

FORUM: "CHILDREN'S RIGHTS" TWO VIEWS

Abstract

This essay discusses the topic of the rights of students in formal educational settings from both a philosophical and historical perspective. The author begins by refining the philosophical notion of a right and continues the discussion with a brief overview of children's rights in education since the 17th century. Finally, there is a treatment of the implications of the child's rights of freedom, participation and welfare to which he is morally entitled in the schools.

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Children's Rights in Education: A Philosophical and Historical Approach

In 1798, a 17-year-old boy, Robert Ladbroke Troyt, was found guilty of forgery at London's Old Bailey courthouse. It was his very first offense and according to contemporary accounts of his trial, he "... appeared to have no sense of the awful situation in which he stood, behaving with much unconcern."¹ On November twenty-eighth, young Troyt was executed for his crime.

At first glance, one might think that the Western world has progressed markedly on the issue of human rights for children² since 1798 and, relatively speaking, this is no doubt the case. However, one might convincingly argue that even today young persons are an oppressed minority. Children are the subjects of physical and mental abuse in prisons and reformatories; they are denied basic medical care as offspring of the poor; their minds are violated and abused by the creatures of modern technology, such as, television, toys, and movies. Their civil rights are frequently disregarded, especially in the schools, when they are denied free speech, protection against search and seizure and recourse to due process. As Beatrice and Ronald Gross observed:

A good case can be made for the fact that young people are the most oppressed of all minorities. They are discriminated against on the basis of age in everything from movie admissions to sex. They are traditionally the subject of ridicule, humiliation, and mental torture by adults. Their civil rights are routinely violated in the homes, schools and other institutions. They often cannot own money or property. They lack the right to trial by jury before being sentenced to jail.³

In the past decade, there has been an awakening among educators to the problem of human rights for children. The term "child advocacy" has become a rubric under which a variety of programs, proposals and activities on behalf of the rights of children have arranged themselves. Yet the issues surrounding children's rights are in many ways unclear. This is so for a variety of reasons: the clouded philosophical notions of a "right" which prevail in the literature, a lack of appreciation of the historical development of children's rights, and the tendency to minimize the issue of rights in an educational setting. No doubt a discussion of children's rights in education is extremely complex and cannot be treated exhaustively in a brief article; however, in approaching the topic from both philosophical and historical perspectives, perhaps we shall discover it more intellectually and practically manageable an issue.

It would be impossible to embark on a comprehensive review of the philosophical notion of rights. Indeed, such discussions have permeated the Western intellectual tradition since Aristotle and have

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gained widespread dissemination in the works of the philosophes of the Enlightenment.⁴ A number of these theorists have argued that a right cannot be divorced from the concept of power or that, similarly, rights depend upon the holding of power.⁵ Others, such as Jeremy Bentham, believed that a right was derived from the performance of a duty and, therefore, one who neglected his duty could conceivably forfeit his right.⁶ Further, rights have been seen simply as "claims" without a moral or objective standing independent of an individual's assertion. This is not to say that some claims cannot be more justified than others and thus grounded in a right. Still, a claim itself, however justified, is not a right. Rather, a legitimate claim is *dependent upon* a right.⁷ Here we reject contentions which would like rights to power, duty or claims.

Frequently, the notion of rights is confused with the canons of the legal code, and an individual is said to possess rights under the law. Yet it is difficult to accept the assertion that legal and moral rights are synonymous, for quite often legal codes have merely institutionalized inequality and the violation of moral rights. As we reject the legal approach to a discussion of rights, we must also put aside, at least in part, another common misconception, i.e., that chronological age can be the sole determinant of rights. For example, that a young person at the age of 18 should suddenly possess a wide range of rights that he did not at the age of 17 years and 11 months seems difficult to justify, if not actually ludicrous.

And so, if a right is not contingent upon power, dependent upon the completion of one's duty, synonymous with a claim, limited by the legal system, nor linked to chronological age, then what is right? To this question we can give no simple or direct answer. C.A. Wringe in his recent study of children's rights hesitates to define the term and engages in only descriptive attempts to explain it:

To raise the question of rights when a particular course of action is being considered is to focus attention on the wishes, choices, and aspirations — not merely on the interests as seen by others — of those concerned. To insist that people have rights which only they may alienate is to emphasize that they are to be seen in a particular way, as beings whose wishes may not be lightly set aside, however great the benefit to be derived from doing so.⁸

Rights, then, have a moral suasion that exists independently of the factors mentioned above. They may be, perhaps, divided into three general categories:⁹ general rights which are held against everyone, special rights held against individuals, and welfare rights which have been defined as rights which assure that the

... individual should be given certain things which they need if they are unable to obtain them by their own efforts, on the grounds of the dire consequences to the individuals concerned if these things are not provided.¹⁰

Children's rights, then, must be seen in light of these categories, for to a certain extent children hold the same rights as adults. In the realm of general rights, for example, there exist rights of freedom and participation, subject only to the important proviso of the degree of the individual's rationality. But it is the welfare rights which are most often associated with children and unfortunately confused in the process. In a less specific way, one might say that children, like adults, have the right not to be subjected to cruelty, assault or abuse, nor to be made to suffer discomfort, pain, fear, embarrassment or humiliation. Interestingly, these are assertions with which many moderns readily agree, but they are not claims that have been widely accepted for any length of time.

A brief historical view of children's rights must necessarily focus not upon the issue of moral rights itself, for this is a very recent concern, but rather upon the concept of childhood. Grounded in the common law of the medieval period, English parents regarded their children as a possession, and the "ownership" of this possession could only be usurped in extraordinary circumstances.¹¹ Still, for a time prior to the 18th century, a child could maintain a high degree of freedom and even participation were he to become a student. The privileges and prerogatives of the medieval university student *vis à vis* their professors and the administration are well known and need not be

detailed here.¹² Further, even the schoolboy who chose to board in a private home or a hostel near his college fell beyond the limit of his school's authority and thus enjoyed, in effect, a right of freedom. Only by the end of the 17th century, especially under the influence of the Jesuits, did school authorities manage to assert control over off-campus living quarters, until by the 19th century children may be likened to prisoners of sorts. A 19th century English educator wrote: "It is an eminently wise rule, established in several colleges, not to let the boarders out on Sundays and holidays."¹³ and a French schoolboy during the same period complained:

I was more closely confined than a monk in his cloister and had to present myself for divine service, a meal or a lesson at the sound of a bell, which governed everything.¹⁴

And the headmaster of the College of Sainte Barbe wrote to the parents of one of his students:

Holidays strike me as dangerous in the first year at college; they are not traditional at this college or in the pupil's interests.¹⁵

Thus, the trend in the last three centuries until the latter part of the 20th century in terms of certain rights of freedom for students has been toward greater restriction on the part of school authorities.

The limits of a child's rationality often compel some modification of his right of freedom or of participation. Consequently, at times it is not a violation of these general rights to exercise a degree of discipline and coercion in a school setting. This is, however, quite different from justifying cruel, painful, embarrassing or humiliating punishment by appealing to the intrinsic evil of the child's nature. This latter view was particularly popular in 18th and 19th century England and America and arose from Calvinist and Puritan world views. Medieval Europe, under the sway of Catholicism, for example, saw fewer instances of corporal punishments in the schools than the 17th century,¹⁶ while in France Jean-Baptiste LaSalle, the founder of the Catholic Christian Brothers, generally frowned upon the beating of a child as a corrective measure.¹⁷

Still, American colonial educators in effect rejected the notion that a child, evil as he was, had any participatory rights whatsoever, emphasizing absolute obedience to authority as the cornerstone of schooling.¹⁸ Taken to its extreme, this attitude inspired a 1641 Massachusetts law which read:

Rebellious children, whether they continue in riott (sic) or drunkenesse (sic) after due correction from their parents, or whether they curse or smite their parents, to be put to death.¹⁹

Cotton Mather's famous work, *A Family Well Ordered*, published in 1699 spoke of the evilness of the child and the need to hold him in complete subservience to authority,²⁰ while an English counterpart wrote:

Surely there is in all children a stubbornness and stoutness of mind arising from natural pride which must in the first place be broken and beaten down so that the foundation of their education . . . may be . . . built.²¹

Reforms in terms of discipline, and thus in terms of rights of freedom, participation and the right to be free from humiliation, cruelty and embarrassment, were slow in coming in the course of the 16th to 19th centuries. In America, the educational literature of mid-19th century²² continued to reflect the belief that the child's will had to be broken for education to commence, and broken not by bribes or cajoling, but by corporal punishment. Even when a figure of such educational importance as Horace Mann argued that the use of the rod be limited, he was nonetheless soundly criticized.²³

The entire issue of children's rights was, in fact, a non-issue and of no concern to even the most progressive of educators until well into the 20th century. From the waning of the Middle Ages to the 1960's, the history of children's rights has been one of a progressive loss of independence and respect in the school setting. Only in the early 1970's did a serious movement for child advocacy begin to gather momentum and to effect the child's position in education.

The movement for the recognition of children's rights gained a great deal of attention in 1979 when the United Nations issued its "Declaration on the Rights of the Child," but a steady, if not

spectacular, stream of literature preceded the Declaration.²⁴ It is not possible nor desirable to review here the literature on the subject published since 1970. Suffice to say it ranges from the very radical approach to John Holt²⁵ to the very conservative interpretation of F.A. Olofson.²⁶ Far more informative for our purposes here is to return to our original categories of rights and attempt to apply them to the problem of children's rights in education.

Rights of freedom and rights of participation, it has been stated, may be granted, given their nature, only in the case of the existence of a degree of rationality. This simply means that one must be able to make a judgment concerning the implications of an action. Now, Wringer properly argues that we must distinguish between the level of gravity of an action, for the choice of toys, playmates, coloring books, etc., are generally simple and can be understood by a person who is not fully rational. In these cases, the child possesses a right of freedom.²⁷ As the choices become graver and require fuller rationality, the child's right to freedom is modified. Thus, we must admit of instances where the restriction of a youngster's freedom is not necessarily a violation of his rights, but even this restriction justifies restraining him not until he reaches some designated age but only until the child is capable of making a reasoned judgment — whether the adult agrees with that judgment or not.²⁸ In fact, even in limiting a child's rights based on his level of rationality, a certain inequality persists, for the same restrictions are not always applied to adults. Apart from institutionalized adults, society makes no attempt to interfere with adult rights of freedom, although many people may possess marginal reasoning ability. As the trend in mental health professions to de-institutionalize all but the helpless continues, the disparity between how we treat rational children and irrational adults becomes even more flagrant. Although practical difficulties may abound, whenever possible, children should be held to the same standards as adults in determining rights of freedom. Essentially, the same arguments may be made for the right of democratic participation.

Turning to the notion of welfare rights in education, we can assume the basic right to education is, in fact, a welfare right. Given the complexity of modern society, the right to education is necessary in order to avoid significant deprivation. Although the individual will not necessarily perish, as he would were he deprived of food, a clear injustice is perpetrated should a child be denied an education. If we admit that a child has the right to be educated, it follows we must ask to what extent does he possess the right. Since 1958 and the promulgation of the National Defense Education Act, American society seems to have gone well beyond the limited scope of a right to education as a welfare right. Rather than view the extent of education as linked to what it would take to enjoy "protection from material deprivation,"²⁹ the Federal Government from Eisenhower to Carter echoed the sentiments of the NDEA:

We must increase our efforts to identify and educate more of the talent of this nation. This requires programs that will give assurance that no student of ability will be denied an opportunity because of financial need.³⁰

Undoubtedly, this is a laudable and desirable aim for a society, but it is difficult to justify as a right of the child. The actual right to education goes as far as is needed to provide sufficient education to participate intelligently in a democratic society. Anything less would be unjust, as the individual would find himself exploited by others and at a material disadvantage.

Thus far, we have attempted to establish a child's right to sufficient education to serve him in a democratic society. Consequently, we must admit of the child's right to a good education. It has been observed that upon entering school a youngster gives up approximately 11 years of freedom and entrusts himself to the teacher and the school system with the expectation of realizing his right to be educated for participation in a democratic society. His rights are violated if instead of being educated

. . . he is abused, humiliated, subject to needless and stultifying boredom, made to learn things which are of no value or to engage in sloppily inefficient learning procedures, as a result of which he eventually emerges from school having learned little of value.³¹

Finally, let us turn to some of the implications of these rights of freedom, participation and the welfare right to education. In a school setting, the right to freedom can be restricted only as a general function of rationality. One may legitimately modify a child's right to freedom when, as in the adult world, his action would infringe upon the rights of others and when, should he not be fully rational, an action would be damaging to the child's own interests. A student also appears to have the right of participation to the point of the partaking in democratic decision making, at the very least in the form of consultation on matters directly affecting him. This right of participation would also include, as in society at large, the legitimacy of protest and demonstration, for as Wringer rightly observes: "It is morally impermissible to punish sincere (even misguided) protest as if it were simply childish disobedience."³²

Simply because he is in school does not mean that the child forgoes rights with which he is justifiably invested. A student's right of participation, for example, is violated if he is not afforded recourse to due process and consultation, his welfare rights trampled upon should be denied a good education, his rights of freedom unjustly disregarded if his activities are restricted without concern for his interests and his level of rationality.

Traditionally, the child and student has been treated as if he had no rights whatsoever. Well-meaning educators of the last two centuries, predicated their views on the assumption that the child's very nature was evil, believed in an authoritarian, punitive school structure which denied all rights to children. Over the years, we have come to believe that a child is a person in his own right and that a student has rights, not as a future adult, but as a child. Indeed, the rights of a child may differ from those of an adult, but only because the youngster has different needs, interests and rational capacities and not because he is inferior. We cannot deny the student's rights of freedom, democratic participation, nor his welfare rights. Instead, we must attempt to restructure educational settings so as to ensure respect for the child and his moral rights.

Although the implications of this overview may be disturbing to many educators, the problem of denial of legitimate student rights in schools is too serious to be ignored. Children in educational settings have the right to participate, for example, in academic decisions affecting them. Secondary school student governments should have very real democratic powers over a wide range of school issues. There is no reason why the disbursement of funds for academic and nonacademic purposes, the structuring of the curriculum and the employment of teachers and administrators, to name a few, should not be matters about which students through their representatives are consulted.

As elementary and secondary schools return, for example, to "the basics," i.e., emphasis upon the mastery of fundamental verbal and analytical skills, there is the temptation to restrict student rights, blaming the lowering of academic standards in the past decade upon a lack of discipline in the schools and a pandering to children's concerns. In fact, there need be little connection between the two. Educators can "return to the basics," should they desire, without denying rights of freedom and participation of children. Irrespective of the good intentions of the teacher and administrator, their attempts to improve quality and performance of students must include the children's involvement in decision making at various levels.

With some variation, the same criteria for determining moral rights should apply both to adults and children. Educators may resist the casting off of authoritarian molds which have developed, especially in North America, over the last 200 years, and they may spurn a view of children which runs counter to a teacher's "common sense," but until we truly respect children's rights, there can be no justice in the schools. Despite strategic difficulties, the development of a genuine moral educational structure largely depends upon society's recognition and acceptance of the child's right

to participate, his right to freedom and his right to sufficient education. C.A. Wringe concluded his study on children's right in an admonishing, but appropriate, tone:

. . . it is at least sometimes morally obligatory to consider the interests, wishes and point of view of the young with the same degree of seriousness as those of adults who are in a position to assert their rights more effectively and forcefully.

That children have rights is not to be seen as a matter of purely academic interest. . . . those moral rights which children possess are a matter of undeniable practical concern for parents, officials, teachers and others upon whose activities and responses the happiness, fortunes, and well-being of children depend.³³

By and large, society has rejected Cotton Mather's harsh views of the child, but it is not sufficient simply to modify adult attitudes toward the nature of children for, in the interests of justice, the moral rights of children in the classroom demand firstly recognition and finally implementation.

Notes

¹ Quoted in Irina Stickland, *The Voices of Children, 1700-1914* (New York, 1973), p. 93.

² Literature on the subject is fairly recent. The seminal historical works are Philippe Aries, *Centuries of Childhood: A Social History of Family Life* (New York, 1962); Robert Coles, *Uprooted Children: The Early Life of Migrant Farm Workers* (New York, 1971); and Lloyd De Mause (Ed.), *The History of Childhood* (New York, 1975). Since 1970, there have been a number of works on the contemporary movement of human rights for children, including Brenner (1974), Cole (1972), Cuban (1974), Haskins (1975), Levine, Carey, Divorky (1973), and Strouse (1970).

³ Beatrice Gross and Ronald Gross (Eds.), *The Children's Rights Movement: Overcoming the Oppression of Young People* (New York, 1977), p. 1.

⁴ See, for example, the writings of Hobbes, Hume, Montesquieu, Rousseau, Voltaire, Locke and Jefferson, to name only a very few.

⁵ Notably, David Hume, in *Enquiry Concerning the Principles of Morals*.

⁶ See Jeremy Bentham, *An Introduction to Principles of Morals and Legislation* (New York: Columbia University Press, 1945). Reprint.

⁷ C.A. Wringe, in *Children's Rights: A Philosophical Study* (London: Routledge and Kegan Paul, 1981), discusses at length why a right is not a claim, nor dependent on duty or power. See pp. 23-29.

⁸ P. 36.

⁹ See, for example, D.D. Raphael (Ed.), *Political Theory and the Rights of Man* (London: Macmillan, 1967).

¹⁰ C.A. Wringe, *Children's Rights*, p. 74.

¹¹ P. 94.

¹² See, for example, Lowrie J. Daly, *The Medieval University* (New York: Sheed and Ward, 1961); Lynn Thorndike, *University Records and Life in the Middle Ages* (New York: Columbia University Press, 1944); Charles Haskins, *The Rise of Universities* (New York: Cornell University Press, 1957).

¹³ Quoted in Philippe Aries, *Centuries of Childhood: A Social History of Family Life* (New York: Vintage Books, 1962), p. 281.

¹⁴ C. Sorel, quoted in Aries, p. 275.

¹⁵ P. 282.

¹⁶ P. Aries, *Centuries*, pp. 260-262.

¹⁷ See Jean Baptiste La Salle, *Conduct of the Schools* (New York: McGraw-Hill 1935).

¹⁸ R. Freeman Butts and Lawrence A. Cremin, *A History of American Education in American Culture* (New York: Holt, Rinehart and Winston, 1953), p. 67.

¹⁹ *The Hutchinson Papers* (Albany: Prince Society, 1865) V. II, p. 198. Also quoted in Butts and Cremin, *A History of American Education*, p. 67.

²⁰ Cotton Mather, *A Family Well Ordered* (Boston: Green and Allen, 1699), Columbia University Microfilm Collection.

²¹ John Robinson, *Children and Their Education*: quoted in Alice Morse Earle, *Child Life in Colonial Days* (New York: Macmillan, 1899), p. 192.

²² See, for example, Herman Humphrey, *Domestic Education* (Amherst, 1840); Mrs. J. Blackwell, *The Mother's Practical Guide to the Early Training of Her Children* (New York, 1943); S.G. Goodrich, *The Young American* (New York, 1842).

²³ Association of Masters of the Boston Public Schools, *Remarks on the 7th Annual Report of the Honorable* (Boston, 1844), pp. 128-131.

²⁴ Paul Adams, Leila Berg, et al., *Children's Rights: Toward the Liberation of the Child* (New York: Praeger, 1971); Robert Bremner (Ed.), *The Legal Rights of Children: An Original Anthology* (New York: Arno Press, 1974); Ted Clark, *The Oppression of Youth* (New York: Harper & Row, 1975); Larry Cuban (Ed.), *Youth as Minority: An Anatomy of Students' Rights* (Washington: National Council for Social Studies, 1974); David Gottlieb (Ed.), *Children's Liberation* (Englewood Cliffs, N.J.: Prentice Hall, 1973); Harvard Educational Review, 1974; Alan Levine, *The Rights of Students: The Basic ACLU Guide to Children's Rights* (New York: Discus/Avon, 1973); Beatrice Gross and Ronald Gross (Eds.), *The Children's Rights Movement: Overcoming the Oppression of Young People* (Garden City, N.Y.: Anchor, 1977).

²⁵ John Holt, *Escape From Childhood* (New York: E.P. Dutton, 1974).

²⁶ F.A. Olofson, "Rights and Duties in Education," in J.F. Doyle (Ed.), *Educational Judgments* (London: Rutledge and Kegan Paul, 1973), pp. 179-183.

²⁷ C.A. Wringe, *Children's Rights*, p. 111.

²⁸ P. 106.

²⁹ P. 146.

³⁰ National Defense Education Act, 1958.

³¹ C.A. Wringe, *Children's Rights*, p. 134.

³² P. 158.

³³ P. 162.