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Children's Rights: Has anyone got it right?

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Introduction

Rights-based programming now dominates the agendas of child-centred governmental and non-governmental institutions. Rights cannot be ignored, although some institutions still choose to sidestep engagement with the Convention on the Rights of the Child for philosophical or ideological reasons. This paper sets out to give some historical background and contemporary developments to children's rights and outline three perspectives that inform these institutions. The final section on religious groups focuses predominantly on Christian viewpoints. Further work needs to be done to explore more deeply the perspectives of different faith groups.

Background

From Good Intentions to Soft Law

Witnesses to the suffering of children during the First World War laid down the foundations for child rights. Eglantyne Jebb played a key role in drafting the 1924 Declaration of the Rights of the Child. Informed by her Christian beliefs (Yates 1998)¹ and outraged at the plight of children caught up in the conflict she acted to develop a series of rights distinct from those afforded to adults. Its prime aim was to protect and nurture children, guaranteeing certain moral entitlements such as love and understanding (Boyden 1997). The Declaration and subsequent manifestation of it adopted by the UN in 1959 was the first global treaty that focused on a particular section of the community, namely children.

However, the Declaration was a statement of good intent without any real force. Subsequent international instruments, such as the United Nations International Year of the Child and the UN Convention on the Rights of the Child (CRC) were seen as important advances on the Declaration. They both give greater scope for children to advocate and speak for themselves, bestowing not just protective but enabling rights on children. Ultimately, the CRC moved from the view that children are objects of international human rights law, to one that makes them subjects of rights (Ennew. J.²).

As 'soft law' the CRC gains force as nations draw upon its principles to draft and amend legislation. Although the CRC is not international law, pressure will be put on ratifying nations to bring their legislation into line with it. An example of this

¹ Yates, M. 1998. Eglantyne Jebb and Save the Children. leader-values.com/leader%20values/Eglantyne%20Jebb.htm

² Ennew, J. 1999. History of Children's Rights: Whose Story, in *Rethinking Childhood*, Cultural Survival Quarterly

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can be seen in UNICEF's New Global Agenda for Children. Target 19 states that: 'In each country, all legislation should be in conformity with the CRC by 2005.'³

At its adoption by the General Assembly of the UN in 1989, nation states rushed to sign and subsequently ratify the convention. Within the first five years, 191 of the 193 member states had signed and ratified the CRC. Only the USA and Somalia stood aside for differing political reasons⁴. A desire to protect and help children provoked the universal enthusiasm for this international treaty and its unprecedented uptake. Despite this, the implications and implementation mechanisms of the convention were less than clear.

UNICEF: the Reluctant Champion

A decade on, the debate over and the impact of child rights now dominates the child welfare community: academics, policy makers and practitioners alike. After a sluggish start, the CRC now frames the programming approaches of major international agencies and NGOs. Article 45 identified UNICEF as the lead UN agency 'to foster effective implementation and to encourage international cooperation in the field covered by the convention' (UN CRC 1989). However, the agency showed an initial reluctance to participate in the drafting process, finding it difficult to transform itself from a service provider to advocate. It stumbled hesitantly into the first World Summit for Children in 1990, which played a lead role in galvanising the international community to sign up to the CRC. Despite this early hesitancy, Unicef now plays a lead role in championing children's rights.

The Summit endorsed a Plan of Action based around twelve broad goals to be achieved by the year 2000. Although noble intentions guided the summit, subsequent national plans of action failed to meet their targets. Blame has been apportioned to lack of budget, regional armed conflict, corruption, crippling debt and structural adjustment programmes as these targets failed to be reached. In some cases, situations actually deteriorated for children⁵. However, part of the problem lies in a poor understanding of what a rights-based approach should look like.

The second World Summit for Children in 2001 seeks to promote a rights-based approach to meet targets and goals in line with key provisions of the Convention. The UNICEF Executive Board states in its report setting the stage for the Summit⁶ that: 'In the light of the near universal ratification of the CRC, a rights-based approach should underpin all future action for children.'

³ UNICEF, 2000. A New Global Agenda for Children. UNICEF, New York. As yet unpublished.

⁴ The USA because it felt that current federal law upheld the rights of children sufficiently, and Somalia because of a lack of representative government in a time of civil conflict.

⁵ Dr. Lincoln Chen: World Summit Goals: Achievements and Shortfalls, address at the 1st UN Prepcom for the 2001 World Summit for Children, 30.5.2000, Prepcom Summaries, UNICEF, New York.

⁶ 'Emerging Issues for Children in the 21st Century', Unicef, 2000

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Rights of Passage: Achievements and Challenges

Ten years on, however, the debate on how to implement rights-based approach still continues. Ennew argues that this debate, in parallel with the history of children's rights, is controlled and mediated by adults. While the CRC makes children subjects of rights, they have yet to take their 'meaningful and rightful place' (Ennew) at the tables where policies are decided and evaluated. The exclusion of children in the rights debate is not the only contentious issue. Anthropologists, social scientists and religious groups also accuse the child-rights movement of insidious cultural imperialism and interference in the affairs of sovereign states and families.

While these debates play a vital role in mediating the implementation process of the CRC, one can point to some significant achievements over the past decade that demonstrate the validity of the rights-based approach. These include:

- issues relating to children's rights have been put on the political 'agenda'
- an increased focus on especially disadvantaged groups: children with disabilities, HIV/AIDS affected children, militarised children, access to education, sexual exploitation, street and working children are now widely debated at both international and national levels
- an increase in state responsibility for children following ratification, and a setting of global standards
- increased involvement of non-governmental organisations into the children's rights fields; several played a lead role in the drafting of the treaty
- growth in the 1990s of coalitions, networks, organisations that focus on children's rights, as well as a movement by established NGOs away from 'needs-based' to 'rights-based' approaches to child welfare
- greater demand for more and better information relating to all aspects of children's lives
- the realisation that children are not simply passive objects or victims, but active participants and subjects of their own development who make important contributions to society
- the convention has provided a powerful tool for grass-roots activists to campaign on social and political issues affecting children
- children's rights have opened doors for a human rights discourse in countries such as China
- the convention has given rise to a wide range of new, supplementary international human rights agreements concerning children. These include, optional protocols to the convention and related conventions⁷
- finally, ratification of the convention leads to changes in national legislation in favour of children. Although this does not always mean improved services or provision for children, it does provide the necessary legal framework for advocacy and ultimately, implementation.

⁷ For example, the optional protocols on sexual exploitation and recruitment of U-18s into conflict; the ILO Convention 182 on intolerable forms of child labour, and the Ottawa Treaty on Land Mines.

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Who's Right?

While undoubtedly fostering some significant advances in children's welfare over the last few years, the Convention provokes strong and contentious debate. Three key groups can be identified as contributing to these debates: the children's rights movement, the children's studies group, and religious groups. While these may not be all encompassing, they provide a useful illustration of the issues that need to be addressed to achieve the successful implementation and impact of the CRC. The following section aims to summarise the key aspects of each group's position on the CRC.

Child Rights Movement

Michael Freeman describes the children's rights movement as a 'motley assemblage of lawyers, philosophers; educationalists etc, whose primary goal is to disseminate and propagate children's rights' (P.433, 1998)⁸. Those within the movement seek to make rights reality. They view the CRC as the moral and ethical foundation for 'propagating the personhood, integrity and autonomy of children (protecting their rights)' (p 434-5). Universal rights, therefore, provide a global standard against which the welfare of children can be measured. Most importantly, they establish a direct relationship between the child and the state, granting children individual human rights. Children need special rights, argues leading international child rights consultant Judith Ennew, because they are children: they have no voting rights or status, and therefore are much more vulnerable to exploitation and violence. The 1948 UN Universal Declaration of Human Rights, she argues, whilst including children, is not specific enough in this regard.

The primary concerns of the children's rights movement, according to Freeman (1998), can be identified as follows: to challenge discrimination; to problematise the relationship between age and status; to present the moral case for treating children's rights seriously; to document information about wrongs done to children - at home, school, work, in the street etc.; to explore the limitations of laws and conventions designed to improve the lives of children, granted that 'rights without services are meaningless and that services without resources are impossible' (p. 435), and to advocate for the recognition of children's rights as part of a cultural revolution, recognising the role that rights can play in the reconstruction of a society.

Leading thinkers from the child rights movements recognise that the convention creates tensions around issues of universal norms versus cultural relativism. Their argument is pragmatic. Without the universal conceptualisation of child welfare within the convention, there would be no foundations for progressive

⁸ Freeman. M., The sociology of childhood and children's rights, in *The International Journal of Children's Rights* 6: 433-444, 1998. Kluwer Law International. Netherlands.

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global action and activism in favour of children. They argue that the language of the convention does give 'due account' of the dimensions of class, gender, culture, belief, disability etc.⁹ The future success of the rights movement, they say, depends upon constructive interpretation of the convention in parallel with its full implementation.

The Child Studies Group

Over the past decade, the growth of childhood studies coincided with the development of the children's rights movement. Those contributing to the sociology of childhood discourse encompass a variety of views and differing emphases. They set out to demonstrate that childhood is not a natural phenomena, but rather a social construct; that childhood is largely an adult invention that serves to 'propound versions of social cohesion' (Freeman); to analyse how childhood is seen as a period defined as one of immaturity, inadequacy and inexperience measured against the desirable state of adulthood, and attempt to explain why childhood is described in terms of 'difference', requiring it to be referred to in terms similar to those reserved for other forms of deviance.

Within the broad areas of study in this field, the place of children's rights is located as an historical event contributing to the emergent construction of childhood. The convention, argues Jo Boyden, anthropologist and leading child rights critic, embodies a particular view of childhood favoured by the industrial North. The rise of the convention coincides with the globalisation of culture, especially that of youth and the more romantic notions of childhood integral to Europe and North America. These norms include the cult of the individual, the different-ness of childhood with the attendant overemphasis on passivity, vulnerability and helplessness, and increasing levels of state intervention in the lives of family and community.

However, this group recognises that the convention is here to stay and therefore it needs to engage constructively in the debate. It also realises that pursuing an argument whose ultimate answer blows in the winds of cultural relativism offers little hope of affecting real change in the lives of children. But trying to bring the universal into conjunction with the particular is 'a process inherently fraught with ambiguity' (p.406 Editorial¹⁰). The tone and language of the CRC lends moral authority and political force, but how can this be made relevant cross-cultures, gender, class etc.? Jo Boyden sees a way ahead for the convention that would mitigate against the worst excesses brought about by its unchecked enforcement:

⁹ Preamble and Article 2

¹⁰ Editorial, (1999). *The UN Convention on the Rights of the Child as a touchstone for research on childhoods*. Childhood, Vol.6 #4, Nov. 1999. Sage Publications, London, Thousand Oaks, New Delhi.

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“...a more liberal vision in which the convention provides a flexible framework that brings cultures together around children’s rights and children’s welfare rather than an instrument of censure endorsing a single model of childhood...cultures are allowed some latitude to proceed towards the global goal in their own way and in their own time, situations are negotiated and not imposed and children assume an active role in these negotiations.” (P. 224 Boyden. J.¹¹)

Finally, there is a sense that the rights discourse places too little emphasis on social relationships and human needs and duties. In this aspect, the child study group shares similar concerns to those of the religious groups.

Religious Groups

Commentators on the CRC claim that its roots lie in Judeo-Christian thinking (Boyden. J., 1997). However, for Christians the language of rights in a secular society plays to the increasing individualisation of society where claiming rights becomes a blunt tool to vindicate individual rights at the expense of others. The interpretation of human rights is key here. Christian thinking sees that ‘human rights are not something to be demanded, but something given and conferred on others by active obedience to God’ (Miles, G. & Stephenson, P. 1999)¹².

Christianity and Human rights

Christians claim that God is the independent standard of right and righteousness, and that he holds human beings responsible, accountable to him; ‘It is our *responsibility to God for others* that is primary.’ (P. 2. Wright, C.J.H.)¹³. This is a responsibility not marked by guilt, i.e. ‘It’s not my fault’, but by obligation: in other words, to be under responsibility to God for the person or people in a particular situation. This may result in individual rights being deferred in the interests of others, as exemplified by both Jesus and Paul. Thus rights are not simply to be claimed or enforced, but are the result of active responsibility to God for others. In his letter to the Ephesians, Paul sums this up in verse 21: ‘Submit to one another out of reverence for Christ.’ By acting out God’s intentions for humanity, human rights, e.g. harmonious, loving and just relationships between people can be achieved.

The bible does not view children as lesser beings, but as being complete humans made in the image of God (Psalm 139). A Christian view of rights takes this into account. Biblically, children are subject to God-given rights, but this is held in balance with their responsibility to God and obedience to their parents as the primary caregiver. Parents, at the same time, should not ‘exasperate’ (Ephesians 6:4) their children, but ‘surrender any right they feel they have to act unreasonably’¹⁴ towards them. Neither parents nor state can claim ownership over children. All are ‘children of God’. Therefore, within Christian teaching, both

¹¹ Boyden J. (1997) *Childhood and the Policy Makers: A Comparative Perspective on the Globalisation of Childhood in Constructing and Reconstructing Childhood*. James.A & Prout. A. (Eds) Falmer Press

¹² Miles,G. & Stephenson,P. 1999, *Child Development Study Pack*, Tearfund.

¹³ Wright, C.J.H. 1980s, *Human Rights, Bible Study Booklet Number 3*, Tearfund

¹⁴ Study Notes (1990) *NIV Study Bible*, Hodder and Stoughton. London.

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children and adults should be treated with the love and respect accorded to 'children of God', thus upholding their rights.

This interpretation of human rights and child rights differentiates the Christian approach to rights-based development from the secular. The omission of the divine dimension presents a particular perspective on rights, one that Babu Gogineni, Director of the International Humanitarian Society, says should be guided by 'personal ethics, nationality and conscience.' (P.4 de Berry, J., and Stephenson, P. 1999)¹⁵. Secular NGOs are particular in avoiding religious input or bias into their programme and training. They take a more litigious approach, empowering children through making them aware of their rights and how to claim them.

At the Nazareth Conference on 'Children's Rights and Religion' in 1999, speakers representing the three major monotheistic religions of the Middle East sought to justify and lay claim to the religious values and traditions that underpin the CRC. Imans, Rabbis and Priests alike referred to how the CRC was 'in line' with scripture, and that the CRC emerged out of a 'universal morality of which all religions are an expression' (Fr. George Khouri).

Legal and ethical conflicts

However, on closer scrutiny, subsequent speakers identified conflicts of implementation in terms of some religious laws and values and the CRC. While the CRC sets itself as over and above other institutions, the question was raised as to how then to implement the CRC in family and religious settings that have other priorities? Such conflicts existed in Sheria law on, for example, the lack of provision for female inheritance, and Islamic paternalism that undermines practical entitlement of children to rights (Safir Sayed); Jewish laws on marriage, adoption and conversion (Anat Horowitz) and Christian fundamentalist arguments that the CRC undermines the God given right of parents to raise children (Kimbrough-Melton. R.).

Difficulties also lie in the interpretation of Article 14 that states that the child can exercise the right to freedom of religion. This creates tension with the Declaration of the Elimination of all Forms of Discrimination Based on Religion or Belief. This stresses 'the liberty of parents to ensure the religious and moral education of their children with their own convictions.' The outworking of Article 14 of the CRC has in practice pitted children against parents in terms of choice. The CRC attempts to balance the 'best interests of the child' with their evolving capacities to express his/her interests or wishes. Test cases thus far have shown¹⁶ that the best interests argument holds sway over the rights of the children. In these particular cases, these interests included those of the state, the child and the parents in that order. Getting this balance right is critical to the religious groups

¹⁵ Ibid. Footnote 11

¹⁶ See Veerman. P., & Sand. C. (1999) *Religion and Children's Rights*, International Journal of Children's Rights Vol.7 pp. 385-393. Kluwer Law International. The Netherlands.

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who perceive that the CRC creates the legal precedent to allow children to exercise their right to freedom of religion over the parental right to 'ensure the religious and moral education of their children with their own conviction.'

Fundamentalism

Although the conference attracted a diversity of faiths and religious perspectives, it did not truly represent the wider spectrum of opinion that can be found within each faith. An inter-faith dialogue tends to attract the more liberal wing of different faiths. Despite this, issues raised mirror the wider debates and dissensions that can be found among the more fundamentalist groups.

Such groups agree on key issues that emerge from a particular interpretation of the articles of the CRC. Those most vehemently opposed to the Convention base their arguments on the assumption that the CRC is one of a raft of international treaties emanating from the United Nations that seek to increase its hegemony over the thoughts, policies, and socio-cultural values of the international community. Dallas K. Miller Q.C. is a Christian lawyer in Canada. His views represent those of a substantial group of fundamentalist Christians, Mormons and Muslims opposed to what they see as the subversive agenda of the United Nations.

"Although several of the provisions offer generally positive, non-offensive platitudes, a substantial portion of the Convention undermines parental rights. Thus threats to the family generally fall into three categories: 1) the transfer of God-given parental rights and responsibilities to the State (*Article 3*); 2) the institutionalization of rebellion by vesting children with various fundamental rights which advance notions of the child's autonomy and freedom from parental guidance (*Articles 12, 13, and 14*); and 3) the establishment of bureaucracies and institutions of a national and international nature designed to promote 'the ideas of the United Nations' and to investigate and prosecute who violate their children's rights (*Article 16 and 17*)."¹⁷ (P. 19 Miller.D.K.)¹⁷ (italicised references to the CRC added by the author).

Richard G. Wilkins, a professor of Law at Brigham Young University believes that the Declaration on Human Rights sufficiently provides for the protection and provision for children. The CRC, in his view, is unnecessary. Wilkins argues that along with the International Criminal Courts and the vast UN conference system, the CRC just is another step in empowering the United Nations to intervene in the sovereignty of other nations¹⁸.

Miller and Wilkins approach these issues from the perspective of citizens of nations with good law and welfare provision for children. The fears they articulate are the fears of like-minded groups who sense a gnawing sense of moral decay within their societies fuelled by the perception that the libertarian agenda is predominant in national and international politics. They also sense that their very way of life and their freedom of religion is under threat. They feel that by taking

¹⁷ Miller.D.K. 2000, Implications of United Nations Policy on Canadian Domestic Law, paper presented at a training seminar, New York.

¹⁸ Wilkins.R.G. 1999, International law, The International Criminal Court and National Sovereignty, Unpublished paper.

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the polaric view and waging semantic wars over UN treaties in the backrooms of UN conferences they can hold back the pervasive liberal tide.

What they do acknowledge, however, is that this argument weakens in the light of the potential impact of the CRC in developing countries. In many ways, their arguments resonate with those expressed by the children's studies group. Although these make strange bedfellows, the children's studies group recognises the threat to sovereignty and enforced cultural imperialism, paralleling the concerns of religious groups. However, the issues that face children in Canada, for example, cannot be compared to those faced by their peers in the Sudan or Colombia. The strength of the CRC lies in its near universal ratification. This creates a global unity of purpose and standards that can provide a safer and better world for children. Legislation and policy that seeks to outlaw the use of child soldiers, or exploitative forms of child labour have been made possible by the existence of the CRC.

Christian Evangelicalism

Some high profile evangelical Christian non-government organisations (NGOs) and churches view the CRC in a pragmatic way. World Vision, for example, now professes to follow a child rights-based approach to development. Tearfund U.K., an international NGO with partners in over 100 countries, prefers to view the CRC as a useful tool that forms part of an advocacy strategy. It sees that the CRC arguably provides the 'best opportunity to move forward the process of meeting the needs of the world's poorest children'¹⁹, but that its implementation provides a great challenge and potential dangers. It also believes that the championing of rights is implicit to a Christian approach to development. Tearfund believes that God holds Christians responsible for acting towards people, including children, with respect whilst upholding the rights that God has given to them.

The debate is growing among evangelicals in South America about the pros and cons of the CRC. Some of the more conservative churches view the CRC with suspicion, citing an upsurge in disrespectful behaviour among youth as a direct result of new legislation related to the CRC.²⁰ However, others argue that in countries riven by conflict and poverty the CRC acts as a wake up call to the church and governments. Not only does it provide a basis for action, but challenges the assistential approach taken by the church in its children's ministries by overcoming the concept of the child as 'an object of compassion' to seeing children as 'full subjects of their rights.'²¹

Faith-based and Rights-based Approaches

¹⁹ De Berry, J. & Stephenson, P. 1999, Entering the new Millenium: Children's Rights and Religion at A Crossroads, Conference Report, Tearfund in-house paper

²⁰ Hugo Castro, Venezuela, the church and child rights email forum, August 2000

²¹ Eneida Herrera, Alfredo Mora (Colombia), Lucy Palma (Colombia) and Luis Cesari (Uruguay), the church and child rights email forum, August 2000

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It could be argued that the CRC gives secular organisations a new ethical vision that provides the moral guidance for their programming. In a way, the CRC has become the 'doctrine' for these agencies to define their moral and compassionate humanitarian mission. A rights-based approach may be the 21st century's reinvention of the first wave of child welfare organisations that were driven by a faith-based approach.

However, faith-based and rights-based approaches are not mutually exclusive. Human rights uphold religious freedom and religious values uphold human rights. The key difference lies in the why and how rights should be upheld. For people of faith, rights are the outworking of a relationship between people, and between people and God.

Conclusion

This paper outlined the different perspectives of three groups on the Convention of the Rights of the Child: the Child Rights' Movement, the Children's Studies Group and Religious Groups. It is clear that a variety of opinions are held even within each of the groups. However, despite the differences, the overriding consensus holds that the CRC has put children at the heart of the international aid agenda. As Judith Ennew states: 'At the start of the twenty-first century it is no longer possible for policies concerning children to be developed without at least nominally taking children into account as subject of rights, however mistaken or hostile some notions of child rights may be' (P.4 1999).

What does emerge from this brief analysis are the differing perceptions of and approaches to rights-based work. The child rights movement seeks universal ratification, resources provided for effective implementation and efficient monitoring; the children's studies group warns that there are 'no short cuts' in achieving children's rights (Boyden), and that simply enforcing the implementation of rights could be damaging to what are complex cultural situations. Finally, the religious groups see much in the CRC that complements faith-based work. However, some perceive a hidden child rights agenda that seeks to undermine parental rights and religious laws.

Leading proponents of the CRC claim that it is flexible and open to interpretation in different cultures and contexts. How it is implemented depends on the outworking of State legislation at national level and resourcing that enables services to be provided. Not only that, but holistic approaches should be developed which take into account all aspects of the CRC. All rights need to be considered simultaneously. This may go some way to ensure a balance between allocation of resources and the approach taken on the ground. For example, not considering Article 12 (considering the views of children) at all times may lead to ineffective and assistential service provision.

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Much needs to be done by all institutions interested in children's welfare to enable that implementation to be carried out in the spirit of the convention. The differing perspectives described in this paper could contribute constructively to ensure that the CRC fulfils a positive role in enhancing children's well-being.