

# "Justice and Security For Our Children" The Rights of Children and Education

By Noel Preston

Jean Jacques Rousseau is arguably the grandfather of the modern discussion amongst educational theorists regarding the rights of the child. His own childhood was by contemporary standards a disaster and that of his own children even more so; nevertheless Rousseau laid down a programme for the education of one fictional male child, *Emile*. The proposal was radical in as much as it implied a child-centred focus for learning rather than a content-centered approach associated with the classical and mediaeval curriculum. Writing just before the dawn of modern democratic practices and two centuries before conventions of human rights, this romantic rogue reformer, was midwife to the tradition in education which focusses on the child. The discussion of this paper emerges from that tradition.

Though I am a father and teacher of teachers, I confess that I have paid little attention to the substantial question of the rights of children. It is a question made all the more urgent by a growing public awareness that children, as exemplars par excellence of 'the little people' of the human community, are frequently abused and oppressed. While many of us have learnt to be sensitive to instances of racism and sexism, we overlook the fact that children share the forgotten and excluded status of the minority groups in history which Martin Luther King Jr. has called 'nobodyness' (Franklin, 1986: 1).

So on the one hand, the human tendency to be careless and unjust make this discussion necessary, while on the other, the human capacity to be caring and just makes this discussion possible. Such a realisation lies behind the draft United Nations Convention of the Rights of the Child.

The adoption of that convention by the General Assembly of the United Nations would have profound implications for Australian society providing that our Federal Government ratifies it, which is surely a reasonable assumption. It would place obligations and opportunities on our Federal

Government in areas like child welfare and juvenile justice where there is presently no Federal involvement. It may also have implications for education; for the draft convention is not silent on education and the Federal Government Minister Dawkins, indicated a keen desire to make an impact on children's education throughout the states of the federation. In other words, it is fascinating to contemplate the possibility of this convention being used under the external powers of the Commonwealth to strengthen the capacity of the national government to make decisions regarding pre-school, primary and secondary education, areas previously left to the states.

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Under the provisions of the Convention, governments could be expected to act with more commitment in certain areas such as the education of *disabled children*. Further, Article 28 which requires governments to make secondary education available and accessible to every child, and to take appropriate measures including financial assistance in cases of need, could arguably be used as an imperative for government to act on the education of homeless youth. The recent Human Rights Commission Inquiry into homelessness found that such children are effectively denied access to education, and that financial and other support is not adequate or sufficiently accessible, to enable them to continue education or training.<sup>1</sup>

Given these introductory reflections and before identifying specific contemporary schooling issues and outlining some principles for educational policy on the rights of children, I propose to step back and analyse, rather philosophically but briefly, certain concepts and assumptions which underpin this discussion.

## CLARIFYING SOME CONCEPTS

Though we may take the commonsense view that we know what 'human rights' are, or even that there are such, or indeed, that

we know what 'a child' is, or what 'education' is, these terms are much more problematic and debatable than they appear at first.

The complexity of this discussion has been identified in extensive literature (Wringe, 1981; Snook and Lankshear, 1979; Edwards, 1985; Cohen, 1980). It is fascinating that this literature avoids a simple, quotable definition of 'human rights'. Lankshear and Snook (1979:8) speak of the language of rights as 'essentially the language of moral conflict'. So it is, for it is an area of competing claims. In the field of education there are the competing claims of parents, students, the community, and of educators, impinging on the establishment of rights.

Some properly inquire, what of the link between 'rights' and 'responsibility'? By this question I do not mean the crude suggestion that 'rights' must be earned by being responsible. Rather, I refer to the reciprocal connection between a claim to rights in society and the exercise of social responsibility. It is this question which leads the Universal Declaration of Human Rights to prescribe the obligation to exercise rights only to an extent commensurate with "the just requirements of morality, public order and the general welfare of a democratic society".

Immediately we canvass these issues we are engaging in debate which rests on philosophical assumptions about human beings and society that are quite debatable. Are there 'essential' attributes of so-called 'human nature'? Are human beings primarily 'communitarian'? Are 'rights' an adequate foundation for any presumed 'social contract'? Each of these issues is the prelude to an extensive debate within a long tradition of social philosophy.

It is simply impossible to pursue an exhaustive examination of the range of questions that demand conceptual analysis in this discussion. I have elected to raise three issues to illustrate the conceptual minefield associated with this topic and as a prelude to a more practical, policy-oriented consideration of the topic:

1. What is childhood?
2. How do rights relate to justice?
3. To how much education is there a right?

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## 1. WHAT IS CHILDHOOD?

Childhood is a socio-cultural construct and a relatively recent one at that – and indeed, one which may have a short future (Postman 1983). Cohen provides a starting point for our consideration:

“The change from childhood to adulthood is a process of gradual change like the ripening of fruit or the losing of leaves. Capacities are not acquired at a moment but developed over time. A newborn clearly does not reason; a normal sixteen year old clearly does. But what about the normal 7 year old? Who would want to pick the age at which the child attains the capacity to reason? With children, unlike trees, we do not simply acknowledge a period of transition. Instead we draw lines, and we do so in part because we need to separate those with rights from those without. As we say, designating rights requires drawing lines. So we say that the age of reason is 18. We do this and expose our line-drawing to the hazards of the slippery slope.” (Cohen 1980:49)

I would add that it is not always helpful to link children's rights too closely to the individual's capacities such as reasoning or physical strength. Indeed the case for rights arguably arise precisely because of a lack of those capacities. Consider the view, that 'childhood' has less to do with chronology and development and more to do with 'power'.

The question “what is a child?” is answered by those in authority – those with power in a child's world. So children are defined in relation to the powerful. To be a child is to be dependent in some significant measure on a powerful adult. To cease to be a child is to gain power, autonomy. It is not necessarily a matter of chronology. Ask the black man of North America who in past generations came to know his powerless status by the reference, 'boy'. If being a child is something about one's powerlessness, then the discussion about rights of children is something to do with maintaining respect for, and the essential humanity of one who is quite powerless without those rights.

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To sum up. What constitutes childhood is a vexed question. It does vary from one cultural context to the other. However, there are certain biological characteristics certainly prior to puberty which give childhood such a universal character that we may engage in a practical discussion about the rights of children. Having said that, I am

maintaining that the fundamental character of children is relative powerlessness vis-a-vis the world, especially the adult world, and that characteristic cannot be simply limited to chronological age. Because being educated is demonstrably linked to assuming power over one's world and one's life, the claim can be made that those concerned with the rights of children to overcome their powerlessness will make a commitment to the education of the child.

## 2. HOW DOES THE CONCEPT OF 'RIGHTS' RELATE TO JUSTICE

We have answered that there may be a conflict of rights. Social theorists such as John Rawls (1973) have observed that this conflict may be resolved, philosophically, via a theory of justice. So, for example, conflict between the basic claims for human freedom and equality in a human community are the subject of arbitration around the notion of justice as fairness leading Rawls to delineate the principle that “each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all”. Following through on this principle with Rawls we encounter the claim that “equality of opportunity” is an insufficient policy principle especially when we are seeking a just distribution of social goods such as education. Drawing on the Aristotelian dictum that there is nothing so unequal as the equal treatment of unequals, a theory of justice leads us to the principle of warrantable discrimination or affirmative action in favour of those who are disadvantaged in a society.

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In this view of human rights then, it is not sufficient to talk of equal rights. Justice as fairness, in particular socio-economic conditions, maintains a priority of right to say women, blacks, or the poor; this consideration is particularly pertinent to the debate about the right to education.

## 3. TO HOW MUCH EDUCATION IS THERE A RIGHT?

That there is a right of children to education is a reasonable assumption. It rests on many other reasonable arguments for children's rights: the right not to be misled, or the welfare right not to be left in a state of gross ignorance and debilitating dependency. But how much education satisfies this right?

In some measure, this has been an issue within the current Australian debate over the introduction of a Higher Education Contribution Scheme levy. Do Australians have the

right to tertiary education without fees and without regard to socio-economic status? Or is it a reasonable satisfaction of the right to education to provide free, public schools to the secondary level only?

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The questions within this question of 'how much education' are the prior questions, 'what is education for', and 'what does education achieve?'

One set of answers to these questions revolves around the idea of education as socialisation. In this view the individual needs as much education as will equip him/her to contribute to, and benefit from, society. In other words, in a society like ours, sufficient education would, at the very minimum open up prospects of employment and an understanding of what it is to participate in a democracy. But one might pursue this discussion into other less instrumental or utilitarian arguments. Doesn't the individual have the right to pursuit of knowledge through education as an end in itself, making education a right nearly as essential as the right to eat or health care?

Wringe's discussion of this question (1981) points in a helpful direction:

“As a compromise between the right to be educated to the full extent of one's capacities, and the minimal level of education attainment..., it may be suggested that the individual is entitled to receive education from the community, at least until he (sic) has gained sufficient insight into the pursuit of knowledge and the various modes of human understanding to decide for himself (sic) whether to continue this pursuit by his (sic) own efforts and at the expense of whatever resources of his (sic) own he (sic) may possess.” (Wringe 1981:148)

This brief discussion has not answered many of the debatable questions associated with our topic although it has alluded to some directions for resolution. It has demonstrated that the policy matters to be determined within the discussion rest on assumptions which require close philosophical analysis and conceptual clarification.

## SOME SCHOOLING ISSUES

There is seemingly no end to the list of contestable issues about schooling which emerge in the debate about 'rights and education'. I will identify some of these briefly.

1. There are rights associated with the *protection of children*. Education may be

seen as giving children protection from their vulnerability in an adult society: schooling should give them a protected environment from which they may graduate to the adult world. Within that context there are specific protective rights for the physical and emotional well-being of children such as the right to be protected from bullying (McKerracher, 1989) or, a more controversial claim, the right to have indications of child abuse notified to appropriate authorities. A related matter is the discussion about the imposition of disciplinary and punishment measures within schools; this will be discussed in greater detail later.

2. Another set of rights concerns the availability of education. Is there a right to 'free' education? Is it a contradiction to speak of 'free' education as compulsory: is there a right to stay away from school? Further, what requirement of dress (uniform) is it right for school authorities to make of children? Also, what rights of school choice should students have? Do practices of zoning which prevent students from outside a given area attending a particular school, infringe upon reasonable rights? In this matter of educational choice, an issue of rights is arguably present in the distinction between the private and public school system; this will be discussed in greater detail later.

3. Obviously there are a range of rights issues relating to the presence of minority groups in schools. Racial, ethnic or religious minorities may conceivably claim special rights. The vexed debate about mainstreaming of disabled students and of mixed ability grouping generally invites close consideration of particular rights (Bailey and Bridges, 1983; Australian Journal, 1989: 40-41).

4. Then there are contentious items to be considered in curriculum selection. Are there certain topics on which every child has a right to education, which (in a society where the family's role is in flux) should therefore be covered within the school curriculum? Is there a right to sex education, to religious education? Is there a right to be educated in a manner which is not indoctrination? Is there a right to be taught about rights?

5. As we have observed elsewhere, the right to education is a maze of competing rights. How do we reconcile the rights of parents, the rights of teachers, and the rights of society with the right of the individual child to education? In an attempt to achieve this reconciliation, legislation and regulation leads to further arguments about rights such as the right of access to one's school file.

Let us subject two items to closer scrutiny.

Few would doubt that there is a place for discipline in the education of a child. However, many would claim that schools

and school teachers have often abused their responsibility to discipline. Corporal punishment, in particular, has little support amongst those who emphasise the rights of children (Ware, 1983) and it is strange to imagine an argument that a child has a right to corporal punishment at school. Even though schools in the British tradition tend to retain some element of corporal punishment, this is a practice widely rejected in other school systems notably throughout Europe. However, corporal punishment is but one dimension of a wider issue. What of detention, suspension or the imposition of penalty work? Clearly, because of the potentiality for abuse of teacher power over students, limits must be placed on such practices. Further, they should be subject to the test of what educational purpose they serve if such disciplinary measures are to be consistent with an overriding right of children to education.<sup>2</sup>

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The question of discipline is set within a wider analysis and understanding of power in which an ethos of 'them' and 'us', and controlling power rather than empowerment is the order of the day.

In some parts of the school system, the power struggle is worse than in others. Franklin reports (1986: 61) that in some American schools the threat of physical assault is such that police patrol corridors and doors are locked to keep out ex-students. In parts of Australia a similar trend is emerging: in some Northern Territory schools police are attached to schools and elsewhere security guards and barbed wire protect schools from vandalism. Too frequently, schools have had the character of the 'total institution' structured around a hierarchical distribution of power. In the early years of schooling the imposition of this power relationship upon young people presents few problems; given their relative inexperience and youthfulness, they offer minimal resistance. Yet, even at this stage, teachers are aware that their professional standing and their right to a measure of autonomy within the classroom are primarily dependent upon their ability to 'keep order' and the class 'under control'. In the large high schools where a percentage of students invariably feel alienated and remain at school against their desire, the battle for control and survival is intensified. The consequence of the power struggle for a secondary system over which more and more teachers and principals are despairing

should not be underestimated. It is a traumatic social climate in which the vital issue of rights must be addressed.

Another case of the powerful and the powerless arises from the distinctions between the private and public school systems. Here we encounter further social and ethical questions that are highly contentious but are, arguably, related to a fundamental rights issue: the distribution of educational resources in our society.

Since the debate about State Aid to non-government schools suffered a seemingly terminal illness, governmental policies have ensured that more and more public resources are provided for non-government schools. Though there are undoubtedly poor private schools, the disparity in terms of conditions and resources between the well-endowed independent schools and the average state school is transparently obvious. Numerous studies have demonstrated this (Connell, 1982). One social and ethical question which emerges from this disparity is whether all children are entitled to an education which minimises social inequities rather than one which exacerbates them. The principles of freedom and choice as rights intersect here with the objective of human rights serving social justice and social harmony. These considerations do not necessarily lead to a philosophy which requires the abandonment of independent schools; however, they do presume, at least, social responsibility from the private sector and a provision of resources in the public sector which is aimed at equality of education outcomes across all sections of the schooling system.

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*schooling must become "an apprenticeship in democracy"*

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The U.N. Convention on the Rights of Children asserts a right of all children to education of the highest possible standard. As Shirley Allen, President of the Australian Council of State School Organisations, asserts, "If we interpret this to mean only a right of access to schooling we take the easy road to superficial compliance – the hard road is to interpret that right as a guarantee of effective learning for all children". (Aust. Journal, 1989: 47) Arguably, to give effect to that right, public education in this country needs a higher proportion of government provision for education.

#### CONCLUSION

This overview has demonstrated not only that there are many facets to the discussion about education and children's rights but also that there is a case for society and its educational systems to define rights more clearly. There have been attempts to codify educational rights but in the Australian context they have been occasional and sporadic (Birch, 1977; Knight, 1985; Wringe, 1981). Perhaps the Federal Minister



for Education, in this year of consideration of the Declaration of Children's Rights, might place the task of defining educational rights high on the agenda of the Australian Education Council.

Throughout this paper I have argued that the task of defining educational rights centres around resolving questions of power in educational relationships. The status of 'children' and 'students' is determined by the perceived and real use of power in their world. The dilemmas of rights regarding discipline hinge on an approach to power in the school; the rights of the private and public sectors of education revolve around how power is defined in a particular political system.

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When the issue of power is addressed as central in the rights debate it poses more profound questions for educators. It invites the search for an educational perspective or philosophy which transforms the nature of schooling as it has been practised in the liberal and vocational traditions. If the rights of all are to be nurtured in our schools then we need to move toward what has been described as the empowering school, or a negotiated education, within a socially-critical approach (Kemmis, 1983). As Tony Knight suggests, schooling must become "an apprenticeship in democracy" (1985).

Knight defines democratic schooling as that which "integrates students to a formative learning process, and encourages the widest access to knowledge and decision making

within school and community" (1985: 6). Obviously this approach includes a new approach to school governance where decision-making is genuinely shared, where student and parent councils are not merely tokens. It presumes also that everyone is being educated in democratic citizenship, experimenting with their potentialities but also becoming aware of limitations and responsibilities. Consequently, the curriculum will involve analysis and debate on social issues, examination of the history and logic of individual rights, and an appreciation of the struggle for equity. All areas of knowledge will be subject to a social and ethical review. Democratic schooling will be an ongoing objective never fully attained but never abandoned. This approach links 'rights' to 'social justice', and redefines concepts such as 'freedom' and 'autonomy' generally regarded as fundamental to a progressive educational philosophy. At the same time it avoids a crude or simplistic libertarianism. Indeed it preserves a sensitivity to competing rights placing authority appropriately within the learning context. According to Paulo Freire, the Brazilian educational philosopher:

"The democratic teacher never, never transfers authority into authoritarianism. He or she can never stop being an authority. Without authority it is very difficult for the liberties of the students to be shaped. Freedom needs authority to know that it has its foundations in the freedom of others, and if the authority denies this freedom and cuts off this relationship, this founding relationship, with freedom I think, that it is no longer authority but has become authoritarianism (Freire and Shor, 1987: 91).

Such a dialectical appreciation of the interactions within a human rights approach to education is the cornerstone of the philosophy of education underscoring the

discussion in this paper. It is fundamental to the achievement of child-centered education and the process which was initiated by social critics such as Rousseau.

#### References:

- Australian Journal of Early Childhood*, (1989) "The New Convention on the Rights of the Child", Vol. 14, No. 2, April 1989.
- Bailey, C. and Bridge, D. (1983) *Mixed Ability Grouping: A Philosophical Perspective*, London: George Allen and Unwin.
- Birch, J.K.F. (1987) *Rights in Education: The Australian Conundrum*, Melbourne: National Press.
- Choice, "State Schools - Your Rights", February, 1985 pp9-13.
- Cohen, H. (1980) *Equal Rights for Children*, New Jersey: Littlefield, Adams & Co.
- Connell, R. et al (1982) *Making the Difference*, George Allen and Unwin, London.
- Edwards, P. (1985) "Teaching and Learning About Rights", *New Education* Vol. 7, No. 1 & 2, 1985, pp103-109.
- Franklin, B. (ed) (1986), *The Rights of Children*, Oxford: Basil Blackwell.
- Freire, P. and Shor, I. (1987) *A Pedagogy for Liberation*, London: Macmillan.
- Knight, T. (1985) "An Apprenticeship in Democracy", *The Australian Teacher*, No. 11, Feb. 1985, pp5-7.
- Koch, T. (1989) "Laws Limit Detentions, Caning", *The Courier Mail*, 5 August, 1989, p 1.
- McKerracher, B. (1989) "Schools Without Fear of Bullying is a Child's Right", *The Age*, 28 February, 1989, p22.
- Postman, N. (1983) *The disappearance of Childhood*, London: W H Allen.
- Rawls, J. (1973) *A Theory of Justice*, Oxford University Press.
- Snook, I. and Lankshear, C. (1970). *Education and Rights*, Melbourne University Press.
- Ware, H. (1983) "Corporal Punishment in Schools and the Rights of the Child", Human Rights Commission, Discussion Paper No. 1 draft, 1983, Canberra.
- Wringe, C. (1981) *Children's Rights: A Philosophical Study*, Routledge and Kegan Paul.

1990 has been designated The International Year of Literacy. The United Nations Development Report estimates that there are nearly 900 million adults unable to read and write. Ed.