

## Who Judges What is Best for Children and their Competence? —A Critical Evaluation of Perspectives on Children’s Rights—

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### Abstract

This research paper considers the question of “Who knows what is best for children?” and critically evaluates the issues which expand from this, including asking *what* children need and considering the children’s rights perspective which promotes them as competent decision makers on issues which influence their lives.

Beginning by considering the actors involved in children’s lives, this paper then discusses *what* is best for children under a number of headings. From there, it addresses the competence of children as decision makers, before discussing issues that affect their lives. Furthermore, along with considering the topic of responsibility for rights obtained, this paper enters the debate regarding whether or not children should and can participate in decisions affecting themselves.

Instead of seeking to give answers to the questions posed, this paper attempts to reveal the issues which make deciding on such answers difficult.

Keywords : Children’s rights / Competence / Influences

### 1.0 Who knows what is best for children?

Thomas (2009, p.1) tells us that *we* see children as an indicator of our future society becoming “containers for both hopes and fears.” Who is the ‘*we*’, above? Is it parents or society in general (including childless people)? Thomas indicates that ‘the community’ is an important stakeholder, showing that *all* people have a vested interest in children.

The government is also involved, acting either through the community (teachers, Local Education Authorities (LEAs), local police, etc.), or directly in the form of national laws and assistance. This is expressed in Figure 1, below:

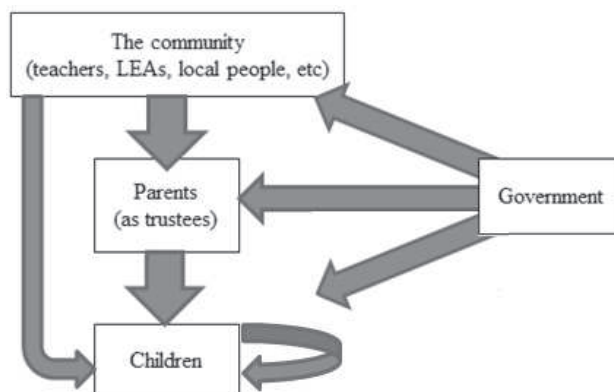


Figure 1: *Who* has a vested interest in children?

In Figure 1, we can see some of the agents who are involved in knowing ‘what is best’ for the child. It shows a plurality of actors involved in the lives of children. Parents are not the only actors in children’s lives, with Thomas (2009, p9) claiming that “parents are trustees” only, and that additional actors are present. However, the influence of non-parental actors can change according to different circumstances including, for example, the trustees’

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resources. Gladwell (2008) tackled the question of whether relatively well-off parents are better trustees of children, suggesting that they can be better as they have a well-developed network, helping them to have a better idea of and provide what is “best” for children. Gladwell offers case studies which show that it is not only monetary resources but educational resources that can make a difference to the life of a child. Less educated parents tend to have less access to information, and have less confidence to take ownership of problems, resulting in their children having less support relative to those with a better resourced parent (Gladwell, 2008).

Both Gilliom (2001) and Thomas (2009) confirm that better-off parents are regarded as knowing what is best for children, and that the poor have more state surveillance. This state surveillance can come via the local community (through LEAs, teachers, etc.) or from the state, such as in efforts to reduce youth crime. However, Parton (1991) holds that such intervention can be undesirable, and poses the problem of how not to intervene yet at the same time promote the individual rights of the child and simultaneously empower the family (which may go against the *individual* rights of the child). This creates a tension between state and family – how far should the state step in?

## 2.0 What is best for children?

Children can be viewed as a combination of three things: biology, their immediate environment, and society (Thomas, 2009). Then, in order to provide what is best for children, we need to provide the best in these three areas as argued in the following sections.

### 2.1 The right to a good start - Biology

There have been instances where a government’s eugenics policy has striven to improve the intellectual ability of the general population by favouring those with higher intellectual ability (Chan, 1985). Another,

less controversial method of improving a child’s biological start is to support the needs of the pre-natal foetus.

The growth of a baby in the womb is something that is vague in UK law. In *Medical Law* (Kennedy and Grubb, 2000, p.1487), the authors claim that “the ‘born alive’ rule is now unassailable in England”, meaning that the child has no rights as a person until after it is born. A case in British-ruled Ireland in 1891 showed this when a judge ruled against damages to a child who was injured while in utero, but ruled in favour of damages after birth as “The plaintiff’s right to compensation came into existence only when she was born” and that it was only then that “she commenced to have rights.” (Walker v. Great Northern Railway Co. of Ireland, 1891). Kennedy and Grubb seem to indicate that the law has not changed in over a century.

Steedman (1986, p122) writes that post-war British society gave children the feeling of “a right to exist”. However, this right is only after birth, it seems. This paper avoids going into *the right to life*, but will touch on the *right to appropriate sustenance and protection from damage* for pre-natal children. Although there has been little change in British law, recent years have seen some states in the USA bringing in state laws which, according to Sexton (1992), recognize that the foetus is a separate legal entity regardless of live birth. This seems to bring protection but, as Janssen (1999) and Linder (2005) note, the US Supreme Court decided in *Roe v. Wade* that *person* written in the Fourteen Amendment *does not include fetuses*, and therefore they do not have protection under the constitution, although they may have protection from other sources. This leaves it difficult to protect the unborn from abuse such as malnutrition or poisoning from, for example, an anorexic or alcoholic mother.

It seems that the biological “right to a good start” is not yet one defensible for all children. While few

will argue that this is best for children, we also need to take into account what is best for society, making it more difficult to be clear about the choices that should be made by the different stakeholders in Figure 1.

## 2.2 Immediate environment

State intervention is discussed by Thomas (2009), who argues that the *laissez-faire* of Goldstein et al (1973) has been rejected and a more involved state is currently more in vogue. However, it is not clear *how* involved the state should be in the child's immediate environment (a part of which is the family), with options ranging from a (family) supportive state, a state that has a duty to intervene, and a state that gives children their own rights within their immediate environment. There is also the issue of children affecting each other, with Frank (2005) finding that children can feel safer in groups. Morrow (2008, p.66) tells us that siblings are "significant others" and we should research a model seeing "family members as interdependent at different stages during their life course."

Bullying can also be part of children's immediate environment (Frank, 2005) along with the choices children may make regarding this, especially after entering school – an extension of their environment. Cyber bullying of children by their peers is a recent trend, with some victims feeling forced to choose suicide to escape, as shown by Harkin (2012). Bullying is an international problem, with a Swedish study by Thornberg and Knutsen (2011) giving the main reasons for it as the individual characteristics of both bully and victim, rather than the social environment. As it affects the lives of children, it could be argued that making them more competent at dealing with bullying can be one way in which the problem could be tackled. After all, having an environment free of threats such as bullying could be interpreted as a right of the child (Thornberg and Knutsen, 2011), and the decisions children make (or the personality they show) seem to

affect whether such bullying takes place, according to their study. This is only part of the story, as bullies need to be tackled too. This could be one area where input from children could pinpoint effective ways to deal with the problem as shown by their study of bullying, which used the opinions and experience of 176 young people aged between 15 and 16.

## 2.3 Society – and perspective on children's rights

Dingwall and Eekelaar (1983) say that all children have "an equal claim for optimal conditions of upbringing", adding that this is when conditions are compatible with society's ideological and economic structure. This introduces the third 'component' of the child; society.

Although society perceives children as not being able to understand politics and the political area, they actually can understand (Thomas, 2009). Wells (2009) says that children get involved in international politics in spite of the orthodox thinking, influenced by Piaget, that they cannot, and also shows that they can hold political ideas. The Piagetian idea that children are, essentially, *adults in waiting* can affect the perspective we have on children's rights, especially on those which require competency in decision making on issues which affect them and their lives.

## 3.0 Competence as decision makers

Wells (2009) argues that children can be active although gives us the caveat that children, once given power (albeit often in times of social stress), can police society aggressively. She also warns us that they can become the pawns of leaders or would-be leaders in society, from schools (group think) and teachers to warlords and new regimes. So, although children can and do become decision makers at a young age in the case of, say, a lengthy civil war which removes adults, Wells (2009) casts their *competency* in doubt. She suggests that children may be too impatient and intense, due to their inexperience.

#### 4.0 Issues affecting children's lives

Do children want to be involved in decisions regarding issues affecting their lives, or are they happier having an adult decide for them? Kellett (2009) says that we also should respect the right of the child to decide they do not want to participate. Nonetheless, a study by Graham and Fitzgerald (2008) in Australia, found that children (aged 13-18) wanted such participation, and viewed participation as not important only for the results of getting involved, but because it recognised their place in the cultural and social life around them, giving them an increased feeling of self-confidence, respect and esteem. This suggests that children could benefit from participation per se, regardless of how the topic affects their lives. Adults can be seen to have similar needs, such as when they enjoy discussing the fortunes of a certain sports team which may be in a different country than that in which they reside. Having someone else recognise one's opinion (even if they may not agree with it) brings with it self-recognition and self-esteem. This reflection makes me agree with Graham and Fitzgerald (2008) that recognition is a vital human need, rather than something 'bolted-on'. They refer to children in their study but it can be argued that it is true for all.

Regarding children having the right to be involved in issues relating to their own lives, Kellett (2009) reminds us that children have a valuable *insider* view of their world to which adults no longer have direct access. This could empower children to make a positive contribution, which is one of the five things identified as important to children's lives by the *Every Child Matters* agenda (DfES, 2004). However, Skivenes and Strandbu (2006) present four procedures which facilitate effective child participation, and just listening to children's needs does not fulfil all of them. They state that children's arguments must be taken seriously and that children should be informed of what was done (and how it was done) after a decision. Kellett (2009) claims this is rarely done in practice.

#### 5.0 Should children participate, and can they?

In order to participate, "children ... must be seen as active" (James and Prout, 1990, p8). Since children, as main actors, are already actively involved in issues that affect their lives, it could be argued that they are participating. However, in situations where main decisions are being made on their behalf, this participation can be seen as shallow. As Kellett (2009) reminds us, activities must be *truly* participatory or involvement might lead to disillusionment. According to Roche (1999), citizenship is connected to rights.. While, historically, active citizenship has connections to participation (Arnstein, 1969), children have tired of "tokenistic consultations" that lead to no change Stafford et al (2003). This means that children are not afforded the right to make real decisions on issues in their lives, regardless of the competency of the child, hence cannot be said to be participating at a level which equalling active citizenship.

Why are children kept at arm's length? Kellett (2009) gives the reason as children lacking knowledge and skills, while Moses (2008) says that children can be excluded from the beginning by the language and behaviour of adults. However, Kellett (2009) goes on to give an example (in the WeCan2 case study, Aoslin et al., 2008) of how these problems can be overcome once a toolkit is provided offering practical solutions. Aoslin et al (2008) indicate that taking time to explain ideas clearly to children can have positive effects in increased levels of participation and a sense of achievement.

In other words, children can participate if given suitable support. However, *should* they participate? Or, do they have *the right* to make decisions? If children have the knowledge to participate, and are aware of the consequences of decisions made and are willing to accept them, then they should *be given the opportunity* to be involved in making such decisions, *if* they desire to take that opportunity. To paraphrase article 12.1 of the UNCRC, we must allow the child

to express their opinion in matters which affect them, if they are capable of expressing those views, and give them commensurate weight in accordance to their age and maturity. However, we need to keep in mind that some children do not desire to give their opinions (Shier, 2001).

What rights should children have? The UNCRC briefing document describes a child as one that has no political rights (John, 1996). Therefore, if we do give them political rights, are we taking away childhood from them? Does this result in *little adults*? If so, is that a bad thing? These are issues which need to be further researched.

### Conclusions

This paper has revealed some of the issues involved in children's rights, looking at *who* can recognise children as having those rights as well as *what* those rights should and can be. Sometimes, the child does know what is best as long as they have the knowledge, ability and time to think about their actions and their consequences. Some children are competent decision makers on issues which affect their lives, although there will also be cases where children are not competent. In that case, it is best to give support and advice, while making clear the results/consequences of their choices. Giving such an opportunity is, as outlined in the UNCRC, a right of the child. However, we must be careful to teach children about the value of the rights of others too.

This paper has explored the reasons why children may not have the rights that the UNCRC says they should be afforded (given under the three headings of biology, immediate environment, and society), and discussed whether or not children have the ability to fulfil the obligations of having those rights.

### References

- Arnstein, S. (1969) 'Eight rungs on the ladder of citizen participation', *Journal of the American Institute of Planners*, vol. 35, no. 4, pp. 216-24.
- Aoslin, A., Baines, R., Clancy, A., Jewiss-Hayden, L., Singh, R. and Strudgwick, J. (2008) *WeCan2 Research* [Online], Milton Keynes, Children's Research Centre, Open University, Available at <http://wecan2.open.ac.uk/reports.cfm> (Accessed 31st October 2012).
- Chan, C. K. (1985) Eugenics on the rise: a report from Singapore. *International Journal of Health Services*, vol. 15, no. 4, pp. 707-712.
- Department for Education and Skills (2004) *Every child matters: Next steps*, London7, DfES.
- Dingwall, R. and Eekelaar, J. (1984) 'Rethinking child protection', in Freeman, M. (ed) (1984) *The State, the Law and the Family: Critical Perspectives*, London, Tavistock.
- Frank, E. (2005) *How children feel about their local housing estates* [Online], Milton Keynes, Children's Research Centre, Open University, Available at [http://www8.open.ac.uk/researchprojects/childrens-research-centre/files/crc-pr/file/ecms/web-content/Local\\_Housing\\_Estate\\_Feelings\\_Eleanor\\_Frank\\_11.pdf](http://www8.open.ac.uk/researchprojects/childrens-research-centre/files/crc-pr/file/ecms/web-content/Local_Housing_Estate_Feelings_Eleanor_Frank_11.pdf) (Accessed 30 October 2012)
- Gilliom, J. (2001) *Overseers of the poor: Surveillance, resistance, and the limits of privacy*, Chicago, University of Chicago Press.
- Gladwell, M. (2008) *Outliers: The story of success*, New York, Little, Brown and Co.
- Goldstein, J., Freud, A. and Solnit, A. (1973) *Beyond the Best Interests of the Child*, New York, Macmillan.

- Graham, A., & Fitzgerald, R. (2008, May) 'Conversations with children: theoretical possibilities for progressing participation', In *Child and youth research in the 21st century: A critical appraisal*, International conference. European University, Nicosia: Cyprus.
- Harkin, G. (2012) 'Family devastated after tragic Erin (13) takes own life after vicious online bullying', *Irish Independent*, 29th October [Online], Available at <http://www.independent.ie/national-news/family-devastated-after-tragic-erin-13-takes-own-life-after-vicious-online-bullying-3277171.html> (Accessed 30th October 2012)
- James A, Prout A. (1990) *Constructing and Reconstructing Childhood*, Falmer, London.
- Janssen, N. D. (1999). Fetal rights and the prosecution of women for using drugs during pregnancy. *Drake L. Rev.*, vol. 48, p. 741.
- John, M. (1996) 'Voicing: research and practice with the silenced', in John, M. (ed) (2006) *Children in Charge: The Child's Right to a Fair Hearing*, London, Jessica Kingsley Publishers.
- Kennedy, I. and Grubb, A. (2000) *Medical Law*. 3rd edn, Oxford, Oxford.
- Linder, E. N. (2005) Punishing prenatal alcohol abuse: The problems inherent in utilizing civil commitment to address addiction. *U. Ill. L. Rev.*, p. 873.
- Moses, S. (2008) 'Children's public participation in the South African context', In *Child and youth research in the 21st century: A critical appraisal*, International conference. European University, Nicosia: Cyprus.
- Parton, N. (1991) *Governing the Family: Child Care, Child Protection and the State*, Basingstoke, Macmillan.
- Roche, J. (1999) 'Children: rights, participation and citizenship', *Childhood*, vol. 6, no. 4, pp. 475-93.
- Roe v. Wade* [1973] 410 U.S. 113
- Sexton, P. A. (1992) *Imposing Criminal Sanctions on Pregnant Drug Users: Throwing the Baby Out with the Bath Water*, WASHBURN L.J. 32, p. 410.
- Shier, H. (2001) 'Pathways to participation: openings, opportunities and obligations', *Children & Society*, vol. 15, no. 2, pp. 107-17.
- Skivenes, M. and Strandbu, A. (2006) 'A child's perspective and children's participation', *Children, Youth and Environments*, vol. 16, no. 2, pp. 10-27.
- Stafford, A., Laybourn, A., Hill, M. and Walker, M. (2003) "'Having a say": children and young people talk about consultation', *Children & Society*, vol. 17, no. 5, pp. 361-73.
- Steedman, C. (1986) *Landscape for a Good Woman*, London, Virago.
- Thomas, N. (2009) 'Children, young people and politics in the UK', in Montgomery, H. and Kellet, M. (eds) (2009) *Children and young people's worlds: Developing frameworks for integrated practice*, Milton Keynes, The Open University.
- Thornberg, R., & Knutsen, S. (2011). Teenagers' explanations of bullying. *Child Youth Care Forum*, vol. 40, pp. 177-192.
- Walker v. Great Northern Railway Co. of Ireland* [1891] 28 L.R. (Ir.) 69.
- Wells, K. (2009) 'Children and international politics', in Montgomery, H. and Kellet, M. (eds) (2009) *Children and young people's worlds: Developing frameworks for integrated practice*, Milton Keynes, The Open University.