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Climate Action and the UNCRC: A 'Postpaternalist' World Where Children Claim Their Own Rights ‡

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‡ The postpaternalism hypothesis was first outlined in the blogpost, Daly, A. Children/youth climate advocates 'doing' rights themselves: Post-paternalism for the UN Convention on the Rights of the Child? 9 November 2022. Available online: https://www.childism.org/post/children-youth-climate-advocates-doing-rights-themselves-post-paternalism (accessed on 26 September 2024).

Abstract: In this paper, it is argued that we are in a 'postpaternalist' era for children's rights, involving grassroots action from children (for the first time, on a global scale) rather than well-meaning adults 'giving' children their rights. Child/youth climate action has involved under-18s acting for the environment through grassroots protest, media work and lobbying. The UN Convention on the Rights of the Child (CRC) has arguably to date been approached in a paternalist way, whereby children need adults to help them to access rights. Yet, child/youth climate advocates have taken their own action, and demand equality as they enter rights spaces. They are frequently working with adults as equals and allies in litigating climate cases, for example. It is argued that (although there are rights challenges in a postpaternalist time) these young rights leaders have transformed human rights for the better, and adults should facilitate their work in a way that is child- and youth-friendly.

Keywords: postpaternalism; UN Convention on the Rights of the Child (CRC); youth climate action; climate cases; right to a healthy environment

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1. Introduction

Children and youth have been extraordinarily active and influential on issues relating to environmental and climate emergency. The catalyst for this was the solo vigil of then 15-year-old Greta Thunberg outside the Swedish parliament. This sparked a global movement which mobilised a generation in an unprecedented effort of international solidarity for the planet and its future. Although children and youth have been engaged in climate action long before this [1], there has been a wave of child/youth climate action from 2018 which has been transformative for how we perceive children. Child/youth climate action is understood here to include a broad variety of action including protests, lobbying and strategic litigation relating to the environment, with the climate crisis as a motivator.

The climate crisis poses an existential challenge to humanity. A 2022 IPCC report outlined that our failure to curb global heating will result in irreversible damage, and that there will be an additional 1.7 billion people exposed to severe heat. Children are affected disproportionately by the climate crisis for a number of reasons. Children are physically developing in damaged environments and may suffer irreparable harm in ways that adults will not. Because children generally have longer to live than adults, children will be the ones dealing the longest with the worst effects of the climate crisis (of those of us alive today). This will likely involve greater food insecurity, disease and poverty.

Traditionally, in the Global North at least, children are primarily viewed as in need of protection. The UN Convention on the Rights of the Child (CRC) was drafted in the 1980s, outlining the basic human rights which states are to respect, protect and fulfil for all

children. This has been a groundbreaking and far-reaching instrument, including as it does numerous rights for children, such as the right to be heard and to have various freedoms. However, it has been argued that children's protection has had significant, perhaps undue, emphasis in this instrument [1,2]. It has also been argued that the potential for recognising children's political rights has not been met to date, perhaps in part because of the failure in academia and in courts to rely on the 'freedom' articles of the UNCRC—freedom of information, freedom of expression, freedom of assembly/association, and so on [2,3].

Increasingly, commentators are providing analysis of the ever-evolving right to a healthy environment [4], and the environmental cases and petitions in which children are involved [5–7]. There has also been reflection on the nature of child/youth climate activism, particularly in youth studies [8,9]. This article turns, however, to consider what this new era means for the CRC. It proposes that we are in a 'postpaternalist' era, where child/youth climate action is transforming children's rights. Traditionally, it is assumed that children are 'given' rights by adults, such as the right to be heard, but youth climate activists are taking control of their own rights on a global scale, e.g., becoming active participants in litigation in a way never seen before. Adults are not simply advocating 'for' children, but rather working alongside them as equals in many circumstances (or even being surpassed by them).

This article considers the effects of this disruption, and how we could work beyond contemporary paternalistic approaches to the UN Convention on the Rights of the Child, examining intergenerational dynamics in this postpaternalist climate context. Child and youth climate advocates are, unprompted by adults, engaging in 'rights work' by what Pantazidou [10] (in the broader human rights context) describes as creating meaning and shaping the narrative around what is considered a 'just claim'—a claim like a future in a healthy environment. Adults, such as the authors here (including among us a young climate advocate), can become allies of children and youth in their advocacy for environmental rights. There is an opportunity for academics, climate advocates and others to reflect on what young climate action means for children's rights.

In this article, it is outlined that the threats posed by the climate crisis have brought about a significant change in both the engagement of children with political rights, and the consequent public perceptions of children in many societies. Children/youth climate advocates have likely been more visible and accepted since Thunberg's vigil. They have been more visible in the media, in the streets, and even in institutions of power such as parliaments and international organisations. It has caused commentators to reflect on how children are 'moving beyond the category of victim and assuming a disparate role and distinctive voice in various climate discourses' [11] (p. 103).

This article will therefore reflect on some elements pointing to a new era for children's rights. The global, self-directed work by children/youth on the climate crisis stands in contrast to the primarily adult-driven CRC work which has been carried out to date (in terms of efforts to progress children's rights both in and outside of courts/UN bodies). The first section of this article considers that child/youth climate action has, in many instances, involved activities led by children and youth themselves. The second section considers whether, because CRC work to date has been primarily adult-led, child/youth climate action breaks through paternalistic boundaries. The term postpaternalism then seems to be a good vehicle to bring together some factors to understand the new phase of international human rights law that is evident today due to young climate action. Some of these factors are considered in the remaining sections. Children/youth are taking their own action on a global scale, using law and other spaces of power in their quest. They are also demanding equality, a little-used principle in the CRC when it comes to children as group [12]. Just as Fisher, Scotford and Barritt [13] (p. 178) suggest that legal frameworks generally must therefore 'evolve', so too must the legal and conceptual framework of the CRC. It is concluded that there are also challenges inherent in postpaternalism, and stakeholders are encouraged to consider how to approach and perhaps interpret human rights law anew.

'Children' is understood by the CRC to mean those under 18 years unless majority is obtained earlier (Article 1). The boundaries are not clear cut of course—in everyday language, the term 'youth' is used from age 12 but can be understood to extend to those in their mid-20s [14]. There is much overlap between the experiences, rights and needs of children and young adults engaging in climate action. Nevertheless, references to children/youth will be taken to refer in this article to under-18s unless otherwise specified, considering much of the focus in this article is on the CRC and on the under-appreciated role of under 18s as rights leaders.

2. The Limits of the UN Convention on the Rights of the Child (CRC)?

In the past 100 years, children/youth in liberal democracies have chartered an impressive legal journey. The CRC established children as 'individual holders of rights to survival and development, protection and participation' [15]. In this section, it will be argued that, whilst the CRC is a groundbreaking document for children's rights, much work in relation to the CRC has upheld the traditional paternalistic approach to children. Children/youth through their climate action, however, have pushed through their own understandings of the world and the rights they believe they do or should have, making demands on their own terms.

Paternalism is a word which evokes the protection of a father in respect to a child. It is inherently directed to the adult–child context (although, in reality, it has a broader use [16] (p. 32)). Paternalism can be defined as follows: "The policy or practice of restricting the freedoms and responsibilities of subordinates or dependants in what is considered or claimed to be their best interests" [17]. Children started out in the 20th century as essentially property of their parents, and, in particular, their father [16]. There was a refocusing on the best interests of children in the latter part of the that century, which elevated the status of children in the Global North, but it also brought with it the construction of the helpless child. This outlook emphasises the protection and welfare of children over their autonomy and participation, framing them as pre-political and pre-citizen subjects who must be prepared by adults to enter the public sphere [18].

The adult–child dichotomy fails to reflect reality in a lot of circumstances. One such area is the involvement of children and youth in sociopolitical issues, including their involvement in transformations in various societies. Before child/youth climate action, children and youth were heavily involved in numerous rights efforts in recent history, including the US civil rights movement, the fight against apartheid in South Africa, the first intifada in the Occupied Palestinian Territories, and the Arab Spring. Nevertheless, the adult–child dichotomy persists in the Global North, permitting the exclusion of children from their wider societies, and the devaluing of their wishes [19] (p. 246).

The CRC was drafted in the 1980s and became the cornerstone of the rights of children globally. It involved groundbreaking assertions about children, positioning them as active agents. States were to uphold their right to be heard and to have their views accorded due weight in all matters affecting them (CRC Article 12). A number of civil and political rights are enshrined in the CRC. However, it is still arguable that the CRC is a paternalistic instrument, or that, at least, it is regularly interpreted in a paternalistic way. There are a number of reasons for this, including the emphasis in the CRC on protection and the fact that children were not involved in its drafting.

The CRC Article 12 right of children to be heard, and the 'freedom' articles [3], including the right to freedom of assembly (CRC Article 15), undoubtedly go some way towards mitigating CRC paternalism, protecting, for the first time in international law, the position of children as active agents in the world. Yet, the protection elements in the CRC can be argued to be more prominent. Tobin [1] outlines that the preamble to the CRC strongly emphasises children as vulnerable and in need of protection, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care . . .', with Tobin concluding that 'vulnerability appears to have played a critical role in motivating the adoption of a special human rights treaty to protect the special interests of children' [1] (p. 156). There exists at

the very least a 'tension between paternalistic and anti-paternalistic features' [20] (p. 39). Whether the undue paternalism represents structural flaws within the CRC text itself, or rather with interpretations of it, is an interesting and important issue. Yet, the end result is the same—children are understood more as vulnerable beings than as active agents.

That the CRC is paternalist, or at least is interpreted in a paternalistic way, reflects well-intentioned concern for children, as it focuses on their best interests rather than 'an exclusive focus on parental and adult interests' [1] (p. 181). Children face disproportionate threats as compared with adults and a paternalistic approach is justifiable (or at least understandable) to some extent. Yet, undue paternalism detracts from the potential for children to advocate for themselves; it impinges on their 'resilience and capacity to protect themselves from harm' [1] (p. 182).

When it comes to children enjoying their Article 12 right to be heard, adults still retain significant power in most matters concerning children, having the determinant say in court proceedings (that is, the judges that make the decisions) and in political matters (that is, adults can vote and children cannot). It has spurred the comment that adults and organisations 'remain the guardians of this right, ultimately weighing and judging the abilities of children and young people to participate based on their age, maturity or perceived best interests' [21].

Another point is that children themselves were not involved in the drafting of the CRC, save some 'ad hoc' attempts, primarily by non-governmental organisations [22] (p. 118). This is another reason why one could argue that the CRC has its basis in paternalism. It seems extraordinary today that a human rights instrument would be drafted in relation to a particular group without their input. It strongly gives the message that adults know best, and that they will 'give' children their rights, without ascertaining children's views, experiences or input. Lundy et al. [23] reflect on this in their article: 'What if children had been involved in drafting the United Nations Convention on the Rights of the Child?' After a consultation exercise with children, they came to a conclusion. They argue that children's absence from the drafting process does not necessarily affect the validity of the instrument, particularly since the CRC is the result of attempts to achieve consensus between states. In any case, the fact that the wording of the instrument is broad leaves significant opportunity for interpreting and understanding rights 'in a way that is respectful of children's views and opinions' [23] (p. 239).

Nevertheless, the point has been made that children's rights are still an abstract and remote concept for many children. Liebel [24] argues that the CRC can only be meaningful to children if the rights are relevant in the realities of children's lives, and crucially, whether children 'themselves can put them to an empowering use. . . whether they can be enforced by children themselves'. Children are far from the only group for whom human rights law may seem remote. There is a significant amount of research indicating that the international human rights law framework may seem abstract in the everyday struggles of those on the ground, such as those who are economically disadvantaged. Yet, for children, the abstract nature of the rights framework is arguably particularly an issue for a number of reasons, including the fact that children were not involved in the drafting of this instrument.

Another significant issue is the powerful position of CRC Article 12, and the question of whether it has led to complacency about the adult–child power divide, particularly in the socio-political realm. Article 12 has been enormously influential, encouraging a new attitude to children as individuals who deserve to have a say in decision-making in all matters affecting them. It has had a remarkable impact on law, policy and language. It has been implemented in many countries around the world [25]. The CRC has gone a long way therefore in confirming the child as an individual rights-holder. Article 12 encourages children's 'participation' in every decision-making process, and has the potential to 'make it more inclusive by bringing views into play that would otherwise go unheard' [1] (p. 179). The CRC right to be heard has had a visible impact on the involvement of children in the sociopolitical arena. Youth parliaments have been established all over the world, for example, facilitating children's views on various issues to be brought before the elected

representatives of national parliaments. Nevertheless, there are significant questions about whether Article 12 is sufficient to empower children to influence policies sufficiently. First, as Article 12 does not require that adults address the structural issues that vulnerabalise children in societies. Article 12, it can be argued, is also problematic as it obscures the fact that children are denied the right to vote and therefore a crucial means of influencing policies in the states in which they live. Second, a common criticism of Article 12 is that 'it is easy for adults to comply with the various outward signs of consultation and ultimately ignore children's views' [26] (p. 937).

Many have commented on the conservative nature of the discipline of children's rights. Kilkelly and Liefaard [27] (p. 617) opine that it lacks the level of theory of other disciplines. It is a discipline, they say, 'to some extent. . . caught in the twilight', whereby there is a lack of acceptance that children are autonomous rights holders. The CRC has been described as 'largely accepted and unproblematised' by those in the discipline [20] (p. 39), involving an assumption that the CRC represents international consensus on what constitutes children's rights [20] (p. 38). Likewise, Reynaert et al. [28] identify a lack of critique or discussion about the *meaning* of children's rights or a questioning of this framework. The author cautions that this risks the discipline having a 'technocratic' discourse, that is, 'a technical debate on the most effective and efficient way to implement children's rights, how best to monitor this implementation and how this can be organized' [28] (p. 528). The study of children's rights therefore risks assuming that implementing the CRC is all that is required. Examining the fundamental, structural issues that prevent children's equality with adults is not required in the way that it is assumed necessary for other groups, such as women and minorities.

Perhaps there was a natural element of children being in a better position to have their voices heard because of the visibility given to them because of the influence of the CRC. Article 12 has undoubtedly progressed, at least in some countries and sectors (e.g., the NGO sector), how children and their views are treated. However, young climate advocates have pushed beyond the expectation that adults will give them space to be heard or have influence, and they have demanded change themselves through their climate action.

3. Children/Youth Taking Their Own Action—The Spark for Postpaternalism

Children and young people engaging in climate action have seized the opportunity to be heard through their own spheres of competence which are particular to this group, such as the use of digital media platforms for communication and activism [6]. Children and young people have not mobilised on this international scale on any other issue. This is certainly a new phenomenon, and leads us to theorise that it is a disruptive time for adult–child/youth relations and for the CRC.

Children have frequently been key to movements for change, including in Apartheid South Africa and in child/youth movements for labour rights [3,24]. It is notable, however, that the 2018 explosion of child/youth activism brought this to a global scale [29]. It has also involved children taking litigation at national, regional and international level at an unprecedented rate [5,6]. Tisdall and Cuevas-Parra [30] (p. 11) say of child activism generally: it 'is not reliant on adults: child activists take the space and demand the attention, rather than relying on adults to do so'. It demonstrates the power of *children/youth themselves* deciding what is best. Children and youth have always been political, but their global climate action has made this somewhat mainstream. They are, unprompted by adults, doing 'rights work' by what Pantazidou [10] (in the broader human rights context) describes as creating meaning and shaping the narrative around what is considered a 'just claim'.

Children and youth climate action creates a sense of what Pickard refers to as a notion of 'doing-it-ourselves' [31]. The roots of the environmentalist action of children and youth can be identified before Greta Thunberg's success in sparking a movement. Yet, this 2018 'Greta effect'—that is, her impact on news agendas as well as people's attitudes and behaviours [32]—has been described as a watershed moment in climate action and in 'the ways that adults including academic researchers consider young activism' [29]. The climate

movement led by children and youth has resulted in the largest global climate marches in history and has garnered worldwide attention [33]. Child/youth climate advocates have taken action together to demand that their political leaders act immediately on climate change [11] (p. 109).

Climate action has allowed children/youth to come together, in their locales, but also as a collective all over the world. This collective collaboration and collectivism have fostered a sense of a shared experience with others. These have facilitated child/youth climate advocates to work with like-minded people in their local communities, and even in a global context, and this has permitted them to take action rather than to give in to feelings of anxiety and fear [34] (p. 732). In doing so, they are living out their 'freedom rights' [3], such as the right to freedom of expression (CRC Article 13) and the right to freedom of association and peaceful assembly (Article 15), which are not frequently associated with children/youth, and indeed sometimes criminalised [3]. This indicates that climate advocates have created a shift towards greater recognition of children and young people as holders of political rights and as political actors.

Young climate activism, however, has demonstrated the power of *children/youth themselves* deciding what is best. Biswas and Mattheis [35] (p. 4) interpret the civil disobedience of young climate strikers as being about the renegotiation of political boundaries and belonging. On the face of it, children and youth are accessing climate justice on their own terms, sometimes initiating their own proceedings, even recruiting other children and youth across nations to join them in their litigating causes (see, e.g., the ability of children to sign-up online to become involved in the *Juliana* case, outlined in Daly's work [6]). This appears to point to climate justice as an area in which children and youth have pushed beyond paternalism, taking control of their own rights in a way not envisaged by the CRC (which was drafted without any input from children) and not accounted for in the climate justice framework.

In national contexts, children and youth have been active in environmental initiatives. In the Philippines, children in Eastern Samar province organised a Children's Coalition for Adaptation and Resilience. They urged the local government, then making recovery and adaptation plans after 2013's Typhoon Haiyan, to include children. Young people in Fiji and the Solomon Islands came together through youth councils and civil society organisations to ensure their own participation in climate change policymaking [33].

The work of these young advocates appears to be having tangible results. The action can have a direct effect on public attitudes, for example, which is crucial for pressure on governments to change climate policies. Greta's movement of school strikes was found, for example, to lead a third of Swiss citizens to change their habits [36]. There has also been an impact on politics, for example, at the international level. Gasparri points to the engagement of young people at COP negotiations amplifying advocacy efforts and putting pressure on states to meet their commitments on emission reductions. The Intergovernmental Declaration on Children, Youth and Climate Action was drafted at the 2019 UNFCCC COP25 in Madrid by young activists. It acknowledges the role of young people as agents of change, and their right to a healthy environment [33].

One feature of this postpaternalist era is children and youth peer-to-peer learning. The concept of 'educative movement-building' [37] has been used to describe the new and exciting way in which child/youth climate advocates have been creating their organisations and generating support for climate justice. A part of this has been framing child/youth climate advocates as legitimate political actors who are responding to an enormous crisis. It has involved action which is both peer-based and involves educative initiatives [37]. One example is an interactive, peer-to-peer learning initiative, "Climate Change Solutions Festival", involving school children aged 13–18 years old nationwide in Gambia, which likely contributed to community building and knowledge sharing [38].

Shier talks of the engagement of children in collective actions as being frequently impeded due to 'social structures that prevent children from accessing equitable opportunities to participate in decision-making' [39]. Likely as a result of this, young climate advocates

have been taking action into their own hands. Pickard refers to 'Do-It-Ourselves (DIO) politics', which she describes as a helpful concept to understand youth-led climate activism and defines as 'when citizens participate politically beyond the ballot box, personally and collectively' [34] (p. 730). When young environmental activists engage in DIO politics, they are reacting to institutional inefficacy, that is, the perception of politicians not 'doing' enough [34]. As under-18s cannot vote, in this postpaternalist time, they have had to embrace other avenues which permit them to exercise political agency, such as protest and the courts.

4. Harnessing Law and Human Rights

Child/youth climate action has included engaging in national and international frameworks in a way that has impacted and developed human rights law. It has also included taking cases and petitions. Their work in this regard has facilitated greater attention being given in the human rights framework to the priorities expressed by them as ordinary citizens. It has meant that a postpaternalist era involves the international human rights law framework being used in a more participatory, locally informed way.

In 2023, the Committee on the Rights of the Child (the Committee) released General Comment No. 26 on children's rights and the environment with a special focus on climate change, making it clear from the beginning that the efforts of children to draw attention to the intersection between human rights and the climate crisis motivated its development. The drafting of this general comment included global, participatory consultation, receiving input from over 16,000 children on how environmental degradation and climate change are impacting their lives and what work should be carried out regarding it. Youth climate action is therefore shaping the way we come to understand what the right to a healthy environment means in the context of climate change; in other words, the relationship between children and the natural environment is influencing the way children's rights are being defined and shaped.

In climate litigation, children and youth have become prominent in efforts in the environmental protection context, with a sharp increase in cases and applications. We are witnessing, particularly in climate litigation, 'children as agents for their own change' [40]. Children/youth have not traditionally been litigators in large numbers on any issue. Yet, when it comes to the human right to a healthy environment, they are shaping the narrative around what is considered a 'just claim' [10] (p. 284) in both the political arena and in legal terms.

There are a number of child/youth-involved, climate-related applications to national courts around the world. These include Colombia [41], Canada [42], and Australia [43]. There have been some significant successes amongst these cases. In Hawai'i [44], the young plaintiffs claimed that the Hawai'i Constitution's public trust doctrine and the right to a clean and healthful environment were being violated by Hawai'i's state transportation system. In a settlement, Hawai'i agreed to bring its transportation sector emissions to zero by 2045. A French court found that the state had failed to fully meet its goals in reducing emissions [45], and the Supreme Constitutional Court in Germany held that the government's measures in the Climate Protection Act 2019 were insufficient to protect future generations, and therefore violated their human rights [46].

There are also a number of regional and international petitions. Although the Sacchi petition was deemed inadmissible due to the failure to exhaust domestic remedies [6,7,47], the outcome nevertheless involved an exciting development at the UN level. The Committee recognised in *Sacchi* the possibility of transboundary responsibility for human rights violations [6,7]. Such developments have prompted academic attention in relation to how these efforts by child litigants are changing human rights law and changing human rights law procedures [6,7].

Children have been accessing courts in a way which is somewhat democratising, included the cases of the *Juliana v US* young people [48] (p. 11), and the crowds of ordinary citizens who gathered for proceedings before the courts in 'Climate Case Ireland' [49].

Children/youth are probably the group which have been most excluded from the legal arena to date. Therefore, their involvement in climate cases/applications in this way is transformative for children's rights and for the human rights law system more broadly. This sense that human rights law mechanisms now have greater accessibility not only benefits children and youth, but can also be seen as a success for human rights law itself [6]. Human rights law does not only set standards for states' obligations in relation to individuals, but it can also provide concrete tools, for potentially anyone, to hold states accountable for human rights violations [50].

This multidirectional dialogue [51]—whereby the local, national and global inform each other—is helping to democratise human rights, include more groups [6] and to achieve a more authentic reliance upon human rights. Young climate advocates are, unprompted by adults, doing 'rights work' by what Pantazidou [10] (in the broader human rights context) describes as 'creating meaning and shaping the narrative around what is considered a 'just claim'—a claim like a future in a healthy environment. In doing rights work, children and youth have highlighted and challenged some of the shortcomings of human rights law—the failure, for example, of human rights to adequately recognise environmental issues. The work of young climate advocates facilitates a sense of entitlement, a recognition of the 'right to have rights' being asserted and reflected [10] (p. 268) in the realities of struggling for recognition as serious actors and rights holders. Human rights uses the language of 'claims' and 'duty bearers'. Yet, the *collaborative* nature of human rights is being emphasised via youth climate action, with adults and children working to solve problems together. This assists in moving beyond the top–down approach to human rights towards one which is more multidirectional—adults do not simply decide what human rights are and 'give' them to children. Children/youth are now involved in driving such decision-making, and human rights norms are therefore travelling and transformed in this way [51].

5. Children as Equals

Child/youth climate action highlights one challenge which arguably exists within the discipline of children's rights. It is usually assumed that *adults* are in control [52,53] and that it is adults that 'give' children rights, for example, the right to be heard in certain circumstances. Child/youth climate action therefore provides the opportunity to push beyond paternalism in children's rights. For the first time, child/youth litigants are accessing courts in huge numbers, which facilitates an in-depth examination of postpaternalist workings, whereby adults and children unite in intergenerational work for the planet.

The way that children refer to themselves in their cases is also pushing the boundaries. In *Mathur v Ontario* 2019 [54], seven children/youth brought an application claiming that Ontario violated the Canadian Charter of Rights and Freedom by failing to address climate change. The young applicants refer to themselves in the petition as "activists" and "public interest applicants", demanding to be taken seriously as climate advocates.

One of the most striking things about child/youth climate petitions (e.g., the *Duarte Aghostino*—'Portuguese youth'—petition to the European Court of Human Rights) [55] is the increasing use of the principle of non-discrimination/equality in these cases. The failure of states to adequately mitigate the climate crisis can be argued to be indirect discrimination, as this seemingly neutral policy has a detrimental impact on children for many reasons. These reasons include 1. the age-related environmental vulnerabilities of children [56], 2. their exclusion from voting, and 3. the fact that they will on average live much longer than adults. It is pointed out elsewhere that although arguments relating to non-discrimination/equality for children are not necessarily *successfully* invoked in climate cases, the consequence of raising these arguments is quite significant. The use of such arguments explicitly proclaims that children are the equals of adults, as they access adult spaces and make rights claims in a way that they have never engaged in before [57].

The equality claims of young climate advocates are redolent of movements like feminism globally and the civil rights movement in the US. Working children certainly led claims for greater rights which were being denied to them [53]. These rights are denied by

ostensibly well-intentioned but ill-informed adults, who give inadequate attention to what not working means for the safety and welfare of many of these children. These children worked across different countries, but child/youth climate action is more global—it had, at its peak, millions of children marching across more than 150 countries [58]. The modern phenomenon of the connectedness of online media has certainly facilitated this level of organisation amongst young climate advocates [6]. The interruption of COVID-19 and its attendant lockdowns may have slowed the progress of this global organising. Nevertheless, youth climate action is a sea change for human rights law, and law generally, as these advocates make equal rights claims—a key part of postpaternalism.

Intergenerational work is a related part of the youth climate movement and of postpaternalism. It involves child/youth and older adult allies working together. There have been several statements of support from groups amongst various professions for the work of young climate advocates. Over 12,000 scientists, for example, signed a statement in support of youth climate strikes, agreeing that states' actions were insufficient to keep global warming well below 2 °C—the aim of the 2015 Paris climate accord. The statement emphasises that young people's concerns are "justified and supported by the best available science" [59].

Climate cases and applications are one particularly notable site of intergenerational work, as children and lawyers work together to bring legal action against states for failing to mitigate climate change. It is crucial then that courts and other processes are made more suited to the specific needs and experiences of children and youth [57]. Legal practitioners have an important role to play here as they work together with young applicants. In the *Sharma* case, the federal Court of Australia agreed with the child/youth applicants that the government had a duty of care to avoid causing climate harm to children, though this was overturned on appeal. The legal representatives engaged in extensive preparation to work with child/youth litigants. These children/youth were already experienced activists by the time of the litigation. The law firm involved engaged media advisors and child/youth-specific counsellors, and used more informal methods of communication with their young clients, for example, through Whatsapp chats and live tweets. Bella *Burgemeister*—a young environmental activist and a youth litigant in the *Sharma* case—outlines that she found it very positive to work with her legal representatives: 'I guess one of the big things from me in this case was how well we were treated basically by. . . the legal team. It was incredible to see how positive everyone was being, and how informed all of our litigants were during the legal process' [60].

6. Other Key Features of Postpaternalism

6.1. Post-Colonial and Global South Approaches of Young Climate Action

It can also be argued that young climate activists have been applying a postcolonial approach in their work by insisting on attention to Indigenous people and those in the Global South (also referred to as majority world) who will be worst affected by the climate crisis. Postcolonialism offers a critical approach to understanding the relationship between former colonial powers and current post-colonial nations/states, examining how the history of colonisation has transformed each other's identities and conditions [61]. Postcolonial approaches are useful not only to challenge colonial power structures, but also to advocate for non-'Western' perspectives—for example, the perspectives of those from the Global South and Indigenous voices. There can be a greater diversity of interpretations of children's rights and of practices relating to children's rights when they are reformulated by Global South contexts [62].

Burman points to the way that 'the child' and childhood have been central to colonialism [62]. Reasons for this include the infantilisation of colonial subjects, and 'child protection' as a political site of intervention for colonial policies and practices. It is necessary in legal and academic efforts to move beyond the homogenised/universalised rights of children and to bring attention of lesser-known accounts of children and pluralise childhood identities and children's agency [53]. Young climate advocates have been carrying

out that work. Prominent European youth have emphasised that the plight of Indigenous people must be given sufficient attention. At the 2019 UN Climate Change Conference they worked to redirect media attention on Indigenous youth, stating that '[o]ur stories have been told over and over again . . . It's really about [Indigenous youth] . . . We talk about our future, they talk about their present' [63].

The environmental work of children in the Global South underpins much child/youth climate action. The 'Greta effect' belies this point. Indigenous peoples and those from the Global South have long been engaging in climate action [64] and participating in environmental efforts, lobbying for inclusion in intergovernmental climate negotiations at the UN. The UNDP points to the fact that many climate activists from Asia and the Pacific are young people fighting, for example, to halt deforestation and to protect the rights of Indigenous peoples. Environmental action can be dangerous, however—there were 227 lethal attacks on climate activists in 2020—and young people are among the groups facing the worst attacks [65]. Whilst the harms for child/youth climate advocates in the Global North are not to be taken lightly—they include online bullying and burnout—the risks for children/youth elsewhere can be much more serious.

So too are the harms of the climate crisis. This important point—that Indigenous people are amongst the worst affected by the climate crisis—has been included in climate cases, for example, in the *Sacchi* petition. There was a strong emphasis by the young applicants on the rights of Indigenous children, and their connection to nature as compared with that of non-Indigenous children. In the *Sacchi* petition [66] (para. 92), the following is stated: '[C]limate change has a unique impact on indigenous children, whose close connection to nature and dependence on wildlife and plants are integral to their livelihoods and their spiritual and cultural practices'. The right of Indigenous children to their own culture (Article 30) was one of the CRC's provisions cited in the petition, along with the claim that respondent states failed to adequately consider the best interests of children as a group (Article 3) in their policies in respect of climate change, Also cited are the right to life (Article 6) and to health (Article 24). Carl Smith of the Yupiaq Tribe in Alaska describes the impact of global heating on the ability of his Tribe to subsist, and his fears that their way of life would not survive (paras 141–150).

Child/youth climate advocates have also brought attention to other issues that have traditionally lacked adequate visibility and advocacy, such as the topic of climate-related (im)mobilities. Despite recommendations and resolutions from various UN bodies (e.g., the Office of the United Nations High Commissioner for Human Rights, 2015), there is still no official legal recognition of "climate refugees" under international law, which leaves climate-displaced communities without meeting the necessary conditions for accessing the rights associated with refugee status. Climate applications submitted by children and youth in national and international courts, such as *Álvarez et al. v. Peru* [67], *Ali v. Federation of Pakistan* [68], *Juliana et al. v. USA* [69], *Billy et al. v. Australia* [70], and *Sacchi* [66], have highlighted forced displacement as a significant impact of climate change and a risk to children's rights.

6.2. Postpaternalism and Relationality

There are some particularly striking features of postpaternalism, and the child/ youth climate movement, which relate to care for others, and for the environment more broadly. As children and young people have mobilised on a global scale to protect the planet from further environmental degradation, it can be argued that their relationship with the natural environment is a key factor in motivating and shaping their climate action. From protesting on the streets to litigating in court rooms, children and young peoples' climate activism is countercultural; it is challenging the unsustainable systems (i.e., capitalism, nature resource exploitation) that have contributed to the climate crisis while reshaping the narratives around the way society perceives and understands the role of young people [71]. Thus, the environment has played a central role in this shift towards a postpaternalist era for children's rights.

International human rights law is not an arena which easily encompasses or includes environmental rights. Human rights law is, by its nature, concerned with the rights of humans, not the protection of the environment per se. Human rights law systems require, for example, for one's petition to be admissible, harms which occurred in the past (when the worst of the climate crisis is, of course, in the future). Such systems also present other obstacles such as lengthy delays and proceedings. This means that young climate advocates in their work in the courts and elsewhere encourage an understanding of human rights which includes expanded person–environment connections [6]. Their work facilitates a greater recognition of what is needed for justice and a healthy environment for themselves and their communities. In 2023, the children and youth of Ireland's Young People's Assembly on Biodiversity Loss, for example, called for greater respect for the rights of nature in this form, proclaiming that '[w]e must treat the Earth like a member of the family or a friend' [72]. In this, there is a sense that children and youth may be less likely to see humans on a hierarchical scale compared with other species on Earth. The signs and the protests in court suggest that they see nature as more connected to them than adults do.

In this way, children can be seen to be taking a 'posthumanist' approach, offering a transformative lens for reimagining approaches to rights in the climate crisis. By rejecting the anthropocentric and hierarchical perspectives inherent in traditional humanism, posthumanism emphasises the interconnectedness and co-dependence of all beings, human and non-human. This framework encourages us to move beyond seeing humans as isolated entities. Instead, it places them within extensive relational networks where their agency and subjectivity are recognised and valued [73]. Postpaternalism aims to transcend a hierarchical order based on age (and gender) to recognise the full rights and agency of children from a relational perspective. Posthumanism similarly seeks to destabilise the anthropocentric supremacy that has objectified 'nature' as resources to be extracted and incorporated into capitalist value chains while proposing a relational ontology opening new ways to understand our relationship with the world and the various forms of life inhabiting it.

The different ways that environmental degradation is impacting children is changing their relationship with nature, ultimately acting as a motivator to take control of their right to be heard and participate on the basis that the natural environment is integral to their current and future lives. In *Held v. Montana* [74], a recent successful youth-led climate case in the United States of America regarding violations of the constitutional right to a 'clean and healthful environment', the young plaintiffs (ages 2–18) refer to the many ways in which climate change is affecting their daily lives, for example, preventing them from partaking in nature-based recreational and cultural activities such as camping, hunting, fishing, and skiing. Connection to nature has been identified (e.g., by Larocque [75]) as an important theme among the narratives of youth climate activism, lying at the 'heart' of their aspirations to make lasting change. Perhaps this relational component is tied to a sense of connectedness to the natural world that adults tend to lose as they grow up [76]. This sense of responsibility, care and relatedness that children/youth are demonstrating towards the natural environment appears to be an underlying characteristic of the postpaternalist era of children's rights.

The work of young climate advocates demonstrates deep care, then, for the world and those in it. The movement appears to adopt ethics of care and relational autonomy [77,78]. This perspective acknowledges the interdependencies and reciprocal relationships that characterise human existence, moving beyond the individualistic notions of personhood that underpin traditional paternalism. In a postpaternalist era, children must be recognised as active participants in their own lives and in broader societal contexts, enmeshed in continuous exchanges of collaboration, reciprocity, and conflicts with others, in ambiguous and non-unidirectional networks of care [79]. The adult-centrism and power imbalances which characterise much of our political, legal, and other systems are challenged by postpa-

ternalism. Postpaternalism encourages the de-paternalisation of the concept of protection, empowering children to engage on an equal basis with adults [80].

Postpaternalism also encourages the reimagining of children's roles in society, and particularly in human rights. It involves recognising that the equitable incorporation of children as political actors means not only 'allowing' their participation in human rights spaces and processes, but also acknowledging that these must necessarily be transformed because of their inclusion. In other words, it is about promoting the pluralisation of human rights spaces, ensuring that these adapt to children in appropriate ways, rather than merely having children adapt to pre-moulded forms created by adults in which children had little or no participation.

6.3. Some Challenges in a Postpaternalist Era

There are clearly challenges inherent in child/youth climate action and the postpaternal era that we are now in. These include challenges to children's rights, to understandings of childhood and to children's welfare.

One factor is that children, that is, those under 18 years old, appear to have been lost somewhat in the analysis of young climate action, as preteens, adolescents and young adults all work together in the climate crisis. There is far more theorising, analysis, interviews about youth climate action emanating from youth studies [34] as opposed to children's rights law/CRC studies, although this is changing. As valuable and insightful as youth studies research is, it usually does not involve any distinct consideration of the rights issues, particularly for under-18s. There is little analysis of the important factor that subjects of the research are both under and over 18. This factor brings with it a number of questions about the rights status of young activists, such as whether or not one falls under the remit of the CRC, and whether one has to consider parental permission to attend protests, as well as the presence/absent of the right to vote for a given person. Under-18s, on the one hand, are part of a movement across generations; so, it is understandable that such questions are often forgotten. On the other, they are distinguishable due to their general exclusion from the right to vote—presumably a key motivation for many of the under-18 youth climate activists interviewed. These and other child-specific questions are not explicitly considered in many studies.

There are also legal disruptions in this postpaternalist time—a distinct lack of engagement with the CRC is evident in child/youth climate cases, for example [5,81]. This could be for a number of reasons. One is the legal difficulty of arguing for children's rights when some litigants are over 18 years old or turn 18 during proceedings. Although there is impressive intergenerational work in the applications which involve children from young to old and into young adulthood, it appears to be having the effect of discouraging applicants from relying on children's rights arguments. Another point is that it appears that arguments relating to both 'intergenerational equity' and 'the rights of future generations' could possibly be distracting those taking cases from the realisation of the potential usefulness of CRC rights [81]. Donger [5] points to a preference for future generation arguments as opposed to children's rights arguments in child/youth-focused climate applications. The newly ubiquitous notion of 'future generations' could well be detracting from a focus on the rights of children, who are here now, which is arguably a missed opportunity, given that the climate crisis is broadly accepted to affect children disproportionately, and almost every state has signed up to abide by the provisions of the CRC. Childhood risks being airbrushed from climate justice as it is more difficult to pin down, study, and litigated as opposed to more attractive concepts such as 'youth' and 'future generations'.

Another key children's rights concern is protecting the safety and mental health of child/youth climate advocates. Postpaternalism does not mean that children should be treated identically to adults, nor should they be abandoned to whatever consequences come from climate cases or other climate action in which they might be involved. As noted above, in some countries, environmental action can be very dangerous for children and youth. States have obligations to ensure the right to be free from violence for these children,

enshrined in Article 19 of the CRC. It has also been documented that young climate activists can experience 'burnout', that is, mental health difficulties associated with the feeling of not having an impact, even after intense advocacy work [82].

Children and youth are accessing courts and other complaints mechanisms, and this means that adults must ensure that those mechanisms are suited to their unique characteristics as children and youth. Children are individual rights holders, and their unique status requires that they receive additional support and care in climate litigation. Protecting children/youth litigants from a justice system ill-suited to their needs, from public hostility, or other threats must be built into climate litigation efforts to the extent possible [57]. The Council of Europe has advocated via its 2010 *Child Friendly Justice Guidelines* a collection of principles and guidance aimed at adapting the legal process to the rights of needs of children [83]. A body of literature has also developed to point to the different ways in which courts and practitioners can utilise children's rights in the courts (e.g., Stalford and Hollingsworth [84]). These principles and guidelines have yet to be elaborated in relation to child/youth climate advocates, however. The very difference of climate litigation as opposed to the (usually) family law in which children and youth have been parties is notable. Climate litigation tends to be part of broader campaigns on the climate crisis, as opposed to private matters, and climate campaigns require much media work, which likely brings with it some risks for children in terms of well-being and safety. Research is needed in this area to ensure the rights and welfare of children/youth litigating climate cases. Applying the principles of the CRC should be a minimum for those working with children in the area of climate justice, however [57].

Another point is that adults can be unsupportive of child/youth climate action, or even hostile. Children and youth have sometimes felt patronised and belittled in their climate work. This is perhaps inevitable where adults, the dominant group, may feel threatened in a postpaternalist era where children are leaders—many adults may perceive their power as diminishing. Children can face public hostility when taking climate cases. In the *Sharma* case, for example, youth litigants described receiving some hostility as one litigant outlines: *'They were bad mouthing some of us, talking about us in a way that we never thought would come from this. As 16 year olds, we never thought anyone would do that in a public media'*. Their legal firm had to carry out an enormous amount of work to prepare children for the hostility they might receive and to protect them from it [60].

Furthermore, some children and youth are left frustrated with rights processes. The UN Committee on the Rights of the Child declined in *Sacchi* to fully consider a climate petition by applicant children as they had not gone through national courts first. There was much anger expressed by the applicants. Raina Ivanova, one of the 16 youth litigants in the application, said: "I feel extremely left alone by the Committee on the Rights of the Child [the] UN body who is supposed to help uphold our rights" [85]. When engaging in initiatives or applications with children and young people, it is crucial that legal professionals and other adults carry out much preparation work to manage the expectations of children and young people about what they can expect in such processes. It was widely expected that the *Sacchi* petition would fail for just the reason that it did—the applicants did not first exhaust domestic remedies, a key principle of international law.

It is also important that, considering we are in an unprecedented crisis, courts and other bodies interpret human rights law in a way that is appropriate for this key time window that we are in, and bearing in mind the specific nature of childhood. The *Sacchi* decision of the Committee on the Rights of the Child (not to allow the petition to proceed to full hearing) is questionable for many reasons. It expects that children should go through incredibly lengthy national processes after which they would likely no longer be children and may therefore not then be able to take the petition before the Committee, as the CRC would no longer apply to them. *Sacchi* is not the only application where the young applicants failed to even have their case fully heard (note *Duarte Agostinho*, for example). It appears that adult decision-makers are frequently failing to permit child and youth litigants to even have their cases heard on their merits [7]. Postpaternalism is an extraordinary

phenomenon (of children as rights leaders) which responds to an extraordinary threat (the climate crisis). It therefore requires a response to legal questions that reflects the urgency of our time and the nature of childhood.

There is also the need in this postpaternalist time to refrain from assuming that children's rights problems have been entirely solved or that children are emancipated in some way. Many of the spaces of power that children have now entered because of their environmental employment work are likely still adult-created and adult-led. As powerful as Ireland's youth biodiversity assembly was, for example, it still involved children being invited into a space created by adults, rather than creating and forging a space for themselves. This assembly was, however, instigated by decision-makers in recognition that a democratic process for adults was taking place and children and young people deserved equal opportunity to have a say. This space was given to children and youth because the decision-makers acknowledged the leading role children and youth were playing in environmental action. This points to the nuances of how and whether children and youth are provided opportunities to contribute to democratic platforms.

In spite of the visibility of children as rights leaders in this postpaternalist time, there are many instances of children being left unheard and unseen. Some literature points to the fact that the climate leadership of children/youth is often undervalued by negotiators and policy-makers. Gasparri [33] pointed out in 2021, for example, that only 12 governments have signed the 2019 Intergovernmental Declaration on Children, Youth and Climate Action, an instrument aiming to accelerate child/youth-centred climate policies and action at the national and global levels. Amongst those children most frequently left unheard are disproportionately Indigenous children, those from the Global South and those of colour. This was displayed with crass clarity when Ugandan climate activist Vanessa Nakate, attending a youth climate science event, was cropped out of a photograph appearing beside many white young climate advocates such as Greta Thunberg [86].

There are many less visible ways in which the voices of some children can be excluded, such as the fact that many crucial climate policy documents and instruments may not be translated into Indigenous languages. Sultana [87] opines that the coloniality of climate seeps through everyday life, curtailing opportunities for social groups to participate due to, amongst other factors, global racial capitalism and colonial dispossessions. She continues that COP (a UN international meeting focusing on climate) can be seen as a site of decolonial, anti-colonial, anti-racist, and feminist politics, particularly because of the involvement of women, youth, and Indigenous groups; it can also be seen as a theatre of climate colonialism as it is led by powerful governments and corporations. There is some way to go, then, towards making sure that it is not just privileged, Global North children who have an influence on environmental issues.

7. Conclusions

The CRC is a groundbreaking instrument but it has limitations. Children were not involved in its drafting, for example, in contrast to the heavy involvement of people with disabilities in the drafting of the UNCRPD some years later. It can be argued that the instrument is unduly paternalistic or at least encourages paternalistic interpretations. Children have been perceived primarily as objects of concern rather than as active agents in their own lives, with adults 'hearing' children where they deem this appropriate. This paternalism seems very far from the grassroots way in which children and young people have been taking their own action around the world for the environment and the climate.

Children/youth are, unprompted by adults, doing 'rights work' by what Pantazidou [10] (in the broader human rights context) describes as creating meaning and shaping the narrative around what is considered a 'just claim'. They are doing it on a global scale, and broadening approaches of human rights by engaging with postcolonial and posthuman approaches. It seems, therefore, that we are in an era of postpaternalism, where children have organised globally in a grassroots fashion to become leaders in human rights. The disruption of climate change has created a context for children to, in turn, disrupt the

international human rights law framework, including the CRC, which can be argued to have encouraged paternalism to some extent in children's rights.

A postpaternal era is not all positive for human rights, however. It seems that childhood is being airbrushed from the conversation in some ways (note the lack of children's rights in child/youth-led climate cases), and there are challenges and risks for young climate advocates due to hostility and burnout. The positives and negatives of postpaternalism require rights advocates and commentators, as well as others, like judges, lawyers and policy-makers, to consider how to approach and perhaps interpret human rights law anew. Human rights should reflect the realities of the lives of children and youth, whether it is in relation to accessing courts or enjoying a healthy environment. Adults should be allies as children and youth create their own meanings and interpretations of their rights [88]. In this way, we ensure that the international children's rights law framework stays as attuned as possible to children's needs and experiences as we work intergenerationally, and learn from each other, to combat the greatest threat to humanity yet [88].

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