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Young people's rights: children's rights or adult' rights?

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Introduction

To which rights are young people entitled? Should they have full adult rights, or those of the United Nations Convention on the Rights of the Child (UNCRC 1989) for everyone aged under 18-years? The UNCRC enshrines more than adults' rights (extra provisions and protections) but also qualifies and modifies full adult autonomy rights. This article reviews how adult and child rights relate to young people, and then reviews how, and possibly why, everyone's rights are being restricted by current policies.

'The young people I work with make demands and choices and say, "It's my right", so that I have to give into them, even when I think it is not in their best interests.'

This kind of comment is often made. However, it misunderstands 'rights' and confuses them with wants and demands. Rights are both much more basic and also more complex than the quoted view assumes, as the first section reviews.

The nature of human and children's rights

All rights are *limited*, and minors' rights have extra qualifications. As legal concepts, rights concern freedoms, entitlements and obligations, which can be deliberately honoured - or withheld. Parents cannot be taken to court, for example, for not loving their child. Love and happiness and health cannot be willed or enforced so they cannot be rights. Yet adults can be prosecuted for obvious neglect or abuse, and children do have the right to be protected from these. The UNCRC sets possible standards, which can be enforced to help parents to give loving care, and the UNCRC's preamble states the importance of every child living 'in an atmosphere of happiness, love and understanding'. The UNCRC enshrines minimum standards, which may rise in future as the world's children come to be more respected.

Some rights are *aspirational*, not yet fully realisable, but only 'to the maximum extent of [each nation's] available resources' (4).¹ Richer nations are expected to help poorer ones to respect children's economic rights (24:4).

Rights are not *absolute* but *conditional*, affected by the 'evolving capacities of the child', the 'responsibilities, rights and duties of parents' (5), 'the primary responsibility of the parents' (18), and the national law. 'The best interests of the child shall be a primary consideration' (3). Rights cannot be exercised in ways that would harm other people and, with children's rights, the child concerned. In exercising their rights, people must 'respect the rights and reputations of others', as well as 'national security and public order, health and morals' (13).

Rights are *shared*, being about solidarity, equality in social justice and fair distribution, 'our' rights not 'my' rights. The UNCRC is not about selfish

¹ Numbers in brackets denote UNCRC Articles.

individualism. To claim a right acknowledges that everyone has an equal claim to it and so reaffirms the worth and dignity of every person.

The UNCRC Preamble states that the child 'needs special safeguards and care, including appropriate legal protection.'

Children's rights are part of promoting 'social progress and better standards of life in larger freedom'. The UNCRC recognises 'the inherent dignity and...equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world' (Preamble).

Rights are about *necessities* not luxuries – clean safe water, freedom to play.

One argument against children's rights is that rights cannot be bestowed. They can only apply to groups, which understand and claim and exercise rights for themselves, as some, though far from all, women, black and disabled people have struggled to do. Yet the provision and protection rights involve *duties*, which adults owe to children, who are partially dependent. With the participation rights, although children and young people may not use rights language, they repeatedly say they want adults to listen to them and take heed of their views.

It is also said that rights go with *obligations and responsibilities*, and that children are irresponsible or pre-responsible. Adults are responsible for ensuring that many children's rights are respected. Yet children and young people often want more participation rights so that they can share more responsibility with adults.

The UNCRC is about broad *principles*, which can be interpreted and applied in different ways according to local values and traditions. There is therefore at times confusion and *disagreement* about how best to honour certain children's rights. For example, what does poverty mean, and how is it best relieved?

The UNCRC's articles *combine* all children's rights. They are not separate but complementary. A coherent overall view can inform ways to apply them, in order that children, young people and adults can enjoy more equal, respectful and mutually-rewarding lives and relationships.

Adults' rights and young people

This paper will assume that everyone aged 18 and over is entitled to full adult rights including the right to vote, to work and to found a family. And yet there are blurred adult-child boundaries below 18-years, when children and young people share adults' rights under the European Convention on Human Rights (1950) affirmed in the Human Rights Act (Home Office 1998).

For example, the right to work in Britain is denied to those aged under 13-years, although it is estimated that half of all young workers are aged under 13. As illegal workers they have none of the legal protections that adults workers and their Trades Unions have fought for. Right up to 18-years, there is no set minimum wage. Around the world, millions of children have to do paid work in order to survive and, for many, to earn their school fees. Policies to end child labour ignore this reality. The UNCRC protects children from 'hazardous' labour but does not seek to ban child work.

Regarding the right to vote, there are calls in Britain to lower the minimum age from 18 to 16. With the right to found a family, teenage pregnancy is common, and young adults can marry in Scotland at 16, and in England and Wales at 16 with parents' consent. There are many child soldiers around the

world. At 15 years 9 months, young people can join the British forces, which run promotions in many schools, bringing young people into the 'adult' world of warfare and away from the protections of childhood.

Social and economic rights

The UNCRC includes social and economic rights. Arguably these make the exercise of other rights possible for children and adults alike: education, an adequate standard of living, support for family and parental care, the best attainable health care, which is to be enabled with help and information from richer to poorer countries. This paper is mainly about the UNCRC and the Government policy Every Child Matters (ECM) (HM Treasury et al. 2003) in order to point out difference between the rights and status of people aged over or under 18-years. ECM affects everyone aged up to 19, and schooling will soon be compulsory until 18 years. The Government argues that ECM can duplicate and replace the UNCRC. However, ECM's five rather vague intended outcomes (being healthy, staying safe, enjoying and achieving, making a positive contribution and achieving economic well-being) have little connection with the detailed legally worded and ratified UNCRC (for comparisons see www.crae.org.uk, www.arch-ed.org.uk). Primarily authored by HM Treasury, ECM aims to promote parental employment and increase children's future adult skills and earning potential, also to reduce the risks that children will become criminal, fail to realise their (economic) potential, and be neglected or abused.

ECM involves extended schools from 8.00 am to 6.00 pm five days a week and most weeks of the year for all children from the early months up to 14-years. They are deemed in need of constant adult protection and control. In contrast, many children and young people in some European countries and in other continents are more independent, able to move quite freely around their neighbourhood and meet their friends as they choose (rights to freedom of association and peaceful assembly UNCRC article 15). Thinking about young people's rights and status reminds me of when I was training to be a teacher in a boys school on the North Yorkshire coast in 1966. For music lessons we had only one book of folk songs called 'Hearts of Oak', which the eighty 15-year olds found very dull, so instead we sang Beatle songs. As far as I remember they were large strong tolerant confident young men, looking forward to joining their fathers, brothers and uncles on the fishing trawlers in a few weeks time. For better or worse, there was a much more common national culture then, from music to careers. Fishing was a highly respected, challenging, dangerous, fulfilling career, with a proud culture, in close communities. These young men could expect decades of a benign double identity: of being a respected worker and of having life-long family securities and intergenerational interdependent friendships. This often meant the dignity of reciprocal, informal, intimate, practical support instead of, as now, often one-way, paid, impersonal services by strangers, which risk being demeaning, and therefore partly counterproductive in their supportiveness. Within an impersonal system with payment, and with ulterior ends and public records often set by distant policy makers, however genuinely concerned and skilled the individual worker may be, there can be a clash of trusting support versus policing surveillance and potential betrayal.

Today, on the English and Scottish coasts the fishing and processing communities have gone. A few huge trawlers, owned by absent millionaires, sail away for weeks with a small crew (Tudge 2007). Respect for fishing is now qualified by concern about mile-wide dragnets destroying ecosystems, about throwing so many dead fish back into sea, about the intensive farms that now supply half the fish sold, massive problems of global competition and waste, and about fragmented families and communities, which people leave in search of work. So life, biological and social, is being squeezed out of the oceans, fisheries, and coastal communities alike, to profit a few remote wealthy people. In Britain, young people now seldom face an early adulthood of respected reasonably paid work, freedom from debt, and the right to afford necessities such as reasonable housing.

These dramatic and quite rapid changes are likely to have affected the confidence, wellbeing and mental health of many young people, and to make it harder for them to tolerate or endure school, if it feels like a boring, irrelevant, humiliating series of failures that close down hopes. In the 1960s, the prospect of decades of reasonably paid and respected work, at least for many men, depended much less on school achievements. Today, 40 per cent of young people leave school with no qualifications, and even highly qualified ones may face years of insecure, intermittent, unfulfilling and poorly paid employment. This is not to say that everyone was happily employed at work or home decades ago, but that today's awareness and promotion of choices and unrealistic expectations present different problems for the adults who seek to counsel, mentor and support young people – or to help them to comply within possibly hostile systems. For example, education is being commodified: schooling is being reduced to the eventual outcome of future earning power; learning is less for fun, interest, fulfilment, or for its intrinsic worth than for utility; young people are assumed to be motivated not by love of learning for its own sake but by a token economy of ulterior rewards - praise, stickers and grades - or coercions, penalties and shame. The government and numerous 'experts' blame current employment problems on the lack of skilled workers and on the *personal* deficiencies of young people, whereas the problem is really the *political* lack of reasonable employment conditions and opportunities (Wolf 2002). Any resistance by young people tends to be seen as deviant, requiring control through punishment and reform. Yet is some of their resistance being out of step with a just benign society, *anomie*, when they need to be supported, guided, restored 'rehabilitated' back into their rightful place or, alternatively, is it sometimes the protest of *alienation* when they feel out of touch their authentic self. Then their social and moral health depend also on changing society towards greater equity, justice and respect for basic social and economic rights.

The three Ps

The UNCRC is loosely divided into three overlapping types of rights, the three Ps: *provision* of education with support for play and recreation, healthcare, adequate standard of living; *protection* from neglect, abuse, discrimination; *participation* or modified adult autonomy rights. The many participation projects and reports over the past 18 years owe much to the UNCRC and Article 12, the child's right 'to form and express views on all matters affecting the child' and for 'due weight' to be given to those views by the adults

concerned. The UNCRC, which took ten years to write, is the most widely agreed international treaty of all, ratified by 192 governments. It is a tool for change in its 54 articles, in that governments have to report regularly to the UN Committee on the Rights of the Child on their progress in implementing the UNCRC, including how they consult children and young people. Governments tend to present glowing reports (see www.dcsf.gov.uk) and the voluntary organisations for children and young people tend to present critical reports of their country's progress (see www.crae.org.uk).

The three Ps involve powerful dyads: the providing adult and the needy child; the protecting adult and the victim child; the more mutual equal partnership of participation between adults and children or young people. However, the following models suggest that young people's formal 'participation' is often more about protection or provision.

In participation model 1 provision, staff and researchers in education, play, community and youth services might say to young people:

'I am going to consult you so that we adults can see how to provide better services for you all. You will learn about cooperating, listening, speaking, sharing, collecting and discussing different views and choices and, more broadly, about democracy, citizenship and social inclusion. You will gain new skills, self-esteem and consideration for others.'

Here, the main aims may be to teach young people, to improve their trust, compliance and involvement, and to provide better services. The adults are primarily accountable, for their effectiveness, to systems that manage, evaluate and fund the services, rather than to the young people.

In participation model 2 protection, social workers' view might be:

'I will listen to the young person as part of supportive, semi-therapeutic, expert, good practice, to learn about any problems and possible ways I can help. I must balance my decisions about the young person's best interests with those of the family, and within available resources. I will inform and support in order to help the young person to trust me and accept my decision. This may mean avoiding very painful areas where I may not be able to help, to save the young person (and myself) from unnecessary distress and false hopes. I may need to hold back some information and perhaps over-emphasise certain hopes or dangers to persuade the family to comply'.

Here, the aims include protecting the young person's safety and welfare. Social workers risk being ultimately accountable, for making the correct decision, not to the young person but to the courts and the mass media, balancing costly over-intrusion into family life against the risk of fatal injury to the child.

The aims, topics, methods, processes, values and outcomes, relationships and 'participation' itself are structured, framed and organised mainly around provision in model one, and protection in model two. Growing tiers of management and inspection allow less autonomy to most professionals and thereby restrict young people even more. The two models involve realistic and

valuable activities, but too often they evade real 'participation', its origins, meaning and purpose, context and grounding, which are adult autonomy rights. These include:

- freedoms of information and expression, thought, conscience and religion, association and peaceful assembly (Articles 12-17);
- rights to life and survival, to privacy and family life, to a legal identity, to cultural life and the arts, and due legal process (Articles 6-8, 12-17, 31, 37, 40);
- freedoms from discrimination, violence, torture, cruel or degrading treatment, exploitation, and arbitrary punishment, arrest, detention or interference (Articles 1-3, 5-11, 18-19, 22-23, 30, 32-40).

The whole UNCRC is imbued with respect for every person's worth and dignity, and with the social, economic and political means of promoting these.

This paper mainly reviews public relationships between professionals and young people, rather than private family and friendship relationships, but I will briefly mention how young people tend to report more genuine experiences of participation within informal private relationships (Mayall 2007), when there tends to be more time and freedom for people to listen, understand and encourage one another, inhabit the present without pressing future goals, and respect one another as ends in themselves, instead of means towards the ends of the school, the service concerned or the government. Criticisms of the government policy regret the move from informal, more personal and private youth worker-young people relations to more public, regulated, and impersonal relations (Jeffs and Smith 2002).

In participation model 3, which uniquely illustrates respect for autonomy, doctors in effect say to young people and usually their parents too:

'This is the intervention I recommend to treat this problem (provides details). Treatment involves these hoped-for benefits, these methods and processes, risks and discomforts, and these alternatives, including the likely effects of the continuing problem if it is not treated. I must warn you of all the potential difficulties, and not put any pressure on you, so that you can give your informed, voluntary, autonomous consent, or refusal.' Here, the aims, topics, methods, processes, values and outcomes, youth-adult relationships and the 'participation' itself are all structured, framed and organised mainly around the young people's and/or parents' autonomy, qualified by concern for the young person's 'best interests' and 'evolving capacities'.

Why and how is model 3 so different from the other two? The emphasis is on honesty about risk, caution about benefit, deference to the patient's and/or parents' decision, and concern with direct specific intended actions, rather than with young people's learning or other ulterior benefits. Trust is based on honesty not on protective paternalism. Medical decisions affect the individual young person most directly and potentially dangerously. Frequently, he or she knows most about the bodily problems to be treated, and the desired balance between the need and hoped-for benefits of treatment against the harms and costs. For example, surgeons may operate to straighten a minor spinal curve and leave a more obvious curve partly depending on the boy's or girl's view (Alderson 1993). Surgeons warn even children aged from around 6-years of

the risks that spinal surgery might paralyse them and cause double incontinence, saying it would be so dreadful if this happened and the child was not prepared. In one-to-one discussions about planned (not emergency) major treatment, many healthcare professionals have the time, opportunity and expertise to recognise and enhance young people's informed, competent decision making. If young people disagree with the decision, there are usually great efforts to inform and involve them, sort out fears and misunderstandings, negotiate as much as possible, and avoid imposing a decision against fearful resistance. Most of the research, analysis and guidance on young people's competence, autonomy and consent stem from practical medico-legal concerns.

If the doctor and family disagree, unlike the earlier professionals the doctor cannot simply overrule the family. Only the courts can resolve the dispute and, further, not the family courts but the adversarial crown courts that defend human rights. Young patients share the status and long history of adult patients. This includes the trials about Nazi medical experiments, which produced the definitive statement on autonomous voluntary consent: 'Free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or any ulterior form of constraint or coercion.' And the person should also have sufficient information to be able to make 'an understanding and enlightened decision' (Nuremberg 1947). Human rights gradually emerged through resistance against oppression; patients' autonomy rights developed from scandals about abusive research and treatment (Alderson and Morrow 2004:25-34).

Uniquely among the professions, the doctor is ultimately accountable to the courts and the mass media, *not for making a correct decision, but for ensuring that the patient/parent was able to make an informed voluntary decision*. The doctor cannot claim that the young person or parents were all incompetent to decide, whereas teachers and social workers may validate their decisions by presenting parents as lacking the expertise or capacity to decide correctly. The doctor, however, who acted without consent would be tried for negligence (for not informing patients sufficiently) or assault (for touching the person without valid consent). Consent involves the transfer of responsibility for accepting risk from the doctor to the competent patient or parent. Over past decades, doctors have gradually accepted that codes of ethics and consent protect not only patients, but also doctors, researchers and high standards of treatment and research. Doctors accept that they can do immense harm as well as good, whereas other professionals tend not to acknowledge this - another reason why they favour 'participation' over serious respect for autonomy. The next two sections review how and possibly why adults' and young people's rights are being restricted.

How systems are reforming

The earlier example of the 15-year olds in the Yorkshire school in the 1960s points out marked changes in family life, education and employment over four decades. There is now unprecedented government intrusion into family life, styles of parenting, home-school contracts, holding parents responsible for many educational and social aspects of their child's life, but also much less direct financial support for the poorest families. Concerns with social justice have transferred towards criminal justice, with anti-social behaviour being

reframed as crime. Billions of pounds are being spent on extended school buildings, staff training, advisory and regulation agencies, rather than on redistributing wealth towards the poorest families. Education and youth services and employment are being reshaped into micro-managed accounting systems with measurable targets and fixed outcomes, which can lessen more personal, spontaneous, responsive and flexible initiatives and personal autonomy for adults and young people.

Sennett (2008) analyses how complex and diverse activities are broken up into simplistic measures, so that work loses its intrinsic worth. He considers that workers most highly value years of time to refine their skills, respect for their expertise, and good relationships with their colleagues. But Sennett considers that today's systems reinforce opposing values: speed, rapid alterations, superficial skills, constantly changing teams and impersonal conditions of work, all driven by 'impatient capital'. This involves constant take-overs of firms, stripped assets, and reduced staffing on lower pay. The few highly paid top managers do not own the business or the profits. Instead their wealth depends mainly on increasing the price of the shares they hold, which they do by public relations, spin, 'imaginative' accounting and constant much publicised flux, until they move quickly on like chameleons to the next firm, selling their shares before prices fall. No one knows what the firm is really worth.

To secure new posts and promotion on the carousel of industry, banks, government quangos and auditors, they have constantly to network and promote themselves. This ruthless competitive short-termism wreaks havoc for everyone except the successful wealthy. Managers who move on quickly, do not know their staff personally, and so they rely on assessing impersonal fixed targets and outcomes, based on systems they are constantly changing and which may be irrelevant to the real work of the firm or service. Such targets erode the personal ties, obligations, respect and trust, judgement, loyalty, security and recognition, which workers most value. Workers are assessed for their adaptability, not for their accumulated knowledge and expertise. Penalties and rewards become mechanical and often unjust routines (like the tyranny of testing in schools) which, Sennett considers, stop curiosity and reflection. He concludes that work is being gutted of its content, humanity, dignity, morality and meaning, its values, creativity, solidarity, its potential for personal narrative and agency and, in sum, workers' human rights.

Why systems are reforming

Sennett describes the rapid global changes, but this does not explain why impatient capitalism is so endemic despite harming the great majority whether in schools or colleges, in paid work or not. In debates and research about structure and agency, the structural power over individual agents is often missed, and so also are the agents who help to shape the structures. It would be implausible to write the history of the twentieth century without mentioning leading individuals: Stalin, Hitler, Churchill, Eisenhower, Ghandi, Mao, Thatcher, Pinochet, Mandela. Yet rapid twenty-first century changes tend to be ascribed to blind impersonal market forces. Surely these immense and powerful global movements involve some human intention and agency. Mirowski (2008) has traced the history of the 'neo-liberals', which was the title

they gave themselves, until they dropped it in order to seem to be traditionalist inheritors of classical liberalism. Hayek at London University set up the Mont Pelerin Society in 1946, linked to Chicago University, to Milton Friedman, and other leading economists. From 39 centres in 1947, by 1991 there were 500 linked centres, think tanks and university departments around the world. Some slowly develop policies. Others provide rapid response reports and media comments, all with massive funding from industry and with staff alternating between the centres, government, civil service and business. Mirowski identified key differences between liberalism and neo-liberalism, summarised in the table. It is vital to know about the differences in order to be able to understand and predict the apparent contradictions when governments and other authorities, which claim to be liberal, are actually neo-liberal.

Liberal philosophy, aims and methods	Neo-liberal philosophy, aims and methods
Positive freedoms, human rights, equality and wellbeing of the people	Profit the ultra-rich, promote inequality, over-rule human rights
Adam Smith version of free market, with hidden hand (of Providence) Market complemented by state support Free and fair trade Adequate benefits/social security/pensions	'Fake' history of Adam Smith Managed market Low taxes, no state intervention Protections for rich countries, none for poor ones, Low benefits/social security,
Reasonable work conditions Trades Unions, workers' rights Beginning of concern for environment	Strip assets and work force, Destroy Unions Plunder planet
People as citizens	People as consumers
Rights to freedom of expression and information	Managed mass media, PR, biased advertising. Trade everything including knowledge
Government works with private sphere to promote employment	Government leaves employment to markets (except for state services) then blames lack of jobs on lack of skills. In USA, huge 'slave' industries (Microsoft) inside prisons lead to dearth of jobs outside, to unemployment, theft and re-imprisonment
Education, health and welfare services provided/assisted by state	Education, health and welfare services privatised, outsourced, standards micro-managed by state, 'end cancer of socialism'
Practical material support for families, benefits, housing, redistributive tax	Withdraw material support, increase state surveillance and punitive control of family, blame the poor
Consultation/participation, a means to an end	Consultation/participation, an end in itself

Democratic involvement and influence	'Let them express their views and have minor choices but do not let them have rights'
Socialism: people and states know enough to plan and allocate Many problems are not scientific or economic but moral and political	Humans are 'sloppy cognisizers', the Market 'knows' Narrow amoral economics explains everything, influences game theory (psychology), neo-Darwinism (biology) and all disciplines Privatise the market of ideas. Trade in intellectual property Find costly technical 'fix' for all problems (ecology, mental illness, crime)
Work and wait for things to get better Enlightenment faith in progress	Every crisis an opportunity to intervene and impose neo-liberalism (Klein 2007).
Ironically, liberal-left believe in central organisation yet they are themselves disorganised and fragmented	Neo-liberals believe in small state and deregulated individualism yet they are a tightly organised, lavishly funded global network controlling all academic economics (as arcane maths) with agents at all levels of national and international government, civil service, mass media, academia, science, medicine, and industry.

Conclusion

In order to respect young people's rights, it is necessary to understand what rights mean, by reading the European Convention on Human Rights (1950), the UNCRC (1989) and the Human Rights Act (1998), by seeing how the rights can be implemented on the local, individual, personal and small group level, and also how human rights are supported or restricted by local, national and international policies and economics.

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