

Vulnerable Agency: Children's Rights and the Law

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As scholars increasingly argue, we must no longer consider vulnerability and agency as opposed or mutually exclusive. We must also not imply that they attach to agents in the abstract, considered in themselves alone. Rather, vulnerability and agency are mutually entailing qualities of being human that are essentially interpersonal and that take on shape and reality only in concrete cultural and historical context and social relations; they are also the conditions of political personhood or citizenship, with the implication that persons of all ages and abilities are full, political subjects with full, agential human rights whose capacities must be promoted and whose vulnerabilities deserve protection. Given that liberal Enlightenment versions of political agency and rights have implied the rationality of the isolated, invulnerable, mature subject, and have conceived of others as subject only to “protection,” this new vision of the person destroys the liberal model of agency on which law, representation, and even international relations has been based. This at least partly explains the mismatch between current international labor standards—often enforced in treaties and trading relations—and the situations of children in poor countries. It also illuminates the systematic failure of “the liberal system” to protect the rights and welfare of persons whom the liberal system has declared “non-agents”: for protection without recognition of full agency and rights silences and excludes, especially when it comes without the resources actual protection demands. The paper approaches these arguments inductively, through the case of the Bolivian child labor law passed in 2014.