



This paper is taken from

*Citizenship Education in Society
Proceedings of the ninth Conference of the
Children's Identity and Citizenship in Europe
Thematic Network*

London: CiCe 2007

edited by Alistair Ross, published in London by CiCe, ISBN 978-1899764-90-7

Without explicit authorisation from CiCe (the copyright holder)

- only a single copy may be made by any individual or institution for the purposes of private study only
- multiple copies may be made only by
 - members of the CiCe Thematic Network Project or CiCe Association, or
 - a official of the European Commission
 - a member of the European parliament

If this paper is quoted or referred to it must always be acknowledged as

Fumat, Y. (2007) The Rights of the Child: A European Invention of Universal Significance?, in Ross, A. (ed) Citizenship Education in Society. London: CiCe, pp 395-400.

© CiCe 2007

CiCe
Institute for Policy Studies in Education
London Metropolitan University
166 – 220 Holloway Road
London N7 8DB
UK

This paper does not necessarily represent the views of the CiCe Network.



This project has been funded with support from the European Commission. This publication reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained herein.

Acknowledgements:

This is taken from the book that is a collection of papers given at the annual CiCe Conference indicated. The CiCe Steering Group and the editor would like to thank

- All those who contributed to the Conference
- The rector and the staff of the University of Montpellier III
- Andrew Craven, of the CiCe Administrative team, for editorial work on the book, and Lindsay Melling and Teresa Carbajo-Garcia, for the administration of the conference arrangements
- London Metropolitan University, for financial and other support for the programme, conference and publication
- The SOCRATES programme and the personnel of the Department of Education and Culture of the European Commission for their support and encouragement

The Rights of the Child: a European invention of universal significance?

Yveline Fumat
University of Montpellier III (France)

Abstract

European countries have legislated for the protection of the child, culminating in international declarations of the Rights of the Child. In what spirit were these different declarations proclaimed? Were differences in form or content at issue? How can the acknowledgement of the weak and vulnerable state of a child be reconciled with the recognition of his/her freedom as a rights issue and that increasingly important of equality? What can be made of the coexistence of rights and protections specific to childhood and those of adulthood? We explore the status of these historic texts - linked to a certain context and proclaimed in a well-defined space - and their relation to universality.

Children by virtue of their physical weakness, their intellectual immaturity and their moral credulity are vulnerable beings, constantly threatened by domination, exploitation and manipulation. They need protection to survive, to live and to develop well.

Maltreatment can be physical - blows, deprivation of food, exhausting work - but it can also take the form of sexual abuse. The child is then abused not only physically but also morally, by making him/her believe that these practices are *normal*. Humiliating domination when the child is constantly treated with contempt and severely reprimanded is yet another manifestation of maltreatment. Past history offers countless examples of beaten, abused, humiliated, exploited children, those put to work at the age of five or enrolled in combat at the age of twelve. Since the dawn of time children have been the unfortunate victims of a social violence which is merciless with the weak.

But is it not precisely this question that should be put into perspective, acknowledging that maltreatment depends on the degree of general violence (at one time husbands beat their wives, their children and their dogs), but depends also on changing values and beliefs?

This 'maltreatment' may have appeared as an *appropriate way of bringing up* children. Education based on physical suffering - flogging, deprivation of food, fear of the dark, threats of abandonment - is not so ancient. Carried out in theory 'for the good of the child' - to train and correct him/her - it was linked to a conception of sin, to a dominant representation of the imperfection of the child who was 'inherently evil'. Child labour was a necessity for families in the 19th century - and still is in many countries. Can *the exploitation of children* be so easily condemned? Did we in France not learn about children being enrolled at a young age in the army during our lessons on the glorious past of the French Revolution? (Bara aged twelve, his heart pierced by a sword, figured on the front cover of schoolbooks in 1790).

This paper is part of *Citizenship Education in Society: Proceedings of the ninth Conference of the Children's Identity and Citizenship in Europe Thematic Network*, ed Ross A, published by CiCe (London) 2007. ISBN 978-1899764-90-7; ISSN 1470-6695

Funded with support from the European Commission SOCRATES Project of the Department of Education and Culture. This publication reflects the views of the authors only, and the Commission cannot be held responsible for any use which may be made of the information contained in this publication.

Should we not admit that the manner in which childhood is considered depends entirely on the evolution of societies, their level of development, their family structures, on some historically variable customs and beliefs and values which are very different from each other?

The question then becomes: Why is it that at a certain period it was considered necessary to declare the 'Rights of the Child' and in what way would these rights be considered 'universal', valid for all societies in all places and at all times?

The idea of declaring the rights of the child is closely linked to a global evolution of societies that have less need for the physical work of children (progress in rational knowledge and technical tools) and that give more freedom to the individual ('individualistic' societies which loosen the hold of the group over the individual instead of the 'holistic' societies which give priority to the group). The representation of the child changed too when he/she appeared more strongly as the 'promise of the future', when the future and progress became more attractive.

We have had to better understand the nature of the wrongs done to the child. Among all the aggressions that he/she can experience in his/her earliest years, one has to discern those that not only do him/her harm at the time, but also those that destroy his/her future because they hinder his/her development. One has to be aware of the *specificity of the aggression carried out on the child*: not only does he/she suffer at the time but he/she is more or less prevented from growing up in a satisfactory way.

Thus the child in a cupboard: he/she is certainly cruelly abandoned and suffers from profound emotional deprivation; but at the same time his/her mental development (early language learning for example) and his/her future mental stability are also affected.

Thus with child employment: the philanthropists of the 19th century were the first to show that child labour in factories for children of eight years old was not only too hard for their feeble strength but jeopardised their future development causing rickets, making them sickly, underdeveloped, depriving them of education, making them slow learners.

Thus with sexual abuse: durably damaging the victim's future sexual life (inhibition and repulsion of all physical approaches). Better understanding of the psychological damage in the long term has undoubtedly done much for the present greater recognition of this crime.

Thus with the humiliating domination which throws the child back to his/her shortcomings, his/her faults. What satisfactory identity can be developed in one who always feels themselves to be worth 'less than nothing'?

It is the increasingly strong conviction that the present sufferings of a child jeopardise his/her future, that the deviations of or restraints to his/her development increase *to the power of two the damage that has been done to him/her*, which is also undoubtedly at the root of a collective desire 'to better protect childhood'.

The first declarations of 1924 and 1959

For over a century European countries had drawn up national legislation and set up institutions for the protection of childhood. These laws were crowned by the International Declarations of the Rights of the Child. A first text was adopted in 1924 by the League of Nations: the Declaration of Geneva was written by Eglantyne Jebb, who was the founder of the International Save the Children Union.

After the Second World War, the Declaration of Geneva was adopted in 1946; UNICEF was set up. The Universal Declaration of Human Rights mentions children in Article 25: 'Motherhood and childhood are entitled to special care and assistance.'

It is the desire to define this special care more precisely that leads to the Declaration of the Rights of the Child in 1959 setting out ten principles (adopted unanimously by the 78 member countries of UNO).

The declaration of 1959 refers first to the Universal Declaration of Human Rights then to the Declaration of Geneva. Next it says '*mankind owes to the child the best it has to give*' and states that these Rights of the Child are proclaimed '*to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth*'. The first Principle states that all children are entitled to these rights without any exception whatsoever, without distinction or discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It therefore adopts the text of the Universal Declaration of Human Rights for children and strongly reaffirms its universal significance.

The second principle states that the child shall enjoy *special* protection so that he/she may grow in a healthy, normal way *physically, morally, spiritually and socially, in conditions of freedom and dignity*. It emphasises the '*best interests of the child*'.

The principles which follow define '*special protection*'. *Principle 3*: entitlement to a name and nationality; *Principle 4*: social security, the right to grow; *Principle 5*: support for the handicapped; *Principle 6*: necessity of love and understanding, need of a family, of the mother in the earliest years; particular state support for children without family; *Principle 7*: the right to education; *Principles 8, 9 and 10*: protection from all kinds of negligence, of cruelty or exploitation, of racial or religious discrimination.

Two remarks may be made here:

The declaration has therefore a clearly affirmed universal significance.

Nevertheless it is cautious on two points and this allows a certain flexibility of interpretation matching the unequal development of countries: Education should be free and compulsory *at least in the elementary stages*. Child employment should be refused especially work which may hinder the development of the child and damage his/her health: '*The child shall not be admitted to employment before an appropriate minimum age*'. The expression

is sufficiently vague to allow variations in the applications according to the country

The declaration is of moral significance only; it bears no legal weight.

This is an important text but even if it recommends that national governments *strive for their observance by legislative and other measures* it is only a recommendation. The call for giving the text *wide publicity* is in accordance with this. For the moment, it is a question of principles as the title shows: *10 principles*.

This status of *declaration* which is only a moral commitment changes with the Agreement of 1989, signed two hundred years after the first Universal Declaration of Human Rights.

The Convention of 1989

This convention is not only '*open for signature by all state parties*' but should also be '*ratified*'. By this, countries undertake to implement it by law and to report on the difficulties and the progress of its implementation (Article 44). It has a legal, restrictive status and not only a moral one.

Philosophical and legal thought from the beginning of modern times put limits on *Patria Potestas*. No longer did a father have the power of life or death over his son (as in Rome where he could accept or refuse the child, expose him, abandon him, give or sell him). The thinking established from Hobbes (1651) to Locke (1689) then Rousseau (1762) and Kant (1790) lead to the destruction of the sacred aura surrounding the power of the father and to criticism of its naturalist foundations. An echo of these times past can be heard in Kant's statement: 'Parents cannot destroy their child as if he were their work or property, neither can they abandon him to chance' (*Groundwork of the Metaphysics of Morals* 1785). Paternal authority can no longer be thought of as an absolute power; it is temporary, provisional and must be carried out for the good of the child. The child has a fundamental right: that of being brought up *to become a free individual*. The child is therefore a person and already the theoretical writings of the philosophers of several centuries accord him/her dignity.

The first Declaration of the Rights of Man and the Citizen of 1789 formalised the new principles of Modern Times (those set out by Locke and Rousseau) and proclaimed the freedom and equality of all men, and one may say that implicitly it already concerned women and children. This can be said *now*, however, because this implicit understanding remained implicit for two centuries. Even if children and women as human beings were logically included in these principles, their state of dependence, their difference concealed their equality, and prevented it from being thought, admitted and recognised. The 'Rights of the Child' *included*, in a way, in the Declaration of 1789, had to wait two centuries before being formulated for themselves. It was only in 1989 that the Convention on the Rights of the Child picked up the thread of the Declarations of 1789 and 1948 by really setting out the freedoms: in Articles 12 (of opinion), 13 (of expression), 14 (of conscience, thought, religion), 15 (of association and peaceful

assembly), 16 (from interference with privacy, from attacks on his/her honour) and 17 (of access to information).

The previous international texts on The Rights of the Child (the Declaration of Geneva of 1924 and that of 1959) put the emphasis on the *protection of childhood*. They considered that the child, 'by reason of his physical and mental immaturity' needed 'special protection' (1959). For the first time, in 1989, to this 'special protection' which was certainly not forgotten and was indeed even developed (54 articles instead of ten in 1959), a certain number of articles touching explicitly on 'freedom' were added. From being aware above all of the differences of the child, of his/her dependence, we suddenly discover his/her similarity, his/her status as a human being.

Thus in the 1989 Convention, articles which aim to protect the child, to make him/her happy - especially by avoiding suffering - are set down alongside articles which aim to increase his/her freedom, to give him/her real means of action. This hitherto unknown mix appeared to some as eclectic or even incoherent.

The problem, then, is definitely the affirmation of freedom of opinion, of expression and of association of the child, which seems almost absurd to some people; even the 'right to privacy', which causes others to smile. We can discern the global indignation of some in the face of these Rights/Freedoms, an incapacity to imagine the freedom of the child outside parental authority, a difficulty in recognising that parents do not always protect the child, the impossibility in admitting, right to the end, that the child should be under no domination, even that of his parents.

They rejoin the first Declaration of Human Rights in recognising that the Child is part of humanity, and in this sense the equal of adults. But they do not forget however that the difference of the child can lead to domination of him/her, to maintaining him/her in parental dependency even if this dependency claims to be 'for his/her own good'. (They can counterbalance excessive and harmful protection; sometimes they are protecting from too much protection)

By pushing the recognition of rights and liberties to the limit, the Convention allows us to really consider the child as a 'subject of rights', as an individual, separate from his family. By the same token, it is the starting point of the building of his/her independence.

A special law in France (6 March 2000) instituted 'a commissioner as an independent authority for the defence of children'. (Claire Brisset was appointed to this post.) This 'defender' can be contacted directly, by *the child* him or herself, by his/her family or by an association. The defender is authorised to examine cases in which individual or collective rights have been breached.

It is a further step forward, a kind of consolidation, for this new institution was set up to promote the rights of the child, to organise information campaigns about these rights and the effective respect of them.

Conclusion

Even if the Declarations were invented in Europe, they have taken on a progressively more universal form. One country which ratified the 1989 Convention has now recognised its worth and has undertaken to apply it.

The gap which exists between Rights and reality can be judged differently: Some think that Rights have only ever had an ideological function of illusion - a mask - and that social reality (economic and cultural) will never be changed by international law. Others, more optimistic, consider that the implementation of Rights is gaining ground (with a greater number of countries signing) and is increasingly carried out in every country, and that one day the reality will meet the ideal. Although one might think that a gap will always exist and even if one is less optimistic, it must be admitted that the Declarations of the Rights of the Child represent guidelines that aim for a better world, one towards which we must strive and always try hard to achieve.

References

Brisset Claire : *15 Millions d'enfants à défendre* Albin Michel Paris 2005

Renault Alain : *La libération des enfants* Calmann levy Paris 2002

Déclarations des Droits de l'Enfant 1959 et 1989 in « Claire Brisset » (at the end)