

Dos paradoxos dos direitos aos contra-direitos da criança

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Resumo

Este artigo é um ensaio teórico a partir de uma leitura crítica da literatura social-filosófica e jurídica sobre direitos contra-hegemônicos e contra-direitos. Discutem-se os direitos das crianças do ponto de vista do que estes significam para elas e de como podem ser utilizados por elas em seus próprios interesses. Para tanto, ele analisa o que significa considerar as crianças como sujeitos jurídicos, quais paradoxos jurídicos precisam ser considerados e como eles devem ser abordados. O artigo chega à conclusão de que as crianças têm mais condições de se apropriar de seus direitos se eles forem transmitidos juntamente com suas condições de vida e experiências e forem conceituados como contra-direitos.

Palavras-chave: Contra-direitos. Direitos da criança. Infâncias populares. Paradoxos jurídicos. Sujeito jurídico.

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From the paradoxes of rights to the counter-rights of children

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Abstract

This article is a theoretical paper based on a critical reading of the social-philosophical and legal literature on counter-hegemonic rights and counter-rights. It discusses children's rights from the perspective of what these rights mean to children and how they can be employed in their own best interests. To this end, it examines the implications of regarding children as legal subjects, the legal paradoxes that must be addressed, and the approaches that should be taken to address them. The article concludes that children are most capable of claiming their rights as their own if these rights are conveyed in conjunction with their living conditions and experiences, and conceptualized as counter-rights.

Keywords: Counter-rights. Children's rights. Popular childhoods. Legal subject. Legal paradoxes.

De las paradojas de los derechos a los contra-derechos de la niñez

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Resumen

Este artículo es un ensayo teórico basado en una lectura crítica de la literatura socio-filosófica y jurídica sobre los derechos contrahegemónicos y los contra-derechos. Analiza los derechos de la niñez desde el punto de vista de lo que significan para los niños y de cómo pueden ser utilizados por éstos en su propio interés. Para ello, analiza qué significa considerar a los niños como sujetos de derecho, qué paradojas jurídicas deben tenerse en cuenta y cómo deben abordarse. El artículo llega a la conclusión de que los niños son más capaces de hacer suyos sus derechos si éstos se transmiten junto con sus condiciones de vida y sus experiencias y se conceptualizan como contra-derechos.

Palabras clave: Contra-derechos. Derechos de la niñez. Infancias populares. Sujeto jurídico. Paradojas jurídicas.

Introduction

My objective in this article is to analyze children's rights from the perspective of what they mean to them and how they can be used by them in their own interests. I do not see these rights as speaking for themselves, but rather relate them to the living conditions and experiences of children. This is the only way to avoid the mystification of children's rights and the only way for them to perceive these rights as relevant to themselves. The discourse on rights presupposes that they apply equally to all people, and in the case of children's rights, to all children, but what they mean to them, whether they are useful, and whether they can use them depends on the circumstances of each child.

I will make some proposals to understand and frame children's rights derived from these premises. My considerations are based on a critical reading of the socio-philosophical and legal literature on counter-hegemonic rights and counter-rights. They were inspired by the experiences I had since the late 1980s in educational practice with children and adolescents from popular sectors and as a "collaborator" and "facilitator" in social movements of working children and adolescents, especially in Latin America (LIEBEL, 2006). This practice went hand in hand with participatory action research, in which children and adolescents acted as co-researchers and took on research tasks themselves (LIEBEL, 2024, p. 149-210, in cooperation with Urszula Markowska-Manista and Marta Martínez MUÑOZ; LIEBEL; MARTÍNEZ MUÑOZ, 2024). Children's rights were not an explicit topic of this research itself, but they led me to examine more closely why children and adolescents were skeptical about these rights and, in the end, accepted them in a way that was not foreseen in the dominant discourse on children's rights. This experience led me to examine more closely the "hidden" currents in the history of children's rights (LIEBEL, 2013; 2023, p. 75-146) and, ultimately, also to examine critical legal theories and relate them to the issue of children's rights.

To clarify the essence and reasons for my deliberations, I will explain what it means to consider children and adolescents as subjects of rights, which paradoxes need to be considered, and how they should be addressed. Finally, I will explain why children and adolescents can better claim their rights if they are conceptualized as counter-rights. In doing so, I continue the considerations I formulated under the term "children's rights from below" (LIEBEL, 2012; 2023) and bring them to fruition. First, I will describe some reasons for the reconceptualization of children's rights.

Why Children's Rights Need to Be Reconceptualized

Children's rights do not emerge and exist in a socially and historically distant space. The claim of their universal validity faces a world marked by significant power imbalances and cultural

diversity. Therefore, it is not enough to simply apply rights; they must be “translated” in a way that makes them compatible with the living conditions and specific experiences of children in each context.

Before anyone invokes children's rights, one must question how they can be an effective and practicable instrument to safeguard the dignity of children and strengthen their position in society in a given situation. If we consider children as actors, that is, as active subjects with their own ways of seeing and expressing themselves, a series of minimum conditions must be met beforehand. This includes the fact that children not only depend on themselves but also need the necessary social space to act. It also means that they need to have legal contacts who take the discourse of rights seriously and that there are political frameworks in which human rights are not completely ignored. Finally, it also means that children can find adults who are their allies in society and are willing to assume and support their claims. The emergence of these assumptions, as well as human rights, should not be understood as a kind of naturalistic fact but rather as the result of social struggles and, therefore, can also be questioned and changed.

It is considered important to take children's opinions seriously and understand their rights in a way that they can be used both individually and collectively as they grow. It must be taken into account that rights only acquire practical meaning if they are accompanied by structural changes in the respective societies, leading to greater equality and social justice, and, in particular, strengthening the social position of children in the intergenerational order. This does not exclude the representation of children by adults and state institutions, but it also requires us to recognize that any representation by third parties is associated with risks, which can only be countered through broad participation and self-organization by children. If we want children to appropriate their rights, and learn to exercise and use them, it becomes necessary to consider them in the context of their lives and communicate them through their life experiences.

It is important to analyze children's rights within their political, cultural, and structural context and assess them in terms of the impact they can have on children's lives (LIEBEL, 2023, p. 43-73). In all of this, it must be considered that, for example, the real situations of girls, boys, intersex children, or children from poor and rich families are very different, so the same right may have a different meaning or weight for each of them. In some cases, rights need to be specified and expanded, whenever possible, with the participation of the children involved. Children deserve respect as human beings who, as they grow, can participate in the formation of their rights and contribute to their realization and development.

From the paradoxes of rights to the counter-rights of children

Therefore, children's rights should not be understood merely as a state obligation, but in a much broader sense, oriented toward the individual as rights that are in the hands of individuals, societies, and the communities they constitute and reproduce. This idea requires concepts of politics and law that do not rely solely on the state and the legal form of codified rights, but that see rights and legal systems as the result of social struggles and movements that can permanently change (PUPAVAC, 2001; STAMMERS, 2009). Based on these arguments, I suggest going beyond the merely legalistic interpretation of rights, which turns them into paper rights, and understanding children's rights as the result of an ongoing transformation process. In this process, the actors (children) from below transform their realities, translating their needs and rights to a better life into demands for action and obligations toward governments and the power elites.

This concept of law as a process draws attention to the contingency and dynamic development of rights: rights are not fixed or predetermined; on the contrary, they are the mutable result of conflicting needs, ideas, or interests and the social and political action that emerges from these antagonisms².

This dynamic has at least two dimensions. In the case of existing and codified children's rights, whose legal wording is often very vague, we are confronted with the problem of interpretation, the concretization of their meaning, and the implementation of these rights. For example, what is the content of the central concept of "best interests" in the United Nations Convention on the Rights of the Child (CRC)? How should the balance between protection rights and participation rights be struck? How should the participation rights of children be implemented across various political domains? Equally important, though much less explored in the literature on this topic, are the efforts of different actors to express their viewpoints and interests in rights that are not yet codified. Therefore, it may be necessary to expand and transform the current system of children's rights based on the CRC.

In terms of children's rights, it is therefore necessary to acquire situated or liberating knowledge about the realities lived by children in socially disadvantaged and marginalized circumstances. It would be a type of knowledge that views children as social subjects and would enable and facilitate

² In this sense, legal scholar Hedi Viterbo speaks of the "fluidity of legality." According to him, legality is "a constantly changing product of discourse, imagination, and practice," and all legal concepts are "inherently fluid and elusive." This is exacerbated by the "numerous potential conflicts between one legal principle and another. Instead of being obeyed or violated in a specific case, the inevitable flexibility of the law makes it readily susceptible to multiple potentially competing interpretations" (VITERBO, 2023: 350). This critique is also directed against the "normative fetishism of the legal system" (SALAMANCA SERRANO, 2018, p. 134) or "legal fetishism," which sees "the law not as a means to an end, but as an end in itself" (LEMAITRE, 2008, p.331).

the claiming of their rights in a specific situation, as well as the formulation of new (individual or collective) rights tailored to the situation at hand, and the insistence on their social and legal recognition.

The child as a subject of rights

In the discourse on children's rights, the concept of "subject" holds a central and consistently positive meaning. It is used to attribute to children their own legal and social status, which must be respected by society. When referring to children as legal subjects or subjects with their own rights, it is emphasized that they do not depend on the benevolence of those who have more power than they do and who exercise power over them. Instead, these individuals, just like the state, are legally and morally obligated to respect children as persons with their own dignity.

As internationally recognized human rights, children's rights are both objective and subjective rights. When referring to objective rights, the focus is on the obligations of society or the state toward children; when referring to subjective rights, the emphasis is on the fact that children themselves can demand and assert their rights. The assumption that children's rights should be understood not only as objective rights but also as subjective rights aligns with the premise that children, as social subjects, also possess characteristics that allow them to recognize, claim, and exercise their rights. Societies are obliged to recognize and promote these capacities.

I believe that, in this sense, it is essential to understand children's rights not only as objective rights but also as subjective rights. If this does not happen, the redefinition of children's rights remains empty, because it essentially leads to adults or state institutions reserving for themselves the monopoly of knowing what is best and appropriate for children, or what corresponds to their "well-being" or "best interests." They act in the name of children's rights, but the holders of these rights are left out and have "nothing to say." The objection often raised, that children must first develop the necessary skills before they can understand and use their rights, is not valid. It is true that very young children do not yet have an explicit understanding of "rights," but they acquire an early sense of what is good for them and what is fair (LIEBEL, 2013, p. 231-253).

Children only learn to deal with their rights and value them if they have the experience of being respected by adults as subjects and given the opportunity to use their rights in their own individual and collective interest. Understanding the subjective nature of children's rights, therefore, implies that adults strive to understand children's perspectives and opinions, and provide them with the necessary conditions to recognize the meaning of their own rights and, ultimately, to demand and claim them.

From the paradoxes of rights to the counter-rights of children

However, it must be considered that it is not enough, and it may even have problematic consequences, to understand children only as legal subjects. In debates about the philosophy and sociology of law, it is repeatedly pointed out that there are a number of problems associated with the historically developed concept of subjective rights. One of these problems is that the idea of human relations as legal relations distances people from one another, as they are dominated by individual interests that are claimed at the expense of others. In bourgeois-capitalist society, this is particularly true in the case of the right to property, in the sense of private property that can be used, accumulated, and bequeathed or inherited almost arbitrarily for personal interests.

To understand a person only as a subject of rights means reducing their human qualities to legal aspects. Under these aspects, the human being is seen, on one hand, as a person who is obligated or even subjected to certain established rules, such as laws, and other norms codified by the state (a rarely considered meaning of the category of "subject" in the sense of being subjected), and, on the other hand, as a person who has claims against other people or institutions and can demand them. In any case, the relationship between the person and others, or state institutions, signifies a reduction of life and human coexistence to issues of obedience or demands. This makes it difficult to imagine relationships of love, friendship, or solidarity, which could contribute to the impoverishment of human relationships.

In attempting to claim their own rights, those who are marginalized, and whose rights are massively violated, are precisely the ones who are forced to abstract themselves from their concrete daily experiences and enter a terrain where they are already at a disadvantage. This certainly applies to children.

An approach that sees children and adolescents as subjects and emphasizes their subjective rights is not without threats. There is a risk of trivializing the structural constraints imposed on children, beyond their discernment and capacity for action. It can also be used by "stakeholders" to absolve themselves of their responsibility toward children and shift it to the forces and initiatives of the children and adolescents themselves. This happens, for example, when the neoliberal state redefines those in need of help as "sovereign clients" or people dependent on the sale of their labor as "entrepreneurs of labor".

However, these risks cannot be avoided by viewing children only as victims who must be completely protected and shielded from all risks. This would fix children in a position of objecthood, effectively incapacitating them and, above all, going against the growing demand of children and adolescents worldwide to act independently and have a say in matters that affect them. A subject-

oriented approach requires that we are aware that all children are "children of the society" in which they live. Their viewpoints, judgments, and desires do not develop in a space free from society and are influenced by ideologies and normative social orientations.

In all societies, being a subject is confronted with structural, cultural, and social limitations, more or less pronounced, and it is only shaped in confrontation with these limitations. Therefore, I consider that dealing with these limitations is an indispensable part of subject-oriented interaction. These limitations include the fact that children are often unable to decide how and under what conditions they want to live or are often forced to live in conditions that leave little or no space for their personal interests or developmental needs. Thus, it is important to examine the causes of these limitations. For example, to what extent can they be attributed to extreme poverty, dependency relations based on domination, age hierarchies, ideologies of childhood, and/or a specific mode of production?

However, even and especially considering the limitations of being a subject, the question of the role that the children themselves (can) play in dealing with these conditions remains central. A theoretical analysis must also ensure the (possible) judgments and (possible) actions of children. This is more than just a methodological research issue. It is a matter of who is more likely to be interested in overcoming the limitations of being a subject and how theoretical reflection and empirical research can best contribute to achieving this. To this end, it seems particularly important to address the paradoxes embedded in the current dominant rights framework, which takes on a particular form in the case of children's right.

Paradoxes of Human and Children's Rights

The human rights enshrined in international law are characterized by the problem that, although they should apply equally to all people, they can only be claimed by them to varying degrees or not at all. This relates to the fact that people's living conditions and political status (citizenship) are extremely unequal. The supposed equality of rights or "before the law" can therefore have the effect of reinforcing inequality. This fact is sometimes referred to as the paradox of human rights.

To counteract this paradox, human rights have been specified over the last few decades for groups of people considered particularly disadvantaged or marginalized. For example, special rights have been created for women, people with disabilities, indigenous peoples, and children. In contrast to the general human rights codified in the Universal Declaration of Human Rights of 1948 and the United Nations Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights

From the paradoxes of rights to the counter-rights of children

of 1966, these rights are adapted to the special need for protection of these groups. This is because the equality of rights is not the same for all people, who find themselves in unequal starting conditions and, as a result, risk propagating ideological grievances. Since these specific human rights presuppose definitions of disadvantage or marginalization, they tend to establish a status or particular characteristics of special need or vulnerability, materializing and perpetuating them. This, in turn, carries the risk of stigmatizing the groups to whom these rights are directed, thus creating new paradoxes (from a feminist perspective, see BROWN, 2002).

In the case of children's rights, the issue arises as to how the specific situation of children as subjects of rights is conceptualized. Children's rights are justified by the fact that children are particularly vulnerable and dependent compared to adults, and therefore, require additional rights to be able to enjoy and exercise them.

The United Nations Convention on the Rights of the Child (CRC) of 1989 is based on the idea that children need specific rights because they are particularly vulnerable, still immature, and, therefore, dependent on adults. These characteristics of being a child, sometimes also referred to as generational asymmetry, are considered anthropological universals in the dominant understanding of children's rights. In the CRC, this means that attention is given to protection and provision rights, and the fulfillment of participation rights is linked to certain conditions, such as age, maturity, and the capacity for judgment. It also means that not only are special rights created for children, but some rights are also denied to them, particularly certain political rights (e.g., the general right to vote; see LIEBEL, 2022) or economic and labor rights (e.g., the right to work, rights in the workplace, or the right to unionize; see LIEBEL, 2021, p. 158-178).

Using Article 12 of the CRC as an example, sociologist Teresa Behrends investigated whether recognizing children as legal subjects means that they have the same legal status as adults. She concludes that this is not the case, and in this sense, she speaks of a specific "childhood legal subjectivity" (BEHRENDTS, 2017, p. 28). According to this article, children have the right to express their opinions and be heard in administrative and judicial processes. However, while adults can decide whether to express their opinions, whether they do so in their benefit or detriment, children can only do this "as children" and only to the extent that the child is "capable of forming their own opinions" (CRC). Whether and when this capacity is granted cannot be decided by the children themselves, but "is determined by the courts or specialized practices associated with them [...]. In this case, the law is not bound to the will of the individual holder of the right, but decides, according to its rules, if and when this will is mature enough to be heard" (BEHRENDTS, 2017, p. 28).

Furthermore, the nature and extent of the power granted are always limited to "matters affecting the child" (CRC). What those matters are is "not determined by the legal subject of the child itself." In this case, the child indeed has a right (individual), which semantically bears strong similarities to the form of a subjective right (BEHRENDTS, 2017, p. 28), but a central and decisive difference is marked. According to Behrends, this difference consists in the fact that "the subject of this right is entirely a child and cannot cease to be a child even with this right. The power granted by Article 12 is entirely a child's power pre-formed by adults or institutions" (ibid.). In this regard, the author raises the question of how "modern societies reconcile and what the consequences are of the fact that childhood is produced in and by modern bourgeois law, on the one hand, and at the same time represents an additional rupture in its presumption of equality, which once again passes through the paradoxical form of subjective rights" (ibid., p. 34).

Dealing with the Paradoxes of Children's Rights

The codification of children's special rights contains the inherent contradiction of naming specific vulnerabilities to which children are particularly exposed, while thus losing sight of the fundamental disadvantages of being a child. This applies, for example, to the right to non-discrimination, enshrined in Article 2 of the CRC. It itself can result in discrimination, as it overlooks age (particularly younger age) as a possible reason for discrimination, as if the mere existence of the CRC already guarantees that the special characteristics of children are taken into account. Legal scholars Aoife Daly, Rebecca Thorburn Stern, and Pernilla Leviner (2022) refer to this fact as the "paradox of the CRC".

Another example is the protection against economic exploitation granted in Article 32, which requires establishing minimum age limits for work. In this case, children are excluded from economic activity solely based on their young age, without considering the specific life circumstances of children, the working conditions, and, above all, the children's own wishes. This way of thinking, which focuses on exclusion and prohibition, dismisses the possibility of imagining children as actors who want to take responsibility for their families and communities (LIEBEL, 2021, p. 158-177), for instance, and for whom the work experience can contribute to the development of vital skills and

belonging to a particular culture, such as children in rural areas or indigenous children, for example (VOLTARELLI, 2023³).

This approach also accepts that children are incapacitated simply due to their young age and are prevented from defending themselves against life circumstances that are harmful to them and that they do not wish to accept. This understanding of children's rights can be described as adultist or adult-centered (DUARTE QUAPPER, 2012; LIEBEL, 2015; MORALES; MAGISTRIS, 2021; MORALES, 2022; 2024; LIEBEL, 2023), as it denies children the right to participate in determining their own lives simply because of their age. This also undermines the participation rights formally granted to children, reducing them to absurdity.

A central issue is how the differences between children and adults and the special characteristics of children are understood and legally defined. When children's rights are defined as specific rights, there is the alternative of understanding the disadvantage and vulnerability attributed to children as a permanent characteristic of childhood or as a condition to be overcome. If the special nature of childhood is understood as an anthropological universal, it is obvious that states of disadvantage and vulnerability are permanent. If, on the other hand, these are understood as socially generated results of unequal power relations, the perspective arises of conceptualizing rights as a possible means of overcoming disadvantage and vulnerability. Understood in this latter sense, the use of rights would lead to them becoming redundant for the children directly affected. This understanding of children's rights, which I call transformational or emancipatory, is what my argument boils down to.

Therefore, I also consider it necessary to go beyond the frequently constructed contrast between "well-being rights" and "agency rights" (BRIGHOUSE, 2002; GRIFFIN, 2002) or between "needs-based" rights and "capabilities-based" rights (WOODHOUSE, 2008). In the interpretation of the CRC, these respective rights are usually attributed to the legal groups of protection rights, provision rights, and participation rights. However, if we understand children's rights as a set in a transformative or emancipatory sense, these groups of rights would be conceptualized in a new way.

Protection rights would be understood as enabling and facilitating children to protect themselves and have a decisive say in the measures taken to protect them. Provision rights would be understood in such a way that their fulfillment is not primarily carried out by measures from state or adult authorities, but that society as a whole would be restructured so that people of all ages become

³ In Latin American societies, children work not only for survival in the face of state absences but also for formative learning in belonging to campesino, indigenous, quilombola, Andean, and other cultures, where children take on various labor roles, becoming part of the daily activities that make up social life in these contexts (VOLTARELLI, 2022; 2023).

active subjects of these rights, considering their respective starting conditions. Participation rights would be understood in a way that eliminates the unequal distribution of power between adults and children; that is, they become political rights that children can use in their own individual and collective interests, just as adults do, but taking into account their particular starting position.

This understanding of children's rights transforms them into counter-rights that can be used by children, both individually and collectively. Their aim is to strengthen the social position of children and counter any type of social and generational disadvantage, subordination, and discrimination. In this way, they can also help make social relations more equal and democratic, and particularly challenge any type of power inequality. As counter-rights, children's rights would be especially important for children who are particularly disadvantaged, marginalized, and oppressed at the social level. These children can be found all over the world, but especially in regions affected by the inequality of the post-colonial world order (LIEBEL, 2020).

Needs and Meanings of Counter-Rights for Children

To address the paradoxes in the discourse and practice of children's rights and to reconceptualize them, it seems essential to transform the previously dominant concepts of (state) law and subjective rights. Regarding these rights, I believe that a key element of this transformation is to communicate these rights through the concrete experiences of children. In this way, children, like other subaltern groups of people, must be empowered and enabled to formulate their own rights and use them to shape the reality around them, without having to depend on the authority and power of the state.

When this happens, rights are not formulated abstractly as "general rights" that are equally valid and meaningful for all children in the world, but rather refer to concrete life situations and indicate what must change to achieve a safe, dignified, and fulfilling life. Moreover, they are formulated in language that does not require specialized knowledge or legal experts to understand these rights. In current legal language, these are "moral rights."

For them to be understood as something more than mere moral admonitions that ultimately have no consequences, they depend on processes of self-empowerment that arise from society and collective action. Since they need to address the overcoming of the unequal distribution of power, they only stand a chance if they are conceptualized as "counter-hegemonic rights" (SHIVJI, 1989, 1995) or "counter-rights" (MENKE, 2018; 2020), which not only aim for their "own" freedom but seek to achieve a different society. This would evoke a society in which freedom and equality are

From the paradoxes of rights to the counter-rights of children

essentially defined as expressions of the communal existence of people and institutions, coined by Balibar (2014) as "equaliberty." This idea of rights is justified in various ways in legal and legal-philosophical discussions. Two main strands of discussion can be distinguished.

The first strand understands counter-rights as a means of decolonization. In this way, their main goal is to enable people in the former colonial territories to free themselves from post-colonial dependencies and subjugations. They are also directed against the legal system adopted by colonial powers after independence and the selective instrumentalization of human rights in favor of the former colonial powers (WALLERSTEIN, 2006; MEISTER, 2010). This concept questions the (national) state as the guarantor of rights and emphasizes the need for collective power to compensate for the subjugated and exploited peoples. In this regard, the African legal scholar Issa Shivji (1989, 1995) speaks of "counter-hegemonic rights." The concept has also been adopted in debates and social movements for a "counter-hegemonic international law" (RAJAGOPAL, 2003) and a "counter-hegemonic globalization" (DE SOUSA SANTOS and RODRIGUEZ-GARAVITO, 2005; CARROLL, 2007), which oppose the supremacy of multinational corporations, financial institutions, or business organizations and their arbitration courts as part of investment protection agreements.

The second strand understands counter-rights as a kind of "new law" that leaves behind the paradoxes of liberal-bourgeois "civil law" and neutralizes the individualization and depoliticization of legal subjects. Its aim is to resolve the paradox of, on one hand, granting equal rights to all people, but on the other, denying the majority access to these rights due to their disadvantaged social situation, thereby perpetuating social inequality. This concept of counter-rights mainly traces back to legal philosopher Christoph Menke (2018; 2020). Menke develops his concept of counter-rights from a critique of subjective rights in bourgeois capitalist society. He views the legal subjects created by civil law as alienated beings who are confined to a private space and thus depoliticized. In the discussion, it is repeatedly pointed out that there are several issues associated with the historically developed figure of subjective rights. One of these issues is that the idea of human relationships as legal relationships distances people from one another, as they are dominated by individual interests that are claimed at the expense of others. In bourgeois-capitalist society, this is particularly true with regard to the right to private property, especially concerning the means of production and real estate for profitable use.

The counter-rights, in the sense in which I understand them, do not distance themselves from the idea of subjective rights, as suggested by Menke (2018; 2020), but rather expand, modify, and specify them. They do not derive from the nature of human beings and are not solely focused on the

"own" of each person, but arise from the context of life with other people and are related to coexistence with other human beings. They take into account the "sociality of human subjectivity" (LOICK, 2017, p. 305). In this sense, they are both social and political rights that aim for a society in which people do not compete against each other and prioritize their own interests, but where intersubjective relationships are characterized by what they have in common and by being present for one another. Such a society requires a minimum level of social and political equality and mutual recognition as individuals with their own life stories, characteristics, and particular thoughts. In this society, equality and diversity are not opposites but are mutually dependent.

Rights understood in this sense do not require a state authority to guarantee and enforce them with power, but are based on the collective self-governance of people in the places where they live. They incorporate a new "concept of law that overcomes the statist reductionism" (FISCHER-LESCANO, 2018, p. 383) and abandons the "ideology of the free person underlying traditional subjective rights" (ibid., p. 385). These rights are necessarily counter-rights, as this self-governance must first be imposed against the existing unequal power and, possibly, also against state violence. They require not only a fundamental democratization of decision-making and the application of the law but also a democratization of the legal system itself (BUCKEL, 2021, p. 275-276). This democratization represents a special challenge concerning children, as they have been systematically excluded from lawmaking and jurisprudence thus far.

These rights must also be conceived as counter-rights because people who are socially and politically marginalized, oppressed, and disadvantaged are particularly dependent on them. This applies both within the territories of nation-states and in the relationship between the Global North and the Global South ("coloniality" according to Aníbal QUIJANO, 2019). In the case of children, unequal power is also embodied by "adults" who assume the right to govern the "not-yet-adults" as they see fit ("adultcentrism"). However, children's rights as counter-rights are not directed against adults as individuals or generations, but against the dominant social habits, rules, laws, and structures that subordinate children to adults and extend and prolong children's dependence on care and protection beyond what is anthropologically necessary. For this to become a reality, children and adolescents depend on the union of forces with other children and adolescents and on becoming a compensatory force in the places where they live and, whenever possible, beyond them. Due to their subordinate and relatively powerless position, they depend on the solidarity of adults and a minimum of opportunities to take their lives into their own hands through collective action

Challenges for Children's Counter-Rights

Children's rights, understood in this sense, emerge and have their best opportunities for realization in the places where children live. However, they are not necessarily limited to the local level. They gain importance and strength when children and adolescents manage to establish networks beyond the places where they live and express their common interests (LIEBEL, 2021). As rights that emphasize what children and adolescents have in common, they are more than just subjective rights in the individual sense. They are rights that emerge from the communication and awareness of children and adolescents in social spaces determined by themselves and that claim validity beyond these spaces. Therefore, they could be called intersubjective or trans-subjective rights (TEUBNER, 2020).

Children's counter-rights generally refer to codified rights (such as the CRC or regional children's rights treaties), but they reinterpret and reformulate them to improve a situation they themselves have experienced. Typically, they are not formulated in legal language but can be inferred from children's actions. Sometimes, but not always, they aim to reformulate official legal norms. The counter-rights that emanate from children gain strength from their experiences in their own living environment and from the self-organization that arises within that environment.

This understanding of children's rights transforms them into counter-hegemonic rights that can be used by children both individually and collectively. Their goal is to strengthen the social position of children and neutralize all forms of social and generational disadvantage, subordination, and discrimination. In this way, they can also help make social relations more equal and democratic and challenge any form of unequal power. As counter-hegemonic rights, children's rights are particularly important for those children who are especially disadvantaged, marginalized, and oppressed socially. These children can be found all over the world, but especially in regions affected by the inequality of the post-colonial world order (LIEBEL, 2020). The counter-rights, as I understand them, are similar to what anthropologist Olga Nieuwenhuys and legal scholar Karl Hanson call "living rights" (NIEUWENHUYS; HANSON, 2023), but the concept of counter-rights emphasizes more the agency, activism, and protagonism of these children (TAFT, 2023; LIEBEL, 2023, p. 175-198, in cooperation with Marta Martínez Muñoz).

Counter-rights are based on an understanding of childhood that goes beyond the bourgeois Western standard of childhood as a preliminary stage of adulthood and are directed against its dominance in the world. They focus on children who are often referred to as "children without

childhood” and, therefore, are discriminated against and marginalized, and whose experiences, knowledge, and skills are disregarded. They express the specific interests and experiences of these children and demand that they be recognized. In this sense, they aim to liberate children from the stage of subordination, in order to realize a society in which children are seen as subjects with equal value and dignity.

Children’s rights as counter-hegemonic rights face the problem that the realities and interests of children can only be abstractly reflected as rights that apply equally to all children. The challenge arises as to how rights can do justice, particularly to socially disadvantaged and marginalized children and their experiences and expectations, especially since these children have had little reason to trust the form of rights and the existing legal system. To address this, it is necessary to go beyond the abstract legal form of liberal law, and rights must be concretized in ways that apply to children’s experiences. This includes the right to oppose all forms of discrimination and violence resulting from unequal power relations, including those between adults and children. However, counter-rights cannot only be based on the common interests of all children as a social group; they must also consider other specific forms of oppression and marginalization experienced by children (e.g., classism, sexism, racism, ableism), meaning that an intersectional perspective is indispensable (LIEBEL; MEADE, 2024).

To address the question of how power inequality can be overcome in its structural forms and personal relationships, it is essential to question the temporal development pattern of childhood, which defines it as an imperfect preliminary stage of the supposedly perfect adulthood. This development pattern has contributed to the ongoing reproduction of adultism through processes of internalization. It is equally important for children to be able to change their living environment to some extent through their own actions, in a way that recognizes their moral equality. The so-called self-efficacy should not be seen only in the psychological aspect of gaining the self-confidence necessary for action, but also in the sense that reality itself is transformed by children's actions.

Counter-rights can serve a supporting function, as they also justify and legitimize these actions. They take the law out of the "legal sky" and become an integral part of daily life. The "power" of counter-rights and their counter-hegemonic effect arise from children's specific experiences in their living environment and the forms of organization and resistance that emerge within that environment. They are subjective in the sense of a resistant political subjectivity that involves the whole body and emotions, thus becoming the driving force behind directed action (LIEBEL, 2024, p. 87-114).

From the paradoxes of rights to the counter-rights of children

An open question is how children can free themselves from their seemingly natural dependence on adults and not only formulate their rights, but also claim and enforce them. This includes the issue of how counter-rights, which do not have an external guarantor (the State) or cannot rely on it, can become effective. It seems essential that children in similar life situations are able to develop elements of compensatory power in their own specific localities, which those who previously held power over children can no longer ignore. To achieve this, it may be useful to distinguish between micro and macropolitical levels of action and identify the interfaces and transitions where one level merges with and intervenes in the other.

The concept of counter-rights does not exclude the invocation of "official" codified rights, but instead, their subjects appropriate them and try to use and reconceptualize them according to their specific interests whenever possible, thus in a counter-hegemonic sense. Independent human rights and children's rights institutions, complaint centers, etc., which are also easily accessible to socially disadvantaged children and can effectively intervene in the decision-making processes at all levels, can be particularly important in this regard. Children's counter-hegemonic rights do not become effective simply by taking children into consideration, and it is not only the personal relationships between children and adults that need to change, but societies must be transformed in terms of social and generational justice. This is the responsibility of both adults and children.

Final considerations

Based on observations in educational practice with children in socially disadvantaged and marginalized situations, in this article, I argued that children's rights should be transformed into counter-rights. This is necessary because the current system of internationally codified rights is based on the premises of a childhood standard that devalues the vast majority of children in the world and disregards their knowledge and agency. Counter-rights point beyond the liberal-bourgeois legal form and manifest fluidly in a shift in power relations, between adults and children, as well as between different classes, genders, and by denying the characteristics of inferiority and imperfection attributed to children. At the same time, counter-rights always remain precarious, as they aim to change something that has not yet been changed. They are not only manifested in demands but also in lived practices and the forms of counter power that arise from this practice.

Children's rights understood in this sense emerge and have their best chance of realization in the places where children live. However, they are not necessarily limited to the local level. They gain importance and power when children and adolescents can connect beyond their localities and express

their common interests. As rights that emphasize what children have in common, they are more than just subjective rights in the individual sense. They are rights that emerge from the communication and awareness of children in social spaces determined by themselves and that claim validity beyond these spaces.

These processes can be observed wherever children and adolescents gather in their own movements and organizations to remind adults, and especially those with political responsibilities, of their duties toward children and adolescents and future generations, as is expressed today, for example, in the Fridays for Future or The Last Generation movements for climate justice. These aspirations can be seen everywhere children from disadvantaged sectors gather to resist both their relegation to silence and their social stigmatization and contempt as “poor,” “Indians,” “girls,” or “minors.” In this way, boys and girls reaffirm themselves as collective subjects with rights against every form of social injustice, racism, sexism, and adultism at the same time. Since children alone cannot generate the necessary counter power, adults who think and act in solidarity are challenged to facilitate and enable this practice.

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