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## What Are Children's Rights? Contemporary Developments and Debates

Phil Jones

### Chapter Overview

This chapter will introduce the broad context for children's rights, drawing on areas of recent research and enquiry that illustrate current developments, debates and tensions. This will include looking at the need for rights and the effects of a rights perspective on different areas of children's lives. It will also look at some of the tensions which have emerged concerning children's rights. The idea of child rights has developed from the convergence of different pressures for change. This chapter introduces the different ways this is happening, giving brief examples of the kinds of policies that are emerging and showing how changes in long-held attitudes and practices relate to child rights. The United Nations Convention on the Rights of the Child (UNCRC) is the touchstone for work being developed in many countries. Key articles from the UNCRC and other sources such as the European Convention on Human Rights (ECHR) will be outlined and linked to the sections of this book which consider their implications for different areas of work. Criticisms of the UNCRC and challenges to its implementation are also explored. After over two decades of living with the UNCRC there is a wealth of experiences of the practical application of the Convention in different areas of children's lives. This section introduces examples that link child rights to their lived experiences.



## Rights and responsibilities

In day-to-day contact adults in working situations relate to children in many different roles and contexts. This book examines and supports such relationships in relation to child rights. One way of looking at these concerns how we engage with areas such as policy or practice in terms of 'rights' and how these affect working with children. There are many definitions of rights, normally drawing on broad conventions or legislation such as the United Nations Convention on the Rights of the Child (UNCRC), the European Convention on Human Rights (ECHR) and the UK's Human Rights Act 1990 (HRA) but developed for different audiences. The UK Government, in a publication aimed at young people, used the following broad definition:

- Q. What is a Right?  
A. This is something you should always be able to do, to have, to know, to say or to be protected from.
- Q. What is a Responsibility?  
A. This is something you should do for other people, for society or for the environment.

(Ministry of Justice, 2009: 5)

Here child rights are connected to the responsibilities children are seen to have (see Chapter 3 for more details on this perspective). Another definition sees this connection differently. It sees rights developing from 'long-established moral and legal traditions' and situates child rights and responsibilities within the idea of a *contract*:

The core concept of a right is that of an agreement or 'social contract' which is established between the person(s) who holds a right (often referred to as a 'rights-holder') and the person(s) or institutions(s) which then have obligations and responsibilities in relation to the realisation of that right (often referred to as the 'duty Bearer') (Save the Children, 2005: 14).

An example from Franklin helps illustrate a practical implication of the relationship between rights, responsibility and this *contract*: 'Children have a right to education but they can only exercise that right if government locally and nationally assumes responsibility for its provision' (Franklin, 2002: 27).

Such rights and responsibilities for children, and related 'contracts' for their definition and implementation, are linked to different conventions, acts and laws. The following sections explore the ways child rights are currently defined and implemented.

## What are child rights?

The Participation Works organisation foregrounds the way children and young people's rights relate to the ECHR and the UK's HRA, which commit all public

organisations to follow the rights in the ECHR. These include early years provision, play work, schools, children's services, health, youth and social services, the police and youth courts. Examples of the ways the HRA relates to children and young people are explained by Participation Works as including:

**Article 5** – If you are arrested or charged with committing an offence, you should be promptly told the reasons why. You should be given information in a language and way that you understand ...

**Article 6** – You have the right to fair trial. This means you should be able to follow what is going on in court, and you should have a lawyer to help you and question people giving evidence against you. You have the right to an interpreter ...

**Article 8** – This is your right to respect for private and family life. This right covers many different matters relating to your own choices and decision making, and whether others can interfere with these ... It also protects your relationships with your family, and is relevant when decisions are being made about who you should live with ...

**Article 9** – This is your right to freedom of thought, conscience and religion. This is relevant to the choices you make for yourself about what you believe and if you follow a religion or not.

**Article 10** – This is your right to freedom of expression. This includes what you wear, as well as giving and receiving ideas and information ...

**Article 11** – This is your right to peaceful assembly and association – being on a public protest for example, or being able to form and join groups, such as school councils, trade unions and political parties ...

(Participation Works, 2009)

The United Nations Convention on the Rights of the Child was adopted by the United Nations in 1989. Child, within the UNCRC, is defined as an individual aged 17 or under. Within the convention children have a set of *economic, social, cultural, civil and political* rights. The rights guaranteed by the Convention are afforded to all children without exception. The UNCRC is defined as an agreement between countries and consists of a number of articles. Specific governments need to ratify such a convention. This means that they agree to obey the articles set out in that convention. Ratification UK ratified the Convention in December 1991: by doing this the UK government has incorporated the UNCRC into its national legal framework and confirmed that the government should make sure that every child has all the rights outlined in the treaty. Most world governments ratified the Convention in full, but the UK government would not do this and entered specific reservations about some of the articles. Some of these, such as the 'UK Reservations' on Articles 10 and 37, were lifted in October 2008. The United Nations' Committee for the Rights of the Child reviews specific countries' responses and issues periodic reviews.

A number of authors have indicated that different areas of rights will be foregrounded, or understood and acted on differently, depending on the political, social and economic contexts of different societies. So, for example, in some

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situations child rights in relation to child labour or poverty will be at the fore of attention for change, whereas in other societies issues concerning change in relation to children's participation in decisions about the services they access may be given priority. How action develops is usually arrived at through pressure and debate involving children and young people, lobbying groups, workers or government. As this book will show, this process is one that involves powerful forces that work both for positive change in children and young people's lives, and those that act to preserve or increase ways of working, or seeing children, that have a negative impact on their lives. The ratification of the UNCRC includes over 40 specific rights for children in the UK. These are prioritised and summarised in different ways. The following material introduces different ways of approaching the idea and practice of child rights.

One much-used approach, for example, sees the UNCRC as concerning three broad areas: provision, protection and participation. Some organisations, such as Save the Children, approach the UNCRC by describing the rights enshrined in the convention as falling into four broad categories:

- the right to survive;
- the right to be safe;
- the right to belong;
- the right to develop.

Unicef foregrounds what it calls the *four core principles of the Convention* and locates these in some of the specific articles of the UNCRC:

- non-discrimination, or universality (Article 2);
- best interests of the child (Article 3);
- right to life, survival and development (Article 6);
- respect for the views of the child (Article 12).

### Unicef and the 'four core principles' of the UNCRC

**Non-discrimination** is reflected in articles such as Article 2 which states that signatories 'shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status' (Unicef, 2009: 9). Unicef foregrounds the special relevance to the situation of children living with disability and to undocumented migrants, and emphasises the article's statement that children must also be protected from discrimination that is based on the beliefs of their parents, other family members or legal guardians. Other practical considerations considered within this book include the ways in which children are made aware of their rights in relation to non-discrimination (see pages 110–16), when tensions occur

between the rights of children and those of parents in areas such as sexuality and gender (see page 18) and where the UK government discriminates against children, for example in relation to those who are asylum seekers or refugees (see page 23).

**The best interests of the child** are presented in Article 3 which states that, 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. Such articles and the concept of 'best interests' relate to the legal protection of children and to evidence-based care of children. Unicef particularly notes that this principle requires governments and other agencies involved in provision, legislation, policies and programmes 'to review *any* of their actions for the impact on children' (Unicef, 2009: 9, author's emphasis). Other practical considerations for children include how to work with the concept of best interests in relation to areas such as youth justice (see page 195), or in complex dynamics such as family break-up or in child protection cases (see pages 60–1) or challenges to practice which purports to be in a child's best interests but is actually reflecting adult desires and agendas (see page 19).

**The right to life, survival and development** can be seen in Article 6 where the Convention says that 'every child has the inherent right to life' and that states parties 'shall ensure to the maximum extent possible the survival and development of the child'. Unicef notes that these rights are connected to the enjoyment of the 'highest attainable standard' of provision in areas such as health services and to an 'adequate standard' of living (Unicef, 2009: 9). Practical considerations for children include: issues with regard to child protection (see page XX) and health promotion (see page XX) and issues concerning poverty (see page XX) and in relation to care (see page XX).

**Respect for the views of the child** concerns children's right to have their views heard and respected. Article 12 of the UNCRC says that states 'shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child' (Unicef, 2009: 9). Practical considerations for children include the ways organisations working with children enable and empower them to participate in areas such as decisions about their own lives (see page XX), the design and implementation of services (see page XX) and how differences in areas such as age (see page XX), understanding and communication (see page XX) are worked with.

Drawing on the UNCRC and the ECHR, the UK government has highlighted the following rights as key:

- the right to life, survival and development;
- children's right to have their views respected, and to have their best interests considered at all times;

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- children's right to a name and nationality, freedom of expression, and access to information concerning them;
- the right to live in a family environment or alternative care, and to have contact with both parents wherever possible;
- health and welfare rights, including rights for disabled children, the right to health and health care, and social security;
- the right to education, leisure, culture and the arts;
- special protection for refugee children, children in the juvenile justice system, children deprived of their liberty and children suffering economic, sexual or other forms of exploitation.

(UK government: basics – see <http://www.direct.gov.uk/en/parents/parentsrights>)

### Children's Rights As Voted For By Children

In a recent exercise over 1,800 UK children were given details of child rights from the UNCRC and the HRA and asked to vote for them from their own point of view as children. This offers yet another perspective on the meaning and significance of rights. The five most prioritised were:

- 1 To be protected from abuse (HRA)
- 2 To have an education (UNCRC)
- 3 To be helped to keep alive and well (HRA)
- 4 Not to be discriminated against because of my race, colour, sex, disability, language or beliefs (HRA)
- 5 Not to be treated or punished in a way that is cruel or meant to make me feel bad about myself (UNCRC)

(Ofsted, 2010)

## Child rights in children's lives

The relationship of rights to children's lives can be seen in terms of different areas or domains: from the playground to the classroom, from home to youth courts. A child's relationship to their family, for example, can be seen within a framework of rights and the relationship between child, family and state:

The family is in the middle of these relationships and is meant to be supporting the child as an individual while ensuring they develop positive relationships as part of the family and as part of society. However, each family will have a set of beliefs and values that influence their expectations of the child and their relationships. These may not be in keeping with either the principles of the UNCRC or with the expectations of state policies (Jones and Welch, 2010: 136).

The focus of this book is on the domain of services and provision for children and the ways that a framework of rights connects to our work with children. Looked at from the perspectives outlined in this chapter, aspects of the ways we relate to children are governed and influenced by written policies and procedures, largely created by groups of adults. These shift and change in time, reflecting developments and preoccupations in broad societal attitudes and concerns, political influences such as those from changing government policies as well as the ways any specific organisation is managed and handles the services for children provided by the individuals who work within it. Child rights can be seen as part of this 'landscape' and the following section examines them from this perspective.

One of the areas of rights this book will examine in terms of practical work with children concerns the rights to protection, provision and participation, for example. On a macro level over recent years UK government initiatives such as 'Quality Protects' and 'Connexions' link participation rights to the *involvement* of young people. On paper, and often in practice, many councils are committed to including young people in decision-making in relation to policy priorities. On a small scale, specific providers of local services for children have increasingly reflected the ideas and practice of child participation in their individual policies and practices. Table 2.1 in Chapter 2 samples areas of the UNCRC, while Examples 1.1 and 1.2 below offer illustrations of the specific ways that children and adults can work with child rights to try to apply the broad statements to their everyday relationships and work.



### **EXAMPLE 1.1 Local Services and Child Rights: A Children and Young People's Active Involvement Service**

Telford and Wrekin Council have a Children and Young People's Active Involvement Service. Their work includes developing and supporting children and young people's participation groups, and looking at the specific involvement of groups such as disabled children and young people or looked-after children and care leavers. The initiative has been created to 'offer advice, information and support on actively involving children and young people ... helping children and young people to be actively involved in: play and fun activities; making changes; learning about their rights and responsibilities; expressing their opinions; giving their views; making decisions' (<http://www.telford.gov.uk/Education+learning/Support+for+young+people>). They support service providers in developing awareness of how to reflect child

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rights in their structures and practice, and in identifying participatory methods and techniques that workers can use themselves with groups of children and young people. This has included work on specific arenas of children's lives, for example on safeguarding and corporate parenting, and on the production of a report with children on 'How children and young people living in residential care can participate fully in inspection processes'. Another area of action has concerned involving children and young people in the recruitment and selection of staff. This initiative has produced a 'Good Practice Guide' and a training programme has been developed which has encouraged more posts to have a children and young people's panel of interviewers working alongside the adult panel.



### **EXAMPLE 1.2 Local Services and Child Rights: A School and Day Nursery Rights Policy**

Specific service providers have begun to reflect rights in their individual policies. The following example is an illustration from a Montessori School and Day Nursery in Leeds, where they have created a 'Children's Rights Policy' (revised 23 January 2009) that cites the UNCRC as a source:

All children that are capable of forming their own views are encouraged to express those views freely in all matters affecting the child and the views of the child are given due weight in accordance with the age and maturity of the child.

All children are given the right to freedom of expression; this right includes the freedom to seek and receive information and ideas, either orally or in print, in the form of art, or through any other media of the child's choice. (<http://www.leedsmontessori.co.uk/downloads/policy-pdfs/childrens-rights.pdf>)

Other aspects of the ways we create working relationships are not laid down on paper or dealt with by local government units in this way, but are equally visible. These consist of less easily defined influences, but include:

- cultural attitudes about children and adults' relationships with children;
- children's responses to us as adults and in the roles we have as professionals;



- children's responses to each other and how this influences the way relationships form;
- the contexts that surround and affect the relationship – this can be looked at in terms of areas such as age, class, poverty, gender, race, disability and sexuality or in relation to forces such as disempowerment and empowerment or exclusion and inclusion;
- our memories and responses to our memories of our own childhoods and child – adult relationships.

These are not fixed, but are part of ongoing negotiations between children and adults. They operate at wide societal levels, can contain differences and tensions at local or community level and are also lived with and changed in the interactions between individuals and within specific settings and groups. Sinclair's (2004) description of the ways these changes are occurring sees them as a result of new, and developing, ideas from a number of different perspectives. These are identified by her as:

- *pressure* from children and young people, researchers, policy-makers, practitioners working with children;
- *new paradigms* within the social sciences that have increased our understanding of the child as a competent social actor, seeing their capacity to be commentators in their own lives and to be involved in decision-making;
- the *children's rights agenda*.

The following material gives more details of each of these as a way of helping to show how child rights as an area of concern has emerged and is emerging.

### Pressure

The kind of pressure talked about by Sinclair are reflected on a large scale by legislation such as the UNCRC and the ECHR. On more localised levels, it is shown by the work of charities and groups, or by adults and children, in specific services such as schools or centres. This book will include both perspectives, offering material containing details of key broad legislation and of national organisations, but will also provide examples of specific local initiatives, research and ideas to show how adults and children are developing the ideas and practices of rights within their daily lives together. An illustration of this is that, in the consultation referred to earlier (Ofsted, 2010), the children reflected rights that were already recognised in the UNCRC and the UK's development of the Human Rights Act in 1998, but added two that were not in the conventions or legislation. The report concludes that:

Any future Act, Bill or Charter of Rights and Responsibilities also needs to take note that the children added in this top 10 two new rights that had come from our other consultations with children:

- the right not to be bullied, and
- the right to keep in touch with parents, grandparents, brothers and sisters.

(Ofsted, 2010: 31)

This is an example of the ways in which children's perceptions are developing society's understanding and approach to rights.

### New Paradigms

The idea of childhood as a construction is relevant to our examination of the practice of child rights. Moss and Petrie (2002) have summarised this approach as arguing that, though childhood is a biological fact, the way it is understood and lived varies considerably. This variety is created through interactions between people, and through the kinds of images of children that inform the ways we act and interact. There is never only one version of what a child is: different professions, disciplines and communities create particular versions of what children are, or can be, shaped by politics, history and culture. I have summarised this emerging way of looking at children as being typified as a set of specific images of a child and children, and to be associated with the advocacy of certain kinds of relationships and processes. Two of the key elements of this are reflected in the approach to children and adults within this book – that children are:

- agents in their own lives;
- able to contribute and participate in decision-making.

(Jones, 2009: 29)

### The child rights agenda

It has been over two decades since the UNCRC and, during this time, the responses in different countries and societies have seen the development of what can be called a 'rights agenda'. Twenty years after the UNCRC, for example, the UN Committee on the Rights of the Child criticised the UK government's failure to implement the Convention in many areas of children's lives. It mentioned, in particular, the need to recognise the rights for some of the most vulnerable children in conflict with the law and subject to immigration control. A report from the Children's Rights Alliance for England summarised the situation in the following way.

The UK Government has taken some significant steps to uphold children's rights, including the introduction of the first Cabinet Minister and Department for Children, Schools and Families, but more must be done ...

The UNCRC sets out the rights that all children need to thrive. Existing legal mechanisms to hold the Government and public authorities to account for protecting all children are under-used, largely due to lack of awareness among the public, including children, lawyers, the courts and decision-makers. Making the UNCRC part of UK law would make the Convention justiciable in the UK courts (Children's Rights Alliance for England, 2010: 7).

Over the years, general patterns have emerged in the way the UNCRC is being practically realised – this can be called an *agenda* for change. This book will look at the move from the original Convention to the notion of a child

rights agenda and to the way specific action in workplaces is occurring: exploring the ways policy and practice connect in changing children's lives and the way adults work with them.

It can seem an enormous journey from statements made by the United Nations or the European Union to life between a specific child and worker in an individual school, clinic or court. Experience in many countries and in many communities is showing that real changes are being made that affect children and adults in positive ways. Other pictures are also emerging, though. There can be tensions between the agenda set by broad statements of rights and the specific experience of individuals, or groups, in everyday life. This book will not ignore the actual complexities of creating time, space and opportunities to work in a daily way that is informed by rights. It will draw on ideas, practical work and research that can usefully see both how ideas can be realised, but which also give examples of ways of positively engaging with the tensions, frustrations and variety of situations that test and develop the ideas of rights in everyday practice.

On a national level government organisations use the UNCRC to frame the way they form initiatives. An example of this, from *Righting the Wrongs: The Reality of Children's Rights in Wales*, says that:

The development of a children's rights perspective throughout governmental structures is best achieved by designing strategies to implement the guiding principles of the Convention, non-discrimination (Article 2), best interests (Article 3), survival and development (Article 6) and participation (Article 12). The Guiding Principles are the backbone to the Convention and instrumental to achieving all of the other rights. (Croke, 2006: 2)

*Children in Scotland* parallel this in noting that the three UNCRC Articles most often cited in child policy work in Scotland are:

*Article 2:* that all UNCRC rights apply to *all* children without discrimination;  
*Article 3:* that the best interests of children must be a *primary* consideration;  
*Article 12:* that children's views must be taken into account in decision-making.

([http://www.childreninscotland.org.uk/html/poly\\_righ.htm](http://www.childreninscotland.org.uk/html/poly_righ.htm))

However, the Articles reflect a much wider set of concerns than these three, and all are relevant to different aspects of working with children, covering a range of areas of children's lives: social, economic, civic, political, cultural and participation rights. The next chapter offers a summary of selected, key elements of the UNCRC to help orientate the discussions in this book.

## Summary

This chapter has described how the idea of child rights has emerged, identifying the ways in which different pressures for change continue to develop the way rights are legislated for and understood. It has given brief examples of the kinds

of policies that are emerging and has shown how changes in long-held attitudes and practices are a consequence of the child rights agenda. The chapter introduced areas key to child rights including the United Nations Convention on the Rights of the Child (UNCRC), the European Convention on Human Rights (ECHR), and the UK's Human Rights Act 1996 (HRA). Examples that link child rights to their lived experiences were used to illustrate the ways in which the practical application of legislation affects children and those working with them.



### Question 1.1 How has a rights perspective emerged in relation to children?

#### Review Activity

Refer to the examples of the Children and Young People's Active Involvement Service and the Leeds Montessori School and Day Nursery.

- 1 Think of how the setting you work in or a service provider such as a school or health centre might engage with the areas described in the Children and Young People's Active Involvement Service.
- 2 Look at the extract from the Leeds Montessori School and Day Nursery and the full policy online (<http://www.leedsmontessori.co.uk/downloads/policy-pdfs/childrens-rights.pdf>), or find another example of a local service provider's rights policy.

Either:

- (a) If your setting does not have such a specific policy, do you think it could be useful? How would you adapt a policy so as to fit the specific context of the setting?

Or:

- (b) Adapt a policy such as that of the Leeds Montessori School and Day Nursery for another setting such as an early years setting or a youth club.



### Question 1.2 What are child rights?

#### Review Activity

Refer to examples of child rights given in this chapter that you consider are relevant to children in a specific service or in the service within which you work:

- 1 Create a poster that would enable children to understand the meaning of the rights and the implications for them in their lives and experience of the setting they are in (for example, a day nursery or law court).

- 2 Develop this further by devising a practical activity that you could use in supporting children to understand the poster and how to act on the information it contains.
- 3 Try to think of alternatives to the poster and activity to engage with factors such as working with children of different ages or with children with learning disabilities.



### Question 1.3 How are the ideas of child rights being reflected in practice?

#### Review Activity

The chapter refers to Children in Scotland's statement that the Article 12 of the UNCRC is one of the most frequently cited in child policy work:

**Article 12** – The right to express his or her views freely and these must be given 'due weight' depending on his or her age and maturity. (Unicef, 2009: 9)

Example 1.1 talks about Telford and Wrekin Council interpreting rights to include 'helping children and young people to be actively involved' in a number of specific processes. Consider the following three areas they mention:

- learning about their rights and responsibilities;
- expressing their opinions and giving their views;
- making decisions.

Either:

- 1 How might you develop active involvement with children in your work setting?

Or:

- 2 Consider aspects of daily life in an early years setting, a school setting or a youth work setting, and how each of the three areas mentioned by Telford and Wrekin council could be developed.

Example might include:

- (a) How might children and adults be helped to connect the processes involved in the daily life of a setting as relating to child rights?
- (b) How could children be given more opportunities to express opinions and views and:
  - (i) be helped to understand the potential effect or impact of their views on their daily life in the setting;
  - (ii) be engaged in dialogue with adults about their ideas and their implications; and
  - (iii) see their opinions and views acted on in ways that give their perceptions equal weight with those of adults?

## Further Reading

Children's Rights Alliance for England (2010) *Children's Rights Part of UK Law*. Available from: <http://www.crae.org.uk/protecting/uk-law.html>.

A useful and clear summary of the situation regarding child rights in the UK, both in terms of progress and barriers. The Children's Rights Alliance for England website (<http://www.crae.org.uk>) is a useful source for information, initiatives and a child-centred position on current and future developments in the area of child rights.

Ofsted (2010) *Children on Rights and Responsibilities: A Report of Children's Views by the Children's Rights Director for England*. Manchester: Ofsted.

This is an examination of children and young people's perspectives on their rights. It provides an interesting parallel to formulations of rights created by adults, and offers alternative perceptions of child rights, as well as giving rich detail of the meanings given by children and young people to existing rights and responsibilities.

Unicef (1989) *Summary of the UNCRC Made for Children*. Available at: <http://www.unicef.org.uk> (Accessed 21 February 2009).

A good source for a basic overview of the articles in the UNCRC in a format that is useful and clearly accessible for children.

Welch, S. (2008) 'Childhood rights and responsibilities', in P. Jones, D. Moss, P. Tomlinson and S. Welch (eds), *Childhood: Services and Provision for Children*. London: Pearson.

A thorough, succinct overview of the development of child rights, a review of the different types of rights, along with a useful consideration of the relationship between rights and needs and who is responsible for ensuring child rights.