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Response

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Response

Erik Larson

Professor Asha Bajpai's essay engages a multitude of issues that influence the well-being of people under eighteen years of age in India. It argues that legal and policy interventions in India can improve protection of children's rights. Her essay makes a number of contributions. First, the detail about the myriad influences on the status of 400 million young people in India provides a wealth of information about the real situations that influence people's life chances. Second, the focus on India provides insight about a case that is critically important for substantive and theoretical reasons. India is an emerging economic power, the world's largest democracy, and a diverse society; understanding the influences on children in India enables us to draw lessons that may apply elsewhere. Additionally, as I will briefly explain later, in some respects, India is an outlier in models that predict the pace of legal change. As such, understanding more about the country can build theoretical knowledge about how global developments influence national legal changes. Third, Bajpai's article provides details about a variety of legal processes that seek to improve the realization of children's rights. Analysis of how these legal processes have played out can yield insight about the prospects for legal change. Finally, uniting each of these contributions, the paper demonstrates a passionate commitment to the issues of the status of children.

In this response, I examine contexts in which ideas about children's rights and childhood have developed and how practices about children's well-being have changed to draw lessons related to Bajpai's essay. To telescope the argument: The prospects for change led by law are limited because children's status depends on altering the connections between the family and economy more broadly. In this sense, realizing children's rights remains contingent upon other social changes. Second, focusing on ending child labor elides the multiple ways that children are economic agents. Contemporary organization of children's economic activity has resulted in the institution of childhood becoming more expensive, making the prospects for realizing these rights more dependent on larger-scale changes. These conclusions notwithstanding, change is possible. It is, however, more likely if legal efforts follow, rather than lead, change.

Many of my comments concern how social life is institutionalized—or, in other words, how meanings and practices have become taken-for-granted ways to understand the world and taken-for-granted models for acting in that world.¹ During the past century, “global culture” increasingly became the source for such institutionalization. Global culture consists of models of how people and collectivities organize the world and act in it. These models, derived from rationalized scientific knowledge, have become pervasive in the world. Even in the face of global diversity, there are remarkably similar understandings of appropriate models for organizing society.² The prominence of global culture explains why

there is so much similarity across countries and why countries adopt policies and structures that do not respond to functional needs. Particularly since the middle of the twentieth century, models of human organization have increasingly emphasized individuals as the fundamentally real foundation of society, as creative agents, and as entitled to rights by virtue of being human.³ Simultaneously, other models of organization—such as the patriarchal household as an actor in which women and children have no independent standing—have become illegitimate.⁴ Global cultural models increasingly authorize nation-states to regulate populations, but in the name of promoting individual rights. Globally, regulatory governance (such as international conventions) creates normative models for states to follow, regardless of whether the population supports such changes.⁵

Professor Bajpai's essay rests on two understandings that derive from global culture: (1) children are universal bearers of rights and (2) states are the primary entities for ensuring these rights. While I do not question the veracity or normative implications of these cultural understandings, I argue that we need to understand how these ideas have been produced in global culture and how global culture diffuses to better apprehend the prospects for realizing the promise of children's rights. Bajpai's contribution presumes that the Indian nation-state should be the point-of-entry for the analysis of how to address these issues, reflecting the prevalence of models of social life in the contemporary world that authorize nation-states to organize and take responsibility for interventions to address problems.⁶ Similarly, her analysis takes for granted that children are a distinct subgroup of people who deserve specialized protection. Both presumptions are widely accepted cultural beliefs that we take to simply describe reality; both also are relatively recent beliefs.

I. The Global Institution of Childhood and Limited Prospects for Legal-Led Change

Scientific knowledge and international law concerning children have become more universal. For instance, the International Labour Organization's Minimum Age Convention of 1919 restricted work for people under age fourteen, except for those in India and Japan, which had restrictions only for those twelve and younger. Contemporary international law no longer includes provisions for differences in age-grading across countries, because the rise to prominence of developmental models of childhood makes such exceptions illegitimate.⁷ Similarly, the constitutions of nation-states have increasingly recognized childhood as a distinct life stage.⁸ These universalizing trends indicate global cultural developments that influence law and how we understand childhood as an institution.

Although rooted in changes in global culture, legal strategies to enhance children's rights offer limited prospects for altering the status of children for two reasons. First, because childhood is a temporary status for individuals but enduring for society,⁹ we need to distinguish between childhood as an institution and children as beneficiaries of rights.¹⁰ Although children's rights have evolved internationally such that the United Nations Convention on the Rights of the Child holds children to be autonomous individuals,¹¹ these rights attach to particular individuals only for a limited time. Children's rights, as such, are a means to construct the institution of childhood in relation to other social institutions, such as the family, the economy, sexuality, and the state, to name a few.¹² Second, children's rights raise the questions of how to realize and enforce these rights. Due to limited material

and social resources, children have restricted bases for independently exerting these rights.¹³ They must often rely on third parties and actors in the legal system to make rights claims on their behalf. The rights, therefore, may require additional enforcement efforts to have greater effect.¹⁴

Research on worldwide changes in law demonstrates both the importance of global culture in producing changes in law, but also the limited effects of such top-down legal changes. Certainly, there are global dimensions to changes in national laws that follow the overall development of global culture. For instance, cross-national analysis shows that national criminal laws about sex have become more similar as countries have decreased criminalization of adultery and sodomy and increased criminalization of rape and child sex abuse; these changes tend to happen in tandem.¹⁵ Globally, national criminal laws about sex, therefore, have become more in line with notions that sex is an individual expressive activity rather than a procreative activity governed by the state or patriarchal family. This analysis shows that connections in a given country to global culture account for much of the variation in the pace and timing of such reforms. India's slow pace of reform, as discussed by Professor Bajpai and as indicated in Frank, Camp, and Boutcher's analysis, is surprising given the country's overall connection to elements of the culture of the global polity, suggesting that something about the Indian state or legal system slows the pace of change. While a full analysis is beyond the scope of these comments, possible explanations include a lack of state cohesion that may insulate the state from civil society¹⁶ and the structure of state bureaucracies that may refract global culture in ways that limit the potential for change.¹⁷

Such globally inspired laws, however, do not often result in changes in behavior. University of Minnesota professor Elizabeth Heger Boyle and Macalester Sociology alumna Amelia Cotton Corl demonstrated that developing countries that passed laws to protect female children from genital cutting did so largely in response to global pressure due to conditions placed on international financial support. These laws, however, are rarely enforced.¹⁸ Instead of change in practices of genital cutting coming from law, Boyle and Corl's evidence shows the importance of community-based work in conjunction with increased living standards in altering practices. Particularly when law is distant from everyday life, rights-based reforms will be a poor tool to promote change,¹⁹ particularly when (as in India) much of the support infrastructure for rights-based mobilization is limited.²⁰ To be effective, rights require that people have experiences applying the law as agents. Without such experience, there is a risk that rights-based law reforms that seek to control people will simply provoke resistance and increase barriers to change.²¹ These points help explain how the origin of laws result in the implementation gaps that Professor Bajpai identifies.

Three related lessons derive from this evidence about global culture and law. First, for international legal developments to have greater influence on India's law, the state and legal systems in India will either need to be more directly linked to global culture or be more open to influence from organizations, professions, and other civil society actors who are closely connected to global culture. The gap between the expected and actual rates of legal change in the country suggests that legislative and judicial institutions are more insulated from these global developments than in many other countries.

Second, mere legal change is not sufficient to bring about changes in the treatment of children. Bajpai's article highlights the many formal gaps in law as related to children's

rights. But the influence of law and rights on social change often is contingent upon changes in social organization and societal expectations.²² Indeed, in her oral presentation, Bajpai discussed best practices of civil society organizations, demonstrating this point: building consensus and real impact happens when a community believes that things can be different. In this respect changing law will not likely change minds and will have a limited effect on changing behavior, particularly given a weak resonance of law. A change in minds, however, may change law. From this perspective, the gaps in law that Bajpai's essay identifies reflect the gap between cultural ideas about children in India and global ideals of childhood.

Third, in the absence of such larger cultural shifts in India, changes in laws may have limited but perverse effects. The example of the PCPNDT Act criminalizing ultrasound for the purpose of determining the sex of a fetus stands out in this respect. Merely using ultrasound to produce that information does not result in any harm. Rather, acting on that information is the problem. Convicting physicians for merely providing information misallocates responsibility. Similarly, analysis of laws passed to comply with external pressures demonstrates that such action can decrease the legitimacy of law and the state, thereby leading to reduced ability to pursue change later.²³ Similarly, providing for more "child friendly" practices in legal institutions, as Bajpai suggests, would seem unlikely to overcome the societal attitudes and patriarchal norms that impede incorporating considerations of the welfare of children into decision making. Indeed, such a formalist response may suggest that children's concerns were heard, even if the input they provide is legally irrelevant and not likely to influence actual decision making.

II. Children as Economic Actors and Prospects for Changing Children's Experiences

I now turn to a more extended consideration of child labor. I will use insights from the experience of the United States of America to build to more general ideas about children as economic actors and the cultural content of childhood as an institution. This analysis draws historical lessons about how actual changes in children's conditions occur and explains the prospects for such changes in the contemporary world.

Viviana Zelizer's scholarship on children shows how the United States changed from a country in which children participated in the general labor market as workers to one in which children were formally "priceless" and outside the labor market.²⁴ In the nineteenth century, the market value of children as workers actually increased when urbanization created more opportunities (and demand) for children to work in the formal labor market. By the 1900 census, one of every six children between the ages of ten and fifteen were employed—approximately the same ratio as in India today, according to Bajpai's evidence.²⁵ Fathers in the United States would collect children's earnings, highlighting again how children were subordinate to the patriarchal family. Zelizer notes that legal changes only came after fifty years of work by advocates. When change did occur, cultural influences were central: people's beliefs about appropriate combinations of children's labor transactions, financial flows, and social relations shifted. Indeed, publications demonstrate this cultural shift. From the 1880s until the 1890s, there was more than a five-fold increase in the percentage of books that referenced the "child's individuality." This shift was not merely a link to general trends in attributions of individuality because a similar spike in references to "man's individuality" happened about forty years earlier.²⁶

The legal changes in the U.S. closely coincided with wider shifts in labor market organization. New regulations on child labor typically targeted the types of safety hazards and exploitation that more general labor regulations of the time addressed,²⁷ implying that the changes to child labor were part of larger shifts in labor market regulation. Even more importantly, new labor regulations enabled adult male workers to earn a wage sufficient to support a family. Therefore, it took both parallel changes in the social institutions of work, family, and the economy to enable child labor law changes *and* the investment of significant resources to alter beliefs about children and, therefore, child labor practices. These insights suggest that the holding in *Mehta v. Tamil Nadu*, discussed by Professor Bajpai, may not go far enough. The legal remedy in *Mehta*—that parents will receive a job or income support, as long as the child receives education—seems to address only cases in which parents do not currently work. Broader changes that enhance the ability of parents to earn a social wage sufficient to support a family would more likely result in the types of cultural changes that led to sentimentalizing children in the U.S. In this respect, the changes necessary to reduce the problems associated with child labor may be contingent upon changes in other social institutions.²⁸

Zelizer's analysis also holds additional insights about children as economic actors and childhood as an institution. She points out that solely focusing on laws against child labor in the U.S. to end exploitative practices obscures the range of actual activities that children undertake as economic actors. In other words, despite formal laws against child labor in the United States, children's labor still provides a wide range of economically valuable products.²⁹ Children in immigrant families, for instance, may provide translation services at physician's offices or with authorities. Other children may contribute labor to family businesses. Outside the household, people may hire a child from the neighborhood to shovel a sidewalk or babysit. While the precise mix of labor and appropriate compensation varies by social relation, it is unmistakable that each of these children's labor has economic value.

Yet the cultural logic used to justify children's work as appropriate has shifted. Children now engage in work to build skill and character (at least that is the justification we put forth) or, on occasion, to support particular social relations (by giving care or by translating, for instance). Indeed, Article 32 of the Convention on the Rights of the Child indicates that children have the right "to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." Calls to end all child labor seem to go beyond the CRC's language. However, both these calls and the CRC raise questions about what bounds we set on child labor: How does one determine whether a particular activity helps or hinders development? How does one measure economic exploitation? What is it about market participation that harms children?

This final question extends the analysis of children as economic actors because they also exert tremendous influence as consumers. Children account for about ten percent of consumption in the United States.³⁰ Similarly, as consumer markets grow worldwide (especially in emerging economies like India), children's global influence on consumption increases.³¹ In many respects, children have become more active economic agents, as they now influence or control resources that others bring into the household, rather than simply surrendering wages to a patriarch.

The cultural shifts in childhood concerning children as economic actors—decreasing and obscuring their instrumental economic value, substituting a priceless sentimental value, and nurturing and unleashing children’s consumptive appetites—make children expensive. Despite their social origins, the resulting shift in childhood as an institution and its cultural manifestations appear natural and obvious. More deliberate attention to cultural scripts of what combinations of economic activity, types of compensation, and social relationships are legitimate can help illuminate the connections between childhood and other institutions. We should also account for how the costs and benefits of children’s economic activity are distributed. Such analysis should examine both the institutional level—how much society collectively invests in (or takes from) childhood as an institution—and group inequalities—how stratification distributes these costs and benefits in domestic as well as global settings.

III. Conclusion

I want to conclude this consideration of childhood as an institution in comparative, global context by drawing out implications related to Professor Bajpai’s analysis. She notes: “Today [India] is registering 8–10 percent growth and claiming to be a world economic power by 2020.” In her presentation, she expressed the sentiment that no country should be a world economic power if it does not treat its children well. As Professor Jacquelyne Eccles’ article (in this volume) demonstrates, however, the sentiment, sadly, is not a fact of life in the contemporary world. The economic power of the U.S. and its treatment of children indicate that, at best, there is a weak link between treatment of children and economic power. More likely, the causal order runs in the opposite direction, which is where the potential for India’s growth can become a source of hope. If India devotes fruits of this economic growth to change social organization and institutions bound to childhood, it could result in the types of cultural changes that encourage people to view children as priceless.

At the same time, however, we need to consider how the cultural organization and location of the institution of childhood projects visions for the future. The contemporary global construction of childhood focuses on developing human potential. The culturally legitimate treatment of children has shifted from understanding children as a resource for families and nations to understanding duties that we must fulfill to enable future aspirations. We seem to more readily celebrate and liberate those elements of childhood that help develop consumers and households as sites of consumption, albeit not as unequal as the patriarchal households of the past. At the same time, efforts based on presumed vulnerabilities of children to succumb to nefarious bad actors and criminal-law-based responses may draw our attention away from the broader social arrangements of childhood. Instead of collectively engaging in wider reform, a focus on eradicating bad actors may lead to laws that are misguided and counterproductive, and continued hollow political platitudes about the sanctity and value of children. Realizing the promise of children’s rights requires changes to the institutions on which such rights are contingent. Such change is not impossible—far from it, as the historical evidence indicates. Rather, true change requires that we invest the time and resources in well-focused efforts to alter culture, social organization, and practices in order to make rights into realities.

Notes

1. Hagan 2003, p. 7.
2. Meyer 2004.
3. Frank and Meyer 2002; Meyer and Jepperson 2000; and Meyer 2010.
4. Frank and Meyer 2002; and Boyle et al. 2006.
5. Boyle et al. 2006; Larson 2007; and Meyer et al. 1997.
6. Meyer et. al 1997.
7. Boyle, Smith, and Guenther 2006.
8. Boli-Bennett and Meyer 1978.
9. Corsaro 2005, p. 3.
10. Smith 2010, p. 23.
11. Boyle et al. 2006, p. 267.
12. Children's rights, therefore, draw inspiration from models of human development tied to individual sciences, which have gained authority in world culture. Education as a universal need for children represents a process through which individuals become linked to universalized, rational culture (see Frank and Meyer 2002; Meyer 2010; and Meyer and Jepperson 2000).
13. Boyle and Nyseth 2011.
14. Sutton 2001.
15. Frank, Camp, and Boutcher 2010.
16. Chibber 2002.
17. Larson, Johnson, and Murphy 2008.
18. Even in developed countries, law does not end unwanted practices. Using the numbers in Professor Bajpai's essay yields a rate of sexual abuse of children of 1.75 per 1000. Her essay notes there are 400 million children in India and cites a source from 2006 that estimated 600,000 to 700,000 incidences of child sexual abuse. Using the higher number yields the rate of 1.75 per 1000 children ($700,000 / 400,000,000$). In the United States, evidence from the National Crime Victimization Survey estimates a rape and sexual assault victimization rate for 12 to 17 year olds of 1.9 per 1000 (Douglas and Finklehor n.d.). The estimate is from the 2001 Survey, which

follows a period of significant decline in sexual assault victimization among that age group (Finklehor and Jones 2004).

19. Ewick and Silbey 1998.

20. Epp 1998.

21. Boyle and Corl 2010.

22. Sutton 2001.

23. Boyle and Corl 2010.

24. Viviana Zelizer's scholarship on children (1994, 2002, 2005).

25. Bajpai's article cites 60 million child laborers out of 400 million children, which is 15% of children or one of every 6.6 children. The number provided in Zelizer (1994) excludes children who were working and under age 10 and excludes children who worked with parents.

26. Cohen 2011.

27. Smith 2010, p. 57.

28. Sutton 2001.

29. Zelizer 2002.

30. Bureau of Labor Statistics 2011; *The Economist* 2006; Horovitz 2011; and Zelizer 2002. This estimate seems likely on the low end, since it is from James McNeal's analysis of the approximate dollar value of direct purchase (\$40 billion) and direct influence (\$340 billion) in 2006. It excludes indirect influence (e.g., parents thinking that they should buy something for their child). McNeal's estimate of children's influence (direct and indirect) has increased by more than 40% since 2006 (Horovitz 2011); the rate of increase of consumer spending accounted for by children's direct purchase and direct influence is greater than the rate of increase in overall consumer spending.

31. Schorr 2004; and McNeal 2007.

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