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CHILDREN'S RIGHTS: FACT OR FICTION
A PHILOSOPHICAL ENQUIRY INTO THE JUSTIFICATION AND IMPLICATIONS OF ACKNOWLEDGING CHILDREN'S RIGHTS.

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A research report submitted to the Faculty of Education, University of the Witwatersrand, Johannesburg, in fulfilment of the requirements for the degree of Master of Education.

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ABSTRACT

Children are denied rights on the grounds that they are children and therefore do not have the necessary agency. I argue that children should be granted dual rights, those we have by nature of being human and special rights which will be granted in such a way that they can act upon them. I initially look at agency as having two aspects, namely choice and "voice". I then consider various views of rights and views of children. My position on children's rights is based on the concept of group identity which I explore in detail. Finally I discuss the implications of children's rights for education in the South African context.

Key Words

Children, Rights, Iris Young, Political Groups, Assimilation, Agency, Human Rights.

DECLARATION

I declare that this research report is my own unaided work. It is submitted for the degree of Masters of Education in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.

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Lynette Ziller

Second day of September 1999.

This is dedicated firstly, to the rights-holders
from Grade Three to Grade Eleven
whom I taught while writing this.
Your rights were my inspiration;
and secondly, to my friends and family
who believed I could do it when I did not.

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CHAPTER ONE: THE ISSUE OF CHILDREN'S RIGHTS

1.1 MY EXPERIENCES

I remember in about Standard Eight one of my teachers read James Clavell's[1] The Children's Story to the class. I still remember the shock we all felt. A new teacher arrives and in 25 minutes manages to make the children forget their beliefs in religion, family and state. She does this by appealing, falsely, to the children's sense of logic. It seemed unbelievable that the children in the story could have been so easily duped into rejecting their beliefs in religion, family and country. We all felt that the children had in some way been denied something. They should have been protected from being manipulated or brainwashed. As an adult I can now give that something they were denied a name. Those children were being denied their rights. Also as an adult I now feel not that they should have been protected but rather that there was something seriously wrong with their upbringing and education if this could happen. I believe that if children are not given the right kind of education, one which would ensure that they are politically aware and intellectually able to think, reason and understand the society in which they find themselves, there is a risk that the same thing could happen as happen as happened to the children in James Clavell's story.[2] However my project here is not to recreate the world but rather to present a problem, to unpack the issues and to suggest a solution which is not complete but rather a start in a direction in which the issue of children's rights could go.

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[1] Clavell (1982)
[2] Ibid.

1.2 THE BASIC ISSUE

In discussing children's rights we have a choice; we can admit that this discussion is purely theoretical and no matter how many rights we would cede to children we will end up saying that children cannot exercise those rights so the discussion is merely theoretical rhetoric, or we can recognise that children do have rights. Although I do not wish to align myself with the A S. Neills[3] of this world who would have children exercising a complete spectrum of rights, from choices about leisure activities to choosing their own guardians, I do believe that if we acknowledge children's rights we are saying something fundamental about the children who hold those rights. By having rights we become fully human. If children's rights were acknowledged we would have to treat them differently. Parents could not view children as something they own. Schools could not treat children as objects to be trained. A rights holder is not an object. Feminists have long objected to a view of women as sex objects or as reproductive objects and this is because seeing a person as either of these denies other aspects of her, her intellect, creativity and other abilities. Children similarly have been treated as objects and aspects of who they are have been denied.

1.3 THE CONCEPT OF RIGHTS

The concept of rights is an essentially contested concept.[4] As Gallie says,

> There is no one clearly definable general use of any of them which can be set up as the correct or standard use. [5]

Essentially contested concepts are those about which we find debate. This means that the individual user is not able simply to use the concept in the way

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[3] Neill (1968)
[4] Gallie (1958)
[5] Ibid.,p168

she would wish to but rather she has to justify her understanding and application of the concept.

> To use an essentially contested concept means to use it against other uses and to recognize that one's own use of it has to be maintained against these other uses.[6]

Claims to rights can be based either on the idea that recognizing certain rights is a requirement for justice, or on a concept of equality, with every one being entitled to the same things. The use of rights which I wish to defend against all others is based firstly on justice rather than on equality.

If a society is based on the concept of equality then everyone is treated the same regardless of any individual differences. According to Ben and Peters[7] equality means not that everyone is the same, with the same attributes, but rather that they should be treated alike. Equality does not consider that the individual may have particular needs which other members of society may not have. In a sense everyone is given the same piece of the pie.
However in a just society granting of rights may take into account particular needs. Justice is the process of deciding on the terms by which we consider difference to be relevant and our treatment of the individual follows from this.

I am basing my argument for children's rights on justice rather than equality because I cannot argue that children are the same as adults in every way. Rather I wish to argue that children are entitled not to the same basic rights as adults but to a group of special rights. The link between rights and justice is recognised by amongst others, Benn:

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[6] Ibid., p172

> Human rights are the corollary, then, of the equally modern notion of social justice.[8]

Justice is the process of deciding on the terms by which we consider difference to be relevant and our treatment of the individual follows from this. The implications of adopting a rights position based on justice rather than on equality will become clearer later.

1.4 OUTLINE OF MY ARGUMENT

In chapter two I explore different concepts of rights which are not mutually exclusive but which are justified on different grounds, viz., the rights bearer is human, or the rights bearer is able to act upon those rights. She/he has the necessary agency, and so is competent to exercise her rights. The second ground, competency, is a key factor in the denial of children's rights. Because children are not viewed as competent they are denied their normal rights.

It is, however, my belief that children are competent to exercise their rights and that societies have denied children's rights for other reasons. The social structures that oppress and dominate people who are "different" are the same structures that deny children their rights. In this chapter I wish to show that children's incompetence is no different from that of the so called "disabled". Children cannot speak with the same "voice" as adults but that does not mean that they do not have a voice. Should children be given the necessary opportunity to express their voice in the ways in which matter, we would be unable to deny them the rights we hold.

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[7] Benn & Peters(1959) p 108
[8] Benn in Edwards(1967) p199.

Children cannot speak with the same "voice" as adults but that does not mean that they do not have a voice. Should children be given the necessary opportunity to express their voice in the ways in which matter, we would be unable to deny them the rights we hold.

The ways in which we view children can influence our response to them. Do we see them as cute, cuddly babies who will grow up and reach maturity? Or do we view them as thinking, challenging beings who can, given the right circumstances, become functional participants in society? I will look in chapter three at five views of childhood and discuss the implications of each.

Each of the views of childhood described in chapter three denies children's rights because they deny children their voice. So in the fourth chapter I will look at an alternative view of children that tries to understand how it comes about that children are denied their rights and suggest ways in which children could be included in society. In the final chapter I will attempt to sketch the implications of my position in terms of both society and the education of the child.

1.5 A PRELIMINARY TERMINOLOGICAL POINT

In terms of my discussion some preliminary comments about my use of the term "child" are necessary. "Childhood" is a problematic term. We tend to think of it as referring to the period before we enter adulthood, the period in which we are involved in "growing up". Childhood in the broadest sense includes the individual from the moment of birth until she attains adulthood. The term "child", politically and legally has been used in different ways. In her

of Home Affairs is granted. This does not fall away if the marriage ends. Also at 18 the individual can make application to the Supreme Courts should adult status be in their best interests. Up to the age of seven the child has no legal capacity and cannot commit a crime. Between seven and fourteen children can commit crimes but cannot be punished unless proven to be criminally responsible. At eighteen they are no longer provided for by the Child Care Act 74 of 1983. The new Constitution of South Africa, Act 108 of 1996, seems to support 18 as the limit by saying: "child means a person under the age of 18 years"[10] It is not only in the legal sphere that childhood is ambiguous.

> Media reporting of criminal unrest incidents, or undesirable social conditions, can be highly manipulative simply by omitting the information that the offenders were young children, or by the choice of noun describing the perpetrators or victims of the accident.[11]

What is significant about the ambiguity for my purposes, is that the term "child" is not necessarily used in a way that is in the best interests of the children involved. With so much ambiguity involved, any circumscribing of the term "child" would seem to be arbitrary. However I will limit the term to those people between the ages of six and eighteen. This is for three reasons. Firstly, eighteen is my upper limit because I am concerned with political theory and, in South Africa at least, that is the age at which the individual can begin to vote. Secondly, six is the age at which formal education begins and the age at which the child is expected to separate from her primary care givers. Thirdly, the broad age range will prevent a focus on the details of the changes specific to each year. I need to find a broad theory which can apply

[10] Constitution Chap 2.28.3, p 14

across the range. And finally it is within this age range that the child becomes aware of the political sphere. As Greenstein puts it,

> ..., during the last five years of elementary school, children move from near- but not complete- ignorance of adult politics to awareness of most of the conspicuous features of the adult political arena. And the fourth and eighth graders live in quite different psychological worlds.[12]

I am aware that many seventeen year olds would not be happy to be referred to as children but the reason for this is closely related to my motivation for exploring this topic. Life for the child can be experienced as unpleasant, I argue, because the child is denied her rights and more importantly, she is aware that her rights are being denied. The issue would not arise if she were not aware of the rights being denied.

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[11] Ibid., p 14
[12] Greenstein(1965) p 1

CHAPTER TWO : RIGHTS AND RIGHTS THEORIES

2.1 A CLAIM TO RIGHTS

At the time of writing I was involved in coaching Girl's Cricket at the primary school where I worked. I was therefore involved in invading a male dominated domain in the school, the cricket nets. When the school put up two cricket nets in the previous December holiday I am almost sure that those who funded the exercise wanted them to be used by potential Rhodeses, Pollocks and Adams with their white shorts and boyish charm. However along came 22 girls in pink and red. When the girls were told that they had to use the rather unsuitable playground the immediate reaction was "But we have a right to. It's not fair..." What did they mean by asserting that right?

I wish to show that they did not mean that they had a right to use the nets over and above the boys but rather that they had the same right, a right to use the facilities in the same way that the boys did. The right here was the right to equality of treatment, to being treated fairly. In fact a right to sameness. This is the right they would like to exercise. They see the boys exercising this right during cricket practice and would like their opportunity to do so. Knowing that the cricket nets were built for the school and improved the value of the school meant nothing to those 22 girls. It also has no meaning for the other seven hundred pupils who were involved with swimming, tennis, art club, choir and all the other extra-murals in the school.

As well as an extremely vocal reaction the girls (encouraged by their teacher who has a vested interest in both the struggle and in rights generally) proceeded to make suggestions as to how to take over the nets. Fortunately

their strategies were unnecessary as a compromise was reached in which the girls were given use of the nets during their PT period but I would have enjoyed seeing how effective their campaign would have been.

2.2 HAVING AND EXERCISING RIGHTS

In this section I will discuss what is meant by exercising rights as contrasted with merely having rights. I wish to show that both are necessary in any rights claim. The example described above does serve to illustrate an important aspect of rights. There is a difference between having a right and exercising that right. The girls did not doubt that the facilities provided by the school were provided for the use of all the pupils of the school. This would mean that by belonging to the group called pupils of the school they had a right to the privileges that belong to that group, namely the use of the school's resources and facilities. They believed that the cricket nets fitted into that category of goods which members of the group are entitled to use. They were assuming that they had that right. They wanted to exercise that right. Their belief that the school should give them an opportunity to exercise the right they had shows that they assumed that having a right implies the opportunity to exercise it. To have said to them that they were pupils of the school but that that did not necessarily mean that they could exercise that right would not have made sense to them.

While I do wish to argue that there is a difference between having and exercising rights[13], I believe that these girls have a valid point. Rights have no

[13] Charles Taylor (1985) makes a useful distinction between an exercise concept and an opportunity concept of liberty. This distinction can be applied not only to theories of liberty but also between the two kinds of rights theories. There are rights theories which are based on exercise and those which are based on opportunity. The latter do not req any form of agency. On the other hand exercise theories of rights do require agency. Charles Taylor makes the point these two categories are not mutually

practical use if they cannot be exercised. The distinction I wish to make is between the kinds of rights which we merely have and the kinds of rights we exercise.

My main claim here is that the claim made by the girls was on moral grounds. It seems we have some moral claim to rights. Our moral sense of justice or fairness comes into play when our rights are violated. My girls were upset because they conceived of the situation as being unfair. Many rights claims become issues when there is a sense of the goods being unfairly distributed and our personal claims being denied. Their appeal was to justice. They were being denied the right to use the cricket nets because they were girls rather than on the grounds which were relevant to their cricket playing ability. If in this case they were denied the use of the nets because they were members of the second team and only members of the first team were allowed to use the nets they might have felt that that was more acceptable but the discrimination was on irrelevant grounds, i.e. their gender. Their appeal to justice was therefore understandable. This example, I believe, illustrates my claim that rights need to be exercised as well as claimed and that the grounds for these claims is justice.

2.3 PROCEDURE FOR REST OF THE CHAPTER

In the discussion to follow I will suggest that although there are several rights theories they all stand on one of two grounds; being human and having agency. I will then discuss three theories of rights; human rights, juristic rights and moral rights. I am aware that there are other theories of rights but I have

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exclusive and that a view of liberty could include both an exercise and opportunity or just an opportunity concept. In the same way any rights claims could include both an exercise and an opportunity concept of rights.

selected those three as being characteristic examples which have particular interest with respect to my argument. However before I discuss these rights I wish to expand on my understanding and use of the term "agency". This is important as this is the microscope under which all theories of rights can be placed.

2.4 AGENCY

Agency according to one influential line of thinking is required for claiming rights. If so, how much action on the part of the individual is required for her to be able to claim that particular right?

For example, I may have inherited a large sum of money from an unknown benefactor. I have the right to that money but because of my ignorance I have to cope financially with my present limited resources. My claim to the money is not being questioned, but that money is not mine until I act and claim it. My ownership is conditional only on my action. Another cannot challenge my ownership because I have legal precedence as the beneficiary. The moment my benefactor died I had the opportunity to have and use that money but I did not act upon that right. But this ownership only has meaning if I act. My financial situation will only be improved if I exercise my agency and as an agent claim the money and then use it. This is an important characteristic of an exercise concept of rights because in an exercise concept of rights we only benefit from our rights if we act upon them. We may have rights we are not aware of but we need to act upon them for them to be beneficial to us for example, the right to vote. The rights are claimed by virtue of the opportunity to have them. This opportunity is not created by the claim but rather it predates the claim.

Agency has two parts to it, making choices and expressing yourself, or "voice." Choice is making informed decisions and being able to take the consequences. For example if the girls in my first example decided that the only way they could have access to the cricket facilities would be to challenge the boys in a winner-takes-all match, they would have to be able to take the consequences of that decision. We often refer to the child who is becoming more adult as one who is able to take the consequences of her choices. We exercise choice in voting because we have to make informed decisions and then accept the party that wins as a legitimate government.

The second aspect of agency is the "voice." By "voice" I mean two things, firstly the opportunity for the individual to express her needs and secondly knowing that she will be heard. The difference between someone standing on a soapbox in a park and expressing her opinions and someone expressing the same opinions to a parliamentary assembly is important. In the first case, although she does have an audience and is heard there is no guarantee that her opinions will make any impact.

A person who has agency has to be able to know that her needs and wants can be expressed. If she does not have a voice then the rest of society will make the decisions based on their assumptions about her needs and wants. This means she will be treated as if she is not an agent in her own right. Without " voice" exercise of agency is not possible. Also if children are to be seen as having agency does this mean we have to listen seriously to their voice?

Rather than give a list of the kinds of rights which I believe to be relevant to my argument at this point, I believe that a detailed discussion of some examples is

more relevant and I will explore why the agency involved in each case is so important. I will discuss seven examples.

2.5 SPECIFIC EXAMPLES OF RIGHTS

1. The right to make choices about your life.
2. The right to have contracts honoured.
3. The right to participate politically.
4. The right to information.

I will discuss each one in turn.

2.5.1 THE RIGHT TO MAKE CHOICES ABOUT YOUR LIFE

By the right to make choices about your life, I am talking about the right to decide where you live, how you earn your income and where your life goes generally. These rights will obviously impact on others and are the kinds of rights that require that others respect your decisions and don't second guess them. They are also the rights we normally associate with adulthood but not necessarily old age. We sometimes begin to deny people these rights at the age at which we also start to treat them more like children. The old person who finds her children beginning to take care of her without respecting her will often complain about being treated like a child by her own children. The reason we deny children these rights are because they require a strong agency. The person who claims these rights does so because she is able to take the consequences of her claim to them. The individual who chooses to live in a particular house would normally be able to afford that house. The person who accepts a job offer would normally believe that she is capable of the tasks involved in that job. There is a sense that the individual has weighed up the options and can therefore make an informed decision. The question is whether

children can do so. I will not attempt to answer that question here but rather ask another question, namely, what are the consequences of either answer. If children are not capable of making those choices does this mean that others are able to decide where they live and what they do for them on those grounds or do there have to be further grounds? I will discuss the concept of Paternalism later. Paternalism is the assumption that some people's interests (not just children's) are best served by their being denied life choices.

The second answer to the question would mean that children can make those kinds of choices. But then the issue becomes why we have denied children these rights. If it is not on the grounds that the child's rights are best served by denying her those rights, is it because our rights are best served? Are their parents' or other caregiver's rights to parenting being challenged by the children's rights? Whose rights take precedence here?

2.5.2 THE RIGHT TO HAVE CONTRACTS HONOURED

The second right which we need to consider is the right to have contracts honoured. A child does not have this right. By law in South Africa only an adult has this right. Once a person reaches 21 years of age they are entitled to enter into a contract. Their full agency is assumed. But not all contracts are of this form. What about agreements of a less formal nature? I recently asked a class of teenagers a question from Bob Standish's book Windglow; "Which is weaker?- A spider's web (or) a promise." [14] The overwhelming response was that it was easier to break a promise. Adults are always breaking their promises to children because they know they can get away with it. I am not referring to the legally binding agreement between two people, but rather the kind of the

[14] STANDISH, p52

form "I promise to help you with your homework, take you to the shops, read you a story," an undertaking that children often hear. Why are promises to children not kept? Why are children not treated with the same respect as adults? Because they are not rights holders? The question here is whether children are treated like this because they are not rights holders or are they not rights holders because they are treated like this? I think we deny children the respect they deserve because they are not rights holders rather than the other way around. A strong agency is not required to act upon these rights but a strong agency is necessary to fight for these rights if they are denied. This is because when they are denied only if the individual has the necessary "voice" can they fight for those rights. If children were given the right to have promises upheld then children would have to have a strong agency to demand those rights.

2.5.3 THE RIGHT TO PARTICIPATE POLITICALLY

The next right is the right to participate politically. The assumption in most countries is that to participate politically requires a degree of agency that most adults have and most children do not have. I will discuss this further in the last chapter when I will suggest an alternative way in which children can participate politically.

2.5.4 THE RIGHT TO INFORMATION

The next right is the right to information. Wringe[15] refers to the right of free access to knowledge and the fact that children's access to knowledge includes sexual knowledge, knowledge about violence and any knowledge necessary to understand their society.

He refers to

> (t)his knowledge of sex, contraception, religion, drugs including alcohol and tobacco, and other problems which openly confront every growing child.[16]

Wringe does make the point that this information must be age appropriate. But making it age appropriate is difficult. By "age appropriate" does he mean appropriate to the child's understanding and emotional ability to understand the inform .tion or does it relate to what the child experiences of life? Take sexual knowledge about strangers. This is important knowledge for the 6-year-old who catches a bus or taxi to school. But a typical six-year-old cannot deal with this knowledge. Is a child's right to innocence more important than her right to knowledge (and the resulting protection) about pedophiles? Does the right to knowledge assume an agency that children do not have?

From the above examples we can see how problematic children's rights are. We need to have a better understanding of where the rights we have originate. Rather than following an historical approach I will look at three rights theories in the next section

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[15] WRINGE,(1981),p 15
[16] IBID

2.6 RIGHTS THEORIES

Later I will be discussing what happens when we do not have these two characteristics of agency, choice and "voice". But now I want to look at the assumptions about agency underlying the theories of rights, natural rights, juristic rights, and rights as duties. I wish to show that natural rights theories are based on weak agency and the others on progressively stronger agency.

2.6.1 NATURAL RIGHTS

In the Seventeenth and Eighteenth Centuries rights were viewed as natural rights which the state had to protect. The state becomes the guardian of the individual rights. So we find people like Locke saying, "all men may be restrained from invading others' rights. " [17]

Locke created a theoretical construction in which he described humanity as being initially in a state of nature in which there were basic freedoms which related to basic rights which were natural and undeniable. These were the rights to life, health, liberty and possessions.[18] The ultimate grounds or justification for these rights was that man was the "workmanship of one omnipotent and infinitely wise Maker." [19]

In the state of nature these rights were dominant and every man's duty was to preserve those rights by the protection of self. This was a state of equality in which every one had the right to execute that law. So every one would be judge, jury and executor of anyone challenging their rights.

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[17] Locke, (1946), p120
[18] Ibid. ,p119

> For in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, every one must needs have a right to do.[20]

But this would mean that every one is in conflict with every one else. This consideration leads Locke to suggest that the individual would opt to enter into a contract with every one else to form a government in order to escape interminable conflict. In those circumstances the individual does not lose her rights but rather hands over her authority to exercise those rights to the government.

Should you ask the average person today what they mean by rights they would probably refer to the 1948 UN Universal Declaration of Human Rights or a similar document. This is probably because of the obvious advantages of these rights to the man in the street. These rights offer something to the individual i.e. education, health services. They are statements of needs and are a standard for evaluating communities. Benn refers to them as "canons by which social, economic, and political arrangements can be criticised."[21]

South Africa was an example of a community which did not measure up to the standard set by these rights. While it seems that these rights claim something this claim is directed at society in general. They are not claimed from an individual and they are not situation specific. They presuppose a weak view of agency because the individual does not have to act to have these rights. I may never take advantage of the basic health care offered.

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[19] Ibid.
[20] Ibid.

But I do not lose it. I still have the right to it that has not changed in any way. These rights are therefore important because they help to define several things. Firstly they define what it means to be human and secondly they define what it means to be a member of a community. These rights are what we can claim if we are member of a community. And thirdly, as mentioned already, they define what a fair community is. This leads us to the fourth point namely that they define justice. Justice is what is fair, fair to the human beings who live in that particular society.

These rights are based on the first ground I mentioned earlier, on being human, rather than on any action on the part of the individual. These rights are the kind of rights we would like to say that children have. After all children are human. In the next chapter I will discuss the ways we view children. But without pre-empting that argument I will say that in most views of children there is an assumption or at least agreement that children have a claim to natural rights. This means that the focus of our discussion becomes the other views of rights that rely on some form of agency as their grounds.

2.6.2 JURISTIC RIGHTS

Juristic theories of rights relate to the role of law in rights theories. Spinoza[22] was one of the first to use a concept of power to understand rights. So if a man has the right to something he has the power to claim that thing. The law would be the authority or power which would enforce that right. But the problem with this view is that it assumes that the law can act,

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[21] In Edwards(1967), p 198
[22] See Edwards(1967)

is willing to act, and also acts effectively This is not always so. When the law is not able to effectively solve a problem does this mean that the individual has lost her rights? Also what about the powerless in society, minorities, children? It is therefore difficult to equate rights with powers, though power can be said to be a factor in the effective exercise of rights.

> "A right is commonly said (by Paul Vinogradof, for instance) to be a claim upheld by law."[23]

This would mean that the individual makes a claim to something knowing that should anyone stand in her way she has recourse to the law because she can expect the legal system to act in her best interests. This view of rights would have several implications for children which I will discuss later. In the recent well-publicized cases of child abuse, I found it interesting that children's rights activists were in full force protesting outside the courtrooms. They were implying by their protest that the children in these cases could be protected by the Judiciary system. Could these children who were not protected from abuse at the usual place of safety, their homes, turn to court and there expect justice and protection?

This view of rights does not need action on the part of the individual so much as it requires action on the part of the whole of the society: Firstly, to make laws which are just, secondly to appoint judges who are able to interpret those laws, thirdly, to ensure equal access to the courts for all, and finally, to respect the decisions of the courts. This requires action and therefore this view of rights has a strong theory of agency underlying it.

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[23] Ibid., p195

This agency does have two necessary conditions: there is choice involved in the judiciary system and we can exercise our choice and remove the government by voting. The "voice" part means that the individual does have recourse to the legal system and opportunity to have her say in court.

2.6.3 RIGHTS AS DUTIES

That there is a moral correlation between rights and duties implies that for every right there is a moral duty for a party to perform a corresponding duty. So if a person has a right to own property she has a duty not to claim another property which is not hers. This duty also extends to other people who have a duty not to occupy that person's property without permission.

Benn and Peters suggest that

> The enjoyment of rights, ... is conditional on the performance of duties; no one can reasonably expect that his interests will be safeguarded by the social order unless he recognises and respects corresponding obligations towards others. [24]

This view of rights is compatible with most theories of social contract. The individual who makes the choice to enter a social contract agrees to the relevant duties.

If there is this moral correlation between rights and duties then the agency of the individual is placed in a very different and difficult situation. I wish to create a term here to help my argument, namely "action by choice." By this term I mean action which is based on a choice whether to act or not to act. In this term acting can be included but so too can not acting. So for

[24] Benn and Peters(1959) p 89

example if the individual could act in a situation and she chooses not to she is not necessarily being passive but rather is acting in the negative as it were. A simple example would be a referendum in which the individual has to vote on a choice by writing yes on a sheet of paper. Not acting, that is not going to the voting booth, is also a vote but not in the usual way. Of course if there is a choice on the ballot paper inactivity could be read in any of the possible ways and my example is problematic. However to return to my main point the term "action by choice" allows for the individual to act by refraining from a possible action.

The rights of the individual require action by choice (as I have defined this term) either on the part of the individual or any other individual who is also a part of the same society or who has subscribed to the same social contract. So I can say my rights are morally correlated with the duties of others as well as with my own duties. So each right either requires that I act in a particular way or that I don't act in a particular way or that another individual or groups or people act or don't act in a particular way. This leads to a bewildering combination of possibilities. Remember that this is based on a theory of social contract so we can exclude many of the problems associated with the individual choosing not to act appropriately. If the individual does not act in a way that is appropriate her agreeing to the social contract means that she has agreed to being punished by the society as dictated by the social contract.

This view of rights allows for what I would like to call a strong theory of agency. This is because every right requires action by choice on the part of the individual or another party. Remember that this link is a moral or

obligatory one. And this right is based on the choices assumed in a social contract theory. In a social contract the individual can exercise her choices by the process of voting. If the government is not what the individual would want the individual can exercise her choice by voting. In this way a strong sense of agency is involved.

2.7 SUMMARY OF RIGHTS

So what we have here are two possible grounds on which rights theories are based, viz. on the fact that we are human or on the fact that we have agency.

In the first case this implies that we need fulfil no other conditions to be able to claim rights. If we are human we have these rights. This would mean that we could claim these rights for children if they are human. It is only if we view children as being non-human that we can deny children these rights. But what do these rights mean for children? For instance what would they have meant to my girls playing cricket? Sure they were claiming the right to be treated equally which is an opportunity concept of rights. But they were more interested in exercising some kind of claim to the cricket nets. It is the kinds of rights which we exercise that are harder to grant to children.

In an exercise concept of rights there is an underlying assumption that the person being granted the right is a fully-fledged agent and can therefore exercise that agency appropriately. In both a juristic theory of rights and a theory of rights-as -duties this agency is important. We therefore need to show that children are in some way capable of agency, as we have understood it. This then leads us to views of children and to the next chapter. In this chapter I used a specific example to illustrate claims to

rights. I then explored the distinction between having and exercising rights, and analysed the concept of agency and its two aspects, choice and "voice". That conceptual framework was then used to discuss four rights: the right to make choices, the right to have contracts honoured, the right to participate in politics and the right to information. In each case I looked at the specific case of children and whether this right is granted to them. Finally I looked at theories of rights, natural rights, juristic rights, rights as duties. The last two theories, I suggested, require strong agency to exercise these rights. Finally I hinted at why we need a clearer understanding of children to be able to further explore this issue.

CHAPTER THREE : VIEWS OF CHILDHOOD

3.1 HISORICAL PERSPECIVE

In the Middle Ages the child often was not considered to exist until she was old enough to take up an adult role. That there was no concept of childhood is suggested, for example, by the fact that there is an almost complete lack of children represented in art before the twelfth century. Aries asks,

> How do we come from that ignorance of childhood to the centering of the family around the child in the nineteenth century?[25]

One reason for this would be that with the increase in leisure time in the lives of people there is time to enjoy parenting children. Another reason is that with the advent of universal schooling childhood has become a necessary period in which education could occur. The creation of childhood has implications for the rights of children. If children were not seen as children in the past as we see them today, how "real" is our concept of childhood?

Children's claims to rights have only been seen as a separate or distinct issue from those of adults as childhood has become a separate event in the life of the individual.

To find a single concept of childhood is difficult.

> In a society at any one time, no general definition of childhood exists, although there have been occasions when powerful sectors, such as the law, have provided relatively coherent and systematic accounts of what a child is, particularly in relation to

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25.Aries (1962) p4

> rights. However, far from lapsing into defeatism on account of the difficulty of providing general definitions, we should recognise that it opens up some interesting possibilities.[26]

It is these possibilities which will inform this discussion. Definitions of childhood can be divided into five groups: Childhood as a natural state, childhood as a golden age, childhood as a developmental stage, childhood as a social creation, and childhood as being non-adult, although they do overlap. The basic issue which they all address to a greater or lesser degree is the issue of competence. They all attempt to answer two questions: Firstly, do they view the child as being human? If they do not, then do they deny children those rights which are characteristic of human beings? Secondly they ask the question whether or not the child can exercise her rights in the same way as adults. Is the child competent to take on the agency which is characteristic of adulthood? This agency is the basis for views on rights mentioned earlier. I will discuss the five views in turn and look at the relevant rights. At the end of the chapter I will look at the implications of rights for each. In this chapter I hope to show that some views of children cannot be sustained, viz., childhood as a natural state and childhood as a golden age. I will also show that the other views are fundamentally flawed in various ways. I hope to show by the end of this chapter that what is needed is a new view of childhood. This will then be explored in the next chapter.

26.Jordnova in Ruddick (1979) p 10

3.2 CHILDHOOD AS A NATURAL STATE

It is interesting to see how many times childhood is seen as being closer to nature than adulthood. Much has been written about the way in which women are often described using animal terms and this is also true of children. We hear of women being described as "chicks" and we will say that a baby is "as cute as a kitten." But most of the objects of nature, plants and animals are considered to be cute because they are different to humans. When we talk of animal rights we are talking about beings which are not moral agents. They cannot make the necessary claims to their rights. They are less capable of independence and obviously cannot make rational choices. But we are going further than just denying children their agent rights. So by describing children as animals we are denying their humanity. We are saying that they do not have the same rights as we do because they are not the same as us.

The rights that we are denying the child here are the human rights that are entrenched in manifestos and charters. These rights, as previously discussed, are based on the humanness of the person rather than whether she can act upon them. The child is not entitled to rights because she is not human. The only way to deny those rights is to describe her as being something other than human. Here the child is being denied both the basic human rights and those rights related to having agency.

A response to this would be to question how a non-human can become a human at a later stage. If the child is not human then the child is never going to become human. This view of childhood cannot be sustained after careful consideration of its implications.

3.3 CHILDHOOD AS A GOLDEN AGE

> The myth of childhood as a "golden age." According to this myth, childhood is a special period of our lives when, because of our innocence and weakness, we are protected from the harshness and adversity of adult life. The child is spared the responsibilities and anxieties of economic life, the world of work and the many worries which are to be inherited upon maturity. Childhood is a period of unconstrained freedom, a time for play, education and learning.[27]

This is surely a pretty picture. We can readily imagine children in homes with parents and pets. This is the kind of picture we see on television but the reality of many children's lives is that they are in a very different situation. Poverty and family circumstances mean that many children do not enjoy childhood. Parenthood comes to children too. A fourteen year old mother is not free to enjoy her childhood. Many children are expected to take on the role of parent to siblings and even become breadwinners. But this is not the main issue here. The problem with this view of childhood is that it implies that rights are something you just receive at the end of childhood. While this is true of human rights it is not true of the rights associated with agency.

Our initial assumption is that the young child is not able to take on any responsibility. However as they mature, we give children more responsibility In a typical child's life by the age of six we expect them to dress themselves and to begin formal education. By the age of ten or eleven we expect them to be responsible for household chores, by the age of fourteen or fifteen they are often given the responsibility of caring for siblings and by the age of sixteen

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27Franklin (1986) p 4

they can legally begin to earn their own money. We therefore do not make childhood into some golden age of pleasure. Rather schools and society treat childhood as a learning ground in which responsibilities incrementally develop.

We are thus denying the view of childhood as a golden age by our actions. This view of childhood is in opposition to other views such as the developmental view of childhood that see rights as some kind of reward at the end of a process. Rather childhood is the reward which is taken away. Or alternatively adulthood and the rights that come with it are a punishment that because we did not appreciate childhood enough?

And yet why do children strive to be adults if childhood is so golden and great? The rights that are being denied the child here are the rights we have by virtue of our agency. The child is not expected to act in the same way that an adult would because that would infringe on her enjoyment of her childhood. So the child is being denied juristic rights and rights related to duties although she is still entitled to (but possibly not expected to act upon) the rights which she gets by virtue of being human.

3.4 CHILDHOOD AS A DEVELOPMENTAL STAGE

Developmental concepts of childhood are to be found especially in the field of psychology, where childhood is viewed as a process of moving from one state, i.e. infancy to another i.e. adulthood.

> Childhood may appear simply a biological, age-specific episode- something which 'does not last'' [28]

28.Hoyles(1979),(v)

The very fact that children do not remain children, at least not in the normal case, can cloud the issue of granting them rights. It is very easy to say that it is acceptable not to grant children rights because they do not stay children. For just as it could be said they will develop into adulthood so they will develop into the rights normally accorded to the adult.

It is almost as if adulthood with its adherent rights is the reward for what is a natural and unavoidable process. Although we can reward the achievements of a lifetime we cannot reward its passing. We cannot reward a child for growing taller. It is the very fact that we are dealing with a dynamic process which makes childhood harder to define.

> Children pose special intellectual challenges to us. This is because the state of being a child is temporary and hard to define. Indeed, the process of becoming an adult involves a number of fundamental sh :ts which, certainly from an adult perspective and probably also from a child's, are so dramatic that a gradualist language modelled on small scale, incremental growth seems hopelessly inadequate.[29]

One argument against using the changing nature of childhood as grounds for denying children rights would be as follows:

Children go through a process of becoming adult. They move along this until they arrive at adulthood. If we cannot question granting adults rights then we have to grant children rights when they reach the end of this process because at

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29.Jordvona in Ruddick (1979) p 4

that point they are adults. But what about the day before they reach the end? Are they not as capable of exercising their rights as they will be the next day? And what about the day before that? If we are to say that the child becomes adult at age x then is she a child up to the day before x? What sudden magical event happens at the stroke of midnight on that day? Does she suddenly become more competent to act in a so-called adult manner with the associated abilities? This argument is flawed because the variety of periods children take to go through the same developmental steps mean that we cannot say that there is a definite point at which they will arrive.

The alternative would be to find some characteristics which children have that adults do not. These characteristics have to be such that they are not socially enforced on children, such as being financially dependent. They would have to show that children are incapable of exercising their rights compared with adults. There is no one such characteristic which children have over the whole period in question.

> The very fact that we are dealing with an age span which stretches from infancy to somewhere between sixteen and twenty-one and an age span which encompasses the individual's most concentrated and rapid period of emotional, intellectual and physical growth makes it exceptionally hard to make proposals for 'rights' which are applicable to everyone.[30]

30.Hewitt in Franklin (1986) p ix

This issue would seem to be solved easily by suggesting that children have specific characteristics at each age which could then determine which rights they are able to have. So at the age of ten children are capable of making decisions about which school they should attend. But some children are not capable of making that kind of decision. There is a huge varicty of abilities even in children of the same age. What one child is capable of another is not. One has only to think of a fourteen year old mother who suddenly has to cope with the responsibilities of parenthood. She has to be a lot more adult than her friends who are not in that position.

But even if circumstances do not affect the maturity as in this example, there is still a difference in the maturity of children at the same age. Some children are competent to make the kinds of decision which go with rights and some are not. Although age can serve as a rough guide it is not a sufficient condition and cannot be used as such.

3.5 CHILDHOOD AS A SOCIAL CREATION

I have already mentioned the fact that according to Aries childhood was not seen as a distinct stage in the Middle Ages. It is therefore a relatively recent creation.

> Childhood is not a single universal experience of any fixed duration. It is rather a historically shifting, cultural construction . . . . The work of historians further reveals that the dividing line between childhood and adulthood has been drawn arbitrarily and has varied widely across the different historical periods.[31]

31.Franklin (1986) p 7.

This means that the experiences of children in that society will be particular to that society. What then are the implications of the view that childhood is socially constructed? Firstly there is then no one universal experience of childhood which can be applied to all children. Secondly maybe childhood is merely constructed and does not really exist in any case. The third issue is, what happens when children from different societies meet? Surely their different experiences will clash?

> If it is the case that societies invent concepts of childhood, both consciously and unconsciously, then it is important to recognise the extent to which these mould the experience of childhood.[32]

There are two problems here, firstly, different societies have different values and different values mean that a child will be viewed as an adult at different points. Rites of passage and religious ceremonies occur. In the eyes of some religions the child becomes an adult. However in other ways the child is still a child. We do not expect the bat mitzvah to start their own home, or go out to work at the age of thirteen. What we as adults value will determine when someone is a competent adult.

> The basis upon which childhood is seen essentially to differ from adulthood may be no more than a reflect of prevailing social priorities. In a society where sustaining reproducing life is of overriding importance the ability to work and bear offspring is a strikingly obvious mark of maturity.[33]

32.Jordnova in Ruddick (1979) p 21.

[33] Archard (1993) p 26

Secondly, this is also a developmental view of childhood but rather than having the child develop, society and its institutions develop instead. As the family and the school structures evolved and developed so there emerged a need for a concept of the person who is expected to fit into the education system i.e. the child. The view of the child has developed as society has developed. This view of childhood is problematic on the grounds that rights talk has also developed recently in society. We have only to think about the fact that women's rights are also a recent addition to rights talk. But we can also say that if childhood is only a modern invention then maybe children are no different to adults and they have only been stopped from exercising the same agency as adults by this social creation which is not really there and they should be allowed to exercise fully the same rights as the rest of society. However I feel that this argument is not worth following because it would seem to offer a dead end. It is like saying that a chair is only a chair because we call it a chair. It should really be a table. But the fact of the matter is we will still sit on it.

We may have created the concept of childhood because it suits our society. That denying children their rights also suits society is of added interest. The problem here is not how the concept of childhood came about but rather what we are going to do about it. Because of the way the concept has been constructed we can deny children their rights. Imagine if we had constructed the term differently or had used another term, for example we had called those humans aged 6 to 18 flogs which meant little (in terms of physical size) adults who are intelligent, capable people who are presently involved in their education. On those grounds we could not for example deny them the vote. The problem with this argument is that children are labeled by the term "children" in a particular way and until we replace that

label with another one such as my flogs we have to find a way to deal with the repercussions of that label. We may have created the category "childhood" but that does not change the fact that there are children who have to deal with the real implications of this even if it is a social creation. And some implications are that we deny them rights on the grounds that they are children.

However as Franklin suggests, if the fact that childhood is not a fixed concept means that our understanding of childhood in the past was different to our understanding now it then follows that our understanding could change in the future.

> While common-sense beliefs currently view childhood as a fixed and immutable state, the suggestion that it has, and could again, assume a radically different form challenges that common-sense view and indicates the potential for change. Conceptions of childhood and adulthood are continually shifting.[34]

Imagining childhood as something radically different to our present view is a totally different approach. We might have to go through a complete reassessment of our beliefs, much as someone from the Middle ages would have to do to understand how we view childhood today. Imagine a day in the future in which childhood is viewed in such a way that we look back on our present view with shock. In the next chapter I will begin to outline some of the necessary steps to reaching a new understanding of childhood.

3.6 CHILDHOOD AS NON-ADULTHOOD

Part of the problem of defining children as being something other than adult is that this is a negative definition

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[34] Franklin(1986)p12

> The peculiarity of the otherness we assign to children is paradoxical in that we have all experienced childhood- hence to make the child other to our adult selves we must split off a part of our past, a piece of ourselves. [35]

This means that we are forced to deny a large part of who we are and what we have experienced of life. It is not only psychologists who talk about the inner child but also those who know that their childhood experiences have shaped who they are and influence their decision making and exercising of rights now. It is these people who have a problem with denying that part of their experience of life.

This final view of children as non-adults is basic to Fundamental Pedagogics. I do not wish to explore this theory in detail but I will present some of the central concepts here.

> The child is a fully-fledged human being. His human dignity is untouchable, but he still is not what he can, wants to and ought to, become, namely, an adult of good character. [36]

But this is contradicted in other formulations:

> It is part of the educative task to help the child to make a meaningful contribution to his own humanization (becoming an adult).[37]

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35. Jordvona in Ruddick (1979) p 6

36.Griessel (1987) p 36

37.Ibid., p 37

This implies that the child is not human because you cannot be humanised if you are a fully-fledged human being. This view of the child is different to the maturation view of developmental psychology because becoming "human" is not just a case of time passing by the child.

> Be careful not to make the mistake of seeing 'development to adulthood' as mere physical 'maturation'. [38]

Rather, according to Fundamental Pedagogics, this process needs the intervention of the adult educator who needs to guide the non-adult to adulthood. This would mean that the child would not be entitled to adult rights because she is not an adult. Children are however human and as such are entitled to human rights mentioned earlier. But any rights that require action are not going to be accorded to the non-adult.

The problem of a negative definition is that it seems to exclude too much. But it does offer us an alternative way of defining children viz. the group of people (humans) who are not adults. People yes but adults no. As a group they would have their own right to membership of that group. We cannot define someone as being non-adult without there being something that they are as non-adults. This group we have called children and as such they have an identity. An unintended consequence (from the point of view of Fundamental Pedagogics anyway) is that with that identity come particular characteristics and particular rights. I will discuss the importance of this group identity and the resulting rights in the next chapter.

38.Ibid., p 64-65

3.7 IMPLICATIONS

It is appropriate at this point to reassess our arguments and to see what we are left with in the case of each of the conceptions of childhood, described in this chapter.

In the first view of childhood we have children as being something akin to animals, and as such are not entitled to the same rights as humans would normally be accorded. Not only are their agency rights denied but also their human rights. The problem is that we cannot justify denying someone their rights because they are not human unless we plan to do so for the rest of their lives. And it is difficult to conceive of a society which says that you cannot have any rights because you have been a child in the past.

In the view of childhood as a golden age we have an idyllic view of the child being protected from the dangers of agency rights. The child is better off for not being an adult. And is better off for not needing to express any rights. This view hangs on the assumption not that the child is not able to express her rights but rather that it is more beneficial for the child if she does not have to take on her rights because rights have an attached responsibility.

In the third view of childhood we have the child developing into adulthood and being denied rights because she has not yet "arrived." The ground for denying children rights here are that the child is not yet competent to exercise her rights at a particular age. The competency we associate with being an adult means that we can deny the child her rights. But to support

this position we have to prove firstly that all children do not have that competency and secondly that all adults do have it. In my next chapter I will be discussing other groups of adults who cannot exercise that competency.

In the fourth view of childhood we have a concept of childhood as being a socially constructed and a socially specific notion. This is an exciting position because it means that childhood can be redefined as society becomes more aware of the specific needs and abilities of childhood. In the next chapter I will be spelling out the significance of a shift within our understanding of childhood.

In the final view of childhood we have children being defined, not as what they are but rather as what they are not. Children are not adults but the fact that they are not means that they are something which is just as important and that is a group. And as that group they can campaign for their own rights. In the next chapter I will discuss how they should do so.

CHAPTER FOUR: AN ALTERNATIVE VIEW OF CHILDREN'S RIGHTS

4.1 A POLITICS OF DIFFERENCE

In this chapter I will consider the social implications that rights have for the individual by looking specifically at Iris Young's work in Justice and the Politics of Difference[39] I will look at her idea that individuals are oppressed or alienated from society because they are different to the accepted norm. Young feels that these individuals find an identity within a group and that group identity can be used to grant special rights. I will look specifically at children as potential special rights holders and I will discuss how children can be defined as a group and how they can then in turn be granted the necessary special rights.

For Iris Young

> Rights are relationships, not things; they are institutionally defined rules specifying what people can do in relation to one another. Rights refer to doing more than having, to social relationships that enable or constrain action.[40]

If rights are relationships this means that we cannot have rights in a vacuum. This view could be based on a contractual view of society such as Locke's. Young's view also means that we act upon our rights every time we act upon our social relationships with other people. For Young rights are tied to things which we do. They are not things we get by virtue of being human, instead they regulate our actions. This would suggest that Young tends to agree with a rights theory that offers a strong concept of agency. For Young rights define

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[39] Young(a) (1990)
[40] Young (a) (1990) p 25

the limits of what people can do in relation to others. But much of her argument challenges the accepted views of the limits of people's agency. She feels that the agency of certain people is limited not intrinsically, but by the oppression and domination of society and its structures.

Young is mainly concerned with justice which she describes as "the perspectives, principles, and procedures for evaluating institutional norms and rules."[41]

Her requirement of justice is stated in this way:

> For a social condition to be just, it must enable all to meet their needs and exercise their freedom; thus justice requires that all be able to express their needs. [42]

So for Young a just society is one in which even the smallest or the least empowered minority is able to express its needs and exercise its freedom. Can one imagine a society in which children are able to express their needs sufficiently? Guardianship views of children's rights tend to suggest that children are not capable of expressing their needs sufficiently. However other views do not hold this position.

In discussing justice and the good life Young suggests two general values for the realisation of the good life, development and expression of the self and participation in determining action and its conditions. However,

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[41] Ibid. p 33

[42] Ibid. p 34

> ... to these two general values correspond two social conditions that define injustice: oppression, the institutional constraint on self-development, and domination, the institutional constraint on self-determination.[43]

When applied to children oppression refers to the limits on becoming the kind of person the child would herself choose to become and domination refers to the child's inability to express her personhood, her needs and her voice in all situations.

4.2 OPPRESSION

Before I can discuss oppression in detail I need to consider what Young meant by an oppressed group.

> All oppressed people suffer some inhibition of their ability to develop and exercise their capacities and express their needs, thoughts, and feelings.[44]

Is this applicable to children? Children cannot exercise their capacities but is this a social or a developmental restriction? In the view of childhood as a golden age childhood is a positive thing because children should not have to exercise adult responsibilities before their time. We need to understand further what Young means by oppression.

> Oppression refers to the vast and deep injustices some groups suffer as a consequence of often unconscious assumptions and reactions of well-meaning people in ordinary interactions, media and cultural stereotypes

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[43] Ibid. p 37

[44] Ibid. p 40

> and structural features of bureaucratic hierarchies and market mechanisms- in short, the normal processes of everyday life.[45]

What she is saying here is that oppression does not relate only to issues such as voting for governments but rather applies to the everyday social structures which oppress the individual.

For Young the three characteristics of the oppressed are that assumptions are made about them, society has clear stereotypes about them and the structural features of society work towards discriminating against them. I will examine each in turn in relation to children.

Firstly, the negative assumptions found in society. I remember as an eleven year old being told by a well- meaning librarian that the children's books were on the other side of the library and she would not believe me when I told her I had read all those books already. She saw a child and not the more competent reader. I found a way out of the situation by telling her I was choosing books for my mother. If we see the child and label her firstly as a child and ignore the other characteristics which distinguish her from all other children, and also if we do not see the particularities of the situation in which she finds herself, no matter how well intended our actions, we are oppressing that child. I mentioned earlier the fact that children need to develop personhood, and the moment we make assumptions about how the child should develop we are denying the personhood that the child should be allowed to develop.

Secondly, much has already been written about the stereotypes we have about children and why they are so damaging. I understand stereotypes to be a matter of seeing the individual as having the characteristics of the group and then making value judgements on those grounds. By making value judgements we may not be realistically judging the individual and so we treat the individual inappropriately. So for example we will describe the child as being emotionally incapable of dealing with graphic scenes of violence in films and therefore censure her viewing. Our grounds derived from the stereotype are that children cannot cope emotionally with viewing violence. The problem with stereotypes is not that the individual may not fit into the typical example but rather that the individual is being judged on that basis alone.

Thirdly, schools are institutions which should be specifically designed for the self-development of children and so if any bureaucratic structure should allow full participation of children it should be schools. Why is it then that children are not allowed to make decisions in schools and are often powerless to confront the hierarchies and so to be empowered for other decision-making processes? If the institutes specifically designed for children cannot include children how can we expect the rest of society to do so?

Thus it can be seen that all these aspects of oppression are characteristically experienced by children. However Young is not looking only at the problem experienced by the individual who is oppressed. She is rather suggesting that there are groups of people who are oppressed as a group. She suggests a list which include women, Blacks, Spanish- speaking American, American Indians, Jews, lesbians, gay men, Arabs, Asians, old people, working-class people and physically disabled and mentally disabled, in short, anyone who is

different to the ideal or norm of the white, English-speaking, middle-class male. The differences can be cultural or they can be differences in the way the person lives her life. They can come about through choice, e.g., the single parent or through circumstances beyond that person's control, e.g., the physically disabled.

4.3 GROUP IDENTITY

What makes these people a group rather than individuals who are all classified as "different" is that they find an identity with that group, an affinity that gives meaning to their lives. Groups, in this sense, are part of the meaning making of those individuals' lives. They are in some way attracted to the group as a place where they can exercise their identity in a safe and accepting way with others who wish to do the same.

This sense of belonging Young calls ' throwness". By throwness Young means the way in which the individual finds herself as part of the group without actually having made a conscious choice to belong to that group.
"Throwness" constitutes an identity which the individual has without being aware of having it. It is as if the individual is going home to the place to which she belonged in the first place.

This does not mean that there is no room for difference within the group or that the individual has to be totally part of that group. For example in the case

further be divided into those who will have children if circumstances permit later and those who will not.) The list is of course endless and one person's identity is constantly changing with time and with circumstances. However for Young the differences within the group, far from being a problem, give strength to that group.

> Although social processes of affinity and differentiation produce groups, they do not give groups a substantive essence. There is no common nature that members of a group share. As aspects of a process, moreover, groups are fluid; they come into being and may fade away.[46]

4.4 CHILDREN AS A GROUP

If children are to be considered as a group in this sense I would like to suggest that they have to have the following characteristics: They have to be identifiable as a group; they have to make meaning of their lives in terms of that group; they have to have what Young identifies as throwness; they have to be more empowered by belonging to the group than by being outside it.

Children can be identified as being a group but the question is whether that identification is warranted. A group either is being treated in the same way or desires to be so treated. But children are not all treated the same nor do they desire to be. They would often consider that their rights are being infringed upon by being treated the same. Ask any older sibling whether they like being treated the same as their younger sibling and whether the believe that they should be treated the same. I am sure they will say that they would rather be treated differently. So children do not exhibit that characteristic of a group.

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[46]Ibid., p 47

The next characteristic of a group is that its members should make the meaning of their lives in terms of that group. The question is, do children make meaning of their lives in terms of being "a child" or do they make meaning of their lives in terms of being individuals first? Children socialise with children rather than with adults. But why is this so? I believe it is because children are expected to socialise and find meaning in their lives by being with other children. An only child or a child with no siblings close in age is often considered to be deprived or the necessary peer group interactions.

However children themselves do not consciously attempt to be seen as children. This can be seen in the ways in which children's clothes are more like those of adults. Also many of children's games involve acting out and imitating adult situations. But in spite of this we view them as being children. Children more than any other group exhibit Young's characteristic of throwness. From the moment the child is born they experience life as a child. This is not a conscious choice on the part of the child. Whether this is imposed on them from the outside is difficult to say because (as previously mentioned) [47] it is the experience of the child and is therefore is not really the issue.

The final question we need to consider about children is: Are children more empowered by being viewed as a group? I believe the answer is no. They are not in fact more empowered by being treated as children but they could be. There is the potential for empowerment in the group. Children could be more empowered by being treated as a group than as individuals. Even if children's choices are not maximised by being considered as part of a group, they are

[47] See Chapter Three

more likely to have a voice by being grouped together: It is very hard to ignore a group of children.

Children do conform to Young's concept of group although they do not exhibit all the characteristics of a group. The characteristics that they do not exhibit are those related to choice. As a group children are oppressed. The rights which they are denied are those which give humans an opportunity to act upon their humanity and by denying them those rights we are oppressing them.

But if being identified as a group is what is oppressing children the solution is surely simply to see children as not being a group but rather to make them part of mainstream rights holders, to assimilate them into society.

4.5 ASSIMILATION

The model of assimilating groups into society is based on the concept that the individual is being denied a right by virtue of being different and once we take away that difference there are no grounds for denying that right. For example if we deny the disabled the right to a job because they are in a wheelchair, we can make ramps for them and we would then have no reason to deny them the job. This argument was promoted by Wasserstrom.[48] There are two things that have to happen for assimilation to work: "The assimilation ideal involves denying either the reality or the desirability of social groups."[49]

In Young's historical look at the emergence of the politics of difference in the experiences of Blacks, American Indians, Spanish-speaking Americans, Jewish

[48] Wasserstrom in Young (a) (1990) p158
[49] Ibid.

Americans, homosexuals and women, [50] there seems to be a pattern. These groups first fought for integration into the mainstream, so for example

> The goal was to remove the stigma of being homosexual, and prevent institutional discrimination, and to achieve societal recognition that gay people are no different from anyone else.[51]

But in this battle for integration the discovery was made of an identity in a community of like-minded people and so the group difference became a more important consideration. But what is a key factor in the shift is that instead of these groups playing by the rules of the white, English-speaking American Middle-class male model their identity, previously diminished by them is later celebrated. So in the case of "woman",

> Instead of understanding the activities and values associated with traditional femininity as largely distortions and inhibitions of woman's truly human potentialities, this gynocentric analysis sought to revalue the caring, nurturing, and co-operative approach to social relations they found associated with feminine socialisation". [52]

So what we have as an alternative is a more sophisticated understanding of the needs of groups. The assimilationist ideal assumes that equal social status for all persons requires treating everyone according to the same principles, rules, and standards. A politics of difference argues, instead, that equality as the participation and inclusion of all groups sometimes requires different treatment for oppressed or disadvantaged groups. To promote social justice, social policy should sometimes accord special treatment to groups.[53]

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[50] Ibid. p 159-162
[51] Ibid. , p 160
[52] Ibid., p158
[53] Ibid., p 158

In the case of children the promoters of an assimilation model for children are the Child Liberationists such as John Holt in his work Escape from childhood.[54] Archard makes the point that children's liberation arose in the 1960's and was part of the Marxist Feminist critique of society. The same movement which led to the assimilationist model resulted in the child liberation movement.

> The basic claims of the children's liberationists are that the modern separation of the child's and adult's worlds is an unwarranted and oppressive discrimination; that this segregation is accompanied and reinforced by a false ideology of 'childishness': and that children are entitled to all the rights and privileges possessed by adults.[55]

The main point here is that the division between child and adult is seen as non-existent. Secondly, that this division is justified by a concept of childishness, thirdly, that children can best be given rights by assimilating them into adult society.

The issue is then based on "childishness" which is the assumption of the child being incompetent and not able therefore to exercise her rights. If child liberationists could prove that children are competent then it would follow that "childishness" is a false ideology and therefore the segregation of society into adult and child is incorrect and it follows that children should have the same rights as adults. This argument does not differ much from what I am arguing for children except in the conclusion which follows. In an assimilationist model

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[54]Holt(1974)
[55] Archard(1993) p 46-47

of rights the parties' rights are guaranteed by the fact that they are no different from the rest of society. However, as mentioned earlier, the problem with assimilation is that something of value is lost. By assimilating children into adult society children are losing out in what it means to be children. Adults expect children to "play the game" by their rules. Children's interests are better served in a politics of difference.

4.6 DUAL RIGHTS

The alternative to assimilation as a basis for giving children their rights is the politics of difference in which the specificity of a group is recognised and affirmed.

> Groups cannot be socially equal unless their specific experience, culture, and social contributions are publicly affirmed and recognised.[56]

This needs to be done in such a way that the voice of the groups can be heard. This may mean that a group is given more than the normal representational opportunities to speak. The group may have to be given additional occasions to express their particular needs. And these opportunities must not be viewed as some kind of gift or privilege but rather as a right. This right is not exchangeable with the normal rights that the individual has, her human rights. It is an extra right that the group has.

> A democratic cultural pluralism thus requires a dual system of rights. A general system of rights which are the same for all and a more specific system of group-conscious policies and rights.[57]

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[56] Ibid., p 174
[57] Ibid. , p 174

This would mean that children would not have their human rights taken away. Rather the rights that they have been denied would be given back to them. These are the rights they were denied because they were not seen to have had the necessary agency to act upon those rights.

4.7 CHILREN AS HOLDERS OF SPECIAL RIGHTS

The task at hand is to defend this position above all other options. My reason for suggesting group representation for children is that it is based on an active involvement within the existing social mechanisms rather than creating a false and separate environment where children can find expression of their rights.

4.8 SPECIAL RIGHTS IN DETAIL

The system of special rights is a system where the excluded can find a voice. Group representation for children will mean that the kinds of social structures that have previously excluded children's voices will be adapted to the needs of children. Young [58] describes this system as promoting justice because it does four things. It ensures procedural fairness in the public agenda, ensures a voice for the oppressed, expresses requirements in terms of entitlement, rather than want, and maximises social knowledge. If we look at each of these points in terms of children, what do we have?

Firstly, if we are to have fairness in setting the public agenda it may mean that children's issues are included in discussion in an environment where they are not normally considered, so for example, at a town council meeting the issue of recreational facilities would be included in the agenda. Without the children's interest group this issue may have been excluded.

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[58] Ibid., p185

Secondly, this method ensures that not only the privileged with the ability to debate are heard. So the group of children with an interest in the lack of recreational resources may put forward their own position that may be different from what adults think it would be. Adults often are surprised at children's insight into solving problems which can be very different from what adults expect it to be. One has only to think of Edward De Bono's The dog exercising machine.[59] What is important is that the group is allowed to express its voice in a way that suits it or is in line with its ability. So we have children's art replacing the rhetoric of public debate as well as children being guided through the speech making process necessary for presenting their case. Remember this is done on their terms rather than on ours. The idea here is that not only is a group which is not normally heard given a voice, but also that the assumptions made about a problem by the political mainstream are challenged.

Thirdly, there is a shift from the "I want" to "I am entitled to." This is an appeal to the rights of the group rather than a more emotive appeal to what that group wants. It means that society is more accountable and less likely to serve the self-interests of those who are already advantaged. Also if child interest groups are entitled or have the right to recreational facilities this is different to just wanting them because they would be nice to have.

Finally, by listening to the groups which are normally silenced the common knowledge of the society is increased and if wisely applied better meets the needs of the society as a whole. "A public that makes use of all such knowledge in its differentiated plurality is most likely to make just and wise decisions."[60] This is celebration of the difference in knowledge of the different

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[59] De Bono (1970)
[60] Ibid.,p186

groups. Also children, as I have already mentioned, may have the solution that adults cannot see.

These points are merely the beginning of exploring the potential of an alternative system. In this system the difference of children is viewed not as a tool for exclusion but rather as a valuable asset in society. Childhood can be celebrated and valued and in the ways in which children are children and not in the ways that they are like adults.

CHAPTER 5: IMPLICATIONS FOR SOCIETY AND SCHOOLS

5.1 FINAL DIRECTION

The task of this final chapter is two-fold. Firstly, to consider opposing positions, to close the still open doors. Secondly, to suggest implications of the suggestions of the last chapter for schooling and education in South Africa.

There are two main alternative arguments to what I am suggesting. The first is that of the Caretaker Thesis and the second that of the Child Liberationists.

5. 2 CARETAKER THESIS

The caretaker thesis is in direct opposition both to Child Liberationists and my position in that it denies children their agency rights. It is based on Paternalism.

Paternalism is the justification of making choices for others. Mill[61] believed that the individual was most able to make decisions about what was in their best interests. There were however situations in which the individual could not make those decisions. The first situation was when the individual was in what Mill called "Some state of excitement or absorption incompatible with the full use of the reflecting faculty."[62]For example if a person is suicidal then one would assume that they are not in a state to think rationally for themselves. The second case is a lot simpler. This category includes brain

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[61] Mill, (1978)
[62] Ibid., p46 .

damage and mental disturbance. Although we can find problems with both these examples, in principle it is reasonable to find situations in which it is acceptable for others to make choices for the individual. But what about the case of children?

According to the caretaker thesis it is acceptable for adults to make decisions for children. This is because they have not, firstly, developed the capacity to make intelligent decisions. This is because they do not have the necessary knowledge about the world and about themselves. Secondly, they are emotionally unsettled because they are immature and therefore their decisions are not logical. However the case of children differs from other cases of justified paternalism because the time period of their irrationality is different. They are not the same as the person in the state of irrational excitement who will recover, for they will remain children. Yet unlike the mentally ill they will not remain children for the rest of their lives. In the normal pattern of things they will become rational and autonomous adults. So the caretaker thesis has to find further grounds on which to justify their decision making on behalf of children.

The defenders of this argument look to the future of the child and say that adults are best able to make decisions for the child. These decisions could be justified along the lines of "Mother knows best," the reasoning being that the child cannot know what kind of adult they will become but other adults can. "The caretaker, if you like, chooses for the child in the person of the adult which the child is not yet but will eventually be."[63]

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[63] Archard (1993) p 53

There are three main problems with this. Firstly, each child is an individual and as such, it is hard to see how the adult can know what that child will become. Secondly, adults are given the freedom to make their decisions even though at times adults make mistakes. If this is an accepted freedom for adults why shouldn't it be an accepted freedom for children? Why is it important that all the decisions made for the child be the correct ones? Why can children not have the same freedom to make mistakes as adults have? The third problem is as follows: No-one can predict the future of the child. Decisions have to be made by a caretaker about the adult the child will become. These decisions are made without the sure knowledge of what the child will become. A caregiver or parent who knows the child is assumed to be capable of making decisions about that child's education and development.

Suppose we have a child who is 14 years old. Her parents are good parents in the sense that they want the best for her. In fact if society were to choose a caretaker for her they would choose her parents. They are also able to make rational choices after having availed themselves of all the opinions and having considered all the available information. But the decision at hand relates to the child's education. In South Africa at the end of grade 9 a child chooses her subjects for matric. These subjects will determine whether the child can attend university with certain courses needing certain subjects. Even employers are looking for certain subjects. Her parents want her to choose subjects that will maximize her choices later. This means that Mathematics and Science are important. The child's options are further constrained by the school she attends. With the combination of English, Afrikaans, Mathematics and Science she has to choose two more subjects.

How can her parents know what is best for her? Maybe the school will advise her. Discussing the choices with the child seems a good idea. Suppose she chooses Accountancy because she feels it will help her get a job one day and this subject choice is only offered at that particular school if she takes History as her sixth subject. It seems a broad education with both a practical career orientated subjects and academic subjects. However by making this choice our child has excluded the medical career opportunities by excluding Biology.

It can be seen that making a decision for this child is extremely difficult. Making decisions with the child's future adult's best interests in mind is difficult. I am not suggesting that the child is more capable of making the choice. Paternalism is a problem not because it makes choices. Making choices has to happen as a natural part of life. It is not even a problem because it makes wrong choices. Even the fact that an adult makes choices for a child is not really a problem, in the sense that caregivers have to make choices for the children in their care. It is a problem because it justifies those choices as being in the best interests of the child without knowing what those interests are.

So it can be seen that the problem lies in the basic assumptions. What am I suggesting as an alternative? I am saying that because children are to be seen as having a dual system of rights that means the children are able to exercise the choices that caretakers would take away from them. Children are also able to have these choices presented to them in such a way that they can make the choices intelligently, the child is educated about the choices. If I was to tell my grade four pupils that they have a choice about doing their

school work today, as the children liberationists would have me do, I am only exposing them to the first right they have, namely the right to free choice. I am not exposing them to the second right, the right to educated choice. An educated choice is one they would be able to make if they were able to understand the implications of that choice, namely either missing out on the knowledge, or having to complete the work on their own or for homework. How we view children will determine how effective the process of giving choices is. If we believe children are capable people who can carefully consider their choices and make their decisions based on the options, we need to have a view of children which is in line with this. If we assume a view of the child which is limiting then we cannot assume that my pupils if exposed to the choices and after fully understanding the choices are able to decide.

5.3 CHILD LIBERATIONISTS

One alternative position to mine is that of Child Liberationists. I have already discussed the link between child liberationists and assimilationists but there is more to their argument than the point that Child Liberationists would promote an assimilation model for children. Child Liberationists such as Neill [64] Holt[65] and Farson[66] hold the position that children are not different to adults so the idea of different rights is problematic. The two areas in which children are seen by Child Liberationists as being most oppressed are interestingly enough the two social institutions specifically designed for children, the nuclear family and the school.

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[64] Neil (1968)
[65] Holt (1975)
[66] Farson (1974)

Child Liberationists assume, as I do, that the human rights that do not require agency should be and are granted to children. But they see this as merely protecting children[67] and not as protecting their rights. They are happy with a paternalistic granting and even protecting these welfare type rights. Child Liberationists demand agency rights for children. Those that give the same choices that adults have. All adult rights should be granted to all children. They do so on two grounds. Firstly that age is arbitrarily used as a criterion (see my previous discussion of this argument[68]), secondly that children are more competent than they are assumed to be.

They argue that in a kind of self-fulfilling prophecy children are regarded as incompetent and so act as incompetent. They then attempt to argue against this by citing examples of competency in children much like my fourteen-year-old mother. The problem with citing these examples is that for each example cited an opposite example could be cited. Surely such an issue needs to be based on a more stable foundation

I would like to suggest that the Child Liberationist theory is problematic because after challenging the assumption that children are children and seeing these assumptions as socially constructed they believe they can undo this and recreate society and children simply by giving children the rights that adults hold. The problem however is that children have been brought up in the family and the school in a particular way and cannot suddenly be expected to cope with instant adulthood as this would be denying what they

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[67] Archard (1993) p 45.
[68] See chapter 3

are. Rather we need to look at what they are and give them a voice where they are as children.

5.4 IMPLICATIONS FOR EDUCATION

Some of the greatest changes in education which would result from acknowledging the rights of children would be not in the macro areas of school curriculum and school governance but rather in the ways in which they interact. In this final section I will look at the areas of school governance, relating to pupils and the way we view children.

5.5 SCHOOL GOVERNANCE

Although much progress has been made in the area of school governance with pupil representation on governing bodies, the assumption is that only high school students can and should be elected to SRC's (Student Representative Councils). Also in any schools SRC's run parallel to the traditional prefect system which denies children the kinds of rights SRC's should be granting.

Primary schools are falling behind when it comes to involving pupils in school governance. I am not suggesting that pupils necessarily attend staff meetings but there are issues in schools where pupils could be consulted. Where the issue is relevant it could be discussed with them and either a representative, a deputized teacher or a written statement produced by the pupils could be included in the staff or governing body meetings.

Pupils could be consulted on issues such as dress code, and fundraising as well as "more serious" issues. Most pupils will be more than happy if a

decision on their part is vetoed if they feel it has a fair hearing. The contrast between a recent board meeting of a private school well known for its democratic ethos where the pupils were part of a discussion about employing a new head and the high-handed decision making of a typical school principal is marked. The focus will no longer be on how we, the school authorities, can control them, the pupils, but schools will become democracies in which we work together, in which everyone has their say. And just as pupils are a group so within that group there are a variety of subgroups who will be more likely to express themselves effectively.

5.6 RELATING TO PUPILS

If we view children as having rights we would not use the same manipulative treatment as we do now. We tend to use comments like "if you do not eat your carrots you won't grow up big and strong." This is a lie. But it is also a manipulative way of relating to a child because it is treating a child as if she could not possibly know better and can therefore be duped into eating those carrots. Children can be treated emotionally as capable of having the intellectual ability to know what they need to do in life. We can appeal to their better selves rather than to their emotions.

5.7 A FINAL HYPOTHESIS

Imagine that in a particular town there are two schools. Call them school A and school B. The parents and pupils do not choose which school to send their children to as this is determined by where they live. Both schools take pupils from a similar range of income groups. Both schools are equally funded and have the same facilities. In my hypothetical example it is easy to create identical schools. In reality this could not occur. However there is

one difference between the two schools: in the one case, school A, the pupils are treated as inferior beings who are incapable of expressing their rights, while in the other the pupils are expected to be able to express and act upon their rights. The big question would be how would those two schools influence the lives of the pupils and how would the way the pupils are viewed influence the running of the school.

In school A the pupils would view themselves as being at school to get an education from the teachers. This may be a very good education. The teachers may be excellent teachers with much knowledge about their subjects and the necessary skills to pass that knowledge on but the pupils would not be able to participate in the process in the same way. The vested interest of a participator would not be there. On the other hand the pupil at school B would be able to negotiate both the content and the approaches used by the teacher. We are not talking about the child having the right to refuse to learn but rather the child being able to question and to discuss, to negotiate. Pupils would know that their views are considered to be valid. They would not have to use the tactics of demanding attention because attention would be seen as their due. We as adults know we can demand to be treated with respect. These children would also know this. The rest of the town might struggle to deal with these children because they would be different to what we normally assume to be appropriate behaviour for children.

The question of what this would mean for the teachers is important. Teachers would find they would have to adjust to teaching rights-holders. But in the long run their task would be simplified by the openness. I

sometimes find it difficult to "read" my pupil's response to my lessons. I often ask them for input but sometimes I think they tell me what they think I want to hear rather than what they really think. My efforts to apply what I feel about rights are beginning to bear fruit with some pupils but not with all.

One of the most difficult tasks for a teacher is trying to get the pupils interested in what they are learning. In school B this would not be such a problem. The pupils would still have to learn the things they do not like because they have the right to that knowledge but they would be able to express their dislike and would be able to discuss ways in which the problem could be solved.

In the second school we would have a more dynamic group of pupils with a vested interest in school. We would have teachers who would have to work harder but would experience greater rewards and we would have a community that knows what their children want. The reality of what children experience today is very different to this "dream." But children in this situation could not experience the kind of brainwashing that the children in Clavell's[69] book experienced.

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[69] Clavell(1982)

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