sup> This debate has been aired many times, and one conclusion, rightly, is that we cannot protect children if we do not listen to them.<sup>2</sup> However, it remains a fact that adults continue to make decisions for children without engaging them, and, based on a body of co-produced research with diverse children in a range of social and geographical contexts, I suggest that the more vulnerable the child, the more likely this is to happen. To shed further light on how this plays out in practice, from the hitherto neglected aspect of children's own perspectives, I draw on data from a range of studies in which we captured children's perspectives on their own lives, focusing on situations where adults categorised the children, for different reasons, as vulnerable. All of these studies, bar one, were conducted using a children's-rights-based approach to research (CRBA), working with children as co-researchers. The chapter concludes by reflecting on the impact of the perception of childhood vulnerability on children's enjoyment of their human rights and questions whether classifying everyone – adult and child alike – as vulnerable might impact children differently and disproportionately, reinforcing existing paternalistic responses to children, undermining their ability to inform and shape their own lives, and thus creating what could be described as a perverse and unintended outcome – enhanced childhood vulnerability.

## 2.2 VULNERABILITY AND AUTONOMY (A.K.A. PROTECTION AND PARTICIPATION)

Recognition of children's vulnerability is the golden thread that runs through children's rights law. The impetus for the child rights movement that emerged almost one hundred years ago was based on the recognition of children's vulnerability to harm: the response of Eglantine Jebb and others to the suffering of

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1 See, for example, Aoife Daly, *Children, Autonomy and the Courts: Beyond the Right to Be Heard* (Leiden: Brill Nijhoff, 2018).

2 See, for example, Camille Warrington and Cath Larkins, "Children at the Centre of Safety: Challenging the False Juxtaposition of Protection and Participation," *Journal of Children's Services*, vol. 14(3) (October 2019): 133–142.

children post-WWI was to “save” the children.<sup>3</sup> Indeed, the preamble to the 1924 Declaration on the Rights of the Child states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”. Moreover, the text of the 1924 Declaration is a testament to a range of childhood vulnerabilities, its text laden with well-intentioned paternalism: “the child that is hungry must be fed, the child that is sick must be nursed, the child that is backward must be helped, the delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succoured.”<sup>4</sup> That stance was continued into the 1959 Declaration on the Rights of the Child, underscoring a perception of childhood vulnerability that formed the bedrock of and springboard to the CRC.<sup>5</sup>

It is notable, yet rarely noted, that the CRC was negotiated and drafted by adults for children. Michael Freeman was one of the first to capture one of its key ironies: The legal instrument that gives children the right to be heard in all matters affecting them was drafted without them having any meaningful input into it.<sup>6</sup> It is, in essence, an adult’s vision of what children need. As discussed at the outset of the chapter, when asked about childhood, most adults’ instinctive response is that children are vulnerable and in need of protection. It is not surprising then that, reflecting its ancestors, the CRC is laden start to finish with provisions that are designed to protect children from harm. Its preamble paints a picture of childhood vulnerability, asserting that “childhood is entitled to special care and assistance” and affirming that “in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration”. There is a plethora of articles dedicated to protecting children. Article 19, which covers all forms of violence and neglect, is the most comprehensive, but there is also a series of provisions protecting all children from specific harms (illicit transfer, traditional practices prejudicial to health, drugs, sexual exploitation) or specific children from general harms (refugees, children with disabilities, children deprived of their liberty). Furthermore, this is supplemented by two additional

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3 W. Kerber-Ganse, “Eglantyne Jebb – A Pioneer of the Convention on the Rights of the Child,” *The International Journal of Children’s Rights*, vol. 23(2) (2015): 272–282. Zoe Moody, “Transnational Treaties on Children’s Rights: Norm Building and Circulation in the Twentieth Century,” in *Children’s Rights*, eds. Ursula Kilkelly and Laura Lundy, (Routledge, 2017), 37–50.

4 League of Nations, *Declaration on the Rights of the Child*, (Geneva: League of Nations, 1924).

5 Zoe Moody, “The United Nations Declaration of the Rights of the Child (1959): Genesis, Transformation and Dissemination of a Treaty (Re)Constituting a Transnational Cause,” *Prospects*, vol. 45(1) (2015): 15–29.

6 Michael Freeman, “The Future of Children’s Rights,” *Children & Society*, vol. 14(4) (2000): 277–293, 282.

protocols that expand on the protections for children who may be vulnerable to sale and exploitation and those in armed conflict. In fact, it is fair to say that the Convention, like its ancestors, is predicated on an assumption that all children are vulnerable and that certain children are especially vulnerable, or vulnerable in specific ways.

Even so, there is also no question that the CRC marked a turning point in children's human rights discourse. For the first time, children were recognised as the subject of rights, not only entitled to (almost) the full spectrum of civil and political rights, but also afforded a unique and additional entitlement – the right to have their views sought and given due weight in Article 12 of the CRC. It seems likely that this unique human right may also have been generated from an understanding that was influenced – possibly sub-consciously, but at least in part – by an assumption around children's vulnerability, in this case emanating from their lack of autonomy. Can there be anything that would make a person feel more vulnerable than depending completely on others to make the major decisions in their own lives? Later in the chapter, I discuss the connection between dependency and vulnerability further. However, at this point, it is worth emphasising that the decision to include the child's right to have their views given due weight in Article 12 reflects an understanding that, to afford dignity, equality, and respect for their worth as human beings, children should be given opportunities to shape and influence the decisions that affect them.<sup>7</sup>

Many claims have been made about the significance and innovation of this one Article, yet Article 12 remains not just one of the most widely cited but least understood of all the CRC provisions; it also remains one of the least implemented.<sup>8</sup> Based on data from children and adults, in a study for the first Children's Commissioner in Northern Ireland, I suggested that part of the problem with its implementation was that it was abbreviated to terms such as "voice of the child", a dilution that fails to capture the full extent of the obligation and therefore undermines obligation.<sup>9</sup> Over 17 years later, and in spite of much progress, in some cases strides, to improve children's enjoyment of this right, research across the world continues to confirm that in most cases, children's views are not sought and/or are not taken seriously in the decisions affecting them as children and adolescents. The fact that adults continue to find compelling reasons not to give children's views

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7 Michael Freeman, "Why It Remains Important to Take Children's Rights Seriously," *The International Journal of Children's Rights*, vol. 15(1) (2007): 5–23.

8 Laura Lundy, "'Voice' Is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child," *British Educational Research Journal* vol. 33(6) (2007): 927–942.

9 Ibid.

due weight strengthens the case for the discourse to be firmly located within the framework of children's rights.<sup>10</sup> That resistance to engaging with children remains the case today in many instances, as does my call for recognition that it is not "the gift of adults" – it is an entitlement.<sup>11</sup> Yet, the old adage of "adults know best" is alive and well in many different contexts and cultures, with education, health, and child protection decision-making arguably heading the paternalistic pile. One irony here (and there are so very many in children's rights) is that children were given this right by adults, in part due to a recognition of the vulnerability generated by their lack of autonomy, yet it is then adults who control and, in many instances, deny the enjoyment of the right, often justifying this with reference to children's vulnerability. An additional irony is that children are usually absent from these discussions. In the section which follows, I take the opportunity afforded by this volume of chapters to explore children's own experiences of what adults would classify as "vulnerability".

### 2.3 CHILDREN'S VIEWS ON THEIR "VULNERABILITY" OR RISK OF HARM

As mentioned at the beginning of the chapter, I have never heard a child define themselves or other children using the adjective "vulnerable", although I have carried out many studies, working with children as co-researchers, capturing the experiences of diverse groups of children, often classified by adults as especially vulnerable, that have attempted to capture their views and experiences of actual and potential harm. In the discussion that follows, I want to highlight some examples of this from children's own perspectives rather than that of the many adults who would automatically deem these children to be "vulnerable". It is striking that almost all the academic discussion on children's vulnerability, particularly but not exclusively led by legal academics, has been undertaken without any attempt to engage with children themselves. The need to include children's own perspectives in discussion on childhood vulnerability was previously identified by John Tobin, who in his exploration of the relationship between children's rights and vulnerability, albeit also undertaken without children's input or engagement with their perspectives, nonetheless recognises that the effect of Article 12 is that it demands "a reorientation of the historical tendency for children's vulnerabilities

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10 Laura Lundy, "In Defence of Tokenism? Implementing Children's Right to Participate in Collective Decision-Making," *Childhood*, vol. 25(3) (2018): 340–354.

11 Laura Lundy. "Voice," 927–942.

to be defined and addressed exclusively from the perspective of adults”.<sup>12</sup> In the following sections, I have chosen to draw on a body of research with children, conducted with children as co-researchers along with my colleagues at the Centre for Children’s Rights at Queen’s University Belfast, that captures children’s own perspectives on what causes them harm, contrasting this with the perceptions of the adults who are influential in their lives. This dissonance, between what children and adults perceive in relation to children’s vulnerability to harm, forms an empirical basis to further explore the relationship between childhood vulnerability and children’s rights.

### 2.3.1 “The Yellow Bus”

My understanding of child participation (now known widely as the Lundy model) was shaped by a study conducted in 2003–4 for the Northern Ireland Commissioner for Children and Young People.<sup>13</sup> It was where I learnt that there was so much that children thought about their lives that differed from adults’ understanding and perceptions.<sup>14</sup> However, one piece of data stood out. It was a drawing of a yellow school bus with the caption “the banana bus”, “the custard bus” and the statement “we are embarrassed on that bus. We hide under the seats.” The image was drawn by children attending a school for students with moderate learning difficulties. In Northern Ireland, they are (unfortunately still) the only children who go to school on a bus that is painted yellow. When the education authority was asked why that was the case, the adults in the transport service emphasised that it was to keep the children safe: the bus was painted bright yellow so that other road users would know that the children had learning difficulties and drivers would proceed cautiously around it. So, this decision was taken by adults as a direct consequence

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12 John Tobin, “Understanding Children’s Rights: A Vision beyond Vulnerability,” *Nordic Journal of International Law* vol. 84(2) (2015): 155–182, 180.

13 Ursula Kilkelly, R. Kilpatrick, L. Lundy, L. Moore, L. Scraton, P. Davey, C. Dwyer, & S. McAlister, *Children’s Rights in Northern Ireland* (Belfast: NICCY, 2004).

14 This study gave rise to the Lundy model and, in turn, to a reflection on our own research processes. This is the only study cited that did not involve children as co-researchers. In the wake of this study, we began to reflect on how we could produce data in ways that were child-rights compliant. We proposed a model of child-rights-based research, a core aspect of which is working with children as co-researchers. All of the studies cited, other than this, adopt this approach. See Laura Lundy and L. McEvoy, “Childhood, the United Nations Convention on the Rights of the Child, and Research: What Constitutes a ‘Rights-Based’ Approach?,” *Law and Childhood Studies: Current Legal Issues Volume 14*, ed. Michael Freeman (Oxford University press, 2012), 75–91; Laura Lundy and L. McEvoy, “Children’s Rights and Research Processes: Assisting Children to (In)Formed Views,” *Childhood*, vol. 19(1) (2012): 129–144.

of the adults' perception of the children's vulnerability. It was also taken without any consultation with children. The reality is that the risk to the children disembarking is minimal – the bus goes right to their door of their home and a chaperone will accompany children until they are safely in the presence of their parents/guardians. But the impact of this vulnerability-driven decision is profound: from children's perspective, it does not keep them safe. The distinctive colour of the bus causes them harm since it exposes them to stigma, shame, and bullying. This one piece of data, and this study generally, was for me a professional Rubicon. Had we not spoken to these children about the issues that mattered to them in their lives, I would not have questioned, and in fact may have approved and applauded, the fact that the bus was painted bright yellow to keep these "vulnerable" children safe from traffic danger. Moreover, this study marked the beginning of an academic journey that has since focused on creating the space to capture and understand the unique perspectives of children who are routinely deemed "vulnerable" by adults.

### 2.3.2 Online Dangers for Children with Disabilities

Children with disabilities are widely understood to be some of the most vulnerable children of all. There is, for example, a huge body of research that shows that they are more likely than other children to be abused.<sup>15</sup> A 2019 study of children with disabilities in the digital environment, commissioned by the Council of Europe, explored children's own perspectives on their experiences online.<sup>16</sup> A common theme in the data from children with different types of disabilities was that they were all restricted from engaging in the digital environment because their parents had adopted a common understanding that they were at enhanced risk of harm, including from bullying and sexual grooming. The latter was rejected by many of the children. In fact, the co-researchers in our children's research advisory group of children with hearing impairments said that they had been so warned and alerted to the dangers of the online world that "we are the safest children on the planet". The group of children with disabilities who were subject to most restrictions by parents/guardians were those with learning disabilities. They were, almost invariably, not online at all, as their parents were so concerned that they would be targets

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15 Kirsten Stalker, and Katherine McArthur, "Child Abuse, Child Protection and Disabled Children: A Review of Recent Research," *Child Abuse Review*, vol. 21(1) (2012): 24–40; Janet Njelesani, "A Child Who Is Hidden Has No Rights': Responses to Violence Against Children With Disabilities," *Child Abuse & Neglect*, vol. 89 (2019): 58–69.

16 Laura Lundy, Bronagh Byrne, Michelle Templeton, and Gerison Lansdown, *Two Clicks Forward, and One Click Back: Report on Children with Disabilities in the Digital Environment* (Council of Europe, 2019).

for bullying, for example. However, one girl told us: “I am not online, but I am online”. By that, she meant that other girls in her school were saying mean things about her on social media, and she attributed that to the fact that she was more likely to be bullied because she was not online to check and respond. This example is not offered to suggest that she and other children with disabilities are not vulnerable to online bullying and other harms. Research confirms that they are.<sup>17</sup> However, the approach taken by her parents without her input or awareness of her lived experiences created a different, albeit unintended, harmful consequence.

### 2.3.3 Children Human Rights Defenders

This research took the form of a global consultation with children human rights defenders – children who are acting for their own rights or the rights of others.<sup>18</sup> These children report verbal and physical abuse in their activities and are aware that it puts them in danger, often in ways that would not happen to adults. They do not see themselves as “vulnerable”, and they would not fit any public perception of that. They are confident, articulate, and brave. Their concern is not the abuse that they might encounter – they are aware of it and are prepared to take the risks that go with that. However, the reality is that children are seen as so vulnerable as a group that many states have minimum age requirements that do not let them form or join an association, organise a peaceful assembly, etc., thus breaching their human rights.<sup>19</sup> Moreover, what these children want is not a classification of vulnerability but a recognition of their entitlement and capacity to exercise their civil and political rights through positive steps to enable them to act safely as human rights defenders and/or to seek redress when they experience harm. In this instance, a widespread perception that children are too vulnerable to be involved in human rights activism severely restricts them or shuts them out of the most basic of all human rights – the right to claim them. The consequence of that, too, can be construed as enhancing their vulnerability, leaving them unable to highlight or directly seek redress for a breach of their human rights, including the

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17 Sumera Saleem, Naurin Farooq Khan, Saad Zafar, and Najla Raza, “Systematic Literature Reviews in Cyberbullying/Cyber Harassment: A Tertiary Study,” *Technology in Society*, vol. 70 (2022): 102055.

18 Laura Lundy and M. Templeton, *Children Human Rights Defenders: The Views and Perspectives of Children* (Geneva: Child Rights Connect, 2018).

19 Laura Lundy, *The Rights of Child Human Rights Defenders: Implementation Guide* (Geneva: Child Rights Connect, 2020).

many entitlements in the CRC to be protected from harm identified above.<sup>20</sup> What children want is supportive adults, not usurping ones who prohibit their exercise of their rights due to their perceived vulnerability.<sup>21</sup>

#### 2.3.4 Life under Coronavirus

The final study of children's perspectives draws on the views and experiences of children captured during the early stages of the COVID-19 pandemic. This study, in partnership with Terres des Hommes and the UN Secretary General's Special Representative on Violence against Children, captured the views and experiences of over 27,000 children in 135 countries.<sup>22</sup> This example bucks the trend, however. Children at this stage of the pandemic were largely perceived as "invulnerable" to the worst effects of COVID-19 compared to adults. Indeed, they were often portrayed as a danger to others (as the "virus vectors"). Decisions were once again made about them without them. In the study, children warned of the adverse impacts of lockdown time and time again – highlighting outcomes that would only much later be recognised and addressed by governments. The response to children during the pandemic also provides insights into children's supposed "vulnerability" or lack of it, since the interests of adults took precedence and children's widely recognised vulnerability was suddenly not high on the agenda. Our conclusion was that "children's rights, including their right to have their views sought and given due weight, are not a dispensable luxury but an indispensable entitlement."<sup>23</sup> But, if anything, the findings of this study can also explain why a vulnerability discourse might play out differently for children. They were easily ignored and silenced even in countries with otherwise good track records of involving children in public decision-making. There is no question that this refusal to engage with children meant that their concerns were not heard and that this in turn caused many children profound and avoidable harms, the most serious of which undoubtedly stems from the extended closure of schools. In contrast to governments, one 15-year-old

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20 Nico Brando and Laura Lundy, "Discrimination and Children's Civil and Political Rights," *Harvard Human Rights Journal*, 35(2) (2022).

21 Karen Orr, Lesley Emerson, Laura Lundy, Lucy Royal-Dawson, and Erika Jimenez, *Enabling the Exercise of Civil and Political Rights: The Views of Children* (Save the Children International, 2016).

22 The #CovidUnder19 initiative reports are available here: <https://www.tdh.ch/en/projects/covidunder19> (last accessed 19 October 2024).

23 Laura Lundy, B. Byrne, K. Lloyd, M. Templeton, N. Brando, M. Corr, S. McAlister, E. Heard, L. Holland, E. Symington, and L. H. V. Wright, "Life Under Coronavirus: Children's Views on Their Experiences of Their Human Rights," *The International Journal of Children's Rights*, vol. 29(2) (2021): 261–285.

girl in the study had a clear understanding as to the connection between vulnerability and the right to be heard during the pandemic. Her advice to government was as follows:

Talk to children themselves and ask them what they need. The government needs to remember that there are many vulnerable children out there that need to be listened to. The government should not assume what children need but ask them. A child's right to be listened to is crucial at the moment. (girl, 15, UK)

These studies with children in diverse contexts and with diverse “vulnerabilities” provide examples of instances where children’s perspectives on their own vulnerability and/or their views on how it should be addressed do not align with the adult decision-makers in their lives. Of course, this is not always the case – there are many instances where children and adults have the same understandings of the risks and responses. There are also many areas where research demonstrates that children are indeed vulnerable and that their vulnerability is enhanced because of their age. However, in each of these cases, adult perceptions of children’s vulnerability and a concomitant failure to engage with them have resulted in decisions that have rendered the children even more vulnerable, often to harms that adults did not or could not anticipate. In the section that follows, I draw on these experiences – “vulnerable” children’s own understanding of “vulnerability” – a perspective often absent from the scholarship, particularly legal scholarship, on both children’s human rights and vulnerability theory, to reflect on the role that “vulnerability” can and should play in practice and academic discourse on children’s rights.

## 2.4 WHAT ROLE FOR VULNERABILITY IN CHILDREN’S RIGHTS DISCOURSE?

We have a conundrum. There is little question that children are more vulnerable to most harms and that the impact of those harms may affect them disproportionately compared to adults. There are decades of research demonstrating this in almost every context of children’s lives. A current example is the impact of climate change, which is widely recognised to have disproportionate adverse impact on children and their rights.<sup>24</sup> While acknowledging this, it also needs to

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24 United Nations General Assembly: Human Rights Council, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/37/58 (February–March 2018).

be recognised that one of the major ways in which children are left vulnerable to harm is the fact that they are often not considered competent to make decisions in their own interests and have most decisions not only made for them but made without their input. Based on children's lived experiences described above, it is arguable that this act of exclusion and denial of autonomy and agency is not just a harm in itself (and, of course, a breach of their human rights) but also potentially a way of creating or enhancing vulnerability. Thus, I suggest that the almost universal perception of childhood vulnerability, closely linked to adult perceptions of children's immaturity and incompetence in decision-making, generates a perverse effect: categorising children as vulnerable in itself can render them even more vulnerable. Moreover, the more vulnerable the child, the more likely it is that they will be excluded from involvement in the decisions that impact on them with adults readily taking decisions for them, purportedly in their best interests.

The case for recognising everyone, adult and child alike, as "vulnerable" as a means of addressing the evident shortcomings in, inter alia, a human rights-based approach has been cogently argued by eminent legal scholars, including Professor Martha Fineman<sup>25</sup> generally and Professor Jonathan Herring with specific reference to childhood.<sup>26</sup> While their approaches differ (see Herring in Chapter 3), the case they make is cogent. This chapter is not offered as a critique of or indeed a response to vulnerability theory. My focus is on the role of vulnerability within children's human rights law and its implementation in practice. My intention is to draw on a body of empirical evidence with children to demonstrate that any approach to law and policy that focuses primarily or exclusively on a conception of universal human vulnerability may not play out in practice for children's realisation of their human rights in the same way for children as it will for adults. Some of the questions that a focus on childhood vulnerability raises for me include whether some humans (children) will still be seen as more vulnerable than others; whether a focus on vulnerability can attend to and adequately address the social

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25 At this point, I wish to acknowledge my friend and mentor, the inimitable Professor Martha Fineman. I would simply not be writing this chapter or have come up with the Lundy model but for her influence and guidance. When we met, I was happily pursuing an academic career as a legal academic focusing largely on doctrinal analysis of domestic education law. She urged me (gently, in retrospect) to think conceptually. In my naivety, I had not even realised this was an option. She happened to be in Belfast at the time the first data came back from the children in the NICCY study. I remember looking at it with Martha and Professor Barbara Bennet Woodhouse. Observing their reactions to the raw data confirmed for me that this was a turning point – my Rubicon. At Martha's suggestion, I began to think beyond the legal text of Article 12, drawing on the empirical data to think conceptually. The result was a conceptualisation of Article 12 – space, voice, audience, and influence, now widely called the Lundy model.

26 Jonathan Herring, *Vulnerability, Childhood and the Law* (Oxford: Springer, 2018.)

fact that adults generally get to make decisions in their own lives in ways that children do not; and whether these two factors combined will mean that an approach that conceptualises children as vulnerable, as opposed to one that emphasises their capacity and entitlement to influence their own lives, will have a disproportionate adverse impact on children who will continue to have decisions made for them without them, with more of the types of unanticipated or unintended consequences that children described in the studies discussed in the previous section.

Of course, addressing this is not insurmountable in any of the established frameworks, whether that is a children's human-rights-based approach or, indeed, within vulnerability theory. However, it requires paying specific attention to the particularity of childhood and in particular the widespread acceptance of enhanced vulnerability and the realities of how decisions are made in children's lives. Within human-rights-based approaches, despite some progress, there is no question that this remains an ongoing struggle. There is widespread recognition that rights to participation and to protection are linked. However, this tends to be presented unidirectionally – we cannot ensure children's protection without participation. The experience of decades of child abuse across every continent underlines this; it is now well recognised that we need to listen to children to keep them safe. And yet, most often we do not in fact do this, and we most definitely do not do this when children are especially vulnerable to harm, for example in conflicts, natural disasters, or pandemics, or where they are perceived as more vulnerable due to their status as migrants, as children in detention, or because they have a disability. Paradoxically, children who have in fact suffered the most harm are also often excluded from decision-making with adults concerned that engaging them in decisions about their own lives will in itself cause harm; for example, it will “retraumatise” them.<sup>27</sup> It is striking that few would suggest that adults who have suffered harm cannot choose to speak to their own experience (or not).

Thus, I suggest that a source of childhood vulnerability is not just their size, maturity, or lack of experience but also their dependence on adults to make decisions on their behalf (due, *inter alia*, to their size, maturity, lack of experience, etc.). This plays out in several ways. The first, and arguably worst, is in an abuse of power with children neglected, exploited, and/ or maltreated – the very reason why the panoply of protections is included in the CRC. The second is in what has always been paternalistic decision-making that is intended to promote child welfare. Decades of research indicate that well-meaning adults will do this without

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27 Mary Mitchell, Laura Lundy, and Louise Hill, “Children’s Human Rights to ‘Participation’ and ‘Protection’: Rethinking the Relationship Using Barnahus as a Case Example,” *Child Abuse Review*, vol. 32(6) (2023):e2820.

any attempt to involve children. Our research, always with children, tells us that this very approach is one of the things that can render or enhance children's susceptibility to harm. And finally, one manifestation of this vulnerability that has received little attention to date is the fact that, when children are not asked their views and offer them unbidden to those upon whom they depend, and are thus perceived to be challenging adult authority, they can also be rendered vulnerable. Children frequently report being victims of rebuke or, worse, reprisal when they express their views on their own lives without being invited to do so. This response cuts across culture and context (with many cultures having a saying akin to "children should be seen and not heard"). Moreover, aggressive – including violent – responses are at their most marked when children are at their most assertive – acting as human rights defenders and calling out breaches of their human rights. Children human rights defenders "may experience stigmatization and resistance, including violence, when defending human rights, just because they are children and perceived by some to be breaking social and cultural traditions that expect them to be passive and to leave advocacy to adults. Adverse reactions can be exacerbated because of the child's gender, disability, race, language, religion, ethnic and social origin."<sup>28</sup> As discussed earlier, this mismatch between children's perceived vulnerability and their confident assertion of their rights attracts repression, which creates fresh vulnerability. As I write this chapter, the world is looking on in horror at the repression and violence meted out to children and young people, especially girls, protesting state violence in Iran or the denial of education in Afghanistan.

An outstanding issue to address is whether children might benefit if there were to be a universal understanding of and approach to human vulnerability. Research, including my own, does not suggest that children and adults are equally or perhaps similarly vulnerable, and it is also not certain that conceptualising them as such will necessarily be of benefit to children. There is a danger that a vulnerability paradigm "may provoke protectionist agendas that are difficult to reconcile with the evolving capacity and child participation paradigms that underpin the CRC", as suggested by John Tobin.<sup>29</sup> The studies I describe above underscore this. Children's vulnerability can be distinguished from that of most adults by the scope and depth of their dependency on adults to make decisions for them. As evidenced above, that dependency in itself can create further

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28 Laura Lundy, *The Rights of Child Human Rights Defenders: Implementation Guide* (Geneva: Child Rights Connect, 2020), 16.

29 John Tobin, "Understanding Children's Rights: A Vision Beyond Vulnerability," *Nordic Journal of International Law*, vol. 84(2) (2015): 155–182, 175.

vulnerability, including the often unintended harms that stem from a failure to engage with their views and experiences.

Tobin suggests that the key distinction between adults' and children's vulnerability is children's susceptibility to both endogenous and exogenous harm: "Although international human rights treaties accept that all human beings are vulnerable to exogenous harm, the CRC assumes that children are vulnerable to the risk of self-inflicted or endogenous harm *and* that adults must take measures to protect children against this risk". What this perhaps does not fully capture is the fact that children's exogenous harm is often created by adults (some of whom who are trying to address what they perceive to be children's endogenous harm). He gives a range of scenarios, including that of a child running out into a road to get a football ("A young child may only see the ball on the road whereas an older person will (hopefully) see the oncoming car").<sup>30</sup> In this example, the child is not mature enough to understand the danger and should be protected by adults, presumably by not being allowed to play ball near the road. However, if children were asked about this, they would most likely identify the harm as endogenous – the harm is not the result of their immaturity but the fact that traffic is allowed to speed in an area where children are playing. The children's preferred solution would likely be to create safe spaces for children to play, including in front of their own homes. However, we generally do not ask children and instead prioritise the perceived needs of adult car users. My point is that children playing with a ball are not *per se* vulnerable (to endogenous harm). They have been made vulnerable – *vulnerabilised* – by urban planning decisions from which they have been excluded and over which they have no political clout. Engaging with them to learn of their needs and solutions would likely render them less vulnerable to traffic danger.

Any approach that seeks to protect and provide for children's vulnerability, in law, policy, or practice, whether that is a human rights or other paradigm, must be one which fully acknowledges that childhood and adult vulnerability is not the same due to children's distinctive lack of autonomy and enables children to participate meaningfully in the decisions affecting them. In this regard, Katherine Federle's take on the relationship between vulnerability and a children's rights framework is compelling. She suggests that "Rethinking the construct of 'children' through the lens of rights would enable us to see the ways in which we have disempowered and harmed children" and then argues that "If, however, vulnerability is another way of acknowledging powerlessness, then it may further children's

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30 Ibid. 165.

rights discourses”.<sup>31</sup> In her analysis, vulnerability is a lens to expose children’s lack of power. For me, that lack of power is founded in and manifests itself through children’s dependency. Thus, when approached from a children’s rights perspective, an important response to childhood vulnerability should begin with and be grounded in Article 12(1) of the UN Convention on the Rights of the Child, which is the recognised human rights attempt to compensate for children’s lack of autonomy and dependency on adults, both as individuals and as a group.

A different concern I raise here, but do not have evidence for, is whether children could lose out in other ways if all humans, adults and children, are seen to be similarly vulnerable. One question that this poses for me is whether children would lose out from the lack of a dedicated gaze, especially in research. The childhood sociology movement has spent decades building the case that children need to be considered in their own right. Previously, children were largely invisible in social policy, hidden within family units or twinned with the needs of their mothers, with significant adverse consequences for their distinctive needs and rights.<sup>32</sup> To classify all as vulnerable poses the risk that children once again are deprived of the dedicated attention that was denied them for so long and that a children’s rights approach mandates. For a start, it is unclear whether it would in fact undermine one of the distinctive and bedrock principles of children’s human rights – that in all actions affecting children, their best interests are a primary consideration.<sup>33</sup> While the best-interests principle is much critiqued, there is little question that it plays an important role in ensuring that children’s distinctive interests and needs are not only considered but prioritised.<sup>34</sup> That principle, accepted and embedded in law across the world, exists for a reason – children not only need special attention (as do some other adult groups), but are often denied it in the decisions that are *made for them by others* – a condition that is not exclusive to childhood, but is a predominant characteristic of it. A universal conception of vulnerability could blur, erase, or minimise this, a consequence that many, including myself, would consider retrogressive. While some would argue that a universal vulnerability approach would capture this, centuries of suffering and exclusion, the hallmark of which has been children’s exploitation and subservience to the needs of adults, suggest otherwise.

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31 K. H. Federle, “Do Rights Still Flow Downhill?” *The International Journal of Children’s Rights*, vol. 25(2) (2017): 273–284.

32 Berry Mayall, “The Sociology of Childhood in Relation to Children’s Rights,” *The International Journal of Children’s Rights*, vol. 8 (2000): 243.

33 Article 3 of the CRC.

34 John Eekelaar, “Do Parents Know Best?” *The International Journal of Children’s Rights*, vol. 28(3) (2020): 613–631.

## 2.5 CONCLUSION

Children's human rights are and have always been founded on adults' perceptions of their enhanced vulnerability to harm. Indeed, vulnerability was the primary motivation for giving children bespoke rights. Over time, this has evolved to include recognition of children's entitlement to autonomy and self-determination, with the most comprehensive of the international children's rights treaties – the CRC – underscoring children's right to have their views sought and given due weight, both individually and as a group. My conclusion, drawing on a body of research capturing children's own experiences, is that whatever the chosen paradigm or conceptual frame, in medical, educational, or social decision-making as elsewhere, vulnerability should not eclipse agency. An understanding of children's capacity for and entitlement to influence the decisions that affect them is fundamental to any approach that seeks to provide for those who are or may be "vulnerable". The more vulnerable the child, the more important it is that active steps are taken to provide them with space, voice, audience, and influence – meaningful opportunities to influence the decisions that impact on their lives.<sup>35</sup> Moreover – and this is also often underplayed – the more opportunity they have to act, the more competent, less dependent, and therefore less vulnerable they will be. Thus, it might be argued not only that vulnerability should not eclipse agency, but that enhancing children's agency (protected and enhanced through robust implementation of Article 12) will in turn reduce vulnerability.

Going back to the question I posed at the beginning: What makes children different from adults? The second most common answer (from adults) is that they are dependent on adults. A connection that is rarely made is the fact that this form of dependency is inextricably linked to children's vulnerability. It is adults' role to take steps to ensure that children are safe – the founding rationale and outcome of paternalism. However, what is very rarely acknowledged is that it is this very dependency that provides the foundation for children's vulnerability in the first place. Dependency is a cause of vulnerability, yet is often presented as a cure (i.e., "adults know best" and will handle the major decisions in the child's life in order to protect them). So, readjusting slightly, my conclusion is not just that vulnerability should not eclipse agency. Of course it should not, for adults and children alike. Equally, children are not exclusively or inevitably vulnerable or vulnerable in every way. However, they are differently vulnerable. My contention is that they are, as a group, uniquely rendered vulnerable by their dependence on adults to make decisions for them. This dependency, although sometimes inevitable and necessary,

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35 Laura Lundy, "Voice," 927–942.

contributes to them being “*vulnerabilised*”. Children are not just innately vulnerable – they are made vulnerable. Categorising them as vulnerable justifies their exclusion from decision-making. Listening to them and considering their own concerns could help to reduce this, but pre-existing adult perceptions of their vulnerability often operate to preclude this.

To conclude, most of the scholarship on children’s rights and vulnerability to date has been generated without any substantial engagement with children’s own views and experiences. The CRC was written without any meaningful input from children, and, thirty years on, it is still routine for academics to continue to develop frameworks and theories without attending to children’s unique perspectives or experiences. In fact, it remains common practice in child rights scholarship for authors to stress that children should be heard without engaging substantively with their views and experiences on the issue being considered, including, for example, their purported vulnerability. Imagine the uproar if all the writing on women was produced by men; on persons with disabilities by those without disabilities; on racial minorities by those who have colonised them, etc. Then imagine if all law and policy were also produced without the input of those most affected. We need to acknowledge that this has always been the case for children. The discussion in this chapter is offered as an attempt to address this gap in the literature on children and vulnerability – harnessing children’s own accounts of their experiences to shed light on what may and may not make them vulnerable to harm. It has not, however, been written with or by children. An important next step in this discussion would be for children to develop or co-produce an alternative theoretical conceptualisation of childhood – a new child-authored paradigm. Who knows how this would address vulnerability, if at all? My hunch (informed from two decades of carrying out research on childhood with children as co-researchers) is that it would not focus solely on, or indeed forefront or focus on, their vulnerability.

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