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
‘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
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.

• 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
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](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?
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

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