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# BSc Childhood Studies

**Children's Rights: Nurturance or Self-determination?** How our views of children determine their rights to protection and autonomy

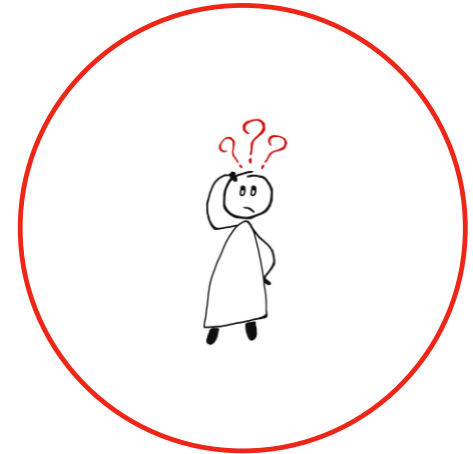


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# Questions, questions...

- What is a child? What is childhood?
  - Is childhood a universal, 'fixed' biological state?
  - Or is it 'fluid'? Dependent on social, cultural, religious and economic factors?





# Different perspectives

- **Historical** – Aries contends that until the middle ages there was no real concept of children or childhood beyond age 7
- **Legal** – broad conceptualisation of children as under 18
- **Biological** - physical development and maturation
- **Psychological** – different stages of psychological development
- **Sociological** – influences on children and childhood (gender, ethnicity, culture etc)
- These different approaches all impact on policy and practice for children – not always consistent; sometimes contradictory



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# ‘Innocents’ or ‘savages’?

Long-standing debate about the nature of childhood:

- Puritanical belief in children as bearers of original sin
- *Tabula rasa* - a blank slate (eg John Locke)
- Romantic views of childhood innocence and vulnerability (eg Rousseau, Blake, Wordsworth)
- Children as ‘investments’
- Children as asocial beings needing to be ‘socialised’
- Children as ‘**becoming**’ adult
- Children as ‘**being**’, with rights, needs and responsibilities

# Why is this important?

- Perspective / stance taken influences our responses to children:
- Children as ‘innocent’ may be seen as in need of protection, sheltering from harm etc – but also maintains their dependency, powerlessness and inferiority
- Children as ‘savages’ may be seen as in need of control, punishment – limited recognition of their potential vulnerability
- Leads to tensions in professional / policy responses to children, eg:
  - Between child protection & criminal justice legislation
  - Between parents’ rights / responsibility & children’s rights
  - Between cultural / historical practices & recognition of children’s agency

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# Understanding Children's Rights

## For example....

- At what age can a child or young person:
  - drink alcohol?
  - smoke?
  - drive a car?
  - fly a plane?
  - consent to having sex?
  - be prescribed contraception?
- Why are these age limits set – and how are they decided?
- Should we protect and nurture children or allow them the right to self-determination?

During C20th, increasing recognition that children and young people need legislation to promote their rights and to provide a way of addressing such tensions



# The Declaration of the Rights of the Child (1924)

*All of us have a duty to give every child the best start in life.*

- Every child should be given what they need to grow up happy and healthy.
- When a child is hungry, they must be fed. When they are sick, they must be cared for. And when they need support, shelter or guidance, they must be given it.
- Whenever there is a crisis, children should be the first to receive aid.
- Every child should be protected against exploitation, and given the chance to earn a living, when the time comes.
- Every child should grow up understanding the importance of using their talents and skills to help others.



- The 1924 declaration was followed by a further one in 1959 (signed by the UN)
- Neither of these declarations were legally binding
- What we know to be the UNCRC today began to be developed in 1979
- There were a number of challenges in developing a series of 'universal' children's rights .....many of which we will be exploring



# The United Nations Convention on the Rights of the Child (1989)

- Was launched on 20th Nov 1989 - Universal Children's Day
- Is the most widely ratified human rights treaty in the world - signed by 195 countries (not the United States)
- Defines a child as a person under 18 years of age
- Is a legally-binding international agreement consisting of 54 articles
- Sets out the civil, political, economic, social and cultural rights of every child, regardless of their gender, religion, ethnicity, culture and disability

There are **three types of rights** in the UNCRC

The right to **participate**

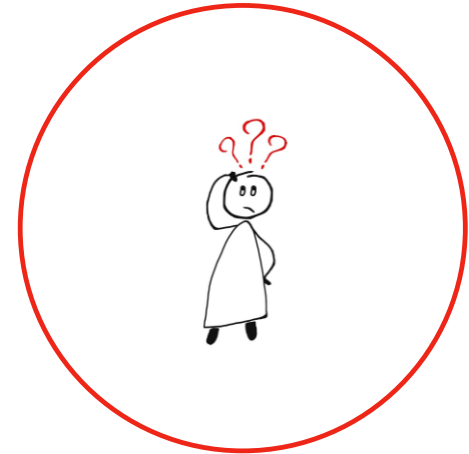
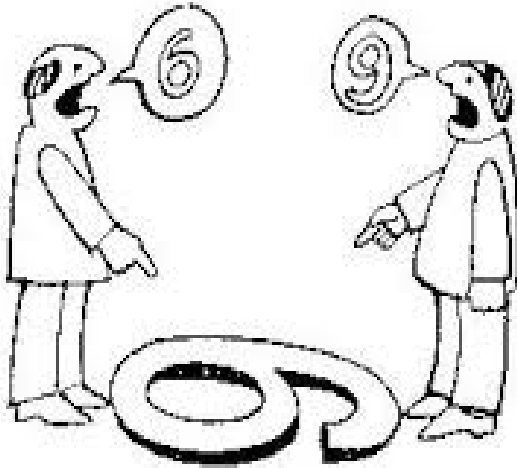
The right to **provision**

The right to **protection**

- **But there also tensions/contradictions between these rights**

# Universalism vs relativism

- Are rights universal or relative – different philosophical positions
- If childhood is not ‘universal’, how can children’s rights be universal?



# Two philosophical positions

## Relativism

- There is **no absolute truth**
- All values are 'conventional': values can **only** be judged by the standards of the community or culture they come from (Freeman 2009)

## Universalism

- There are **universal principles** or values that all 'reasonable' people would agree to
- These can be applied globally, to all humans and to all situations (Freeman 2011b)
- Universalism and relativism are **incommensurable**
- Chat with your neighbour for two minutes and think of the potential problems arising from the application of these two principles in children's rights



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# What does this mean for the UNCRC?

- The **UNCRC** is **universalist** in its approach and contents (Freeman, 1998)
- It applies to **all children**, in **all cultures**

## **BUT**

- What is a child? And is being a child the same across the world? (e.g. criminal responsibility and age of a child)
- Arguably, the UNCRC institutionalises and universalises a Western model of childhood.
- Which in turn, neglects 'the influence of the wider social, economic, political and cultural circumstances' (Pupavac, 2001: 101)
- In reality this means a number of traditional cultural\* practices, values and ways of life can be seen as in conflict with the universal principles of the UNCRC

## Questions to keep in mind

- What makes some cultural practices ok and others not ok? Who gets to choose?
- How can we appeal to universal human rights when (arguably) they are not universal?
- How can the UNCRC respect and promote children's universal and cultural rights?





# Example: Smacking

## Should parents be allowed to smack their children?

Within UNCRC:

- Article 19: 'protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment'
- Article 37: 'no child shall be subjected to ... cruel, inhuman or degrading treatment or punishment'

### ***But***

- Article 5: States Parties shall respect the responsibilities, rights and duties of parents... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance
- Also Human Rights Act 1998: Right to a private family life

## Example: Smacking

Most research evidence indicates that smacking can increase aggression, and can exacerbate behavioural problems ... but it is not conclusive.

<https://www.youtube.com/watch?v=dRwfUwVAFeg>

*What do you think?*

- Should parents be allowed to smack their children?
- What might be the consequences of a ban on smacking?

# Example: Autonomy in decisions

- Key question of who should make decisions for children, such as whether to have an operation, or which parent to live with if your parents are divorcing.

Within UNCRC:

- Article 3: best interests of child should be the primary consideration

***But***

- Article 12: children's right to participate in decisions affecting him or her

# Autonomy in decisions

- Medical decision making eg Hannah Jones, 13 year old requiring a heart transplant
- Hannah, supported by her parents, wanted to refuse (Article 12)
- But Local Authority felt it was in her best interests to have the transplant (Article 3)

*What do you think?*

- Who should decide?
  - Who can tell what is in a child's best interests?
  - Does the age of the child make a difference?
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# Example: Female Genital Mutilation

- 150 - 200 million women and girls affected
- Longstanding practice – evident in Egypt in fifth century BCE
- Based on cultural beliefs and myths
- Illegal in many countries but legislation not enforced
- Extremely painful, dangerous, with long-term harm being deliberately caused to girls
- But girls who are not ‘cut’, and their families, may be ostracised from their community - may be spat at, cursed or mocked, they will not be able to marry within their community, or to find work
- <https://www.theguardian.com/society/2014/feb/07/female-genital-mutilation-kenya-daughters-fgm>

# Female Genital Mutilation

Within UNCRC:

- Article 19: 'protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment'

## ***But***

- Article 5: States Parties shall respect the responsibilities, rights and duties of parents... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance
- Article 14: States Parties shall respect the right of the child to freedom of thought, conscience and religion.

# Female Genital Mutilation

*What do you think?*

- Should FGM be illegal? If so, how could the law be enforced?
- How else could we stop FGM?
- What if a girl said she wanted to undergo FGM to avoid shame / being ostracised from her community?
  
- Do you have the same views of male circumcision? Why / why not?
- Estimates suggest that 100+ boys die from complications due to circumcision each year in the USA alone; may also be long-term complications, especially when not carried out by medical practitioner – as happens in many countries



# Conclusions

- Approaches to children's rights can be linked to specific constructions of childhood, eg
  - **'Liberationist'** approach which emphasises children's equality with adults; argues for the same fundamental human rights and freedoms
  - **'Caretaker'** approach stresses the relative dependence, vulnerability and incompetence of children and need for rights to protect.
  - A **'middle way'** - rights should reflect children's developing competence, with protection as long as they need it and empowerment when they are ready; restrictions on children's freedom and autonomy should only occur where these can be justified in terms of maximising their future choices (Archard, 2004)
  - While its standards may not be met, the UNCRC is visionary, symbolic and provides a foundation for realising children's rights and helping us to reach a balance between self-determination and nurturance
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