

Chapter 10

Issues Concerning the Legal Status, Welfare, Policy Making and Inclusion of Children in Governance and Full Citizenship

In Chaps. 10 and 11 questions regarding the legal status, welfare, policy making and inclusion of children in governance and full citizenship take the lead from the two preceding chapters toward the eventual conclusions. The latter chapter looks at a number of issues that give views of children's status from different legal, welfare and policy positions. These either hinder or aid the route to which full citizenship might eventually be achieved. Both chapters also give insights into the way social research that should be more influential in some cases is disregarded and is clearly very significant in others.

Children are an important stakeholder group; according to recent UN statistics they constitute roughly 34 % of the world's population and their actions play an important role in the future. The CRC created a notion that children's views must be taken seriously, albeit that with caveats, in Article 12. Despite the energy and enthusiasm of children's participation champions, including those examined in both Chaps. 8 and 9, their views have failed to inform the provision of resources for the improvement of their lives. Despite significant insights on the operation of public institutions children's views have seldom contributed to scrutiny of governance. This chapter goes beyond children's participation and the fact that there is little dialogue across the statutory and complementary areas where law and policy are formed.

The history of children's participation in the South has recently begun to inform a new wave of consideration of children in the North as active citizens. Essentially this is an additional question about why the theoretical framework for analysis of the children's rights generation is still failing children and is not the sole focus in this work. It might be that the 'citizenship question' contributes to analysis of the participation question rather than the other way round. Nonetheless, whilst questions of the nature of why the number of street children worldwide appears to be growing, displacement, refugeeism and trafficking are increasing (see United Nations General Assembly 2002) and other rights issues are important, the contribution of detailed examination of these specific issues here would be a distraction.

In the preceding chapter, it was shown that the impact of the process of inclusion or ‘participation’ still passes by children who lack networks, agency and social capital in both North and South despite governments’ commitment through ratification of the CRC. One of the objectives of this and the following chapter is to examine why this is the case. Thus, this chapter sets out to look briefly at the topic areas, legal status, welfare, policy making and inclusion of children in governance around the world. To some extent it also shows the disparity between social research with children examined in Chap. 8 and the role of human rights instruments, despite many of them being foundations of law making, and the participation of children in civil society as partners, if even not equals. Chapter 11 then takes outstanding ‘loose ends’ to briefly include them before drawing toward analysis and conclusions.

This brief examination focuses on parts of each area that are as proximate as possible to the question of citizenship and also, to some extent at least, draw on the notion of ‘human becoming’ that was addressed in previous chapters. The ‘human becoming’ notion is given more substance when separation by classifiable age groups that is not entirely a reflection of capabilities, maturity or any other aspect of an individual’s nature is taken into account. It is also a very brief examination of a very extensive set of fields that take in only very few aspects of many varied legal systems, forms of government, policy and law making for very obvious practical reasons.

Children as Legal Persons

One of the main issues for examination is the status of children as legal persons. Although there are caveats (see Chap. 2) achieving the age of majority is the normal threshold for adulthood¹ as it is described by national and some international laws. In this chapter there are ages or timelines that one might call ‘litmus tests’ or ‘signposts’ where the time in an individual’s life is achieved when it may be considered that actions they take show a development of their assumed capabilities or mark a stage *en route* to full competence. This includes even incidences when the latter does not allow them all privileges an adult will normally enjoy although it may entail the same degree of responsibility as those of majority age. Reaching the age at which majority begins is the chronological juncture at which children legally assume at least the greater part of majority control over their persons, actions and decisions. The legal control and responsibilities of parents or other caretakers over and for them terminate at that moment. However, this does not mean ‘full control’ over one’s life.

There is, on the other hand, a drawback in looking at the law as it is presented in secular codified forms since it is complemented by or even contradicted by cultural

¹This is and may always be a contentious notion since adulthood is a subjective cultural notion where assumptions are often made on the basis of Northern values. It is also a legal standard that is usually incorporated into constitutions, basic laws and other laws. In contrast there are numerous examples of traditions in which age is classified not by chronological age but by generation or age related status. Thus here we are guided by the children’s rights standard that describes *childhood* as 0–18 years of age as the norm.

and religious practices that assume the role of laws within groups who practice them. There is no single standard against which the precise end of childhood is definable. Thus, using the typical civil legal age 18 years (see also the definition of childhood in Chap. 1) it is very unlikely that legislation alone can be used to resolve what this research has set out to examine. The starting point here is secular civil legislation.

In simple terms there are certain things which a person who attains the age of majority is permitted to do which they could not do before. The slow accrual of 'privileges' Oldman (1991:25) described in Scotland lists examples such as when a young person can apply for a provisional driving licence or legally consume alcohol. These do not exactly mark the transition from childhood as an event but as a process. In Scotland, for instance, one can marry at age 16 years but electoral franchise and age at which an individual can own his or her own house is 18 years. Elsewhere in the world there are differences in legal timelines at which an individual may enter into a binding contract, vote, buy or consume alcohol or tobacco, have a driving licence or marry without obtaining consent of legally responsible adults. The ages at which such rights or powers may be exercised vary between different national jurisdictions. Those ages may also vary considerably between and within jurisdictions including by gender (or sexuality) as in the example of ages of sexual consent.

The basic principle begins with the notion that there are some things in life (illness, death, etc.) over which nobody has lawful control. Thus individuals assume majority control over their life at a particular age instead of 'full' control which is oxymoronic by its nature. Thus, of interest for this work it is the period prior to the age of majority, or minority, during which the child has minority control over his or her person and actions. Then adult caretakers have majority control and power to overrule most of a child's decisions and desires and occasionally reverse actions. Age of majority is frequently confused with the similar concept, the age of license, which also relates to the onset of adulthood in a much broader and abstract manner. The criterion is that one neither needs nor can one obtain legal permission to grow up because that happens naturally.

Thus in the USA the legal notion of 'licence', meaning 'permission', can allude to a legally enforceable right or privilege to do something such as leaving school without parental permission. The age of majority is legal recognition that one has grown into an adult and that therewith (generally) no permission is required. Many ages of licence are correlated to the age of majority, but they are nonetheless legally distinct concepts. One need not have attained the age of majority to have permission to exercise certain rights and responsibilities. In fact, some ages of licence are higher than the age of majority such as the age of licence to purchase alcohol is 21 in all states in the USA although most states' age of majority is 18 (except: Nebraska and Alabama, 19; Mississippi, 21; and American Samoa and Puerto Rico where it is 14).² Other variants include examples like the age of majority in the Republic of Ireland at 18 although one must be over 21 years of age to stand for election. Almost

² 'Minimum Age Limits Worldwide', International Centre for Alcohol Policies: <http://icap.org/>

all nations automatically bestow the status of majority on minors who are married and a few do so for minors in their armed forces, except as electors in both cases. Whilst people may decide to form a family or to defend or even die for their country, it would appear almost anachronistic that one of the most fundamental components of democratic decision making is denied to individuals who have made, in either instance, a far more life changing choice.

Decision Making

When somebody is still a legal minor, decision making for oneself would usually be measured in terms of the pros and cons of different choices. Some choices are profoundly influenced by attitudes, values and beliefs. Similarly, they may be influenced by an individual's emotional state or the position of other people who are important in one's lives. Thus, some decisions will be or appear to be unwise or unusual and individuals may or may not acknowledge that they have made mistakes. Likewise, people are reluctant to give up autonomy and the right to make their own decisions. The law in many countries states that it is acknowledged that some people are not able to make decisions themselves.

Decision making for them has traditionally included *parens patriae*, whereby a state has the authority to act on behalf of children or incompetent adults (For instance, see Mnookin 1975:226–293). In most legal systems this appears in the principle that makes the protection of the *best interests* of a child the first and single most important concern of courts. For instance, in proceedings affecting the validity of a marriage, children will not usually be parties in their own right, nor will they be parties to any agreement spouses may make.

In such proceedings courts are often asked to accept and implement any agreement between the couple regarding responsibility for their children. Jon Elster (1989) sees this as a 'randomised' process in which there are probably three 'solomonic judgments'. In a custody case, leaving aside cases in which one parent is demonstrably unfit and assuming that a drawn-out dispute is against the immediate interests of the child, a court will, firstly, presume strongly in favour of the mother or, secondly, presume in favour of the primary carer, who is highly likely to be the mother or, thirdly, toss a coin (see Elster 1989:123–74). He considers these decisions paradigmatically indeterminate since, whilst the first two options may be preferable in the short to medium term, he argues that there is a case for randomisation in the longer term.

When there are random decisions usually it is done when the agreement is seen to be in the best interests and welfare of a child. However it would appear that many jurisdictions do not define exactly how or why such decisions should be made. What is lacking is a clear and agreed framework for making decisions on their behalf following an appropriate assessment of individual capacity to make precise decisions.

The assumption is that they are not competent to make it for themselves, despite a trend toward 'inclusive' laws, so there is often a legal argument based on a 'best

interests' principle. This principle is a primary consideration in the CRC (Article 3, 1) that is supported by the evolving capacities principle (Article 5). Although Article 12 essentially advocates inclusion, particularly Part 2 in such cases, the assumption is often that the age and maturity of the child is not yet well enough developed to include him or her. It thus appears that broadly speaking use of the *parens patriae* principle is unhelpful in searching for a precise answer in law. When seen in terms of the CRC, or within a human rights framework, the state itself has not taken steps to either make or enforce laws which align with the participatory principles, let alone move toward a more responsible role with some of the qualities of self-determination of citizenship.

Majority

There are several other ages one could turn to examine when majority might be considered to have begun.³ Marriage is the first example chosen as a possible litmus test for full citizenship rights since marriageable age usually allows consenting partners entering that relationship to assume a life like any other family. The 'normal' age range for marriage without parental consent is between 18 and 21 years, although a few countries allow it as young as 16 although China is 22 for males (and 20 for females). However in Ethiopia the legal age is 18 years for both males and females. In Mali, Mozambique and Niger over 50 % of girls are married prior to reaching 18, in Yemen around 64 % of girls are married before 18 or in Bangladesh 81 % of girls marry before 18. In practice though, children in rural areas are married young and it is not uncommon to see girls as young as 6 years of age being married and it is still unusual for a girl to be 16 and unmarried. In Brunei no minimum marriage age has been as yet specified.

Numerous countries allow marriage at age 16 with consent and a few allow girls particularly to be married as young as 12 or 13 years. Of course, a conceptual problem arises here since the age of sexual consent does not always correspond with marriage ages. Thus in Ethiopia it is 15 years for both sexes and in Brunei age 14 for males and age 16 for females, in Mali and Yemen both must be married before sex occurs. Marriage age in Yemen is 9 years, whereby in 1999 the minimum marriage age of 15 for girls, although rarely enforced, was abolished.⁴ The onset of puberty, which was interpreted to be age 9, was set as the requirement for the consummation of a marriage. In some countries the age of consent is higher for those, particularly girls, engaged in commercial sex. In some countries the age of consent

³The following ages are mainly taken from United Nations and NGO websites but have been cross-checked through comparison of the given ages between two or more sites. One, however, comes from a single site – in this case ages of consent are taken from the AIDS charity AVERT on <http://www.avert.org/aofconsent.htm>.

⁴See also the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. There are at present 16 signatories and 55 state parties.

is higher when one partner is in a position of trust with regard to the other, usually the male partner, or when one partner takes advantage of the other's immaturity. In some cases girls marry just after menarche and others prior to puberty. A married person is then, for most intents and purposes, considered an adult.

Age of consent laws tend not to apply when the partners are married, thus young traditional marriages occasionally appear to challenge established legal standards. Some countries cover this by having regional laws that may overrule the national law. Likewise, in some cases the age of consent is lower when partners are of a similar age, although no matter how young. In those cases the traditional marriage age also determines the earliest actual transition to adulthood in their society.

Markers for the Beginning of Adulthood

The age at which a person becomes an adult thus varies significantly in different countries in the world. It often depends upon what constitutes being an adult. Most countries look at that in terms of an age at which children can legally work as well as marry, vote, buy alcohol, be conscripted or be charged with a crime. Child labour is an interesting measure. Great variations exist as to the age when one may work in different countries. Wherever this is a factor for considering who is an adult, the age can range from no laws at all in countries like Papua New Guinea, Yemen and Liberia through to countries that set minimum age requirements for child labour. The lowest set ages are in countries like Bangladesh, Paraguay or Syria where the minimum age is 12 years. However, many children working in developing countries begin work before reaching the minimum legal age. Most countries set minimum ages at 15–16 years old and in a few cases the minimum age may be 14.

In many countries legal voting ages at 18 define who is an adult. A few countries are promoting earlier and some even lowering voting ages. Austria and Germany, for instance, now allow 16 year olds to vote in municipal elections. In Italy, however, one cannot vote for a senator until age 25. In Liechtenstein voters must still wait until they are 30 to vote at all. Electoral franchise is a much favoured argument for lowering the age at which full citizenship begins amongst children's rights activists. However, it assumes that a universal and accessible electoral system is available to all and tends to overlook the variations in who actually has franchise; for instance consideration of the inclusion or exclusion of women, people in prisons or mental hospitals, persons subject to the German *Berufsverbot* and comparable examples.

Another common litmus test for determining when one is an adult is the age at which one can purchase alcohol. The USA generally has 21 years, which is actually quite high, however in some countries alcohol can be purchased by either anyone or nobody of any age. In the former it is not generally treated with the same *rite de passage* veneration as in many countries with a minimum drinking age. In the majority of northern nations the consumption age is 18 although a few countries, including Spain, France, Austria, and Germany, have set drinking age at 16 years

and some countries allow children under the drinking age to consume alcohol but not buy it themselves. However, consumption of alcohol is usually taken into account when young people transgress laws and is usually seen as a negative when it is proven that it has been used in full knowledge of possible outcomes. Where a person is unambiguously proven to have been forced or deceived into consuming alcohol, as with any other intoxicants, then whoever has responsibility for giving it, irrespective of age, is liable to prosecution. This then becomes a question of responsibility before the law rather than simply a process of prosecution and punishment, since both instigator and the legal minor who has been deceived or forced to break the law may both be subject of protection orders of one kind or another.

Responsibility Before the Law

Legislation stipulates when children are considered criminally responsible or an adult in the eyes of criminal law. Countries with low marriage, drinking or child labour ages tend to also assess criminal responsibility earlier. For instance, the USA considers 7 year olds criminally responsible and under some very exceptional circumstances eligible to be charged as an adult.

In the US, the age of criminal responsibility is established by state law. Only 13 states have set minimum ages, which range from 6 to 12 years old. Most states rely on common law, which holds that from age 7 to age 14, children cannot be presumed to bear responsibility but can be held responsible (UNICEF 1997).

The defence of childhood is a form of legal argument that excludes defendants falling within that definition from criminal liability for their deeds if, at that time, they had not reached age of criminal responsibility. After reaching a particular age there may be levels of responsibility determined by age and nature of offence allegedly committed. Behaviour of an antisocial nature may well be reproved in a more positive way that discourages society's use of the word *criminal*. Thus one finds the age of criminal responsibility treated in two different ways. The first is as a definition of the process for dealing with young offenders whereby a range of ages beginning with a minimum specifies exclusion of juveniles from the adult system of trial and penalty. The majority of countries have separate juvenile justice systems independent of adult criminal justice:

In Japan, offenders below age 20 are tried in a family court, rather than in the criminal court system. In all Scandinavian countries, the age of criminal responsibility is 15, and adolescents under 18 are subject to a system of justice that is geared mostly towards social services, with incarceration as the last resort (UNICEF 1997).

Hearings are basically welfare based and usually deal with children as 'clients' in need of obligatory measures of management, treatment or care. The second considers the physical capability of a child to commit a crime. Thus children are considered normally incapable of committing some acts such as sexual crimes or other offences that require abilities of a more mature nature.

Some countries link childhood with diminished responsibility on the ground of what is normally considered mental illness. Differences between children below criminal responsibility who are prosecuted and young offenders are classified according to assessed levels of capability. The children's rights lobby does not consider this constructive since it implies that children are somehow defective rather than simply lacking the acumen that comes with age and experience. This is an aspect of the *parens patriae* principle, whereby each nation will consider the nature of its own society and substantiation of the age at which antisocial behaviour begins to manifest itself. Some societies are indulgent toward the young and inexperienced and prefer not to expose them to the criminal justice process, instead pursuing other means of dealing with them. Thus there is a policy of *doli incapax* (incapable of wrong) that rules out liability for all acts that would otherwise have been criminal up to a particular age. Thereby no matter what a young person has done there cannot be criminal prosecution.

In 1998 the principle of *doli incapax* that presumed that children aged under 14 were incapable of telling right from wrong that had been enshrined in English common law since the seventeenth century was abolished (Bandalli 1998). In Nordic countries an offence committed by somebody less than age 15 years is usually considered an outcome of phenomena in the child's development. The authorities will usually take administrative processes to assure the normal development of that child through methods ranging from therapy to placement in a special unit. Since they are not administered by the criminal justice system they are not dependent on the gravity of the offence but based on the normal circumstances of the child. However, this kind of policy of treating minors as incapable of committing crimes does not necessarily reflect public opinion. If the underlying principle of the rationale is that children below a certain age lack the capacity to form the *mens rea* of an offence it is questionable as to whether or not this is a sustainable argument. The counter argument is that given different speeds at which individuals develop both physically and intellectually an age limit may be arbitrary and irrational. Nonetheless the perception that children should not be exposed to criminal justice the same as adults endures. They have neither had experience of life nor do many people consider that they have the same mental and intellectual capacities as adults, thus it may be considered disproportionate to treat young children in the same way as adults.

In 1993, 2 year old James Bulger was shopping with his mother in Liverpool. He wandered off, was found and led away by two 10-year-old boys, Jon Venables and Robert Thompson. They later assaulted and killed him and left his body on a railway line. The case shocked people in Britain for a number of reasons. The age of the killers and the fact that they were caught on closed-circuit television so that images of them making off with James were broadcast on national television caused widespread disbelief. Moreover, the indifference of passers-by who saw James being led away by his killers in obvious distress did little to help. The two boys were tried in an adult court with virtually full media coverage. Their identities were not protected. In the public domain they were treated as though they were adults.

The Bulger case opened up public debate about the nature of children and childhood. It brought with it contrasting representations of children, whereby James and

similar children represented pure innocence and the killers represented pure evil. However, I would argue that this was initially a particularly British phenomenon. About 1 year after the Bulger case, the small Norwegian city Trondheim was affected by an analogous tragedy. Five year old Silje Marie Raedergard was playing with two 6 year old boys. The game turned violent; they stripped her, beat her unconscious and then ran away. She froze to death in the snow.

Similarities with the Bulger case were remarkable. What was surprising were the differences in the perception of children and how the Norwegian authorities and Silje's mother reacted. Trondheim is a close, cohesive community. Many people in the city knew who the killers were, yet their names were never published. They were protected from media exposure. The boys lived in the same neighbourhood as Silje and her family. Immediately news of her death was made public. The police and the local schoolmaster opened up the school that both Silje and the boys attended and talked to both children and parents. Stress was placed on how safe children were. There was a call for calm and no retribution. After 2 days, the boys went back to school accompanied by psychologists. There were no protests and no parents withdrew their own children. The *Guardian* reported the local paper's position: "...the culprits were just 6 years old; how did they know what they were doing? In Norway, where the age of criminality is 15 – as opposed to 10 in Britain – they were treated as victims not killers..." (Hattenstone 2000).

It is difficult to assemble a comprehensive single international overview of the history of juvenile justice. Junger-Tas and Decker (2008) have compiled a collection of in-depth analyses of the juvenile justice systems in 19 different countries in the EU, Canada and USA. Much of what is available looks at European countries or USA with a great deal of emphasis on differences between the Anglo-Saxon countries and Europe. Others, especially looking at the UK, concentrate on the nineteenth century (e.g.: Hawes 1971). Goldson and Muncie (2009) include a number of authors who look at the history, except that the overview is limited to mainly Europe and North America. The rest of the world largely requires country by country examination. Thus this research relies on that which is most accessible and relevant.

Books like Dickens' *Oliver Twist* and Henry Mayhew's *London Labour* and the parliamentary 'blue books' helped to generate the overstated notion of a Victorian 'criminal class' in England. There are two dominant popular views of that period. The first is of a 'golden age' of law and order in which behaviour was generally better than over the period since roughly the early Industrial Revolution, when the treatment of juvenile criminals was less enlightened than today. The other sees the world as a place of chaos in which the administration of law was simultaneously benevolent and harsh. It was benevolent in that it acknowledged the state's duty to provide welfare for the poor, but also harsh since it regarded the poor as highly untrustworthy and treated them accordingly. Dishonesty by child or adult alike was treated ruthlessly. Very few societies had criminal legal systems that can be compared with those of the present day or indeed a notion of separation by ages.

The earliest significant theories of childhood criminality developed out of a notion of biological determinism in Christian European societies. Pamela Cox and Heather Shore (2002) edited a collection of essays examining the development of a

notion of juvenile delinquency in Britain and mainland Europe between 1650 and 1950. One sees that the Christian ethic made it difficult to think of children as being other than tainted by 'original sin' although not completely devoid of moral reserve. They were thus not thought of as inhuman or inherently evil. Although the view of the young offender was seriously prejudiced by established theories that saw things in terms of biological determinism, they were the first to benefit from the 'new penology' of redemption. They were the first simply because they were young and could not be held morally accountable for their actions. Moreover, that was because they were considered more impressionable than older criminals.

Mary Carpenter (see Manton 1976) wrote her *Reformatory Schools: For the Children of the Perishing and Dangerous* in 1851 with which she coined the term 'dangerous classes' in reference to the lower or poor classes being prone to crime. That work was influential, having some effect on the drafting of the Youthful Offenders Act 1854 which recognised reformatory schools. She started a reformatory school in Bristol herself but also advocated good quality free day-schools and feeding children in industrial schools as a means of reducing the propensity for wrong doing.

In the USA (see Platt 1977) a child-saving 'movement' emerged during the nineteenth century and influenced the development of juvenile justice systems. The child-savers particularly stressed the value of redemption and prevention through early detection of deviance and intervention through education and training. The child savers' intention was to mitigate the roots of child delinquency and furthermore change the treatment of juveniles.

The first US juvenile court was convened in Chicago in 1899, founded on two principles advocated by child savers. These two principles were founded on the basis of juveniles not being ready to be held accountable for their actions and because they were not yet fully developed and it would be easier to rehabilitate them than adults.

The quintessence of the juvenile court was recognition of the obligation of the state for its neglected and failing children. The intent was not simply to classify them criminals and steer them further into a milieu of vice and crime in reaction to severe measures and the lessons learned amongst experienced adult criminals. Previously 'delinquent' children had been those who had committed a crime, were tried in adult courts and sentenced to adult prisons.

Other children such as street sellers and orphans were generally ignored by courts unless they were accused of criminal deeds. Under those circumstances they were often treated more harshly than children from poor but 'respectable' families. The rationale had been that young people who came before courts or other agencies appointed to deal with them were being helped instead of punished. They were being helped so there was no need for procedural safeguards. The behaviour of young people was labelled and categorised and they were stripped of their few rights. However, the outcome of reforms in Europe and the USA was that children and youth, with the exception of those for whom *doli incapax* applied, would actually be helped. They were therewith acknowledged to be children and any similarity of treatment to that of adults very quickly ended. Thus, if anything, juvenile justice enforces the separable notions of childhood and innocence, adolescence and youth as the end of innocence at the threshold of development into adulthood.

Cultural Definitions of Childhood and Becoming an Adult

Beyond the administration of justice there are also cultural definitions of child and adult. Marriage ages have already been examined. There are also various forms of initiation that are cultural, religious or a combination of the two. In different cultures they may determine that someone is an adult before legal ages for adulthood apply. For example, coming of age ceremonies for Jewish children, *bat* or *bar mitzvahs* occur when a child is 12 or 13 years old (See Chap. 5). Children have a firmly fixed place in Jewish society in which childhood is rather short although clearly defined and ending with the *b'nai mitzvah*. Their law says that every Jewish girl becomes a *bat mitzvah* automatically at age 12 years and a boy becomes a *bar mitzvah* at age 13 years because boys mature later than girls. As a *bat* or *bar mitzvah* a child becomes duty-bound by God's commandments as specified in the Torah. Until *b'nai mitzvah* parents are liable for their children but subsequently participate in all areas of Jewish belief and practice as an adult.

Many local traditions consider a child an adult long before a child is legally considered an adult. Latin American families have coming of age parties for their 15 year old daughters, called *quince años*⁵ and some others including Mexicans celebrate the same calling it *quinceañeras*. The *quince años* or *quinceañera* is celebrated in a unique and different way from other birthdays. Besides referring to the actual festivities it is also used to refer to the young woman whose 15th birthday is being celebrated in manner analogous to the *bat mitzvah*. The closest equivalent to it in the English-speaking world is perhaps the debutante ball for those turning 18 years.

Celebration of a Hispanic 15th birthday is highly ritualised and traditionally begins with a religious ceremony. Then a party or reception is held at home or in a hall. Festivities include food and music and commonly a dance is performed by the *quinceañera* and her 'court'. Her court is usually comprised of young girls (*Damas*) and young men (depending where it is they are called *Chambelán*, *Escorte* or *Galán*) or a combination of both. There are traditionally 14 persons in the court, which with the celebrant totals 15. It is the point at which there is recognition of her journey from childhood to maturity and therewith a girl is considered a woman and ready for all the responsibilities of adulthood. A 'last doll' is used as part of the ceremony, often in the form of a decoration and token of the event.

In some versions of the custom the doll represents the last thing of childhood now that the celebrant will focus on other things such as having her own children. In some places *cápias* (printed ribbons with the celebrant's name and date of birth) are pinned to the doll whilst the girl mingles with her guests. She thanks them for their attendance and gives them a keepsake of the event. There is a considerable number of extant and lost traditions that mark such transitions (see Chap. 7 for anthropological examination

⁵I had a number of *ajados* (godchildren) in Lima, Peru. As their *compadre* (co-parent, equivalent to godparent) I was expected to contribute generously to the celebration and give the young woman my blessing. I never attended an *ajada's quince años* celebration but went to others and, being a stranger, took the time to find out about the event which I attempt to recall here.

of related issues). Some are formal *rites de passage* that mark events such as menarche, betrothal or 'first marriage' (e.g. Fuller 1976), first hunt or acceptance as a form of apprentice. All of them occur before the civil legal definition of majority.

A more contentious signpost is that a person may also almost be considered an adult if he or she is drafted or volunteers for military service. In most countries this age is 18, though a few countries set the age at 16 or 17. The Optional Protocol to the CRC on the involvement of children in armed conflict (Article 1 and Article 4, 1) stipulates that 'States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.' However, some countries where there has been civil war or continual internal conflict have recruited children as combatants and for other military services (there have been, for instance, stories about girls taken as prostitutes by the Lord's Liberation Army in Uganda).

Many nations have historical accounts of child heroes, for instance the British example of Jack Cornwell VC (see Unknown 1918). However, apart from Nicaragua making all former child *guerrillas* full citizens at the end of their revolution in 1979 very few child soldiers were ever viewed as adults but rather more as children who had lost their innocence. It is the bridge between innocence and being or becoming knowing and part of the adult world that in this situation defines perception of the young fighters as child or adult heroes. In many respects the involvement of children in any form of armed conflict as either directly affect civilians or fighters goes against the grain of principles and practice in most societies. In the contemporary world it is considered a situation of especially difficult circumstances. The approach to dealing with children affected generally follows welfare standards using the 'best interests' principle that we find, for instance, in the CRC, Article 3, 2. 'States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.' Where there are no adult caretakers and reunification is not possible, the means to achieving this end will often be through welfare provisions such as institutions, fostering and adoption.

Welfare

It has, if anything, been for a large part the outcome of children as they are perceived by those who make and administer laws that led to the form of child welfare operational today. Welfare itself is not absolutely the same as child welfare although both have the same origins. Welfare was originally delivered collectively and free of the state. In mediaeval times in Europe hospitals were commonly church run and the word *hospital* should not be understood in today's terms. Then they were communities where the elderly and feeble particularly were cared for (Williams 2007). Until the Reformation, it was a religious duty for all Christians to undertake seven corporal works of mercy. These were acts aimed at relieving physical suffering.

In accordance with the teaching of Christ in the New Testament, *Matthew 25*, 32–46 (see also Unknown 1971:62–3), people were required to feed the hungry, give drink to the thirsty, welcome the stranger, clothe the naked, visit the sick, visit prisoners and bury the dead. Christian parishes were the earliest basic administrative units in Europe and also had responsibility for their poor (Williams 2007). The nearby Islamic countries had *zakat*, or the giving of alms, which is a legal concept and the third of the *Five Pillars of Islam*. There are rules attached to *zakat*, although generally it is obligatory to give away 2.5 % of one's income and savings and 5–10 % of the harvest to the poor. Beneficiaries include the impoverished, low paid, people unable to pay debts, stranded travellers and anybody else needing assistance. The principle of *zakaah* charges that the rich should look after the poor. In Judaism charity is similarly embodied in *tzedakah*, justice, whereby the poor are entitled to charity as a right rather than benevolence. *Tzedakah* is regarded an extension of the ancient *maser ani*, poor-tithe, as well as practices including allowing the poor to glean a field, gather harvest during *shmita* (sabbatical year) and other benevolent practices. Voluntary charity, alongside prayer and atonement, is regarded as penance for the outcome of bad deeds.

With the introduction of 'poor laws' as the medieval age ended, the responsibility in Europe passed on to secular parishes (see Slack 1990). In England, for example, Elizabethan Poor Laws enshrined this right. In 1572 an Act made provision for the punishment of sturdy beggars who were then sent back to their parish of origin, ostensibly for help, and the relief of the impotent poor. The 1574 Act in Scotland duplicated the English Act although it remained in force in Scotland until 1845. In England it was superseded in 1598 and 1601 with an Act that provided for a compulsory poor rate, creation of 'overseers' of relief and provision for 'setting the poor on work'. There was no general apparatus for enforcement and Poor Law operation was inconsistent between places.

This system, with modifications, remained largely intact until a campaign initiated by Utilitarian reformers. They considered fiddling with the facts beyond the pale. The new poor law of 1834 was the result of their campaign, and where a principle of 'less eligibility' was enforced support in the new system would only be offered if a person went into a 'Poor House' or 'Work House'.⁶ There the standard of living awaiting them was below that on which the poorest labourer could survive. There was no distinction between adult and child recipients of this form of assistance.

As the nineteenth century drew to a close, a new notion of welfare began to develop. One aspect of that was unemployment insurance whereby contributions and benefit levels were laid down by parliaments. The insurance principle was preferred for the finance of this new welfare, since some governments were anxious about raising income tax. In Germany, for instance, Bismarck faced enormous resistance to a tax-based welfare, complicated because he did not have the power to levy taxes on income. Until they became national institutions friendly societies and mutually-owned bodies operated health schemes that complimented unemployment benefits.

⁶Often referred to as the 'House'.

In 1889 the first Act of Parliament for the prevention of cruelty to children, the *Children's Charter*, was passed in the UK. It enabled the state to intervene in relations between parents and children for the first time ever. The police were given powers to arrest anyone found ill-treating a child and enter a home if a child was thought to be in danger. The Act included additional guidelines on the employment of children⁷ and outlawed begging. In 1894 it was amended and extended and allowed children to give evidence in court, recognition of mental cruelty and it became an offence to refuse an ill child medical attention. Thus, in the UK as was also happening elsewhere, regulation of employment, education and new protective measures were separating the domains of adulthood and childhood. It was also happening at a time when campaigns for equal contract and property rights for women, opposition to 'chattel' marriage and virtual ownership of married women and children by husbands and crusade for political franchise was at its height. Thus the nature of separatism by age that still persists in most places became entrenched.

Child welfare essentially emerged as a set of government and private services designed to protect them and promote family stability. The notion of a state approved child welfare system dates back to Plato's *Republic* (1998:65). His account of a discussion between Socrates, Adeimantus, Glaucon and Thrasymachus surmised that the interests of the child could be best served by removing children from the custody of parents and placing them under state care. To prevent an uprising from dispossessed parents:

We shall have to invent some ingenious kind of lots which the less worthy may draw on each occasion of our bringing them together, and then they will accuse their own ill-luck and not the rulers.

Furthermore:

The proper officers will take the offspring of the good parents to the pen or fold, and there they will deposit them with certain nurses who dwell in a separate quarter; but the offspring of the inferior, or of the better when they chance to be deformed, will be put away in some mysterious, unknown place, as they should be.

However, since the advent of modern child welfare those who come to the attention of welfare workers most frequently do so because of situations that are generally collectively termed child *abuse* or *neglect*. The former is more or less made up of

⁷In 1833 the Government passed the first Factory Act to improve conditions for children working in factories for very long hours in places where conditions were often appalling. It set out that no child under 9 years of age could work, employers required a medical or age certificate for child workers, children between the ages of 9 and 13 could work no longer than 9 h and those aged 13–18 worked no more than 12 h a day, they could no longer work at night, at least 2 h schooling had to be given each day and four factory inspectors appointed to enforce the law throughout England and Wales. Further Acts in 1844, 1847, 1850, 1853, 1867, 1874 and 1901 eventually brought the working age to a minimum of 12 years. The Education Act of 1870 effectively created the modern system of education in England. It gave rise to a national system of compulsory state education that assured the existence of a dual system of voluntary denominational schools and non-denominational state schools. Elementary education became to all intents and purposes free with the 1891 Education Act. Both processes limited children's availability for employment.

physical, emotional and sexual abuse and anything that can be classified as one or more of those. Thus, child employment may be physical abuse as well as economic exploitation but will probably be comprised of all three if a child is working in any part of the 'sex industry'. The latter, neglect, includes failure to take adequate measures to protect a child from harm as well as all forms of oversight in their care.

The CRC, Article 3 (see Appendix I for full text) sees child welfare as part of the 'best interests' principle:

1. In all actions concerning children...
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being...
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities...

The most detailed expression of the vision the CRC includes is given in Article 19 (see Appendix I), where who is responsible and what that entails are described.

Given that all nation states member of the UN have ratified the CRC without reservation or declaration to the contrary, the assumption projected is that welfare is provided on a comparatively equitable basis. In point of fact, the comments on many of the initial and subsequent reports to the Committee on the Rights of the Child show enormous variance in availability, delivery and, above all else, understanding of the concept of welfare. However, the common standard is that the distinguishing characteristics of social work practice in child welfare are derived from the nature of children. In particular, they recognise the characteristics of dependency and development and also special concern and responsibility for children that all social groups demonstrate. Moreover, it appears to be universally recognised that the years of childhood are of particular significance for future development. Whatever occurs during the developmental process is of concern because it may discourage, interfere with or adversely influence the kind of development considered desirable. Furthermore, community, society or state have a stake in this, by producing the kind of person it needs or wants and who maintains its traditions, values and ideals the provision of welfare shapes the social order. As its basic unit, the family has, through parents particularly, assured the child of the close and continuing individual relationships, attention, concern, special interest and love which are promoted as the most important stimulants of healthy development.

Child welfare assumes that the primary and unique need of the child is parental care but provides alternatives where this fails in most countries. This is encapsulated in CRC Article 20 (alternative care)⁸ and Article 21 (adoption). However, these distinctions within welfare reinforce the division into adulthood and

⁸Article 20, part 3 states: Such care could include, *inter alia*, foster placement, *Kafala* of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

childhood because they assume and underpin the notion of dependency that is further reinforced by the CRC principle of 'evolving capabilities' (Article 5).

The impact of global economy and national social policies on welfare and changes in the established social order and care as such are in need of introspective, pragmatic appreciation from the point of view of children's welfare. That is especially so in the context of particular new forms of social control targeted at young people's norm-violations in which some of the typical features of the modern welfare state model have been questioned. As such, there is much discussion about present contradictions and challenges in the field of social work related with young people. It bears in mind that as part of the process of modernisation, the regulation of the family and childrearing has acquired an important place in the production of social order.

One of the results of this has been the creation of a system of control and care (penal-welfare complex, Garland 1985, 2001) that has been gradually built around the theme of childrearing. This system comprises of an interesting, ongoing dynamic of endeavour to achieve a balance between punishments and support (see Skehill 2004).

There is a gradual transformation of the social context of social work with children and youth, which is an essential for the production and maintenance of social order and cohesion between adults and the young. Early intervention, risk-assessment and multi-professional collaboration have dominated service sectors such as maternity and neonatal clinics, day care facilities, schools and the fields of child welfare, youth work and social work. That is in accordance with international, particularly Anglo-American, models that are being used to modernise welfare delivery (for instance see Lister 2006a; Such and Walker 2005; Schütter 2006). Social work thus operates as a function of governance that has the explicit role of transferring *objective* legislation and policy to the *subjective* sphere of individuals and families through mediation in the 'social space' between the two domains (Donzelot 1980). Traditionally, social work had a strong ethical commitment to the accrual of social capital and the maintenance of social solidarity and the *status quo* generally.

In turn, social policy on children reflects how welfare is designed and delivered alongside education, health, housing, poverty and social security. Social policies for children have risen high on the agenda for governments across the world in recent years as they seek to promote successful outcomes for children as 'beings' and 'becomings'. It also, one should add, for less well off nations periodically attracts generous funding from international organisations such as the World Bank.

Recently, links between children's rights, poverty and development have led to renewed examination of international policies, particularly globalisation, and also looking at causes and not only consequences of programmes to eliminate child labour and poverty. The structural problems of market globalisation and social polarisation in the twenty-first century and human rights theories are being used as a basis for international and social policies with international agencies and NGOs. They are also being analysed in relation to children. The needs of disabled and institutionalised children and the right to social security in line with CRC Article 26 are also being given particular attention.

The Future for Children

Lorenz (2006:138) has argued that the impact of neo-liberal policies, individualisation of risks, the privatisation of social solidarity and the emphasis on economy are being felt in every European welfare state. Consequently, he claims, the basic instruments used to produce social order and social solidarity have all undergone varying degrees of reorientation. This is, in fact, disseminating worldwide.

As global vision gradually displaces localised development of social policy ‘worldwide’ efforts are being made. In May 2002 the United Nations General Assembly Special Session (UNGASS) on Children was held to follow-up the 1991 Summit for Children. It brought together all signatory governments to reaffirm commitment to the CRC and also focus on emerging issues essential for securing the human rights of children. The outcome of this meeting was *A World Fit for Children* which outlines commitments for achieving the aims of the CRC promises made in 1991 and also a set of ‘Millennium Development Goals’. Under the heading ‘Partnerships and participation’, Item 32 (UNICEF 2006b:23–24) states:

In order to implement the present Plan of Action, we will strengthen our partnership with the following actors, who have unique contributions to make, and encourage the use of all avenues for participation to advance our common cause - the well-being of children and the promotion and protection of their rights:

- (1) Children, including adolescents, must be enabled to exercise their right to express their views freely, according to their evolving capacity, and build self-esteem, acquire knowledge and skills, such as those for conflict resolution, decision-making and communication, to meet the challenges of life. The right of children, including adolescents, to express themselves freely must be respected and promoted and their views taken into account in all matters affecting them, the views of the child being given due weight in accordance with the age and maturity of the child. The energy and creativity of children and young people must be nurtured so that they can actively take part in shaping their environment, their societies and the world they will inherit. Disadvantaged and marginalized children, including adolescents in particular, need special attention and support to access basic services, build self-esteem and to prepare them to take responsibility for their own lives. We will strive to develop and implement programmes to promote meaningful participation by children, including adolescents, in decision-making processes, including in families and schools and at the local and national levels.
- (2) Parents, families, legal guardians and other caregivers have the primary role and responsibility for the well-being of children, and must be supported in the performance of their child-rearing responsibilities. All our policies and programmes should promote the shared responsibility of parents, families, legal guardians and other caregivers, and society as a whole in this regard.
- (3) Local governments and authorities, through, *inter alia*, strengthened partnerships at all levels, can ensure that children are at the centre of agendas for development. By building on ongoing initiatives, such as child-friendly communities and cities without slums, mayors and local leaders can significantly improve the lives of children.
- (4) Parliamentarians or members of legislatures are key to the implementation of this plan of action, the success of which will require that they promote awareness raising; adopt necessary legislation; facilitate and appropriate the financial resources needed for this purpose; and monitor their effective utilization.

The Inclusion of Children

This is, of course a highly idealised document that aims to direct policy toward a more child inclusive environment and in some respects runs counter to social controls aimed at young people's norm-violations. Children's civic engagement is held to be essential for achieving the Millennium Development Goals and other development commitments including universal education and eradication of poverty. In the view of the UN, children's contributions are said to improve services and policies and their involvement in social organisations and political decisions improves the quality, efficiency and integrity of services. Community participation in public decisions may help improve public services, hold public officials accountable, ensure justice and reinforce the rule of law.

The achievement of the Millennium Development Goals requires the participation of all groups in society. However, there is a trade off that demands high standards from children and penalties for those who do not conform. Those might, for instance, include the kind of 'anti-social behaviour orders' (see Squires 2008) recently introduced in Britain that occasionally restrain the ability of children to exercise their right to express their views freely because their manner of doing so does not conform with adult standards of what is acceptable and responsible.

The Crick Report (DfEE 1998) stipulates that children and young people should be made aware of their responsibilities toward themselves and others in regard to duties and obligations to family, friends, school, community, state and society. The concept of responsibility itself is defined in broad terms as:

(a) care for others; (b) premeditation and calculation about what effect actions are likely to have on others; and (c) understanding and care for the consequences. (*Ibid.*:13)

It also states that social and moral responsibility is promoted by:

...children learning from the very beginning self-confidence and socially and morally responsible behaviour both in and beyond the classroom, both towards those in authority and towards each other... ..guidance on moral values and personal development are essential preconditions of citizenship. (*Ibid.*:11)

Morality embraces values we maintain about what is right or wrong and good or bad. In *Good Thinking: Education for Citizenship and Moral Responsibility* (The Citizenship Foundation, 2001:3) moral responsibility is described as involving values such as:

Social justice; political equality; respect for difference; human rights; co-operation; civility; respect for the rule of law; and a commitment to negotiation and debate as the proper way to resolve disagreements over public policy.

This, the Crick Report says, occurs even at primary school age when:

...children are already forming through learning and discussion, concepts of fairness, and attitudes to law, to rules, to decision-making, to authority, to their local environment and social responsibility etc. (*Ibid.*:11)

In the European Union, policy is that children should be considered citizens and treated accordingly (Schoorman and Sutton 2004). In a democratic Europe the vision is for guaranteed participation of all citizens including children. Within the EU the guiding principle is that children's rights should be ensured and that it should be possible for them to participate in all decisions that affect them. In order to achieve this goal, some attempts to involve children as active citizens in policy and planning have been made at local and national levels.

A programme and policy guide '*Children as Active Citizens*' was the outcome of a meeting held in Bangkok in January 2007. The topic under discussion by experts and organisations working in that part of the world was that more than one third of the world's children live in East Asia, South Asia and the Pacific. Whereas in the West it is normal to place stress on individual rights, in most of Asia societies place greater emphasis on the responsibility of each individual towards family, community and society. Their starting point was that by definition civil rights are protections and privileges given to citizens. Citizenship itself means a collection of rights and duties that define membership of a community and within that community civil rights essentially describe individual rights. However, in societies where individuals exist as part of the whole and individual rights are not a priority, ensuring civil rights for those children is a considerable challenge. Thus their starting point is (IAWGCP 2008:8):

Just like any other set of rights, there is a long distance between ratifying an international convention and reforming national legislation to fulfil, implement and monitor the rights of all citizens. Children's civil rights are among the least-understood and least-realized rights. Implementing children's civil rights is the most challenging aspect of the CRC, a challenge that applies equally to resource-rich countries... Starting positions are extremely low for most children. This should not, however, discourage decisive actions. The progressive realization of children's civil rights requires a long-term vision and a plan with concrete benchmarks for achieving this vision – even if it takes a generation to transform relations between children and adults.

The IAWGCP wrote the guide bearing in mind that civil rights and citizenship are closely linked to country specific political, social and cultural contexts. Consequently, two key chapters in Part Three of the guide (7.) 'Citizenship competencies and civic engagement' (*Ibid.*:49–58) and (9.) 'Children influencing public decisions' (*Ibid.*:65–74) look at incorporating the contexts into how this might be done. Perhaps more importantly, it allows for the fact that it may take an entire generation to transform the relations between children and adults.

There is no claim that having waited, only that generation will see the goals achieved. However, it projects a minimum realistic value in seeing children contribute to governance in that region of the world. Therefore the approach is to look at children's civil rights in the broader governance context rather than to look at children in isolation. It ensures that children and young people will be represented in local and national governance bodies albeit allowing for the fact that children are not normally considered part of public decision making and the public arena tends to be hostile to their inclusion. They feel that participation by itself is insufficient for improvement of the performance of government services.

Constraints on the availability of resources, socio-political context and political and decentralised structures affect government performance and without accountability and resources, participation can deliver little (Crook and Manor 1998:8–10). Children's opportunity to influence public decisions (IAWGCP 2008:66) is governed extensively by a country's political system and degree of democratisation, the level of devolution of political authority, influence and character of civil society and the independence of the media and justice.

Davila-Ortega and Freeburg (2006:11) say:

“Training young people for democracy and governance is a growing area of interest for NGOs and governments. Young people often lack information about electoral reforms and parliamentary development, which impacts their capacity to be effectively engaged in democratic governance.”

One assumption is that devolution may open up opportunities for children's involvement in governance. However, at the same time local authorities are frequently more uninformed about international obligations than devolved agencies and may consequently feel less bound by the CRC than national authorities do.

It must be borne in mind that vertical relationships between patrons (the 'political class') and clients are the foundation of both an authoritarian social order and horizontal networks based on trust between equals are the source democratic social order (Putnam 1993). However, as societies change and the primacy of the individual increases, for child and youth inclusive policies to work the decline in social trust that is associated with increasing self-interest over the past few decades (for instance, see Rahn and Transue 1998). Thus, a key question will be how to design policies that are aimed at bottom up strategies that will circumvent the barriers such as the 'distance' between local and national governance and allow for the self-interest that is undermining young people's agency (*Ibid.*).

Children's Inclusion in Governance

One of the models one might suggest is children's involvement in governance. In France children's municipal councils have existed since the 1980s. In 1990 when France ratified the CRC there were at least 200, 2 years later the number had doubled.⁹ At present there is something in the region of 1600. The possibility of young people aged 9–16 years (although there are councils with participants up to age 25 years) and contributing to local affairs has been made possible by the councils. At the congress of the French association of children's councils *anacej* (association

⁹In 1993 I had a contract to write a working paper 'Children's Participation in Education for Democracy and Peace in Europe', for UNICEF ICDC, Florence, Italy, published by UNICEF Chile in 1994. It came in the wake of Roger Hart's *Children's Participation: From tokenism to citizenship* in 1992 that had oriented a great deal of interest in children's participation. As a result the French children's councils were a major item in this paper. At that time there were just over 300 of them.

nationale des conseils d'enfants et de jeunes) in October 1998 a constitution was formulated in which one of the fundamental principles was that:

La participation à la vie publique locale et régionale des enfants et des jeunes, citoyens d'Europe et du monde, est une exigence car elle est source de socialisation, d'échanges, de paix et de solidarité.

(The participation of children and youth in local and region public life, (as) citizens of Europe and the world, is a condition because it is a foundation of socialisation, communications, peace and solidarity. [My translation])

This sets a far more universal aim than most (adult) grassroots public representation and may, thus, impose a notion of a rather superficial activity for young people entirely separated from adult governance. However, in 2000 *anacej* and DIV (Délégation Interministérielle à la Ville) carried out an exploratory study of the participation of children and youth councils in three communes: Achères, Clichy sous Bois and Evry. In conclusion they found:

En cela, et nous retrouvons là un propos récurrent dans tout ce document, les conseils pourraient alors vraiment, dans le cadre de cette collaboration à la politique de la ville, être un élément réel et moteur d'une démarche participative sur la commune.

(Given that we find a recurrent observation throughout this document, councils could really seriously consider this a driving force for participatory initiative within the framework of collaboration in communal politics. [My translation])

Their argument is often anchored in the European Union's argument that every individual, irrespective of age, is formally a citizen according to Article 17 of the EC Treaty (European Union 2002):

1. ...Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.
2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

It is also supported by the Charter of Fundamental Rights of the European Union (2000) in which:

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

EU policy has moved in the direction of child and youth inclusion whereby the active participation of young people in decisions and actions at local and regional level is considered essential if the EU is ever to be able to foster more democratic, inclusive and successful societies. The general view is that participation in the democratic life of any community is about far more than voting or standing for election to any kind of (political) office albeit they are recognised as important elements in this sphere. It is not only in Europe though, Eliana Guerra (2005: 151–68) described children's participation in governance and setting the municipal budget in Barra Mansa, Brazil.

Every year since 1998 large numbers of children took part in discussions to elect child councillors and discuss children's priorities. Those elected learn how to represent peers within democratic structures, prioritise use of available resources and develop projects within the complex and frequently slow and very bureaucratic political process of city governance. The initiative came in 1997 when the municipality instigated activities entitled *Citizenship Knows No Age* for local children aged between 9 and 15 years. An evaluation found that children's councils were 'emerging as important mechanisms for the expansion of citizen participation in public policy and management' (*Ibid.*:166). It was felt that their role could be strengthened if the children could be persuaded to take a more active role within the project management committee. It is part of a progressive view of children's political roles in Brazil where the communal franchise is already 16 although mandatory suffrage from is age 18 (although military conscripts do not have a vote).

The EU similarly views participation and active citizenship as having the right, means, space and opportunity and, when and where necessary, the support to participate in and influence decisions and become engaged in activities that should contribute towards creating a better society. To that effect some countries are beginning to lower communal and even general electoral rights down to age 16 (see also Chap. 8). The German federal states of Lower Saxony, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Saxony-Anhalt and Schleswig-Holstein have already lowered the age to 16 years for municipal elections. Austria has already voted to do so and in Scotland the SNP adopted a policy of reducing the voting age for all elections to 16 as soon as possible. Other countries and parts of countries have also done the same or are in the process of changing voting ages. However, there is neither noticeable enthusiasm for lowering the minimum age at which individuals are eligible to stand for political office or the idea of lifelong electoral franchise.

Whether we are looking at existing laws, the process of law making, policy that directs law making, welfare provision or any form of governance in which all or any of those occur, the general impression is of some moves to lower ages in some domains that appear to be almost diametrically opposite to each other such as communal voting ages and criminal responsibility.¹⁰ Alongside those extremes there is an apparent growing tendency to invest less trust in the capabilities of an increasingly educated and informed young population. Protection seems to be increasing because of fears for their wellbeing. If this all taken to be part of what one understands to be

¹⁰In some federal states in Mexico the minimum ages at which children are subject to penal law it is 6 years although in most states 11 or 12 years and age 11 for federal crimes. In Bangladesh, India, Myanmar, Nigeria, Pakistan, South Africa, Sudan and Tanzania it is age 7. In Belgium, Brazil, Colombia, Democratic Republic of the Congo, Peru and the International Criminal Court the official age of criminal responsibility is age 18, although in Brazil, Colombia and Peru there are separate juvenile laws from age 12 that do not 'criminalise' young offenders. In the UK the ages are 8 years in Scotland (it is possible for children even younger than eight, in rare cases, to appear in court, although the Lord Advocate must intervene before anyone under 16 years can be charged before an adult court) and age 10 in England and Wales and Northern Ireland. However, there is a campaign for raising criminal responsibility to 18 in all parts of the UK.

'social justice' then a theoretical route to understanding this can be extrapolated out of John Rawls (1971) *A Theory of Justice*.

All of those aspects of the control of state authority over children is consistent with Rawls' proposition¹¹ in that at least a set of procedural principles of justice on which society should be founded. They should be extended to children as well as adults. Taking Rawls' position as describing 'social justice' in a very broad sense, his theory corroborates a view that the application of children's rights may not always be left to children themselves. They should though, be supposed to be able to exercise their rights unless society as a whole agrees that someone else should make decisions for them. His system of justice calls for people understanding the necessity and preparedness to support a distinctive set of principles for conveying basic rights and duties and the determination of what is understood to be appropriate distribution of benefits and complexities of social cooperation. The objective is to allow the individual to act in keeping with a personal conception of his or her best interests although that must not be to the detriment of others.

Thus, individuals participate in a common development of evolving principles that consists of fair treatment for everyone in the present and future. This concurs with use of Kohlberg's ideas (see Chap. 7), which allow for lowering the threshold at which an evolving capacities argument is valid.

The central notion is all of society must contribute to deciding on these principles and that they are selected in a hypothetical state in which individuals are unaware of specific interests and circumstances in real life. The assumption is that all of members of society are self-interested in decision making. However, unawareness of their situation and the specific configuration of their society guarantee the Rawlsian notion that individuals decide on principles of justice open-mindedly, with equality in mind. Thus no individual has to act as an instrument of the interests of other individuals. Everybody would be a human being rather than a 'human becoming' who would need to evolve his or her capabilities and pass through the liminal phase of increasing 'privileges' accumulated through adolescence to early adulthood. These are what David Oldman (1991:25) illustrates as a drawn out *rite de passage*.

Of course, it would naturally require a global 'level playing field' for the distinctions adult individuals and child individuals to be merged. Only then would the principles of justice deliver all aspects of citizenship including duties, responsibilities, complexities and shortcomings equally. Unfortunately the proposition itself is highly unlikely on account of the degree to which the proverbial 'playing field' is uneven.

Therefore, for instance, there is disparity where welfare is well established and at the heart of one nation's social structures. Another nation may have achieved no more than adopting a notion of welfare that it can neither afford to operate nor has

¹¹On page 460 of *A Theory of Justice* he acknowledges both Piaget and Kohlberg (see Chap. 8) as the intellectual source of his view that by and large shuns a long, drawn out process of becoming a full human being.

had prior experience of. Despite a shared set of principles, the differences will arise anyway. Shared principles such as almost universal ratification of the CRC are assumed to create a set of common standards worldwide. Yet practice of governance from base to the highest level of political office and the cultures and traditions that influence law, policy and moreover the perception of the role of children itself is seldom likely to reach the ideal Rawls' theory expounds.

Attempts to precipitate global actions such as the Millennium Development Goals and *A World Fit for Children's* plans for partnerships and participation, previously detailed in examination of Item 32, to deliver children's rights are doubtless overambitious. On the other extreme, the attempt by ventures such as the large numbers of children's councils in France, and similar initiatives in other countries, to be influential in communal political life is encouraging. Whilst they do not specifically name citizenship as their specific goal for children, there is good reason to believe those efforts contribute positively toward that end.