

CHILDREN'S RIGHTS — ARE THEY WRONG?

This is the year after International Year of the Child; most readers will perceive this as an unnecessary statement as there would be few of us who have not been affected by IYC in some way. Some of us would have attended meetings, conferences, seminars and the like to listen to a veritable plethora of learned, witty, earnest and serious speakers discourse on the rights of the child, and participate in the resulting debates. Others of us made ourselves unpopular with friends and relatives alike by extolling the virtues of IYC, T shirts, sweat shirts, car stickers, badges and other gaudy memorabilia, not to mention raucous renditions of the ubiquitous "Care for Kids" song at some largely inappropriate moment.

Some of us participated in IYC activities on a different, if no less important level; namely on local committees which have, hopefully, heightened community awareness of children's rights, which after all, was the main purpose of IYC. Such participation probably involved us in organising publicity for community events, preparing activities for children's "happenings" and possibly the preparation of adult-oriented pamphlets and press statements aimed at making our local community a more safe, caring and satisfactory place for our children. Although the activities described encompass a wide range of participatory roles on our part, the list is obviously not exhaustive but it serves to underscore the fact that many adults in our community have been united, possibly for the first and only time, in a common cause; that of endeavouring to ensure that our nation's children have access to the rights and privileges that are undoubtedly theirs.

It is over twenty years since the United Nations issued the Declaration of the Rights of the Child. Put simply, this Declaration affirms that every child should have the right to affection, love and understanding, to adequate nutrition and medical care, to free education, to full opportunity for play and recreation, to a name and a nationality, to special care if handicapped, to be among the first to receive relief in time of

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disaster, to learn to be a useful member of society and to develop individual abilities, to be brought up in a spirit of peace and universal brotherhood, and finally, to enjoy these rights, regardless of race, colour, sex, religion, national or social origin.

By implication then, children have the right to love and affection, to a healthy and stimulating environment, to adequate nutrition, to childhood and to play. Obviously no one could seriously argue that such goals are not important, in fact, critical, to the optimum development of the next generation. But just as obviously all children have not enjoyed such an environment in other times and in other places, hence the need to declare our intentions in 1959. One cynical commentator has remarked that only in periods of war, depression and social unrest are children's needs met, and obviously the horrors of World War II played a large part in bringing to fruition the 1959 statement, but the Children's Rights movement began for instance in the USA in the late nineteenth century. The group was composed of professionals from a multitude of disciplines — economists, educators, labour leaders, lawyers, doctors, ministers and many professionals who were motivated by personal motives. They lived in the low-income areas and endeavoured to improve every aspect of the lives of the children and their families. Their care of childhood extended to the total social milieu of

the child — housing, working conditions for women and children, infant mortality, the need for playgrounds and parks in urban areas, school medical and dental services, nutritious school lunches. Takanishi (1979) argues that the new professions of the twentieth century, such as social work, pediatrics, public health, child guidance work, education of young children, emanated from these early social movements to improve the lives of children.

Although these "new" professions proliferate our society, contemporary members of the children's right movement are not slow to point up the present mismatch between the 1959 Declaration and conditions for children in our western society; for instance, Kenneth Keniston (1975) is typical of the newer breed of children's rights advocates who have attempted to stir the population's conscience with carefully researched and presented papers bearing such evocative titles as "Do Americans Really Like Children?" That particular paper listed numerous present-day American examples of what this writer chooses to call socio-psychological abrogations of children's rights, such as the lack of preparation for parenting, infant mortality rates, especially among minority groups, the incidence of malnutrition among neonates, toddlers and young children, the percentage of people living below the so-called "Poverty Line", women who "desert their children" to join the labour force, the increasing number of one parent families on top of the demise of the extended family, the threat of TV, the pollution and despoilation of the environment and our natural resources, and the inequalities which are allowed to fester in our biased education system; the list of our inhumanities to our

children is endless and frightening, and is enhanced by statements such as:

"In the last fifteen years in US the federal health care dollar devoted to children has shrunk from 50 cents to 10 cents. The average US family spends three times as much on liquor and one and a half times on cosmetics as it does on the health care of its children".

(Keniston, 1975)

At the same time, more appropriate models are placed before our guilt-riddled eyes. The following is an extract from *Sweden Today*, 1979:

"1. After July 1, 1979, it will be forbidden for parents to hit their children. The spirit of the law is to eliminate violence as a tool of child rearing.

2. Starting February 1, 1980, a parent will have his or her right to stay home with a sick child up to age 12 extended to sixty days per year.

3. For the fiscal year 1979/80 additional \$1.7 million will be given to promote cultural activities for children. This will include services in libraries and museums, good music, movies for children, and workshops for painting and creativity will be enhanced."

Thus Sweden's laws and practices, which are already among the most humane in protecting children's rights, will be extended even further".

(Link)

Before readers become too taken with the idea of demanding that we follow in Sweden's footsteps in terms of children's rights, it would be appropriate to look briefly at some of the historical, philosophical, moral and legal perspectives which surround the extremely vexious concept of children's rights.

When man existed in tribal societies, children had no rights; (neither did women or senile men). When two tribes fought in battle, the victorious tribe took the vanquished children home to act as slaves, and to be reared in the victor's religion. So much for child rights. Children had no privileges (neither did women or senile men), but as they emerged from infancy into childhood they were given their own tasks or responsibilities and their own corresponding privileges. However children were still regarded as chattels and labourers' children either worked for the same master as their father or were sold into apprenticeship to save the family from impending starvation.

"Childhood" as a separate entity arose during the end of the middle ages when the extended family, rather than the tribe, became the dominant group. But children were still seen as small adults in terms of dress, manners and needs, and those children not fortunate enough to be born into affluent families worked at adult tasks.

Thomas Hobbes, writing in the seventeenth century, argued that children were cared for solely because they are capable of serving their fathers, and should be assigned a position of complete dependence. Hobbes thought that:

"like the imbecile, the crazed and the beasts, over . . . children . . . there is no law."

(Leviathan, p. 257, quoted in Worsfold, 1974, p.144).

The implication is clear; children have no natural rights and no rights by social contract because they lack the ability to make formal contracts with the other members of society and to understand the consequences of such contracts. While Hobbes' argument has one unfortunate flaw in that on the one hand it requires children to promise obedience and on the other hand it assumes that children are incapable of making such a promise and upholding its consequences, the essence of his argument is clear — the relationship between father and child is one of mutual benefit, in which the child must serve the father in return for protection and livelihood. Hobbes equates rights with powers and it follows that children cannot be granted rights due to their lack of powers.

Writing later in the same century John Locke assumed a somewhat different stance, namely that children were to be under the jurisdiction of their parents "until they can be able to shift for themselves". Until such time the child lacks understanding and therefore cannot exert his will. However unlike Hobbes, Locke perceived both children and adults as possessing natural rights which need to be protected but that these rights were the same. In other words, parental benevolence is sufficient to ensure the fulfilment of children's rights.

The nineteenth century saw the rise of the humanitarians who opposed the excesses of child labour and the industrial revolution. "Childhood" was recognised as a distinct stage in human development with its own

peculiar needs. At best it freed children from the rigours and dangers of adult work situations but it also led to a sentimental concept of children's innocence and purity and the need for protection from a nasty, adult-oriented world.

At this time the philosopher John Stuart Mill espoused a different kind of paternalism, but one which reflected the sentiments of the nineteenth century and children's rights. Mill declared that:

"the existing generation is master both of the training and the entire circumstances of the generation to come".

(On Liberty p. 207, quoted in Worsfold, 1974, p.145)

The power of society over its children appears to be absolute and indeed Mill is explicit that his doctrine embodying the ultimate value of personal choice does not extend to children:

"We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood".

(in Worsfold, 1974, p. 145)

Taken together Hobbes, Locke and Mill provide a coherent if somewhat negative attitude towards children; none of these eminent philosophers would have seriously considered the perspective of children themselves in determining their own best interests; none accorded children rights of their own.

The twentieth century witnessed the rise of humanitarian principles which were described earlier in this paper in terms of the American context, but additionally developmental psychology arrived and now childhood was divided into a number of substages; toddlerhood, childhood, preadolescence and adolescence. Each stage has its own clearly defined physical, social, emotional and intellectual characteristics but yet each stage had one identical attribute; all these individuals stand in a dependant relationship to adult society yet make a special claim on it. (McLaren, 1976). Herein lies the problem of children's rights as this writer perceives it coupled with a suspicion at least that children do not possess the capability to exercise these rights. This growing suspicion is enhanced by the bureaucracy we have developed to deal with the educational, medical, legal and welfare needs of this relatively

helpless or at least powerless, section of our community. This bureaucracy is symptomatic of our contemporary society in which bureaucratic hierarchies in the professional and working worlds have evolved to control our work choice, in many cases, and the conditions under which we will work in return for a bureaucratically determined minimum wage, in most cases. There is nothing wrong with such developments per se; they represent a necessary response to the changes in our society which have weakened the role of the family and local community and placed decision-making in the hands of the state. However the welfare agencies provided for the child's benefit may only serve to reinforce the child's feeling of powerlessness which is engendered in our corporate society with its vast army of experts to guide it. The decisions rendered by the experts, and sometimes the facts on which the decisions are based, are often incomprehensible to the majority of citizens, thereby making most people more dependent upon the bureaucracy to solve problems and make decisions. In fact it would seem that the more complex our society becomes, the more prolonged our dependence will be, because it will take us longer to learn sufficient skills to become at least partially independent.

These problems of bureaucratic power have never been more strongly identified than its relationship with children; the child is a whole person and needs to be served as a whole person; for instance, he does not have a thirty percent welfare need, a fifteen percent health need and twenty-three percent parent education need, and so on, yet this is the way in which the child's needs are catered for in our welfare society!

The fragmentation and duplication of services resulting from the existence of various professional groups and agencies dealing with the child will be one of the most critical problems in the years ahead, not to mention one of the prime obstacles to the realisation of a system of rights for children.

From a moral point of view, it would be safe to suggest that there are no "pure" rights; merely a complex "trading off" in the interest of overall justice and the best interests of all, with imperfect results at the end. Hannah Arendt has described the

situation thus:

"Every man is born a member of a particular community, and can survive only if he is welcomed and made at home in it".

(in Morgan, 1979)

A child's welcome must imply some kind of support — not simply a loving responsible family, but the provision of the relevant social services (accessible to all) which are necessary for sustaining love and responsibilities. Arendt is quoted by Greene in Vardin & Brody, 1979, thus:

"I think of hospitals, community organisations, child-care centres, playgrounds, neighbourhood theatres, and museums, as well as schools... face-to-face relationships, people calling each other by their names... and it is difficult to conceive of children's rights without such communities in mind".

Shades of Sweden in the fiscal year 1979/80; but perhaps such rights are secondary to those which appeared in the 1959 Declaration of the Rights of the Child and the moralists, by talking about what ought to be, rather than describing what is, have merely led us away from the task of determining the validity and relevance of children's rights in this year following the Year of the Child. The legal perspective can surely provide a more precise answer in that the law has defined a "legal right" as "an enforceable claim to the possession of property or authority, or to the enjoyment of privileges or immunities". (Rodham, 1973). Adults in this country, for example, enjoy the legal rights set forth in the constitution, statutes, regulations and the common law of the federal and state governments. Children, although we may perceive their needs and interests to be greater than those of adults, have far fewer legal rights, and correspondingly, far less duties. In fact the special needs and interests which distinguish them from adults as argued by people such as Locke, Mill and Hobbes have served as the basis for not granting them rights and duties and for entrusting the enforcement of the few rights they do have to institutional decision-makers.

This apparent contradiction is based on a simple axiom, when a person has rights he is in a position to make a claim on another human being to respond by providing what is needed to fulfill that right. But rights imply some form of responsibility and obligation and

our society has, since the days of tribal living, slowly removed from children the onus of responsibility and obligation as adult-like tasks have been taken away from the stage of childhood and a special "growing and playing" period substituted.

A second problem with a concept of rights of children is the often-stated claims that children's rights fall into two broad categories; firstly claims that the rights which adults enjoy should be granted to children, and secondly the claims that the special needs and interests of children be recognised as rights.

Such claims would preclude the existing presumption of the identity of interests between parents and their children whenever the child can demonstrate that he has interests which are independent of those of his parents, provided he can show that he is competent to assert his interests. This raises still more perplexing questions, such as: What is a Child? When does the child know best? Should individual rights apply to all children or only to adolescents? When can the child have control over his own life?

These questions need to be viewed as a question of individual rights within a community. Persons in the community have rights, some of which are said to be inherent to the human condition while others are conferred by the progress of civilization and upheld by the legal system. These rights should be respected but only insofar as they do not infringe upon the rights of some other persons. As a citizen the child should be seen to have the same essential rights and additionally, it may be argued that because of his peculiarly vulnerable position in society that the child may have additional rights conferred upon him.

For instance, many of us might agree that a child should have the right to grow up in a society "free of war", or to live in a "reconstituted society"; but who should hold the law responsible for seeing that those rights are enforced? Or, how should a "right to be wanted" be defined and enforced? Goldstein, quoted in Rodham (1973), has stated quite

categorically:

“There is attributed to the law a magical power, a capacity to do what is far beyond its means. While the law may claim to establish relationships it can, in fact, do little more than acknowledge them and give them recognition. It may be able to destroy human relationships, but it cannot compel them to develop”.

Quite plainly it is necessary to recognise the limited ability of the legal system to prescribe and enforce the quality of social arrangements. Without wishing to be churlish, this writer's impression of the Declaration of the Rights of the Child is that it is composed of a series of social arrangements. *Ipsa facto*. Rodham (1973) has called the phrase “children's rights” a slogan in search of a definition. While her catchcry has been repeated frequently, very few devotees have bothered to take up the call, perhaps because they would find, as this writer has that the phrase “children's rights” is indeed a paradox, and that in fact we would be better employed in addressing ourselves to children's needs within a particular sphere of influence. For instance, as a teacher I am concerned with children's needs in the school situation so I have prepared a set of children's needs for the classroom. They are as follows:—

1. The need to be an individual in the classroom;
2. The need for sex stereotyped-free instruction;
3. The need to have one's own experiences seen as important: the “hey teacher, the geranium on the window sill just died but you didn't even see it” kind of importance;
4. The need to expert diagnosis before one is labelled “slow”; “lazy”; “defiant”;
5. The need to be led to help our peers and support them, rather than only being encouraged to be independent and self-reliant;
6. The need to hear and read stories about children from other ethnic groups, to talk about and to these ethnically different children in a calm, enquiring atmosphere;
7. The need to be autonomous in that children think and act differently at various stages of development;
8. The need for culture-free testing

and assessment that need not place all children along a single, so-called “normal curve” of performance.

It is further suggested that there are criteria similar to those listed above which can be employed by any person interested in propounding a set of children's needs for a particular situation.

The first necessary characteristic of children's needs is that they must be practicable; children's needs must agree with and be theoretically consistent within the society's conception of justice. As such, children's needs can be theoretically possible or reasonable without being popular or practical to implement. In fact, it is difficult to imagine any scheme which would significantly increase the area of children's needs which would not raise objections at least in some small segment of the adult community.

A second necessary feature of children's needs is that they must be genuinely universal; that is, appropriate for all children everywhere. This criterion of universality need not necessarily apply across age groups as it would not be too difficult to argue that preschool age children and adolescents should be treated differently.

The third feature of children's needs is that they be of paramount importance. When fair treatment is accorded children as a basic need, it must override all other considerations in society's conduct towards children, such as considering children's fun. This may involve children in situations requiring painstaking deliberations which they might prefer to avoid if their own pleasure were of equal importance. Pleasure may be important in the lives of children but it should not have the same importance as children's needs to make just claims. This is a contentious statement but it must hold true if we really believe that children have the need and ability to make decisions and thus indicate their ability to progress along the continuum towards the rights, obligations and privileges of adulthood.

A final thought; that of children's rights and the community. Takanishi, (1977) made the assumption that the twentieth

century phenomenon of the rise in importance of paediatricians, social workers, public health officers, child guidance workers, early childhood educators and the like in our society has helped greatly to reinforce the concept of children's rights. However, these individuals, in hindsight, are perceived by society as believing that if we really care about children then we must care about the children's families, schools, support agencies, legal services, the quality of community life, and the economic and political order.

Takanishi, (1977) writing in the *International Journal of Early Childhood* suggested that:

“we now have a situation where strong professional groups, each with their frameworks and methods for treating children, attempt to deal with the child in their own way. We have agencies which fight to guard their own territories. In the end, it is the child who is the real victim”.

A classic example of this devolution of professionals' roles has been the almost simultaneous expansion of the preschool teachers' role into the area of parent education while the role of the social workers has been moving into the preschool field. Now we are enjoying the situation of seeing preschool teachers, developing support systems for parents while social workers offer advice on the education of children under five years of age. To heighten the problem each professional is employed by a different government department. McLaren, (1976) has suggested that the hierarchical bureaucracy must be replaced by community networks consisting of all the services affecting the family as such, including education, employment, security, leisure, health and so on with an emphasis on variety of service and ease of access. In this way, children would not be seen as separate entities but as part of the community and recorded the rights and privileges of all other community members.

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CHILDREN'S RIGHTS ADVOCACY ADVOCATED

A State Government initiated public consultation to assess the extent of community support for the establishment of some form of independent, statutory "Children's Rights Advocacy Body" has been called for by the IYC Victorian State Committee.

This call was unanimously supported by the delegates to an IYC "Keep on Caring" Conference held in

March 1980. The Proceedings of the Conference, and the Victorian Committee's Final Report were published in July.

Before disbanding on 10th April, the Committee set up an "Advocacy Paper Follow Up Group" comprising interested non-government members to continue to draw public and governmental attention to the

document that had been prepared on Child Advocacy, and the issues raised by it. The group, headed by Dr. G. Keys Smith, is actively lobbying parliamentarians and members of the community seeking support for "a fresh and detailed inquiry to make recommendations on the appropriate means of promoting and safe guarding children's rights and interests in the 80's.

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If such a situation is too radical to countenance at least professional and voluntary agencies that are set up within a community to support the child must work with each other in order that the child's needs are assisted as a whole, rather than the child being perceived as a fragmented, amorphous "object" which can be spread around a variety of services and agencies at the whim of professional advisors.

This paper began with a commentary on IYC and the Declaration of the Rights of the Child; it is fitting that it end on the same note. The following quote is from an article by Terry Carney, Lecturer in Law at Monash. While this writer does not agree with all that he says, he has provided us with a description of what is, and a prescription of what ought to be, in the area of children's rights:

"The realities of the U.N. Declaration of the Rights of the Child cannot be assessed in isolation from the cultural context on the passage of time. It is a relative, not an immediate document. Whatever its relevance in earlier times or for other cultures, the Declaration is now largely a spent force in western industrial countries. The stirring

rhetoric no longer inspires individuals or governments to action; the balmy generality of language obscures the complex tension between the interests of the child, the parent or caretaker and the state; the empty phrase of the "best interests of the child" possess over the critical policy issue of the degree of autonomy to be granted to the family unit. Finally, it sidesteps the philosophic debate concerning the limits which should be placed on state, professional or familial authority where that authority leads to an unreasonable degree of stultifying uniformity for those who conform, and to the risk of a stigmatising "deviant" label for those children who reject that paternal intervention".

(Carney, 1976)

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