RIGHTS, FOUCAULT AND POWER:
A CRITICAL ANALYSIS OF THE UNITED NATION CONVENTION ON THE RIGHTS OF THE CHILD

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Abstract

In 1989 the United Nations Convention on the Rights of the Child (CRC) was ratified by all but two of its members, the United States of America and Somalia. The CRC has been hailed as a victory for the children's rights movement and according to The International Save the Children Alliance (1999: 5) "over the past ten years it has helped to establish an internationally accepted framework for the treatment of all children, encouraged a positive and optimistic image of children as active holders of rights, and stimulated a greater commitment to safeguarding these rights." However, the convention has also been highly criticised for its endorsement of Western values (see for example Pupavac, 2001). Nations which are unable or unwilling to adopt the ideals advocated by the CRC are judged to be immoral and in need of salvation. In offering a critique of the convention and contemporary discourses about rights I adopt Foucault's theorizations about power.

Key words: children, rights, United Nations Convention on the Rights of the Child (CRC), power, Foucault.

Introduction

In 1989 the United Nations Convention on the Rights of the Child (CRC) was unanimously adopted by its members and ratified by all but two of the world's governments[1]. The CRC has been hailed as a victory for the children's rights movement and according to The International Save the Children Alliance (1999: 5) "over the past ten years it has helped to establish an internationally accepted framework for the treatment of all children, encouraged a positive and optimistic image of children as active holders of rights, and stimulated a greater commitment to safeguarding these rights." However, the convention has also been highly criticised as being a new moral crusade to save children, especially regarding Third World children whose lives do not comply with a Western concept of childhood (Pupavac: 2001). Using Foucault's theorizations about power, I provide a critique of the Convention and also of

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[1] The two countries which did not ratified the CRC is The United Stated of America and Somalia.

contemporary discourses about rights. My intention is not to reject the importance of granting rights to children, but to show how the present discourse is limited.

Contemporary understandings of childhood are the product of a specific historical period and its prevailing social conditions, around the development of liberal thinking during the eighteenth and nineteenth centuries. Two major developments arise from new understandings about childhood: the development of the CRC and of a right's discourse, discussion of which will be followed by outlining some of the criticisms made of them, and in particular that although these developments are hailed as important steps towards greater children's participation and fairer power relations, they in fact reinforce existing forms of power and do not empower children. My aims are firstly to demonstrate how a universal charter of children's rights contributes to the production of truths and knowledge which are essential to the exercise of power, and secondly to further develop some of the criticism of the CRC and the children's rights discourse through discussing some of Foucault's understandings of power, knowledge and subject formation[2].

What Is Childhood?

It is now widely accepted that childhood is a historically and socially constructed concept (see for example Valentine, 2001; Pupavac, 2001 and Truong, 1990). Valentine's (1996) account of the development of the concept of childhood argues that it was not until the eighteenth century that the modern concept of childhood as a time of innocence started to gain prominence in Europe. Before then, children were depicted as 'savages', in need of strict control and corporal punishment. This change in attitude has not occurred apart from, but rather as a consequence of, wider social changes taking place in Europe, namely the development of the modern state and liberal thinking. According to Stephens (1995: 15)

> "The creation of the modern state and national culture is integrally related to the creation of new sorts of gendered, and age-graded subjects and spaces, and the establishment of institutions variously engaged in spreading these constructions throughout society."

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[2] It is not be possible to offer a complete discussion of Foucault's work here and only some of his ideas will be drawn on.

Thus, modern concepts of childhood coincide with the emergence of other concepts such as the family, privacy and individuality, and the establishment of institutions such as the school and the welfare state (albeit in their embryonic forms). This period has been linked with the emergence of a new form of power which results in "a concern for the preservation of life, for the fulfilling of human need, and above all for the relief of suffering, which gives us an utterly different set of priorities from our forebears" (Taylor, 1984: 155). This modern humanitarianism brings about a change in ethics from an aim to achieve spiritual salvation to an aim to live a "good-life". But the ethics which accompany modern humanitarianism are, according to Taylor, a new form of domination in themselves rather than a form of liberation, as shall be further discussed later.

The liberal theory that emerged in the eighteenth century has challenged the idea of people as subjects of a king, instead, introducing the idea of capable citizens who engage in consensual relationships with the state. The state's function then became to protect the rights of its citizens. So, it became necessary to establish who was capable and who was not capable of engaging in such relationships, and whose rights the state should protect. People were seen as divided into two groups: those that as active and rational agents in society had rights, and those that did not have rights due to their lack of rationality. Rights were then a luxury granted only to those who were perceived to be active agents in the social world, i.e. rational adult middle and upper class males.

One of the most striking differences conceived at this time was between the rational adult and the not yet rational child. Children were seen by early liberal theory as 'citizens in waiting', "as potential bearers of rights, which they may exercise only when they have reached the age of reason" (Arneil: 70). Thus children, implicitly male children, unlike any other group who was deemed irrational, were seen as having the possibility of achieving rationality, of becoming citizens. The construction of childhood as a concept in direct opposition to that of adulthood serves to establish and reinforce hierarchical relationships typical of the power that had emerged during this period. According to Stephens (1995: 6);

> "the ideological construction of childhood as the privileged domain of spontaneity,
> play, freedom, and emotion could only refer to a society that contained and drew

upon this private domain as the ground for public, culture, discipline, work, constraint, and rationality."

Thus, the modern concept of childhood has evolved as a consequence, or rather consolidation, of new emergent powers, i.e. adult power over children, middle class power over the working classes, and Western power over non-Western nations. Stephens (1995: 18) argues that notions of childhood that evolved in these periods are "profoundly influenced by European colonialist experiences". Thus, the child, like the primitive inhabitants of the colonies, had to be introduced to the liberal doctrine in order to become fully rational and, consequently, eventually gain the rights to full citizenship. Pupavac (2001: 97) notes that, "the issue of children is perceived as of critical value to the project of a new international ethical order" and in order for this project to be successful children had to be under greater surveillance of responsible adults.

In order to institutionalise this ethical order, institutions such as the educational and legal systems were created. Foucault calls these disciplines and they are essential in the consolidation of this new emerging order. Disciplines are "forms of power which are not violent or destructive, but seek rather to produce docile subjects through processes of training, correction, normalisation and surveillance (Gallagher, 2004: 53). Their role is to 'normalise' the individual and to construct new forms of knowledge that facilitate the government of life processes (McHoul & Grace: 1993). Ideas about children based on a universal, almost natural, character of childhood are a product of this normalizing power encountered in contemporary society and reinforced by the production of knowledge by the technicians of each discipline. For example, much knowledge of children is governed by the disciplines of psychology, and its technicians (psychologists) are perceived as the holders of knowledge about children that the lay person should accept and follow.

In contemporary western society, much of the knowledge produced and held as 'the truth' is derived from one of the two types of disciplines or sciences (McHoul & Grace: 1993). The first type works somewhat (but not completely) independently from the social world, i.e. mathematics and physics. The second is intrinsically connected to the social world and is a direct product of it, i.e. psychology and social sciences. The types of knowledge produced by the former are more stable than the latter, which are much more susceptible to historical and social changes.

Nonetheless, it is the latter form of knowledge which permeates our daily lives and it is this type of knowledge that has influenced the construction of contemporary ideals of childhood being a time of innocence and dependence. Children then become, due to their special psychological and developmental needs, the focus of special policies. They have to be protected and kept apart from the adult world for their own safety. For example, most policies introduced in the nineteenth century concerning the education and controlling of children were a reaction to a preoccupation with the maintenance of the social order that technicians wished to preserve (Pupavac, 2001 & Valentine, 1996).

In recent years, shifts in the relationship between local, national and international systems of knowledge and control are leading to different conceptualizations of childhood. These changes are not simply in the economic order or the nation state, but reflect a more profound change in the power relations that have been previously dominant. In this context, the idealized view of childhood becomes a contentious project under the scrutiny of often antagonistic views of governmental and non governmental organizations working at the national and transnational levels. The idealized view of childhood held by the Western world has, on the one hand, been held as the international standard to which all respectable nations should aim for. On the other hand, it has been shaken by the realization that not all children have access to a 'childhood'. Understandably children's rights discourses have gained momentum in this context.

The Children's Rights Discourse

As discussed above, rights were in the past a luxury of male rational agents. However, in the mid nineteenth century other groups started to engage in struggles to challenge the exclusivity enjoyed by some over rights. One example of this is the emergence of the woman's movement as a new force against male hegemony. At this same time the children's rights movement starts to mobilise. There is an interesting difference between the children's rights movement and other civil rights movements. While other civil rights groups were organised by members of the concerned groups, the children's rights movement was not organised by children themselves but by groups which thought their moral obligation was to protect the Western ideal of childhood as a time of play and innocence.

Eventually, in 1924, the United Nations adopted the Declaration of Children's Rights. In 1959 the declaration was expanded and the Declaration on the Rights of the Child was adopted (Hart, 2006). Both of these declarations were mainly 'moral' in character and derived from a belief that all children should have the right to a childhood as a time of play, innocence and protection from the adult world (Stephens, 1995). However, neither took into consideration cultural differences among the United Nations members, or what children themselves had to say. Then, due to a renewed interest on children and children's rights, the 1959 Declaration was replaced in 1989 with The United Nations Convention on the Rights of the Child (CRC). Unlike previous such documents, the CRC has received major support from national governments and child rights advocates. A special United Nations Commission is responsible for monitoring each countries performance and compliance with the CRC. However, the United Nations has no powers to penalise countries that are found breaching the rights of children as established by the Convention.

As in previous such documents, the CRC does not take into consideration cultural differences. On the contrary, it maintains its commitment to Western thought and its ideal of childhood. Thus, the CRC contributes to the normalisation of children and childhood according to Western norms and moral values. As Stephens (1995: 32) observes: "some critics of the Convention argue…that its declaration of universal children's rights gives children the right to be remade in the image of adults and non-Western childhoods the right to be remade in Western forms." Thus, rights discourses are grounded on the same premises of liberal thought that rights advocates wish to reject, namely its moral stances and its insistence on rationality as a measuring rod for competence, and the CRC is itself mainly 'moral' in character.

Humanitarian discourses claim to be neutral (Hart, 2006). However, the humanitarian discourse adopted by the CRC is far from this ideal neutrality, as the discourse adopted by the CRC is that the Western ideal of childhood is to be adopted as the measurement of the moral integrity of all nations. Nations which are unable or unwilling to adopt this ideal are judged to be immoral and in need of salvation. Pupavac (2001: 101) notes that, "although children's rights advocates are self-consciously not paternalistic, they evince paternalism towards whole populations who are deemed incapable of determining their own lives and values without outside intervention." Interventions in other states, or in the family, are then justified in the name of children's rights.

This, according to Hart (2006: 6), "fuels ethnocentric disdain", while Pupavac (2001: 100) believes that it encourages a "misanthropic view of adulthood." The CRC ignores the different levels of economic development around the world and what can be realistically achieved by each country according to wider social, political and cultural circumstances and a general disenchantment with society at large.

According to Pupavac (2001), although the children's rights movement prefers to distance itself from past interventions carried out in a moralistic tone, most programmes targeting children still carry a preoccupation with the individual's moral development. She affirms that "while the rights-based approach consciously sought to move away from the earlier moralising child-salvation model, psycho-social rehabilitation reveals a similar preoccupation with deviancy, but conducted through the paradigm of psychological functionalism" (Pupavac, 2001: 95). As the Save the Children Alliance (2005: 6) has observed, "a lot of what is actually done using rights-based approaches in not radically different from what is done using other approaches." So, rights are argued for in terms of needs – the child has a right to what she needs in order to have a childhood as envisaged by Western societies.

There are three types of rights referred to in the CRC: rights to provision, rights to protection and rights to participation (Alderson, 2000). Rights to provision and to protection mainly deal with the perceived needs of the child as established by the different sciences and its technicians, such rights are catered for in the two previous declarations. It is the right to participation that is hailed as the main achievement of the CRC. However, it is also the most problematic set of rights. Participation as established by Article 12 does, in most cases, conflict with other rights, such as the right to parental guidance established by Article 5. Moreover, the right to participate as enshrined by article 12 does not guarantee a de facto right for the equal participation for all the worlds' children, as one can only make claims to rights when one is aware of those rights. Most children, both in the North, but especially in the South, are not made aware of these rights as often they are regarded as still dependent and not yet mature enough to exercise their rights. Ironically enough, they were not even consulted on the drafting of the CRC.

The Children Rights Discourse and Power Relations

But what this has to do with Foucault? The theorisations of power, knowledge and subject formation proposed by Foucault have a lot to add to previous criticism directed at the CRC and the children's rights discourse. Consequently I shall develop some of the criticism of the CRC made above, using Foucault's understandings of power, knowledge and subject formation.

As mentioned above, the concept of childhood as promulgated by the CRC has its origins in the eighteenth century liberal tradition originating in Europe. Foucault links this period with the emergence of a new form of power, which he associated with new forms of control (Foucault, 1977 [1975]). According to Foucault, control starts to be internalized and exercised through surveillance rather than force. Foucault also affirms that while old forms of power were concentrated on the hands of few, new forms of power are more complex and involve interactions at all levels of society. So, "where the old power depended on the idea of public space and of a public authority that essentially manifested itself in this space…the new power operates by universal surveillance." (Taylor, 1984: 157). Power exercised in this way is no longer public, but its tools are. The tools that power is exercised through are the disciplines, such as psychology and education. Thus, the re-conceptualization of childhood which took place in this historic period occurred so that children were no longer controlled through corporal punishment, but through surveillance. Childhood as a time of innocence and dependence has to be protected from the harsh realities of the adult world. Thus, education is institutionalized and children's development is to be kept under close surveillance of the technicians of each discipline, i.e. teachers, social workers, psychologists.

Such institutions, or disciplines, produce a particular type of knowledge, specific to this historical moment. For example, psychology has been successful in establishing truths about what to be a child is, what childhood should be like, how parents should conduct themselves, etc. So knowledge and truths are socially and historically specific. According to Foucault (1982) the production of truths and the retention of power are intrinsically related. Moreover, it is not only a negative but also a productive force. For example, power produces disciplines (i.e. psychology and educational system), which in turn produces a specific type of knowledge (i.e. the establishments of children's needs) and these disciplines and knowledge will justify certain

forms of control (i.e. state intervention in the family and in other states). So the development of childhood and children's rights discourses can be understood as the effects of power relations. Although they seem to be liberating, they are in fact a way in which to keep control over subjects, i.e. children, parents, non-Western citizens. Control in this way is no longer exercise through repression, but through the stimulation of an ideal, i.e. childhood.

In the same way, the UN can be understood as a discipline, which has its origins in institutions created in the same historical period that Foucault identifies with the emergence of the new power. One of the main roles of the UN is to keep nations under surveillance. As a discipline, the UN produces certain types of knowledge that is indicative of a power relation. So, the CRC for example, is a type of knowledge produced by the UN in order to maintain certain power relations. Power, as described by Foucault, is an action which requires two consenting parties and where there is the possibility of a choice (Foucault, 1982). The relationship between the UN and its members is one of power where member states always have a choice between accepting, or not, UN resolution. However, acceptance does not necessarily mean agreement. So, despite the CRC's almost universal endorsement, it can be argued that it is "the result of a prior or permanent consent, but it is not by nature the manifestation of a consensus" (Foucault, 1982: 220). Consequently, the CRC does not contest, but reinforces power relations; i.e. of adults over children, of Western over non-Western nations.

Although CRC and the children's rights discourse clearly try to distance themselves from old approaches to children and to development, they are not what Foucault would call a 'revolutionary' discourse. Truly revolutionary discourses, in Foucault (1972: xiv) words:

> "Do not demand of politics that it restores the 'rights' of the individual, as philosophy has defined them. The individual is the product of power. What is needed is to 'de-individualize' by means of multiplication and displacement, diverse combination. The groups must not be the organic bond uniting hierarchized individuals, but a constant generator of de-individualization."

Truly revolutionary discourses thus engage in struggles against the submission of subjectivity. But both the CRC and the children's rights discourse are based on notions of an idealized

childhood and defend these as being universal. Foucault (1982) however, rejects the idea of a universal self determined by contemporary disciplines and asks for a 'de-individualization' of the subject. Diamond and Quinby (1988: xiv) comment about this that:

> "Foucault's own labours in explicating how disciplinary power moulds through localized mechanisms of enticement, regulation, surveillance, and classification are invaluable for demonstrating how specific historical and cultural practices constitute distinct forms of selfhood."

So, the category 'children' is the result of subject production. Initially, subject production was mainly exercised through the disciplines of psychology and social work. More recently, the children's rights discourse has adopted the knowledge created by other disciplines in order to produce knowledge on a global scale. These to normalize the subject – the child - based on a notion of a universal self. Likewise, CRC is knowledge produced by the UN that reinforces the concept of an ideal childhood as developed by and for a Western audience. This marginalizes the child that does not fit with this ideal, as well as nations that are unable, or unwilling, to enforce such notions of childhood.

Conclusion

I have discussed how the concept of childhood has been constructed in accordance with, and as a consequence of, the development of liberal theory during the eighteenth and nineteenth centuries, when a new form of power emerged over this period. This power is more complex than old forms, and is constructive instead of negative. Thus, it produces disciplines and knowledge that are responsible for the creation of docile subjects, easier to keep to under surveillance. In the case of children, disciplines such as psychology and education have created specific types of knowledge that guide understandings of what is to be a child and what childhood should be like. These understandings are responsible for the normalization of children, and a way in which Western tradition is positioned as superior to non-Western ones. This is achieved through the consolidation of children's rights discourse and the endorsements of the CRC and the moral crusade they take upon them to save 'the world's children'.

Some criticisms made about the rights discourse and the CRC were presented through some of Foucault's understandings of power, knowledge and subject formation. Foucault's approach is important for this analysis because he rejects the liberal project and grand theories, of which the rights discourse and the CRC are part. Following Foucault, I have not analysed the intended outcomes of the CRC and the rights discourse, but the unintended consequences, which reinforce and legitimise the dominant discourses. Although children's rights theorists and the CRC aim to enhance the participation of children and give them greater autonomy, the end result is the maintenance of the status quo. Because of the almost unanimous acceptance of the CRC, the issue of children's right risks a premature death, and so future analyses should look at possible new directions for children's rights discourses and for means of shifting the emphasis of the CRC from salvation to true participation.

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