

**THE UN CONVENTION ON THE RIGHTS OF THE CHILD  
IN POSTMODERNITY: A GROUNDED SYSTEMIC  
ANALYSIS OF CHILDREN'S RIGHTS EDUCATIONAL  
POLICIES IN SCOTLAND AND CANADA**

**THESIS SUBMITTED FOR THE DEGREE OF  
DOCTOR OF PHILOSOPHY**

By

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## **DECLARATION**

I declare that none of the work contained within this thesis has been submitted for any other degree at any other university. Furthermore, the contents found herein have been composed by the candidate, Richard C. Mitchell.

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## ABSTRACT

As a contribution towards the UN Decade for Human Rights Education (1995-2004), this qualitative, comparative policy study investigated the Convention on the Rights of the Child (CRC) within the Scottish and Canadian educational systems. The researcher adopted an inductive, grounded methodology which is argued to be most congruent when building theory is the chief aim (Glaser and Strauss, 1967; Glaser, 2005). During 20 months of fieldwork, 50 key informant interviews were obtained in Geneva, New York, Scotland and Canada. The author contends that postmodern thinking has contributed much towards contemporary childhood research, yet an underlying deconstruction of the CRC constrains theoretical development. To address this breakdown of overarching *leitmotifs* within the social sciences (Esping-Andersen, 2000), the sociology of human rights is utilised as a conceptual framework (Luhmann, 1965, 1982, 1997; O'Byrne, 2003; Verschraegen, 2002). Furthermore, through the integration of grounded and autopoietic coding (Glaser, 2005), the interview texts revealed six thematic categories that contradict dominant theoretical approaches in the child rights literature. While descriptive and comparative analyses revealed the study's core category of participation, an interpretive analysis further yielded its core distinction of power. The author argues that Scottish efforts to implement the CRC within educational policies are more widespread than any of those currently underway within Canadian jurisdictions (Mitchell, 2002, 2003a, b). Finally, a grounded systemic child rights model developed from the study's methodological and epistemological integration illustrates how CRC knowledge and power are balanced within and across educational systems (Mitchell, 2005).

**Key Words:** children's rights, grounded systemic theory, sociology of human rights



## GLOSSARY OF TERMS

**Autopoiesis** - A word formed from two Greek words 'auto' meaning 'self', and 'poiesis' meaning creation or production, and adopted by Chilean neuro-biologists Maturana and Verela (1980) to describe living systems. In Niklas Luhmann's sociological systems theory (1982, 1997), a system is said to be autopoietic when its inherent components interact to continually re-produce the same components, and the inter-relationships between themselves, as forms of systemic communication aimed at sustaining its own boundaries (see also King and Thornhill, 2003).

**Core Distinction** - An emergent theoretical construct derived from the integration of grounded theory methodology and Luhmann's sociological systems epistemology (see also Gregory, 2003; Gregory, Gibson and Robinson, 2005). Based upon the calculus of Spencer-Brown's Laws of Form (1969) previously adopted by Maturana and Verela (1980) to explain how human thinking occurs, in Luhmann's sociological systems theory the concept aids in understanding how observations or distinctions are made utilising binary codes.

**Devolution** - The Scotland Act of 1998 reads 'there shall be a Scottish parliament', and in May 1999, Scotland elected its first Parliament in three centuries known as the Scottish Executive. This constitutional reform resulted in devolved political powers to establish domestic law and social policy in Scotland in a transfer from the UK Parliament in Westminster. This 'devolution' of legislative and executive powers to an elected assembly in Scotland is the first time since the Act of Union in 1707 when the Parliaments of both nations were united in England.

**Hegemony** - Originates from the Greek 'hegeisthai' meaning 'to lead'. According to Italian Marxist Antonio Gramsci (1891-1937), 'hegemony' consists of the dominance of one group over another controlling the ways in which common sense becomes naturalised, and stems from educational and moral consensus as much as from the threat of armed force.

**Leitmotif** - The German word 'motiv' borrowed from the French 'motif', meaning motive or theme, when combined with the prefix 'Leit', from the German 'leiten' meaning 'to lead', describes a 'leading motif'. Within the social sciences, the 'leitmotif' is an overarching theoretical framework or "fundamental principle of organisation" that is argued by Esping-Andersen (2000) to be absent from postmodern attempts at theory-building, most particularly within sociology.

**Modernity** – While a highly contested notion in philosophy and sociology, beginning in Western Europe during the seventeenth century and maturing during the period known as the Enlightenment, modernist thinking represents a cluster of assumptions about human progress, the superiority of intellectual reason and beliefs in an ordered, certain, predictable and controllable world measurable through objective scientific forms of knowledge that are value-free and universal for all human societies.

**New Community Schools** - Begun as a pilot project in Scotland in 1999 and now within all 32 Local Authorities, New Community Schools have been described as one-stop educational and social service approach central to the government's plan for modernising Scottish schools and to its strategy to promote social inclusion. New Community Schools work with parents and families to stimulate their participation in their children's learning and development.

**Perturbation** - Literally an 'irritation', and within sociological systems theory systemic change depends upon such systemic irritants being triggered from the outside world. The contacts between a system and its environment caused by these perturbations have no meaning until their informational noise has been internally translated and interpreted as formal communication claim Teubner and Willke (1997).

**Postmodernity** - Another highly contested notion within philosophy and sociology emerging in the latter half of the twentieth century. Popularised by French intellectuals such as Jean Baudrillard, Jean-Francois Lyotard, Jacques Derrida and Michel Foucault among others postmodern thinking foregrounds an opposite set of intellectual assumptions from modernist beliefs promoting instead notions of cultural relativity

without absolute forms of knowledge or reality measurable by any one means, that the world and knowledge of it are socially, politically and historically constructed, and that there is no one essential human nature since reality is complex, shifting and contingent across cultures. Within each of the sociology, social policy, human rights, educational, and childhood discourses drawn upon for the thesis literature review, postmodern deconstructive critical analyses - particularly of policy texts - are plainly visible (see also Moss and Petrie, 2002, pp. 23-27).

**Structural Coupling** - Structural coupling is the central explanatory construct given by Maturana and Verela (1980) within autopoietic theory to describe ongoing interaction with the environment and interactivity among systems resulting in, or creating conditions favourable to, systemic change. Within Luhmann's sociological systems theory, structural coupling between co-evolving systems denotes both coordination and co-evolution claim King and Thornhill (2003).

## CONTENTS

<b>TITLE</b>	
<b>ACKNOWLEDGEMENTS</b>	
<b>ABSTRACT OF THESIS</b>	iv
<b>GLOSSARY OF TERMS</b>	v
<b>CONTENTS</b>	vii
<b>CHAPTER ONE: OVERVIEW OF THESIS</b>	<b>1</b>
<b>Prologue</b>	1
<b>Introduction</b>	1
<b>Rationale and Central Research Problem</b>	2
<b>Research Aims</b>	5
<b>Research Questions</b>	5
<b>Theoretical Framework</b>	6
<b>Methodology</b>	9
<b>Research Standpoint</b>	11
<b>Structure of the Thesis</b>	13
<b>Conclusion of Chapter One</b>	15
<b>CHAPTER TWO: CHILDREN, CHILDHOOD &amp; CHILDREN'S RIGHTS</b>	<b>17</b>
<b>Introduction</b>	17
<b>International Policy Arenas: Human Rights in Postmodernity</b>	18
<i>Sociology of human rights</i>	21
<i>Childhood theorising and children's human rights</i>	24
<i>Children's rights in postmodernity</i>	27
<i>2002 United Nations Special Session for Children</i>	33
<i>Postmodern children and educational power relations</i>	35
<i>New models within a new paradigm?</i>	37
<i>Summary</i>	38
<b>National Policy Arenas: Scotland and Canada</b>	39
<i>Geography and politics - salient demographics</i>	42
<i>Politics and ideology - salient contrasts</i>	46
<i>Summary</i>	49
<b>Local Policy Arenas: Postmodernism, Pedagogy &amp; Power</b>	50
<i>CRC in Scottish classrooms</i>	52
<i>CRC in Canadian classrooms</i>	53
<i>CRC in postmodern classrooms</i>	55
<i>Summary</i>	58
<b>Discussion and Conclusion of Chapter Two</b>	59

<b>CHAPTER THREE: METHODOLOGICAL THEORY &amp; METHODS</b>	<b>62</b>
<b>Introduction</b>	<b>62</b>
<b>Rationale for Systemic Epistemology</b>	<b>62</b>
<i>Luhmann's autopoietic systems theory</i>	65
<i>Children's human rights reconsidered</i>	68
<i>Critiquing autopoietic theory</i>	71
<i>Summary</i>	74
<b>Standpoint of Researcher</b>	<b>74</b>
<i>Values, beliefs and assumptions</i>	75
<i>Ethical considerations</i>	76
<b>Qualitative Evaluation within this Study</b>	<b>78</b>
<i>Credibility</i>	79
<i>Criticality</i>	79
<i>Social construction and grounded theory validity</i>	80
<i>Summary</i>	82
<b>Design Strategies, Procedures and Phases of the Study</b>	<b>82</b>
<i>Phase I - Approaching the policy arena</i>	86
<i>Phase II - Immersion in the policy arena</i>	87
<i>Phase III - Leaving the policy arena</i>	88
<b>Rationale for Grounded Theory and Integrated Methodology</b>	<b>89</b>
<i>Critiquing grounded theory</i>	90
<i>Constant comparative method</i>	92
<i>Theoretical sampling</i>	93
<i>From open and axial to selective coding</i>	95
<b>Discussion of Core Category and Core Distinction</b>	<b>96</b>
<b>Discussion and Conclusion of Chapter Three</b>	<b>101</b>
<b>CHAPTER FOUR: DESCRIPTIVE ANALYSIS OF FINDINGS</b>	<b>104</b>
<b>Introduction</b>	<b>104</b>
<b>Presentation of Data</b>	<b>105</b>
<b>Phase I - Approaching the Policy Arena</b>	<b>106</b>
<i>United Nations Geneva: High Commission for Human Rights</i>	106
<i>Article 42 in education: Stirling local authority</i>	107
<i>Perth-Kinross local authority</i>	110
<b>Phase II - Immersion in the Policy Arena</b>	<b>111</b>
<i>United Nations New York: 2002 Special Session for Children</i>	111
<i>Canada: Article 42 in education</i>	114
<i>Scotland: Article 42 in education revisited</i>	123
<b>Phase III - Leaving the Policy Arena</b>	<b>129</b>
<i>United Nations: Geneva revisited</i>	129
<b>Discussion and Conclusion of Chapter Four</b>	<b>131</b>

<b>CHAPTER FIVE: COMPARATIVE ANALYSIS OF FINDINGS</b>	<b>135</b>
<b>Introduction</b>	<b>135</b>
<b>Core Thematic Category of Participation</b>	<b>136</b>
<i>Scottish constructions of participation</i>	138
<i>Canadian constructions of participation</i>	139
<i>Comparative qualities of participation</i>	141
<b>Summary of the Study's Core Category</b>	<b>144</b>
<b>Thematic Category of Communication</b>	<b>144</b>
<i>Scottish policy actors and CRC communication</i>	146
<i>Canadian policy actors and CRC communication</i>	147
<b>Summary of CRC Communication</b>	<b>150</b>
<b>Thematic Category of Non-Governmental Organisations</b>	<b>152</b>
<i>Scottish NGOs and the CRC</i>	153
<i>Canadian NGOs and the CRC</i>	154
<b>Summary of NGOs and the CRC</b>	<b>156</b>
<b>Thematic Category of Pedagogy</b>	<b>157</b>
<i>Scottish pedagogy and the CRC</i>	158
<i>Canadian pedagogy and the CRC</i>	161
<b>Summary of CRC Pedagogy</b>	<b>163</b>
<b>Thematic Categories of Culture and Tension</b>	<b>164</b>
<i>Comparing CRC culture and tension</i>	165
<b>Summary of CRC Culture and Tension</b>	<b>169</b>
<b>Discussion and Conclusion of Chapter Five</b>	<b>171</b>
<b>CHAPTER SIX: INTERPRETIVE ANALYSIS OF FINDINGS</b>	<b>176</b>
<b>Introduction</b>	<b>176</b>
<b>Integrating Luhmann's Binary Coding with Selective Coding</b>	<b>177</b>
<i>Functionally differentiated systems within this study</i>	178
<i>Autopoietic communication within this study</i>	183
<i>Structural coupling and perturbation within this study</i>	188
<b>Power as Core Distinction within this Study</b>	<b>192</b>
<b>Discussion and Conclusion of Chapter Six</b>	<b>195</b>
<b>CHAPTER SEVEN: CONCLUSIONS OF THE STUDY</b>	<b>199</b>
<b>Introduction</b>	<b>199</b>
<b>Conclusions from this Study</b>	<b>201</b>
<i>Article 42 in postmodernity</i>	203
<i>Integration of grounded and autopoietic theories</i>	205
<i>CRC education in Scotland and Canada</i>	206
<b>Grounded Systemic Approach and New Theory within this Study</b>	<b>210</b>
<b>Strengths and Limitations of this Study</b>	<b>212</b>
<b>Future Implications of this Study</b>	<b>215</b>
<b>Conclusion of Chapter Seven and Thesis</b>	<b>216</b>

<b>Epilogue</b>	218
<b>BIBLIOGRAPHY</b>	219
<b>LIST OF TABLES</b>	
<b>Table 3.1 - Key Informants Interviewed in the Study</b>	84
<b>Table 3.2 - Open Coding of Texts from Comparative Interviews</b>	97
<b>Table 3.3 - Axial Coding of Texts from Comparative Interviews</b>	97
<b>Table 5.1 - Texts comparing Core Thematic Category of Participation</b>	137
<b>Table 5.2 - Texts comparing Thematic Category of Communication</b>	145
<b>Table 5.3 - Texts comparing Thematic Category of NGOs</b>	152
<b>Table 5.4 - Texts comparing Thematic Category Pedagogy</b>	157
<b>Table 5.5 - Texts comparing Thematic Categories of Culture and Tension</b>	165
<b>LIST OF FIGURES</b>	
<b>Figure 3.1 - Axial Coding from Canadian Interview</b>	97
<b>Figure 3.2 - Axial Coding from Scottish Interview</b>	97
<b>Figure 3.3 - Evolution of Grounded Systemic Theoretical Approach</b>	101
<b>Figure 6.1 - Grounded Systemic Theoretical Model</b>	196
<b>Figure 7.1 - Grounded Systemic Child Rights Model</b>	211
<b>APPENDICES</b>	
<b>Appendix 1 - <i>Refereed and non-refereed publications from PhD thesis</i></b>	252
<b>Appendix 2 - <i>Letters of consent for research participants</i></b>	261
<b>Appendix 3 - <i>Local authority letters granting access to research participants</i></b>	264
<b>Appendix 4 - <i>Global child rights ballot for UN Special Session on Children</i></b>	274
<b>Appendix 5 - <i>Interview schedules utilised during the study</i></b>	276
<b>Appendix 6 - <i>UNICEF Letter of invitation to UN Special Session on Children</i></b>	281
<b>Appendix 7 - <i>Letter of response from Victoria, British Columbia School District</i></b>	284
<b>Appendix 8 - <i>Renfrewshire Council invitation to Paisley guest lecture</i></b>	289
<b>Appendix 9 - <i>UN Secretary General Kofi Annan Special Session presentation</i></b>	291
<b>Appendix 10 - <i>C. Price Cohen's archival document on Drafting of Article 42</i></b>	293
<b>Appendix 11 - <i>Consulting children and young people in Perth-Kinross</i></b>	295
<b>Appendix 12 - <i>Cover of Children's Services Plan in Perth-Kinross</i></b>	297

## CHAPTER ONE: OVERVIEW OF THESIS

### Prologue

*Personally, I have no enemies under seven years of age* (George Bernard Shaw, 1919, cited in Purves, 2003).

### Introduction

This thesis presents qualitative findings from a cross-national policy analysis of the Convention on the Rights of the Child (CRC) within the Scottish and Canadian educational systems with the central aim of building new theory. After more than fifteen years, there remains a great deal of ambiguity over fundamental issues such as the legality or effectiveness of children's rights in practice, and confusion over the treaty's basic tenets is widespread amongst researchers, policy actors and children's professionals. While many accounts in the literature address variations in child rights law and policy across national settings, most are inadequate to explain the macro-systemic similarities, or the rapid and continuing implementation of the CRC throughout world society. Despite the views of detractors and proponents alike, the CRC has dramatically re-shaped children's social policy in this epoch while emerging as both as a permanent feature of late modernity and a discrete field of study.

This thesis argues that the theoretical treatment of children's rights within sociological and developmental studies is contributing to the lack of accurate knowledge of the treaty's core principles across disciplines. Many research accounts, policy and professional documents reveal a lack of information about the treaty's texts, the implications of UN human rights events, the role played by the Committee on the Rights of the Child, and the significance of their Concluding Observations on domestic child rights reports.

In support of this central argument, this introductory chapter is organised into several sections starting with a rationale for the research problem, the main aims and the research questions. These are followed by a brief discussion of the theoretical framework, and the grounded methodology and design chosen for the phases of the research. Finally, the researcher's standpoint is examined.



## **Rationale and Central Research Problem**

The central research problem addresses the lack of accurate knowledge of the Convention on the Rights of the Child within the educational systems of Canada and Scotland (Alderson, 1999a; Covell, 2001; Ipsos-Reid/Save the Children, 2004; Howe and Covell, 2005; Mitchell, 2000; Roche, 1999; Wyness, 1999b). The investigation starts with the assumption that accurate knowledge and understanding of children's human rights are essential prerequisites to exercising those rights, understanding violations and monitoring outcomes of the treaty. Furthermore, these prerequisites have been committed to by both nations, and thus the investigation is framed by CRC Article 42 - arguably the least ambiguous text in the treaty:

*States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.*

Additionally, evaluative feedback and repeated requests from the UN Committee on the Rights of the Child regarding human rights education of children's professionals have been largely ignored by both nations in the study. Built upon an earlier Canadian pilot project (Mitchell, 2000), this thesis compares CRC Article 42 within educational policy, research and practice arenas of Scotland with those in Canada.

During the above pilot study within a Canadian healthcare context, findings indicated that both educators and pupils within British Columbia schools had never heard of the UN Convention on the Rights of the Child (Mitchell, 2000; see also Covell and Howe, 2001b; John, 2003, p. 216; Mitchell, 2003a, b; Wyse, 2001, p. 210). In fact, adults and young people directly involved in that healthcare initiative had been the primary agents for introducing human rights knowledge within local elementary and secondary schools. This lack of accurate human rights information was discussed by a co-participant:

Use of the CRC is something that affects every single aspect of my life ... I've never taken a course; I've never had anyone sit down and teach me about the Convention. It's one of the things I would like to see happen within our education system over the next few years hopefully. But I have been involved in courses where I have informed various teachers that I have about the Convention

and been able to dedicate a class or two towards learning about it (Mitchell, 2000, p. 342).

As stated by this key informant, few children are being educated in this community's schools about their human rights. The ongoing lack of human rights education within core curricula of the education system across the nation has also been under scrutiny by members of the Canadian Senate (2001, 2005) who have called attention to this non-compliance with international human rights instruments:

In areas where there is a gap between Canada's domestic human rights protection and the international instruments it has ratified, this absence of implementing legislation means that Canada is not entirely fulfilling its international commitments and risks denying its people access to certain of their human rights. Moreover, Canadians and international human rights bodies have begun to notice this gap. This is clearly an embarrassing position for Canada as a nation having a well-deserved reputation as a leading nation in the field of human rights (Senate of Canada, 2001, Introduction; see also Senate of Canada 2005).

These concerns were reinforced by a 2004 National Child Day survey which confirmed the failure to implement international human rights education domestically. In all regions, adult respondents scored poorly when quizzed on issues affecting Canadian children as they answered inaccurately two thirds of the time when asked questions about HIV, poverty, abuse, labour, and childcare issues. No one answered all questions correctly (Ipsos-Reid & Save the Children Canada, 2004). Mooney, Knox, Schacht and Nelson (2004) sanguinely observe "that Canadian legislation rarely recognizes children", and thus their fundamental civic, social and political freedoms are wholly dependent upon the goodwill of adults (p. 183; see also Blatchford, 2004; CBC Radio News, 2004; Hume, 2002).

In fact, Hucker (2002) questions whether the legislative, policy and practice lacunae of human rights in Canada are being addressed at all. Highlighting a similar theme from Canada's First Report on the Convention on the Rights of the Child, the federal government declared:

[T]he participation of all Canadians is essential if the potential of the Convention is to be realised. Children and youth must be educated about their rights in order that they may promote and defend them. Furthermore, people in influential positions must continue to work with citizens to increase their knowledge of children's rights and to promote education, research and social policy action to ensure that children fully enjoy their rights (Department of Canadian Heritage, 1994, p. 3; see also Toope, 1995).

A decade has passed since these concerns were first expressed and human rights education in Canada still languishes (Canadian Coalition for the Rights of Children, 2001; Mooney, Knox, Schacht, and Nelson, 2004). At the same time, UK-based research by Save the Children Scotland (1999), Alderson (1999a), and Willow (1996, 1997) found similar trends towards this lack of accurate human rights knowledge in schools. "Teachers seemed not to know that the government had promised to respect children's rights...including in schools... Schools' lack of interest in children's rights is suggested by the low response rate". Alderson (1999a) also reported less than 20% of 250 schools that were initially invited responded, and of the 2272 students from those schools, "over 75% said they had not heard about the CRC". The rest acknowledged they had heard "only a bit" (p. 1). Meanwhile, Save the Children Scotland (1999) found a similar majority of from 271 student participants had "never heard of the UNCRC before" (p. 13).

Nonetheless, CRC Article 42 obliges all UN-member States to make the Convention widely known to all citizens; this would conceivably include students and educators within public and private schools, colleges and universities as well as within intergovernmental departments. As within their evaluative feedback on successive Canadian reports, the Committee on the Rights of the Child has made similar requests to governments of the United Kingdom: implement the CRC in elementary, senior and post-secondary curricula (Concluding Observations on Canada 1995; 2003; Concluding Observations on United Kingdom and Northern Ireland, 1995; 2002). The Committee also expressed concern to the governments of the United Kingdom during its first evaluation "for the lack of respect for Article 12 in the education field" (see Marshall, 1997, p. 9).

## **Research Aims**

The central aim of this investigation was to discover new theoretical approaches for understanding the implementation of the CRC within the educational systems of two countries. This aim is congruent with the UN's Decade for Human Rights Education from 1995-2004 (Office of the UN High Commissioner for Human Rights, 1998). These UN objectives were the same for all member States and include the formulation of effective strategies for furthering human rights education at all school levels, building and strengthening programming capacities for human rights education at the international, regional, national and local levels, and coordinating the development of human rights education materials.

Accordingly, this study presents findings from a systemic examination that compares how knowledge of the CRC is being transmitted through UN policy summits and treaty evaluations to a sample of educational policy and practice sites within Scotland and Canada. The following main aims directed the study's design.

1. To build substantive new theory within the child rights discourse utilising a grounded methodology.
2. To investigate how knowledge of the UN Convention on the Rights of the Child as obliged within Article 42 is being transmitted to policy actors within the Scottish and Canadian educational systems.
3. To compare theoretical and policy constructions of children's rights in Scottish and Canadian educational systems.

## **Research Questions**

1. a) How are policy actors implementing Article 42 of the UN Convention on the Rights of the Child, the core "principles and provisions", within the Scottish and Canadian educational systems?  
  
b) How are policy actors canvassing children's and young people's views on educational matters that affect them within the two nations?

2. a) Through which international, national and local policy sites are the CRC's "principles and provisions" being transmitted?
- b) Which cultural and ideological factors are shaping implementation of the CRC within the educational systems of the two nations?

## **Theoretical Framework**

The integrated theoretical framework that emerged over the course of fieldwork is based upon grounded theory methods of Glaser and Strauss (1967), and autopoietic social systems theory as posited by Niklas Luhmann (1965, 1982, 1997). To introduce this conceptual approach, an overview of childhood studies, human rights theory and autopoietic systems thinking are provided that lead to a brief discussion of the study's methodology.

Dominant childhood theories within both developmental psychology and sociology have provided the lenses through which divergent disciplinary approaches towards young peoples' rights have been focused to date. In one example, Pupavac (1998) maintains that a closer examination of the Convention "reveals that the universal standards of the Convention are based on a Western concept of childhood". She argues the CRC is, in fact, an "ideology" with a "protective view of childhood" that is not part of the experience of most countries and one which "infantilises children from Southern nations" (see also Burman, 1995, 1996; James and Prout, 1997; James, Jenks and Prout, 1998 for similar critiques). However, Pupavac contends that "few writers have critically examined the implications of the UN Convention on the Rights of the Child" and that to do so "has been described as a modern-day heresy" (in Steiner and Alston, 2000, p. 517). In fact, such a focus on the ontological nature of childhood has been the thrust of many similar arguments in the discourse.

However, these approaches often overlook important epistemological and methodological features of human rights monitoring and reporting, and implications for how a treaty such as the CRC actually works within and across legal, political and educational systems. Perhaps not surprisingly, the "sociology of human rights" has now emerged and attempts to broaden such culturally-based perspectives. One such theorist Derek O'Byrne (2003) acknowledges that "within academic circles, children's rights are

often discussed separately from human rights” (p. 374; see also Lenzer, 2002). Both Turner (1993) and Verschraegen (2002) also argue that sociological research into human rights has atrophied due to its tendency towards ‘citizenship’ study, and ontological contentions over universalism versus relativism.

Thus, a key problem with conceptualising ‘children’s rights’ lies squarely within the plethora of definitions of ‘childhood’ which differ across time and geographical space. In-so-far as children are human they are subjects of human rights standards, and “specifics of age are irrelevant” contends O’Byrne (2003, p. 374). He also reminds us that past citizenship discourses have been adopted mainly for purposes of nation-building and exclusion as may be seen in the case of refugees, aboriginals, minority groups, and women and children throughout the world (p. 64).

Diverse arguments regarding the nature of human rights continue with many being fuelled by sociological claims that both philosophical and ontological attempts to explain the world in terms of universal foundations are flawed (Mouzelis, 1993, 1995). In one response to these concerns, Verschraegen (2002) argues that German legal sociologist Niklas Luhmann has prepared “the ground for a genuinely sociological theory of human rights” to take place. He contends that Luhmann’s systemic analysis leaves aside philosophical questions of how to legitimize or ground human rights by re-focusing instead upon societal structures and the institutions within which rights are embedded. On this pivotal theoretical issue, Luhmann himself observes:

Systems theory does not refer to the city or the state in order to characterize the special features of the encompassing system. Our society is too highly differentiated for this kind of design. Instead, systems theory uses systems analysis to disclose the structures and processes which characterize the societal system (1982, cited in Verschraegen, 2002, p. 131).

Luhmann (1982, 1997) contends that general systems theory has the capacity to improve societal communication within this “world society”, and while he passed away in 1998, he leaves his mark as one of the most important 20<sup>th</sup> century social theorists by proposing to describe societies and related social phenomena in “autopoietic” terms. However, Bechmann and Stehr (2002) speculate about “the reluctance of Anglo-Saxon

social science to engage Luhmann's notions as vigorously" as has been the case not only in his own country, but also in Italy, France and most other non-English-speaking societies (p. 68). Within *Grundrechte als Institution* ("Fundamental Rights as an Institution"), Luhmann (1965) addressed the central question of why human rights communications have emerged as one of the essential features of 'modern' societies. Over a prolific period of three decades, he drew upon and integrated a broad range of theoretical perspectives including Parsonian systems theory, phenomenology and neuro-biological autopoiesis to develop a *radical constructivist* approach to social systems that re-create themselves through forms of systemic communication.

In a (post)modern era where 'grand theory' has been discredited, and calls for a radicalised, reflexive form of modernity still reverberate, the need for theoretical models capable of illuminating, re-invigorating and re-defining global realities nonetheless remains (Esping-Andersen, 2000). This type of autopoietic, macro-analysis of how the CRC is being disseminated across a globalised, "world society" (Luhmann, 1982, 1997) is virtually absent within the child rights discourse which to date has focused predominantly upon individual, local and national outcomes. Furthermore, there are few accounts of how events within the United Nations system are directly impacting domestic child rights law and social policy. Over a decade ago, King (1994) posited that this may be due to confusion amongst social scientists regarding how the CRC is being operationalised. Luhmann views the law not simply as a collection of rules or a network of courts and legislative bodies, but as a "communicative system", observes King (p. 390).

By reconsidering children's rights in theory and practice, King maintains that Luhmann's "autopoietic" (or self-replicating) legal communications may be better understood anthropologically as a form of "living law" (Ehrlich, 1975, in King, 1994, p. 394) and may even be operating as a kind of "pre-coding" for domestic legislation. A similar concept has been put forward by Price Cohen and Kilbourne (1998) who see UN legal communications from the Committee on the Rights of the Child as draft "child rights jurisprudence" (p. 643).

Within the present research, a number of core theoretical constructs from Luhmann's epistemology have been deployed to describe how knowledge of human rights is being

transmitted by policy actors within the UN system to the educational systems of two member states. These theoretical constructs have been integrated with the methodological and analytical approach articulated by grounded theorists Glaser and Strauss (1967), and Strauss and Corbin (1997; 1998a, b). As the investigation progressed, the constant comparison with human rights literature guided the coding and analysis of data, and eventually led to the ‘discovery’ of autopoietic systems theory as a way of interpreting the study’s results. Luhmann’s conceptual framework is argued to offer a more congruent framework for understanding the CRC, one that offers an explicit epistemological approach for making new meaning from the human rights thematic findings of the study. By adopting Luhmann’s autopoietic notion of children’s rights as a form of communication within the legal, political and educational systems, a *grounded systemic CRC model* was developed.

## **Methodology**

As noted, a grounded theory methodology was employed since this inductive approach is argued as the most congruent when “generating theory is the researcher’s principal aim” (Strauss and Corbin, 1997, p. vii; also Glaser and Strauss, 1967; Strauss and Corbin, 1997, 1998a, b). Citing Glaser and Strauss (1967), Krentz, Chew and Arthur (2005) observe that when investigators utilise grounded methods “sampling decisions are guided by the emergence of the grounded theory”. The researcher systematically and “simultaneously collects, codes and analyses the data... moving from one participant to the next while developing categories and building theory” (p. 120).

The full integration of methodology and theory took place during the latter analytical stages through constantly comparing thematic findings with the literature to ‘discover’ a grounded theory; data collection consisted of the following procedures:

1. Multi-level documentary policy review and analyses
2. Semi-structured in depth individual and group interviews
3. Guest lecturing
4. Audio-taped, telephone, and electronically obtained interviews
5. Participant observations during UN children’s rights summits in New York, and evaluative reporting sessions in Geneva



6. Constant comparison of data with literature and previously collected data
7. Open, axial and selective data coding integrated with binary systems coding
8. Field notes and memoing - audio-taped and written

Fieldwork took place over a twenty-month period across sites within four nations, beginning and ending in Geneva at the United Nations Office of the High Commissioner for Human Rights. Over the course of the research, I obtained a total of 50 interviews from key policy actors and informants within the Scottish educational system and participants from six of ten provinces across Canada. In order to fully address the research aims, additional theoretical sampling perspectives were adopted stemming from participant observations during UN human rights events.

As Giroux (2003) has observed, many educators have failed to take seriously Italian Marxist Antonio Gramsci's insight that...

... 'every relationship of *hegemony* is necessarily an educational relationship' with its implication that education as a cultural pedagogical practice takes place across multiple sites as it signals how, within diverse contexts, education makes us both subjects of and subject to relations of power (p. 64, emphasis in original citing Gramsci, 1971).

Mindful of such multiple pedagogical sites, I set out to compare how policy actors within the interconnected educational arenas are adopting the CRC's core texts into new legislation and classroom practice (see also Timmermans, 2001; Clarke in Maines, 1991; Strauss, 1987, 1990; Strauss and Corbin, 1990; Wiener, 1981 for similar grounded approaches across policy). In this regard, I have taken a path not unlike medical anthropologist Judith Justice (1986, 2000) who investigated the planning and implementation of a Nepalese health programme from its international antecedents through to the village level. She began with a similar research question concerning policies generated by international agencies in Geneva and how these were being transmitted to settings far removed.

As noted, the research took forward findings from a pilot study within Canadian healthcare (Mitchell, 2000) in a way that supports Strauss' and Corbin's (1998b)

suggestion that adopting grounded procedures explicitly involves generating new theory and doing social science research as the same process.

Although we do not create data, we create theory out of data. If we do it correctly, then we are not speaking for our participants but rather are enabling them to speak in voices that are clearly understood and representative. Our theories, however incomplete, provide a common language (set of concepts) through which research participants, professionals and others can come together to discuss ideas and find solutions to problems. Yes, we are naïve if we think we can ‘know it all’. But even a small amount of understanding can make a difference (Strauss and Corbin, 1998a, p. 56).

Emerging from the study’s interpretive analysis, a theoretical model is offered in the concluding Chapter Seven as a contribution towards this intellectual project.

### **Research Standpoint**

Before proceeding, I will account for my own standpoint through a brief professional anecdote. Similar to G. B. Shaw’s opening response to the court conviction of English feminist and pacifist Eglantyne Jebb for aiding “enemy children” (Purves, 2003), I have managed to foster a life “free from enemies under seven years old”. In fact, I have co-constructed a satisfying career with the young people whom I have met, and this was acknowledged on my final day of employment as a counselor in a Canadian mental health facility for children. The mother of a young woman diagnosed with early onset of schizophrenia and kept under observation for six weeks due to safety concerns thanked me for “the compassion, kindness and dignity” I had demonstrated. The young woman simply requested: “Don’t forget me”. Their comments reflected well my professional approach to practice through the years with children<sup>1</sup>, their families and carers in British Columbia’s hospitals, schools, courts and welfare offices.

Irrespective of this acknowledgment, it is also noteworthy to recall here that many expressions from young people, their carers and other professionals through the years

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<sup>1</sup> The terms “children” and “young people” are used interchangeably throughout this thesis and are framed by the notions within Article 1 of the United Nations Convention on the Rights of the Child which suggest: “[A] child means every human being below the age of eighteen years”.

have been neither quite so poignant nor positive. Many decisions taken regarding children and the provision of services to support their well-being create contentious problems for policymakers, parents and practitioners, as well as for theorists. At the same time questions of how children experience exchanges of power within structures providing educational, health care, welfare and youth justice services provide fertile ground for applied social science inquiry.

Throughout my time as a practitioner, I met children who had experienced profound levels of mental, emotional and physical maltreatment. Their discussions regarding the social and contextual issues of poverty, ability, gender, sexuality and identity, ethnicity, and physical and sexual violence were daily occurrences. Based upon these relationships, I came to critically reflect upon and re-evaluate a great many professional assumptions in this field and the “deficit-labelling” (Gergen, 2000; see also Kitzinger, 1997; Mitchell, 1996, 2000, 2003a, b, c) of children and young people. My core beliefs regarding children and their experiences of childhood evolved despite the predominance of pathologically-oriented theoretical views. I also came to appreciate that all children and young people are competent social actors who exercise considerable personal agency regardless of cognitive, physical, emotional or social circumstances (see also Davis and Watson, 2000, 2002; James and Prout, 1997; James, Jenks and Prout, 1998; Wyness, 1999).

Furthermore, I ceased using the notion of *empowerment* which often implied a top-down, adultist approach and within my experience had actually been a shared dynamic between and among all children, young people and adults. This belief regarding social relations between adults and young people comes from witnessing thousands of children exercise their own personal power from positions of *less power*, but never from a position of *powerlessness*. Throughout this time, various theoretical descriptions of these relations with young people, their families and carers informed my professional and academic development. This eventually led to my interest in the United Nations Convention on the Rights of the Child as an alternative ethical and conceptual framework for practice and research (Mitchell, 1996, 2000, 2003a, b; Smith, 1974, 1987, 1990).

After completing graduate study, I was invited to represent a Canadian non-governmental organization at the United Nations, and I travelled to New York on three occasions to prepare for and participate in the 2002 General Assembly Special Session on Children. During Preparatory sessions for the summit, I discussed professional and personal experiences of implementing children's rights in a Canadian context with representatives from all races, ages, abilities, religions, cultures and political beliefs. I spoke with UN and governmental delegates, and non-governmental representatives from UNICEF and UN-agencies such as the World Bank and the World Health Organisation. These experiences altered my worldview as well as preliminarily shaping the epistemological and methodological choices taken up within this research.

Consequently, this investigation has been shaped by three dimensions within my life: my career as a practitioner in child and youth care counselling in Canada, my previous peer-reviewed research implementing the CRC in a healthcare setting, and my participation as a non-governmental delegate at the General Assembly between 2000 and 2002. As Jenks (2000) maintains, this research approach is also a basic sociological tenet for investigating children's social realities. "What is it we want from children and childhood? My answer is to say: go back to the phenomenon and show how it is built up" (cited in Christensen and James, 2000, p. 67). In keeping with this invitation, the investigation began by going "back to the phenomenon" - back to United Nations policy arenas - in the attempt to better understand the theoretical and ideological influences impacting children, childhood and children's rights in an era of radicalised modernity (Beck, 1992; Giddens, 2003).

### **Structure of Thesis**

The inductive, qualitative design of this study builds upon a 40-year tradition within sociology first promoted in the US by Barney Glaser and Anselm Strauss (1967), Strauss and Corbin (1998a, b), and Barney Glaser (1978, 1992, 2005). In Chapter Two, a critical review of children's rights literature from theory, policy and practice within and beyond the two nations also includes a focused selection from the overarching human rights discourse.

This literature draws upon sociological, developmental, legal, philosophical, and pedagogical authors while providing an overview of postmodern critical thinking that is

prevalent within many related discourses. Before arguing for an autopoietic re-interpretation of children's rights from the study's findings, current versions were compared and contrasted. As highlighted above, this integration of theory and methodology occurred in response to one of the main deficits of grounded theory approaches described in the literature that I also encountered during fieldwork: without an underlying set of organising constructs such an inductive methodology proved to be inadequate to make new interpretive meaning from the main thematic categories.

In Chapter Three, a more in-depth discussion of how theory and methodology were integrated during fieldwork takes place, and the tools, design, methods and ethical considerations taken up within the study are advanced. To accomplish this, a series of arguments is presented for adopting Luhmann's autopoietic conceptualisation of human rights as systemic legal communications contrasting contemporary approaches to children's rights found within dominant childhood studies.

In Chapters Four, Five and Six the main thematic findings are systematically reviewed and presented by deploying Wolcott's (1994) typology of description, analysis and interpretation. This three-staged presentation format makes explicit how interview data were compared, analysed and re-conceptualised to meet the study's chief aim. Sub-headings within these analytical chapters compare and contrast child rights education policies and practices discussed by key informants, and allow the main thematic categories and their theoretical properties to be fully examined. Wolcott's method for presenting qualitative research also fit congruently with the three grounded theory stages of open, axial and selective coding. Furthermore, this integration of grounded theory coding within Wolcott's organisational format facilitated the discovery and deployment of Luhmann's autopoietic constructs as the study's conceptual and interpretive framework. By drawing upon Luhmann's constructivist adoption of Spencer Brown's calculus for making observations (1969) during selective coding of the *core category* and other main themes, the study's *core distinction* also emerged.

The closing Chapter Seven discusses the main thesis arguments, and a number of new theoretical contributions are posited within the sociology of human rights, Luhmann's autopoietic social systems, and grounded theory. The *grounded systemic theoretical approach* that developed over the course of this investigation is argued to have portable

constructs which are briefly presented and discussed for future research potentials. While this integration of methodology and conceptual framework has a small number of precedents within the research literature (for example Glaser, 2005; Gregory, 2003; Gregory, Gibson, and Robinson, 2005), the approach is also fully in accord with the views of Norman Denzin and Yvonne Lincoln, authors of “The Handbook of Qualitative Research” (Vol. 1, 1998) who declare:

The constructivist paradigm assumes a relativist ontology (there are multiple realities), a subjectivist epistemology (knower and subject create understandings), and a naturalist (in the natural world) set of methodological procedures. Findings are usually presented in terms of the criteria of grounded theory (p. 27; see also Strauss and Corbin, 1998b, Vol. 2, Chapter 7).

This integration of method with theory allowed balance to be brought to the multifaceted nature of the research subject, and the chapter closes with an illustrated child rights model, associated strengths and limitations of the study, and implications for future research within both theoretical and applied settings.

### **Conclusion of Chapter One**

Within this introduction, I have included overviews of the study and the theoretical and methodological tools selected for the investigation, along with a brief discussion of my research standpoint. The study set out to build new theory within the children’s rights discourse through a grounded analysis of educational policies and pedagogical practices within two social democratic welfare states. A rationale for deploying core constructs from Niklas Luhmann’s (1965, 1982, 1997) sociological systems theory during the later interpretive stages of the research was also briefly introduced. This integrated epistemological approach responds to postmodern challenges within sociology identified by Esping-Andersen (2000), Mouzelis (1993, 1995) and others, as well as my own earlier research that found a dearth of CRC knowledge within Canadian schools (Mitchell, 2000; see also Williams, 2005 for similar findings).

Thus, the investigation draws simultaneously on the local and the international, the conceptual and the applied, the structural and the individual, the universalistic and the

relativistic as well as from the professional and political standpoints to accomplish its chief aim. Chapter Two now moves to a critical review of the literature from contemporary human rights and childhood studies impacting upon CRC implementation within the educational systems of Scotland and Canada.

## CHAPTER TWO: HUMAN RIGHTS, CHILDHOOD AND CHILDREN'S RIGHTS IN POSTMODERNITY

### Introduction

Prior to 1979's International Year of the Child, the original draft of the Convention on the Rights of the Child (or CRC) was submitted by the Polish government to the United Nations Commission on Human Rights. John (2003) reflects how the Cold War had affected "the drafting and adoption of the Convention" with the West playing down Poland's initiative in order "to drag out the process of drafting for as long as possible" (p. 27). The Convention was subsequently negotiated by the 42 member States sitting on the UN Human Rights Commission at the time, as well as the *Ad Hoc Committee* of mainly non-governmental representatives. The treaty was unanimously adopted by the UN General Assembly November 20, 1989, and at the time of this writing has been signed and ratified by 192 (UNICEF, 2005) of the 216 nations comprising world society. The CRC is the most widely adopted human rights legislation in history.

As a counsellor with Canadian young people during the 1990s, it became obvious how overlapping theoretical issues were impacting upon the dissemination of new knowledge regarding children's civil, social and political rights within social work, health, youth justice and education systems. These issues appeared to be ideological as well as epistemological and methodological (Mitchell, 1996, 2000, 2003a, b). This study investigates links between international and local policy arenas through which human rights knowledge is being transmitted into daily classroom practice. While the literature records many such connections, inconsistency remains in the application of common theoretical or "bridging frameworks" argued by Myers (1992) as integral to childhood studies (in Dahlberg, Moss and Pence, 1999, p. 164). In keeping with the main research aim of building new theory, this literature review examines the dissemination of children's rights knowledge within the educational systems of two democratic states.

The following chapter is set out in three parts as it traces the path of the CRC through UN policy deliberations and evaluations in Geneva and New York into local settings. Initially, I consider how postmodern theoretical concerns have shaped the discourse with selections from historical, sociological, developmental, philosophical, legal and medical literature revealing numerous constructions of human rights, childhood and



children's rights. This initial section also sets out a rationale for the theoretical framework adopted in the later stages of the study to be explored in greater depth in Chapter Three. Secondly, I compare and contrast the domestic policy arenas of Scotland and Canada. In the final section, I turn to local educational policy arenas in the two nations to review children's rights within institutional and pedagogical practice.

### **International Policy Arenas: Human Rights in Postmodernity**

In relation to sociological theory, Giddens (1976) acknowledges that a diversity of schools of thought exist, but he declares each are concerned "with problems of language and meaning in relation to the 'interpretive understanding' of human action" (p. 23). When investigating social policy and practice in the social sciences, Smith (1974, 1987, & 1990) contends that only "theory and actuality" together have the potential for inner coherence in a way that natural scientific theories do not. Nonetheless, in the current era Esping-Andersen (2000) observes that "postmodernists do not pose big, epochal questions anymore since their basic *raison d'être* is that grand moving forces have ceased". Instead, he argues for "sociology to be empirical and both diachronically and cross-sectionally comparative" (p. 59) in order to identify newly developing disciplinary trends. Each of these points of view considers the central role of theory within sociology and how potential new knowledge is gained by investigating its role in the context of people's lives.

For his part, Mouzelis (1993, 1995) also complains that post-structuralism and postmodernism have created an "ever-widening rift between micro- and macro-sociology" (1993, p. 677). He argues that, in-so-far as micro-sociologists keep ignoring social hierarchies linking micro, meso and macro actors while viewing macro-phenomena as mere representations of micro-events, they only offer a "false, reductive picture of the social world" (1993, p. 681).

Esping-Anderson (2000) agrees with Mouzelis' assessment of the diminishing returns within contemporary sociology since most societies appear to be theoretically adrift. The past benchmarks are no longer relevant while "post-something" labels have also proven inadequate to facilitate social science inquiry. "Latter-day sociologists seem to be losing interest in their historical 'social democratic' mission. The anything goes, all-inclusive thrust of sociology is now pushing towards issues ever more removed

from ... the workings of capitalist democracies". Instead, he argues for the adoption of theoretical *leitmotifs* to re-establish certainty and develop new constants with which to re-anchor the social sciences. Sociology after World War II would have been far less dynamic had it not been for its inherited grand questions and blossoming *leitmotifs*, he asserts. They provoked debate, hypothesis, empirical verification and falsification exactly in the same way that strong theory would. In fact, Esping-Andersen claims the *leitmotif* is a substitute for grand theory. A "*leitmotif* suggests that beneath all that chaotic variation, there lurks some fundamental principle of organisation ... But sociology at year 2000 seems to have depleted its once powerful reservoir" (pp. 61-63).

These insights suggest that postmodern approaches to theory-building are deeply implicated within sociology, but where might such theoretical *leitmotifs* be beckoning within contemporary childhood studies? A framework such as the CRC appears to serve Esping-Andersen's purpose. In addition, re-interpretations of children's power relations within this human rights framework allow for Mouzelis' contention that micro- and macro-sociologists must clearly account for emerging social hierarchies. In response to Esping-Andersen's (2000) objection that sociology is currently a "discipline without theory" (p. 59), the following theoretical *leitmotifs* offer an epistemological foreground for this study:

- The revolution in scientific and technological advancement
- The demise of colonial imperialism, the decline of communism and the ongoing advancement of social democratic welfare states
- The development of international and domestic human rights systems with associated monitoring and evaluation processes

It is now commonplace to observe how scientific, telecommunication and international travel transformations have facilitated the freer flow of information, knowledge and expertise than at any previous historical moment. In addition, discussions of children's rights are still historically bound within the overall context of the end of the cold war between the west and communist Russia, and resultant shifts among global governance systems. To underscore these transformations, simply recall how in 1900 more than half the world's people lived under various forms of colonial rule while only New Zealand had 'given' female citizens the right to vote. For better and for worse, more than three-

quarters of the world's nation-states now have functioning democratic regimes (see United Nations Development Program, Jolly, et. al., 2000; Briggs, 1952; Hardt and Negri, 2000, particularly pp. 3-8).

Not surprisingly, the World Bank also reports momentum towards human development and human rights, a momentum which appears all the more significant within the twin global contexts of population increase and the HIV/AIDS pandemic. In the face of unacceptable levels of malnutrition and absolute poverty, the number of people living on less than \$1 a day is actually falling - by about 200 million since 1980 - the first drop in two centuries. The adult literacy rate has increased by half in the past three decades while life expectancy jumped by 20 years between 1998 and 2002. The previous 20-year jump in longevity had taken since the Stone Age (see Mallaby, 2002; Holcombe, 1995; World Bank News, 2002 for further discussion).

Identifying this democratic revolution as the “reflexive individualization of the second modernity”, Beck and Beck-Gernsheim (2002, p. viii) reflect upon the demise of communism in Eastern Europe and the increase in the number of liberal democracies in the world. They contend that it is too “quickly forgotten that a thoroughly militarized system of orthodox communism imploded *peacefully*” (pp. 169-70, emphasis in the original). Furthermore, their analysis is in keeping with Luhmann's (1982) core contention that the complexity of world society is being stabilised through functionally differentiated autopoietic social systems.

Nonetheless, O'Byrne (2003) recalls the 20<sup>th</sup> century as one of genocide and ethnic cleansing. While common throughout previous ages, these practices reached an odious level in the past century with the extermination of Turkish Armenians, followed by the Russian Communist purges, the Jewish holocaust, the Kurds, Rwandans, Iraqis and Bosnians to recount the most notorious. Against such a backdrop of “modernity” Moss and Petrie (2002) observe that, with the ongoing degradation of the environment any “notion of human progress becomes increasingly hard to swallow, at least not without a strong dose of qualifications” (p. 25). Bell (1960), Campbell (2001), Douzinas (2000), Ignatieff (2001), Lindgren Alves (2000), and Osler and Carter (1996) each offer similar reflections regarding the failure of Enlightenment principles and promises.

While most observers place the beginning of modern human rights thinking with the Enlightenment philosophers (Bobbio, 1996; Campbell, 2001; Donnelly, 1993, 2003; Douzinas, 2000; Ignatieff, 2001; Verschraegen, 2002) and the American and French revolutions, recent research places their origins much earlier within recorded history<sup>2</sup> (Cowan, 2002a, b). In the context of human rights evolution, Bobbio (1996) recalls: “Human progress was not a necessity for Kant, it was only a possibility” (p. 45). Notwithstanding, Douzinas (2000) makes the claim that “human rights” have won the ideological battles of modernity while arguing that “universal application and full triumph” appear simply to be a matter of time and adjustment between the spirit of the age and a few “recalcitrant regimes. Its victory is none other than the completion of the promise of the Enlightenment... Human rights are the ideology after the ... end of history” (p. 2; see Bell, 1960 for alternate view).

Thus, for the purposes of grounding this investigation, I contend that the human rights *leitmotif* is evident through the proliferation of international treaties and evaluative mechanisms within the past half century, and provides an overarching theoretical framework for the investigation.

### *Sociology of human rights*

Traditionally, the sociological study of human rights has suffered from two significant biases. The first is its anti-foundationalism and an underlying resistance to philosophical and ontological attempts to explain the world in terms of fundamental suppositions or

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<sup>2</sup> The current earliest examples of human rights declarations are provided by the “Code of Hammurabi” circa 1780 BCE, and “The Cylinder of Cyrus” the latter of which is housed by the British Museum and promulgated by a Persian king circa 539 BCE. Comparing the French Human Rights Manifesto and the United Nation’s Charter with the “Charter of Freedom of Cyrus”, Ghardeshgary (2001) reports that “the latter appears more valuable considering its age, explicitness and rejection of the superstitions of the ancient world” (p. 43). Other examples of human rights bills pre-dating Enlightenment liberalism are the Magna Carta and the 1320 Declaration of Arbroath, “Scotland’s Declaration of Independence” the latter of which has recently been linked to the development of the Constitution of the United States. “[S]uch notions lie at the root of all modern theories of constitutionalism” (Cowan, 2002a, b).

At first blush, these historical events may appear only tangentially related to notions of children’s rights embedded within current philosophical, legal, sociological, developmental or pedagogical discourses. Nevertheless, human rights ideologies (Minogue, 1978) critiquing liberal notions of ‘rights’ as historically embedded within the failure of Enlightenment traditions are simply revealing themselves to be culturally and historically limited.

foundations (Turner, 1993). The second is that sociologists have tended to conflate society with the nation-state as did Weber and Durkheim (see also O'Byrne, 2003, p. 64). These biases have also shaped the postmodern assumption that history and progress have altogether ceased, and are now associated with a "failed Enlightenment project" (Bauman, 1991; Gray, 1995, each cited in Moss and Petrie, 2002, pp. 24-5). Such widespread rejection of grand theory from the Enlightenment period, commonly described as the time since the dawn of the Industrial Age, is assumed to be upon solid epistemological ground. However, during the study I came to question these precepts within sociological thinking. As one appreciates various perspectives in related discourses, it is apparent that ideological and theoretical confusion regarding *children's rights* may actually rest with conceptual ambiguities regarding *human rights* origins within philosophical, legal and historical accounts (see Ghardeshgary, 2001; also Archard, 1993; O'Byrne, 2003, pp. 28, 59).

The current multi-faceted, post-WW II processes through which human rights have begun to be institutionalised within world society could not have been fully predicted by earlier sociologists, maintains O'Byrne (2003). From this modernist era, a postmodern hegemony of cultural relativism has now emerged turning the academy into a "charnel ground of deconstructive fury" (Wilber, 2000, p. xi). With regard to international human rights law, Lindgren Alves (2000) roundly rejects postmodern relativism, and he observes how the 1948 Universal Declaration of Human Rights has "received the stamp of universality .... In a world virtually without colonies, the [1993] Vienna Conference was the largest international gathering ever convened on the theme of human rights" (p. 482). In this, he also agrees with Douzinas (2000) that human rights thinking represents the world's first universal ideology. Indeed, "this Grand Narrative seems to be the last remaining one" (Lindgren Alves, 2000, pp. 499-500).

Also rejecting the extremes of cultural relativism, O'Byrne (2003) takes up a more moderate, interdisciplinary social science stance. He draws heavily upon Rorty's (1993) account of human rights theory to support the integrative potential within the discrete sociological study of human rights. Similar to Luhmann, both of these theorists have bridged the modernist/postmodern divide by asserting that social scientists need to "move beyond epistemological perspectives which claim that we can, somehow through critique or reason, know the world" (i.e. rationalism) since these perspectives are

“flawed”. Within such an ontological view, insects still sting and in all regions of the world people are born and die each day. There may be other ‘facts’ but both modernist and postmodernist perspectives in turn implicitly point to the challenges inherent in interpreting these ‘facts’ semantically. Like Goonesekere (2001), Rorty offers a sympathetic critique of postmodern relativism but calls on both activists and intellectuals to abandon their quest for ‘universals’ and accept that the discourse on human rights is a mainly Western liberal one (in O’Byrne, 2003, pp. 43-45).

Turner (1993) also assesses the human rights blindspot in the sociological gaze arguing that this myopia has contributed to theoretical stagnation in the discourse. Although the idea of citizenship has received attention in the literature, “there has been no parallel discussion of the sociological importance of rights” (p. 489). O’Byrne (2003) emphasises this point by asking if the study of human rights is even appropriate for social scientists within sociology. While the sociology of human rights may not have made much sense to Max Weber, in order to address O’Byrne’s position, we must consider *what precisely is the scope of sociology?* (p. 65).

One of the most prolific 20<sup>th</sup> century sociologists, Niklas Luhmann, contends that the discipline’s central role “is to clarify the original insights of the Enlightenment [and] to refine the methodological means by which these are obtained” (in King and Thornhill, 2003, p. 133). Verschraegen (2002) also argues that the study of human rights is very much part of sociological concern. Citing Luhmann’s (1965) approach he declares that “sociological systems theory phrases the issue of human rights neither as an ethical question of finding fundamental principles for human rights, nor as a question of consolidating and implementing human rights law” (Verschraegen, 2002, p. 262). It is apparent that human rights are an evolving yet trans-historical feature of both modern and postmodern societies, regardless of one’s philosophical stance concerning the dualistic analysis of universalism versus relativism. While “neo-Kantians” Habermas and Donnelly have taken the more liberal stance, O’Byrne (2003) observes that for both of these prominent theorists, time spent debating “metatheoretical questions concerning the foundations of human rights in natural law ... is time wasted” (p. 43).

Hence, within this investigation I have chosen not to enter the debate on the foundational existence of a universal form of human rights (*ontology*), but on how it is that we might obtain new knowledge about such rights (*epistemology*). I contend that

such an epistemological focus is also grounded within practice with children. At the same time, such a grounded approach is congruent with Luhmann's thinking about rights as systemic forms of communication that help to establish state and institutional boundaries through functional differentiation. World society simply cannot be limited by national identities such as English, French or American any longer since all three states also form part of a communicative whole that relate to one another strategically, politically and economically (King and Schütz, 1994, p. 267). While Luhmann acknowledges that "society" is the most difficult concept sociology has inherited from the past, he rejects Parsons' earlier notion of a system of societies and declares global society represents only one system (Luhmann, 1997, p. 67).

Based upon the kind of pragmatism argued by Rorty, O'Byrne and Lindgren-Alves and following on with Verschraegen's (2002) arguments for Luhmann's systemic analysis, rights, I have chosen to frame this study within the sociology of human rights. Such a conceptualisation is congruent with a continued refinement of "the methodological means by which these are obtained" argued as necessary by Luhmann. As a consequence of functional differentiation, societal systems are the "genuine medium of Enlightenment" (Luhmann, 1967, cited in King and Thornhill, 2003, pp.132-133). Finally, in keeping with the ongoing evolution of human rights as a sociological *leitmotif*, Verhellen (2000) contends the UN Convention on the Rights of the Child has achieved "the first legally binding geo-political social contract in human history" (p. iii). Throughout this study, I considered how this overarching, postmodern ideology and the emergent sociological study of human rights appear unaccounted for within childhood studies.

### ***Childhood theorising and children's human rights***

In relation childhood theorising, Moss and Petrie (2002) identify that postmodern theoretical accounts have done much to illuminate children's rights while creating the potential for new democratic "spaces" for children and adults. There is one of only a handful of accounts encouraging a movement towards interdisciplinarity in this burgeoning field of childhood studies. Similar to human rights theorists, these authors also stress that disciplinary and professional agencies have each constructed a limited and particularised version of childhood shaped by their own limited perspectives (p. 20). This reductive, restrictive phenomenon was clearly visible within my practice years, and

O'Byrne (2003) observes how such disciplinarity has resulted in the current trend within academic circles to discuss children's rights as distinct from human rights. This is because "paradoxically, teaching and research on children's rights often adopt a broader approach ... a key problem with the idea of children's rights lies in the definition of childhood, which of course differs across time and space" (p. 374). He observes that more attention has been paid to "welfare rights" rather than "liberty rights" while focusing his attention more towards "violations of human rights targeted specifically at children - even if by doing so we lead ourselves once again into the quicksand of defining childhood" (p. 375).

To help mitigate the challenge of defining childhood and concerns for "infantilizing" children within Southern societies (Burman, 1995, 1996; Pupavac, 1998), Burman encourages researchers to engage in "cultural and disciplinary tourism and experiment with ideas from outside western psychology" moving away from reified models.

As feminists and child-rights activists have rightly pointed out (Jackson, 1993), it would be ironic indeed if we dispensed with the notion of the individual as *cultural baggage* just at the very moment that women and children were beginning to acquire some hard-won rights there-by ... we should recognise the tactical character of our engagement ... via rights approaches and work alongside this towards formulating more genuinely interpersonal and intersubjective approaches to development and education (Burman, 2001, pp. 14-15).

I contend this kind of critical analysis of developmentalism, and Burman's invitation to consider other epistemologies, may serve to balance many of the hegemonic, ideologically-based Anglo-American approaches currently in vogue (Mitchell, 2003a, b). In fact, it is apparent the CRC is actually facilitating this theoretical tourism. In a similar argument, Malawian legal scholar Kamchedzera (2000) maintains the 1999 *African Charter on the Rights of the Child* is not an example of cultural relativity, and was not designed to infringe upon the principle of universality of human rights. Instead, it was meant to be complimentary to the CRC which is a set of minimum standards, and countries should be encouraged to maintain higher standards (in Verhellen, 2000, p. 556; see also Amnesty International, 1999).



Reaching consensus of this magnitude does much to ameliorate the early concerns articulated by theorists such as Pupavac (1998), Burman (1995, 1996), Boyden (1997, p. 203) and James, Jenks and Prout (1998, p. 141) regarding essentialised, Western views of childhood within the CRC (see Boyden 1997, p. 216). Similarly commenting upon the communitarian approach within many African states, Goonesekere (2001) observes the most powerful argument against cultural relativism is the fact that culture is never static. Human rights “ideologies may have originated in a Western historical experience, but they have evolved in the last fifty years through the contribution of other societies into a very different ideology that reflects a balance between individual and collective rights” (p. 98). I would argue further that fifty years is a very short period in human history, and as we have seen, this lack of historical perspective may also account for the theoretical schism regarding children’s rights within human rights discourses.

Carlina Rinaldi (1999) argues the extreme view that “childhood does not exist, we create it as a society, as a public subject. It is a social, political and historical construction” (cited in Moss and Petrie, 2002, p. 20; also cited by Brunton and Thornton, 2000). Goldson (2002) describes the current “demonization” of children observing how adult anxiety with regard to childhood “has rumbled uncomfortably in recent years in tandem with the emergence, development and consolidation of a ‘widespread belief’ that children and young people are in some way turning feral” (pp. 34-35, citing Jeffs and Smith, 1996). With reference to previously dominant developmental discourses within childhood studies, James, Jenks and Prout (1998, p. 28) declare that within the sociology of childhood, the social constructionist approach “prizes the child free of biological determinism”. Prout and James (1997) also observe how the immaturity of children is a biological fact of life, but the way in which this immaturity is understood “is a fact of culture. It is these ‘facts of culture’ which may vary and which can be said to make of childhood a social institution... Childhood is understood as a social construction” (pp. 7-8).

Jenks (2000) notes that “within the ‘socially constructed’ child mode of discourse, there is no essential child but always one that is built up through constitutive practices” (in Christensen and James, 2000, p. 67; see Ariès, 1962; Finkelhor and Korbin, 1988; Justice, 1986; Takahashi, 1978; Whiteford and Manderson, 2000 for further historical views). Jenks (2000) goes so far as to assert that “it is not necessary to like children,

love children, have children, live with children or regard children as significantly more or less important than any other group” to undertake “interesting research into the state of childhood” (p. 69). For his part, Freeman (2000a) fundamentally disagrees with the postmodern, social constructionist position by Jenks, and in a review of Jenks’ 1998 text, he observes there is “very little on the child as social actor ... [and] almost nothing on children’s rights” (p. 185).

It is evident from the literature that new worldviews associated with childhood, whether modernist or postmodern in origin, are in flux within the social sciences. Ontological assumptions such as those put forward by Jenks (1998, 2000) have previously been argued to obscure empirical analysis while their underlying ideologies “are most often incomplete or in process and as such always involve definition, ambiguity and interpretation” observes Wiener (1981, p. 17). A closer look at a recurrent, ideological perspective within contemporary childhood studies follows.

### *Children’s rights in postmodernity*

The current epoch in childhood studies is characterised by ambiguity while Moss and Petrie (2000, p. 26) express uncertainty about the passing of modernity. “[A]re we in the era of late modernity? On the brink of, or in, the postmodern epoch?” Like these contemporary theorists, Jenks (1996) is ambivalent about where the “postmodern child” might be heading with regard to exercising her rights (see also Davis, Watson and Cunningham-Burley, 2000; Hume, 2002; Jenks, 2000, 2003; James, Jenks and Prout, 1998; Lee, 1998, 1999, 2001; Prout, 2000). Prout (2000) observes that in this era of “late modernity”, we may observe new patterns of family life, marriage, labour market participation and work within the globalised economy impacting children, childhood and children’s rights.

Stainton Rogers (2001) recounts how social constructionism within childhood studies has now been augmented by “postmodern theory” (see also Christensen and James, 2000; Lee, 1999; Jenks, 1996, 1998, 2000; James and Prout, 1997; James, Jenks and Prout, 1998; Mayall, 1994, 2000; and Prout, 2000, 2001).

Now, children have become dangerous to us. We are scared of their sexual precocity and their violent instincts, and we have made them into society’s

scapegoats... We sentimentalize them... and abhor them... and are hopelessly confused about them. We want to protect them and to be protected from them. We think they are sweet and we think they are terrifying. We love them while... they are charmingly playing at being adults, but when they take a few steps towards adulthood, we get scared and angry and morally censorious (Stainton Rogers, 2001, p. 26, citing Gerrard, 1997, p. 5).

This fear reflects the uncertainty dominating the discourse and its common features recognise that a diversity of knowledge - rather than any ultimate grand truth or meta-narrative - has emerged (Lee, 1999, 2001). This emergence reflects Luhmann's notion of the highly contingent nature and complexity of functionally differentiated systems within world society. Postmodernists oppose all forms of essentialism: i.e., that within the context of human rights research, any belief about the human 'core' or 'condition' may be presumed. Knowledge is socially constructed and constantly negotiated, and this process replaces the authority of a single autonomous subject or grand narrative with a diversity of standpoints inseparable from the social processes that created them. As we have seen, postmodern critical thinking appears to have taken a path towards the kind of "transdisciplinarity" argued for by Albrecht, Freeman and Higginbotham (1998, p. 71), Holmes and Gastaldo (2004, p. 259) and Giroux and Searls Giroux, (2004, p. 102) while deeply influencing human rights theorising at the same time.

Indeed, such postmodern perspectives on pedagogy and children's rights provoke new questions as they point out how "policy, provision and practice involving children claim to be based on knowledge. Within modernity and postmodernity, knowledge is understood in very different ways" (Moss and Petrie, 2002, p. 28). While "postmodernity does not stand in total opposition to the Enlightenment, nor are its values completely different" (p. 27), these authors completely eschew modernist assumptions that speak of " 'children' in the abstract... as though this is a universal position" (p. 15). Moreover, Rose (1999) claims prerequisites for understanding power relations underpinning various ideologies are established by taking a highly critical approach towards issues given as if they were "timeless, natural and unquestionable". He describes this as a matter of "introducing a kind of awkwardness into the fabric of one's experience, of interrupting the fluency of the narratives that encode that experience and making them stutter" (in Moss and Petrie, 2002, p. 11).

At this point, I wish to introduce Rose's awkward stutter while considering the notion of a postmodern ideology<sup>3</sup>, and this increasingly taken-for-granted influence upon theorising, policy and practice within childhood studies. Many theorists have noted the limitations within the social constructionist approach to research and its over-emphasis on 'difference' (Campbell, 1996; King and Schütz, 1994; Qvortrup, 1994, 1997, 2000). Indeed, Campbell (1996) dryly notes that contemporary social epistemologists and methodologists seem to be split into two main camps. On the one hand are "ontological nihilists" arguing for a relativity of worldviews and paradigms which preclude "knowing the other"; on the other are the "methodological cultural relativists" (pp. 152-53). Giroux (1999) also identifies a postmodern backlash "so prevalent in North America" that, similar to Nietzsche's god (1882), "postmodernism is dead" (p. 96). Archard (1993) observes that use of such "cognate terms" as modernist "are elliptical; they generally mean 'modern Western' (and indeed Northern). Where this use has commendatory connotations there is a clear danger of ethnocentrism" (p. 21).

Saunders and Goddard (2001) also express deep reservations with regard to postmodern views within the childhood discourse, particularly those "authors within the new social studies of childhood" (p. 443). Their research suggests "the insight and language development of those who wrote the United Nations Convention on the Rights of the Child has either been ignored or is yet to be discovered by authors, even those purportedly concerned about 'childhoods' (Mayall, 1994) and children's rights" (p. 448). As White (2003), and others have begun to ask: "What then will follow after deconstruction?" (p. 11, citing O'Donovan, 2000). Furthermore, researchers need to begin to move through the "difficult and challenging part of theoretical work to generate more useful concepts for more realistic analysis of childhood and youth, and based on this, the development of a standpoint or position linking theory to action" (ibid.).

Nevertheless, as the selections of literature have so far reinforced, contemporary interpretations of children's rights rarely begin with the treaty's texts, and frequently

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<sup>3</sup> Lindgren Alves notes: "It is not necessary to make an inventory of ... all the influential thinkers – structuralist and post-structuralist, modern and postmodern – to reach an elementary understanding of present day postmodern social practices ... Jean-François Lyotard, in 1979, offered the most agreed upon definition of the term 'postmodernity' when he diagnosed the end of the Grand Narratives – of Reason, Emancipation, and Human Progress – as the necessary means of legitimization of the search for knowledge. Lyotard believes that, in a systemic reality like ours, "deprived of ethical values and of a sense of human progress, knowledge now has only performance-rated goals" (2000, pp. 489-490).

stem from one of the many definitions of childhood which are ambiguous and shifting dramatically in this epoch.

Based upon an earlier pilot research which interpreted CRC Article 42 “principles and provisions” within a healthcare context (Mitchell, 2000), I maintain that a postmodern, social constructionist approach cannot fully capture the interdisciplinary, even “rhizomatic” nature (Holmes and Gastaldo, 2004, p. 258) of child rights implementation across cultures and *in situ*. Institutional interpretation of the CRC, argue legal theorists Price Cohen and Kilbourne (1998), must take into account how the texts chosen for the treaty pointedly contain “language [that] is quite general... This built-in elasticity of interpretation is intended to ensure that the Convention will meet the needs of diverse political, legal and economic systems, and make it possible for different cultures to be in compliance” (pp. 642-43). Toope (1995), however, criticises this elasticity from a Canadian legal perspective “for being rather loosely, if not sloppily, drafted” (p. 43). As pointed out by Saunders and Goddard (2001), their concern is more with the emerging “textual abuse of childhood in English-speaking discourses”, one which implicitly ignores the contribution of theoretical semantics in “the denial of children’s rights” (p. 443; see also Howe and Covell, 2005, Chapter One).

In the ongoing debate surrounding the evolution of children’s citizenship, Roche (1999) concurs. “We need to rethink the value of the language of rights and the social significance of this language. Rights are not just about state-citizen relations but about how civil society should imagine itself” (p. 475; see also National Children’s Bureau, 2003). While Davis and Watson (2000) rightly judge that rights must be played out in everyday settings, for most children challenged by disability, they contend that rights are regularly violated *despite* the presence of international legislation. Their starting point also rejects such meta-narratives and their associated general theories allowing for the “homogenization of disabled children... reinforced by the UN convention on the rights of the child” [sic] (2002, pp. 161-162). James, Jenks and Prout (1998) also express sharp reservations with “not only the specifics of the Convention but also its embeddedness in the universalist psychological model of the child” which they cite “as an example of transitional theorizing” (p. 141). While the notion of an essentialised, Canadian, American or European childhood is clearly no longer unacceptable, the sense

that international human rights law can be omitted within sociological theorising is also open to considerable critique.

The institutionalisation of children's rights may be described fairly in such terms, but the associated systemic processes within education and new legislation have been influenced by a lack of coherent theory for understanding international law, and how the Convention fits within the human rights paradigm. As one example of the potential within an interdisciplinary approach, Dahlberg, Moss and Pence (1999) review a Canadian First Nations study wherein a child development curriculum was modified suggesting the kind of theoretical "tourism" encouraged by Burman (2001). Their research offers a viable way of bridging the two worlds of western academia and traditional, tribal communities while illustrating how concepts such as postmodernity are relatively meaningless in the context of world society. In Canada alone, for example, some indigenous communities have existed for more than 20 millennia in the same location (Cinq-Mars, 1979; Jones, 2003). Pence (1999) argues that the linear thinking embodied within a premodern, modern and postmodern typology ignores the "complementarity and synergy" located within holistic epistemologies honoured by indigenous cultures:

These alternative approaches have also revealed glimpses of an alternative world view that are profoundly non-modernist, based not on postmodernist construction, but ancient pre-modernist understandings some of which resonate with postmodernist orientations (in Dahlberg, Moss and Pence, 1999, pp. 182-83; see also Capra, 1996).

Wyness (1999) also criticises postmodern, social constructionism within childhood studies "because it indicates the preponderance of what is unique over what is common" (p. 363, citing Qvortrup, 1994, p. 4). Echoing Atkinson (2002) regarding the failure of the social constructionist agenda within education, Moss and Petrie (2002) further identify the problems within this approach for those taking a more structural, institutional view to research and practice (p. 21).

Considering multi-faceted, domestic legal and political interpretations of the CRC, King (1994) speculates that like the fairy Tinkerbell in the children's play *Peter Pan*, the Convention "may possess magical powers to change children's lives, if people (and

national governments) collectively believe in children's rights as legal communications rather than as instruments of power and of obligation" (p. 385). He considers the sociological notions of human rights have tended to "escape the attention of both detractors and supporters... of rights for children" (p. 385). While the concept of 'needs' is central within the children's psychological and social policy discourses (Aitkenhead, 1978; Marshall, 1970; Shaffer, 2005), within the nursing literature, Lowden (2002) recounts "a decade of dispute" regarding the interpretation of children's needs in the context of rights that is being "influenced by the evolution of the meanings of childhood". Adults view childhood and children's rights from multiple constructions of "their best interests... which are determined by their beliefs about children's ability to understand and consent to health care and treatment" (p. 106; see also Mitchell, 1996, 2003a, b; Piper, 2000 for discussions of 'best interests'). Lowden also observes that ambiguity originates in the law and its interpretation and resultant policies must "develop a more pragmatic ideology" (2002, p. 106).

On the other hand, Coppock (2002) critiques the medicalisation of children's behaviour and observes how "professional discourses contain both written and unwritten assumptions about the nature of 'childhood' and 'adolescence' which inform judgments about what is deemed 'acceptable' and/or 'appropriate' ". Child psychiatry, she argues, "can undermine or overtly breach the core principles of... the rights of children" (p. 139). Once again, such medico-legal constructions of childhood have both ideological and institutional implications for children's rights within and beyond healthcare (see also Alderson, 2002; American Psychiatric Association, 1994; Gergen, 2000; Mitchell, 2003a, b), particularly where the exercise of professional power is concerned.

Within another service milieu, Barry's (2002) account of young people in Scottish foster care highlights how core CRC principles of participation and protection are, in fact, "not mutually exclusive, but interdependent and [need to be] developed in parallel". Through conversations with young people in care and beyond she reveals the majority had little specific knowledge or awareness of the CRC. Her findings highlight the importance of professionals having a basic knowledge of the CRC's principles and provisions in order to balance competing tensions in the exchange of power within institutions (pp. 251-52). The interdependency of the CRC's core principles reported by Barry also illustrates how

local child rights models are possible despite theoretical underdevelopment currently restricting the field (see also Cairns, 2001; Covell and Howe, 1999; Mitchell, 2000).

### *2002 United Nations Special Session for Children*

The closing decades of the 20<sup>th</sup> century witnessed a dramatic alteration in the worldview of childhood (Price Cohen, 2002). After centuries of being dismissed, ignored, manipulated and looked upon as ‘objects,’ children have been granted legal recognition as persons. Worldwide focus has now shifted from negotiations “over the types of services to be provided for children, to struggles over how to develop a framework that would allow for active child participation in civil society”. However, Price Cohen maintains it should not be assumed that this shift in child status from ‘object’ to ‘person’ happened overnight (p. 49).

Despite the widespread “celebration” of children’s rights since the World Summit for Children in 1990, the picture is still “grim [while] the plight of children world-wide has not got better, but worse” (Freeman, 2000b, p. 278). Notwithstanding advances from the past century, this critique was supported in large measure by UN Secretary General Kofi Annan (2000a, b; see also Black, Morris, and Bryce, 2003). John (2003), however, offers a contrasting view of these same events recalling how preparations for the 2002 UN Special Session on Children also recorded “some improvements” (p. 92). While events throughout the world amply support both assessments (see Editorial, International Child Rights Monitor, 2001), UNICEF also reported that sixty-three countries had actually achieved their 1990 goals of a 33% reduction in their under-five mortality rates while one hundred more established a 20% decrease (UNICEF, 2001).

After an initial period of comparing this contested discursive positioning of young people between Scotland and Canada, I heeded Jenks’ (2000) invitation to “go back” to evaluate how these phenomena are being built up and re-constituted. While attending the 2002 General Assembly’s Special Session for Children, I noted other improvements in the globalised state of childhood included efforts to eradicate polio. UNICEF also reported daily deaths for those under five years of age (U5MRs) had declined from pre-1990 figures of more than 45,500 per day to less than 29,500 per day in 2001 (UNICEF, 2003). Supported by World Bank claims (2002), this figure is calculated from the mainly preventable deaths due to absolute poverty and malnutrition, and is located



within a global context of *rising* rates for only six countries from over two hundred (see Holcombe, 1995; de Soto, 2002 for further analyses). In fact, these macro-statistics represent three and a half million additional children alive per year since the 1990 World Summit for Children. Addressing the General Assembly for the first time in its history, young people also spoke of the continuation of early deaths in their communities due to absolute poverty and abuse of the most fundamental, ‘universalised’ human rights during the wartime torture and rape of children, as well as practices associated with genital mutilation, sexual predation and other crimes specifically targeted towards children.

Rajani (2001) observes that it is depressingly easy to catalogue a list of children’s harm, and while this is informative, it does little to invigorate thinking about children or the evolving nature of local childhoods. While White (2003, p. 1) questions what happens “when the delegates go home”, John (2003) notes that one of the Special Session’s chief outcomes was the growing realisation that “global generalities about children are not helpful... the false idea that children develop in much the same way around the world... has been part of an intellectual imperialism” (p. 262). She also observes how the participation of children at this Session reminds us that we live in a global economy, and that children might have many common aspirations. As a non-governmental participant during this Session, I became aware how such summits are also indicative of Luhmann’s notion of “world society” (1982, 1997) with visible impacts within domestic legal and social policies systems (see Hardt and Negri, 2000; Justice, 1986; de Sousa Santos, 1987 for critical reflection on this process).

It may simply be that with the dawning of the “information age” (Castells, 1999, 2000a, b) UN agencies have made improvements in collecting macro-statistics such as those cited above, and that any improvements may be attributed directly to contingencies *other* than the CRC. However, another fair question has to be asked: has the Convention influenced local outcomes at all? (Law Society, 2000; also UN Office of the High Commissioner for Human Rights, 2005).

As noted, those trained in law, medicine, psychiatry, education, social work and sociology have divergent disciplinary perspectives for analysing any notion of *children’s rights* based upon very divergent views of *childhood*. These views highlight epistemological gaps in our understanding of children’s human rights while providing a

tenable position to build more congruent conceptual frameworks. This suggestion also seems quite reasonable in light of the modern/postmodern divide within childhood studies and children's rights theorising addressed more fully in the following sections.

### *Postmodern children and educational power relations*

Alaimo (2002) tracks the evolution of the "child as citizen" recounting how images of childhood innocence and dependency deepened in the 19<sup>th</sup> century while adults made extensive efforts to protect and care for children, "going so far as to use public and private organizations to intervene in the closed world of the family". In the 20<sup>th</sup> century, a growing awareness of the evolving capacities of children "in contrast to a fixed state of dependency and assumed incompetence" is supported by liberalised views of children's autonomy as rights-bearers (p. 3). Leach (1998) maintains that "if children lack power, without even the smallest voice in the policy process, they are ... not only the largest minority group but the one that is most subject to discrimination". Unless the situation can be reversed, "any idea that the twentieth century has been 'the century of the child' will remain a hollow one" argue Daniel and Ivatts (1998, p. 219).

Many British writers maintain that the dominating features of childhood include a sense of "powerlessness" and lack of control (see Lansdowne, 1995, in Cloke and Davies, 1995, pp. 22-24; Prout, 2000). While the exercise of *power* and how it is wielded within children's lives institutionally is frequently considered indirectly in the childhood literature, most rights-related references consider 'the child' as a lone recipient of adult power, and excluded from the process (see Mayall, 2000). However, absolutist views of adult/child power relations are inaccurate within most institutions and the professional practice of both two nations under study (see John 2003; Howe and Covell, 2005). In line with Prout's (2000) late-modern views, I would agree that the exercise of *power* is central to making any theoretical meaning of children's rights, but in contrast, I am arguing that young people themselves are *inherently powerful* in this exchange both as individuals and collectively.

Drawing upon Foucault (1979) and Giddens (1984), Devine (2002) argues that "a theory of power" is fundamental to any current analyses related to children's rights within education (p. 303; also John, 2003). Devine maintains that current initiatives within schools must take the structural dynamics of adult/child relations into account through

citizenship models that emphasise connectedness, interdependence and community (see also Cockburn, 1998; Roche, 1999). Mayall (2000) discusses this structural tension in UK schools by acknowledging how “children’s days are largely controlled by adult agendas” thereby rendering this dominant childhood experience “a political issue”. Theories about what children need and “how they develop and what input from adults is therefore appropriate, are indeed theories, or stories (rather than facts)” (pp. 244, 248; also Mayall, 2003; Oakley, 1994). Scott (2002) also problematises British schools and recent education for citizenship initiatives as well and argues that “citizenship cannot be taught didactically nor assessed by test scores” (p. 301).

Notions of participation under CRC Article 12 must emerge through partnerships between teacher and learner “where the latter is valued and enabled to research, listen, speak, analyse, evaluate - to have a voice in the learning process” (Scott, 2002, p. 301). Scottish educators Mannion and I’Anson (2003) captured this exchange of power during the construction of an arts centre where a rights-based framework was adopted to engage “young consultants”. They also contend that “new methodologies” are necessary if researchers are to work “in ways that are congruent with the values that underpin children’s rights discourses” (p. 1; see also Mitchell, 2000; Mitchell and Bramly, 1999). In line with Mayall (1994, 2000) and Oakley (1994), Fox-Harding also identifies children “as an oppressed and excluded group” while childhood as it is currently constructed “is characterised by powerlessness at the hands of well-meaning but potentially paternalistic adults” (1996, p. 142). While acknowledging that the rights-based approach has far-reaching implications for policy-makers, her “child rights and child liberation perspectives” (1997, pp. 128, 132) are further illustrative of the deconstruction<sup>4</sup> of children’s rights previously decried by Saunders and Goddard (2001). Similar to James’, Jenks’ and Prout’s (1998) treatment, this interpretation of children’s human rights as liberationist and simply as another childhood “perspective” misreads the reflexive and ongoing, systemic nature of international legal communications described by Luhmann as “autopoietic” (1982, 1997).

As a final postmodern note, Luhmann’s (1967) critique of the Enlightenment resonates richly with arguments for re-considering the CRC and moves well beyond postmodern,

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<sup>4</sup> Lindgren Alves (2000) recalls: “ ‘Deconstruction’ of texts, beliefs, and assertions of the Western philosophical discourse, originally proposed and attempted by contemporary French thinker Jacques Derrida, has come to be almost synonymous with the idea of postmodernity” (p. 487).

social constructionist critiques of its essentialism. Since the “naivety and simplicity” of the European renaissance, social and political theory have been concerned with the rational individual, and are thus “incapable of grasping the plural, simultaneous and multi-causal character of social development” in the current epoch. He argues that individual reflexive rationality is simply not enough to “find things common to all people, obtain consensus or even truth”, and as such “the Enlightenment needs to be a *sociological Enlightenment*” (cited in King and Thornhill, 2003, pp. 132-133, emphasis in original). Luhmann’s perspective also allows us to return to make new meaning of what exactly the CRC represents within the education system (and other related communicative systems) as the treaty’s legal and social policy obligations enter domestic settings to cut across disciplinary and theoretical paradigms.

### *New models within a new paradigm?*

James, Jenks and Prout (1998) claim any new “paradigm” for children’s development must not be based upon “presociological” thinking. They also maintain that the developmentalist perspectives underpinning the CRC have been relegated to “the dustbin of history” (p. 9; see also Burman, 2001; Petrèn and Hart, 2000; Mitchell, 2003a; Woodhead, 1999, 2000 for alternative views). Such reductionist accounts of rights-based approaches within the discourse are widespread, but appear to be dominated by notions of children’s and young people’s *participation* rights alone (for example Kjørholt, 2002; Lee, 1999; Prout, 2000). Furthermore, such accounts avoid the more moderate, interdisciplinary approach to human rights theorising noted by O’Byrne (2003) and others. Woodhead (2000) offers a more pragmatic, interdisciplinary stance from which to institutionally consider children’s rights: [W]e must not “throw out the baby with the developmental bathwater. The difference is that a child rights paradigm alters the status of children as social actors”. In contrast to James, Jenks and Prout (1998), he calls for a more “critical examination of alternative child development paradigms for their appropriateness in promoting children’s rights within the global context of the 21<sup>st</sup> century” while acknowledging that rights-based frameworks are contextual, cultural and competency-based (pp. 115-116; see also Burman, 2001).

Similar to Moss and Petrie (2002), Alderson (1998) also argues that “the choice of theory, although often unacknowledged, shapes the way practitioners and researchers collect and interpret evidence” (p. 1007). Alderson (1998, 2000) identifies how theories

about childhood in the discourse are at the heart of rights-based practice, but she also observes how many “confuse *inherent* biological dependence with *structural* social dependence” (citing Lansdowne, 1995). In a study of Scottish residential care staff, Heron and Chakrabarti (2002) contend that “the superficiality of the rights agenda has added to the complexities and tensions permeating residential provision”, and undermined practitioner morale in the process (p. 356; see Collins, Pearson and Delany, 2002; Mitchell, 2003 a, b for alternate views). However, while strongly critical of Anglo-American developmentalist values within the CRC, Woodhead contends these beliefs are not static nor is there even consensus among the so-called “experts” (2000, p. 124).

Notwithstanding the legitimate criticisms of multi-racial approaches evident within the CRC, the treaty has legal implications beyond ideological or even theoretical arguments. Like Petrèn and Hart (2000), I am arguing for a broader systemic approach to understanding and institutionalising the CRC. Children’s and young people’s development is a complex and dynamic concept “associated with many different disciplines... relevant to academic theory and research, legislation and policy-making, social programmes and services” (p. 47).

### ***Summary***

Within this literature, I have built support for the case that highly contested, shifting, and postmodern accounts of *children’s rights* within childhood and developmental studies are linked with incongruent theoretical development within the *human rights* discourse. Theoretical stagnation within (post)modern sociology has also contributed for some decades since the study of international human rights within the discipline has languished. Thus, an emerging, discrete disciplinary study of human rights has established a new theoretical *Leitmotif*, and this sociological approach grounds this investigation into children’s rights within education. The selected literature also supports the notion that postmodern approaches towards children’s rights research, policy and practice appear cut-off from their theoretical antecedents within the Enlightenment project – failed or otherwise. Furthermore, it becomes apparent that to teach or conduct research in this field without a basic understanding of international legal communication seems short-sighted if not ill-informed.

While deconstructive, postmodern thinking is seen by many researchers in childhood studies as increasingly taken-for-granted, there are just as many who contest the inherent limitations within a pre-modern, modern, late-modern and postmodern trajectory. Meanwhile, important thinkers within related fields have been arguing that human rights represent the first legitimate postmodern ideology. Luhmann's sociological approach to the Enlightenment project, and towards conceptualising human rights, has been highlighted as one way forward for new theoretical development to take place. The ongoing intellectual fissure between children's rights and human rights thinking also has important implications regarding social and theoretical constructions of "power" and "powerlessness" within childhood discourses. This disjuncture reveals a gap in the literature that is clearly an impediment to making new meaning from how the CRC functions within international law and domestic institutions such as individual schools or whole educational systems.

While the CRC has dozens of interconnected Articles impacting human rights education and a holistic developmental approach built upon various theoretical, cultural and political perspectives, it is most often critiqued for having a western psychological bias. Moreover, the entire treaty is frequently reduced in the rights discourse to one Article - that concerning the 'participation' of young people. Such deconstructive, reductionist approaches have been highlighted as a textual abuse of childhood, and this gap in thinking impacts upon new theoretical appreciation of children's rights. Such gaps in postmodern theoretical approaches are taken up again in the final section of literature that reviews educational renewal. Meanwhile, the following section shifts to a comparative overview of domestic children's rights law and educational policy for the two nations under study.

### **National Policy Arenas: Scotland and Canada**

This section of the literature draws upon five scholarly papers that were published over the course of this investigation (two in non-peer-reviewed journals, and three in peer-reviewed, international journals) comparing CRC theory and educational policies between Scotland and Canada (see Appendix I, Mitchell, 2002, 2003a, b, and c, 2005). These papers describe Canadian and Scottish implementation efforts that began at the same time, and divergent legal, political and pedagogical responses.

In Canada, the Convention was initially greeted with fanfare since the country's prime minister of the day co-chaired the 1990 World Summit for Children (Mitchell, 1996, 2000). In a report prepared for the 2002 Special Session, the Canadian Coalition for the Rights of Children suggested non-governmental organisations believe the current public silence about children's rights results from a profound lack of knowledge being sustained by the absence of systemic structures (Covell, 2001; see also Howe and Covell, 2005). The Coalition further notes that although children's rights are a priority in Canadian foreign policy, "since the Convention is not part of domestic law, it is not legally enforceable. Canadian legislation rarely recognizes children specifically" (1999, p. 2). Mooney, Knox, Schacht and Nelson (2004) sanguinely observe that Canadian legislation rarely recognizes children, and thus, their fundamental civic, social and political freedoms are wholly dependent upon the goodwill of adults (p. 183; see also Blatchford, 2004; CBC Radio News, 2004; Hume, 2002 for analysis).

In the United Kingdom, Freeman (2000b) notes that the treaty was initially greeted with half-hearted complacency, and a "smug, self-satisfaction still oozes from the government" (p. 97) throughout the nation's latest CRC report. Payne (2003, p. 71) describes this Article 44 review as "a children's rights report card for New Labour" while recounting the "mixed message" received in feedback. Unlike Scotland's political system, Canada has a constitution known as the Charter of Rights and Freedoms established in 1982. Himsworth (2001) compares this constitution with the Scotland Act (1998) and finds "in Canada, the Charter arrived more than a century after federalism had been established whilst in Scotland, the Scotland Act and the Human Rights Act are of the same date and are to be seen as two parts of the same broad project of constitutional reform" (cited in Campbell, Ewing and Tomkins, 2001, pp. 145-146). Furthering these points, Kearney (2000) traces Scots law within the Roman-Dutch tradition, noting how the legal system "has always been separate from the system south of the border" while analysing how children's rights implementation differs between the north and south nations (p. 37).

In order to re-consider how current children's policies have evolved, we must also consider how social policies have been compared methodologically in the past. Øyen (1990) discusses many of the imperfections inherent in "comparative research as a sociological strategy" while calling for a "paradigmatic shift" from the "dubious logic of

quasi-experimentation” (pp. 1, 12). She cites a study of parliamentarians methodologically similar to the present research, and declares that the “theory calls for countries which are well-established democracies with similar Parliamentary systems”. Thereby one level of analysis is given and the range of countries limited. The choice of the countries was finally determined by the fact that the researcher had easy access to data and familiarity with two countries in the study. As I found in my journey to Scotland, such compromises form part of the research process but can at the same time yield “windfall solutions” (Øyen, 1990, p. 11).

Øyen also remarks that “all of the eternal and unsolved problems inherent in sociological research are unfolded in cross-national studies”, but observes thinking in comparative terms is inherent in sociology (p. 1). Similarly, Lewin (1952) noted the early development of a common field for social science investigation, and contended it was “hopeless” to link different problems in sociology and psychology through positivist methods (p. 135). Instead, he called upon researchers to characterise “events and objects by their interdependence rather than by their similarity or dissimilarity” (p. 145). Not surprisingly, Goody (1984) also includes this notion of a common framework for dialogue “so that the potential of comparative analysis... can be focused on practical problems” (p. 2). Lewin, Goody, Esping-Andersen, Myers and Woodhead have each in turn considered the comparative value of practical frameworks within social science, and within this study, the CRC provides such an analytical approach.

While social policy contexts for comparing children’s rights between the two countries are at the same time similar and profoundly different, a common unit of analysis was provided through CRC Article 42. The following additional similarities are readily noted:

- Both nations have implemented the CRC within children’s legislation, social policy and practice since 1991.
- Both are English speaking nation-states with parliamentary democracies as forms of national governance.
- Both nations operate within northern, industrialised, social welfare economies bordered with influential large, southern neighbours.



- Both nations have similarly configured social 'service delivery systems' for children dominated by large tax expenditures within education, health, child welfare and youth justice.
- Both nations have been historically, politically, economically and socially dominated by the English Crown and imperialist, colonialist ideologies.
- Both nations have kinship, social and cultural links due to Scots having explored and settled within Canada's frontier for five centuries.

While initially the population differentials between these two nations seem to argue against valid comparative analyses, the above dimensions do offer more common ground than less. The common unit of analysis found within Article 42 was based upon previous research findings (Mitchell, 2000), and further comparative demographics are brought forward in the next section.

### ***Geography and politics - salient demographics***

Canada is the second largest nation in the world, a vast, under-populated and complex federal state comprised of ten provinces and three territories with a rising population of 31.5 million (Statistics Canada, 2003). The nation is rich in geography, resources and natural spaces spanning three oceans while 90% of its population dwells along a 200 mile-wide band parallel with the 5000-mile US border. These demographics are integral to understanding how the rights of children have been embraced there.

In contrast, Scotland's falling population figures were 5.062 million at the time of this writing in 2004 (General Registrar Office, 2003), more than the population residing within eight of the ten Canadian provinces, and greater than the total inhabitants from Canada's three vast northern territories. However, this population is significantly smaller than the provinces of Ontario or Quebec with 12.24 million and 7.49 million inhabitants respectively. Percentages of children aged 0-19 are comparable with 24.2% in Scotland and 25.9% in Canada - both statistics taken from national census figures in July 2001.

Nevertheless, a dramatic difference in the overall percentage of Aboriginal children (42.6% of the total Aboriginal adult population) is an important distinction with regard to children's rights policy and practice in Canada (see also Mitchell, 1996). In the face

of Canada's international commitment to non-discrimination under numerous treaties, the reality for Métis, Aboriginal and First Nations children is bleak (Bennett and Blackstock, 2003; Dahlberg, Moss and Pence, 1999). Infant mortality rates remain twice that of the non-Native Canadian population while the 50% child poverty rate is significantly more than double that of the rest of the under-18 population (Canadian Coalition for the Rights of Children, 2001). Similar over-representations are evident in the populations of adult and young offender institutions while on many 'reserves' where Aboriginal people live "a significant percentage of children born suffer from Fetal Alcohol Effects of Fetal Alcohol Syndrome" (p. 180). While the UN repeatedly chose Canada as the top nation in the world to live for middle-class adults throughout the 1990s, one Department of Indian Affairs study found that if the same UN Index were applied to First Nations living on reserve, they would rank 79<sup>th</sup> and 80<sup>th</sup> in the world (Bennett and Blackstock, 2003). Furthermore, Quebec's historical relationship with the English Crown and the rest of the Dominion of Canada has been unique and violent at times, and this province has a tradition of language, culture, civil law and social policy distinctly more European (see for example Noël, 2002).

With regard to CRC theorising and policy implications, it is significant that children who experience cognitive, physical, emotional, neurological and developmental challenges - homogeneously described as 'disabled' - are not currently recorded within either national statistics bureau (see Bach, 2002; Corker and Davis, 2000; Davis and Watson, 2000, 2002; and Valentine, 2001 for rationales and related discussion). During fieldwork for this study, both Scotland's and Canada's Second Report on the CRC were reviewed (September 2002, 2003 respectively), and these evaluations provided a rich policy context as well as the opportunity to conduct theoretical sampling and data collection at United Nations sites in Geneva. Previously, the Committee on the Rights of the Child strongly requested in its "Concluding Observations" that Canada address CRC Article 42 within school curricula, and this point is re-emphasised in its 2003 evaluative feedback. Similar concerns were voiced for Scotland after the initial UK report was evaluated in 1995 but were subsequently addressed.

The Committee recommends that in line with the provisions of Article 42 of the Convention, the State party should undertake measures to make the provisions and principles of the Convention widely known to adults and children alike. It is

also suggested that teaching about children's rights should be incorporated into the training curricula of professionals working with or for children, such as teachers, the police, judges, social workers, health workers and personnel in care and detention institutions (Concluding Observations, United Kingdom, 1995).

At that time, the Committee observed: “In relation to the implementation of Article 12...insufficient attention has been given to the right of the child to express his/her opinion ...in schools” (UN Committee on the Rights of the Child, United Kingdom, 1995, C-14; see also Marshall, 1997). Foreshadowing Canada’s Second Report in 2003, the same critiques from 1995 followed the United Kingdom’s 2002 Report in a familiar request:

The Committee regrets that...many of the concerns and recommendations contained in...the State party’s initial report...have been insufficiently addressed...These...are reiterated in the present document...The Committee notes that the devolved administrations have introduced some legal reforms...such as ensuring that the education system in Scotland complies with article 12...The State party is also encouraged to provide training in the provisions of the Convention and to disseminate the Convention more widely (Concluding Observations, United Kingdom, 2002).

As we have seen in the literature, this critical feedback about the lack of accurate knowledge across educational systems in both nations has yet to be addressed. The Canadian Coalition for the Rights of Children reflects: “On the whole, children’s rights have not been widely debated in Canada” (1999, p. 9). Covell and Howe (2001b, p. 103) also point out that apart from the province of Nova Scotia, “Canada has done little...steps have not been taken by provincial departments of education or by school boards to educate children about children’s rights”. This ongoing Article 44 evaluative process offers various professions engaged with young people opportunities to reflect upon new legislation, policy and practice (see also Covell, 2001, pp. 20-21; for Scottish and UK reflections see Payne, 2002, 2003; Doherty, 2002; McKain, 2001; Scottish Alliance for Children’s Rights, 2000; Simpson, 2002; Watson-Brown, 2002).

Subsequently, the emergence of the “child as citizen” as a contemporary theme is occurring moreso in British political and pedagogical thinking (Bryce and Humes, 1999;

Four (4) Nations Child Policy Network, 2004; Howe and Covell, 2005, p. 9; Institute for Citizenship, 2003; UNICEF, 2004). In fact, efforts underway across UK nations eclipse current Canadian initiatives and are most often embedded within relevant new legislation (for example, The Standards in Scotland's Schools, etc. Act, 2000; the Children (Scotland) Act 1995 - Section 19; see also National Children's Bureau, 2003; Martin, 2000; Matthews, 2001; Munn, et al., 2002; Roche, 1999). In contrast, when reviewing Canadian educational and political efforts towards young peoples' citizenship, young people are frequently excluded altogether (Haire and Manley-Casimer, 2000; Jenson and Papillon, 2000; Jenson and Stroick, 1999; MacKinnon, 2004).

From a comparative perspective, there is little evidence in the research or policy literature of either nation that the UN's evaluative reporting process is widely known, or that the legal and political implications are fully appreciated (see Payne, 2003). This was evident from the outset of the study through analyses of the UN's "Concluding Observations" under CRC Article 44 from both nations. Thus, I developed my research questions, interview schedules and data collection strategies accordingly.

Nonetheless, in contrast to Canada key Scottish institutions appear to be following up on these UN evaluations with "rights-based" statutory and policy developments. One important example is evidenced by Section 19 of the Children (Scotland) Act 1995, and ensuing interagency "Children's Services Plans" that are integrating active participation of young people (see *Scottish Alliance for Children's Rights*, 2000, p. 8). This trend to involve young people in policy-making is also observed by the Carnegie Young People Initiative UK (2002), and has gained "unprecedented prominence in Scotland over recent years" (Introduction). The Carnegie Initiative contends that Scotland's political commitment arises from the long-standing practice of rights-based organisations, all of whom have been legitimised by CRC principles embedded within the Children (Scotland) Act 1995. They further contend that devolution was "not intended to end with the Parliament but participation and power for decision making [was] to be devolved down to communities as well (e.g. new requirements for community plans)". They also note that particular challenges for Scotland are due to its rurality, and similar to many Canadian provinces its increasing ethnic diversity (Carnegie Young People Initiative, 2002, p. 1; see also Kirby and Bryson, 2002).

In line the Carnegie Initiative (2002), Barry (2002), and Kearney's comparative analysis (2000, p. 39), Brindle (2003) suggests that "devolution" of political powers from the English Parliament has allowed Scotland to forge ahead in children's social policy. For example, "Scotland is proposing to ban smacking of under-threes, raise the age of criminal responsibility to 12 and provide free school meals for all children... By contrast, England's record on children's rights is described as the weakest in the UK" (electronically cited). While the anti-smacking initiative was ultimately voted down in the Scottish Parliament, Barry (2002) offers this additional analysis of the geographic influence on children's rights law and policy:

Before introducing major legislation in 1995 which combined private and public child care law provision in a unified Act, Scotland has enjoyed the benefit of hindsight and a lengthy period of consultation and reflection following both the Children Act 1989 in England and Wales and the ratification by the UK government in 1991 of the UN Convention on the Rights of the Child (p. 239).

Barry (2002) further reasons that traditional cultural and political proximity to England and Europe affords the nation opportunities for reflexive social policy praxis (see also Kearney, 2000; Mitchell, 2002, 2003c; Moss and Petrie, 2002, pp. 148, 168). In contrast, Canada's closest neighbour for policy comparison is the US who, after signing the CRC initially, is steadfastly opposed to its ratification.

### ***Politics and ideology - salient contrasts***

One significant legal contrast in Scotland has been the Commissioner for Children and Young People (Scotland) Bill 2003 (see Four Nations Child Policy Network, 2004; Scottish Parliament, 2003). Meanwhile, one Canadian province has chosen to repeatedly violate young people's Convention rights since mid-2001 (Office of the Child, Youth and Family Advocate, 2002; also Boulard, 2003; Francis, 2002). In one of their first steps, a neo-conservative provincial government repealed The British Columbia Child, Youth, and Family Advocate Act (1995) replacing a formerly independent ombudsman with a ministerial civil servant. Moreover, British Columbia's nearest western neighbour Alberta declared that they had avoided signing the CRC altogether although this prerogative belongs solely to the federal government (see Arnold, 1999).

This contrast between Scotland and Canada is arguably due to wider public discourse and debate after the UK's CRC Reports that have influenced political will in Holyrood and Westminster differently. Such a hypothesis is also reminiscent of King's (1994, pp. 389-390) "autopoietic" analysis of the CRC and its legal communications. Price Cohen and Kilbourne (1998) observe a similar kind of self-replication contending that draft "child rights jurisprudence is created by the States Parties and others that submit reports to the Committee, as well as by the Committee's reviewing process" (p. 643). In line with these analyses, the president of the UK Association of Directors of Social Services observes: "We've long advocated that a children's commissioner could represent a powerful voice for children to really ensure that ... children's rights, children's interests are at the centre and are the focus of all we're doing at a local and a national level" (Batty, 2003).

In comparison with Scotland, British Columbia is the closest Canadian province to its population with over four million inhabitants and a median age of 38.4 years. Fully 23% of these residents are under 18 years of age, and this dimension is comparable with Scotland's circumstance. Currently, the province has 59 School Districts in its public education system, each with a locally elected board of trustees responsible for interpreting and administering provincial curricula. In 2002-03, there were 599,514 students enrolled in a total of 1754 schools - 1156 elementary, 337 secondary and 261 alternative, independent or custodial facilities (British Columbia Ministry of Education, 2003). Slightly more than 8% or 49, 413 of these pupils were Aboriginal.

Scotland is approximately 25% larger in total population than this western-most province, but one of the principal features that distinguish the nation from its UK and European neighbours is its educational system. The public school system is supervised by the Scottish Executive Education Department acting in cooperation with local authorities, and the national focus on education is heralded as a social policy tradition. "Scotland produces the highest number of graduates per head of population in the European Union ... almost 50% of young Scots enter higher education courses". This nation "takes education seriously with a tradition that has become part of the national character since the first universities were founded almost 600 years ago" (Scottish Executive Education and Training, 2003, pp. 2, 3). While similarities in the provincial and territorial education systems exist across Canada, "they each reflect the diversity of

the region's geography, history and culture" (Council of Ministers of Education, 2003, p. 1). In contrast, Scotland's educational system is simultaneously managed and delivered through national legislation and locally devolved governance structures.<sup>5</sup>

The Standards in Scotland's Schools etc. Act (2000) was the first legislation passed by the new Parliament (known as the Scottish Executive) after devolution from Westminster. In the 2002-03 school-year, 825,300 pupils were enrolled within 2780 schools in 32 local authorities. Of these, 2336 were primary schools (with 65 of these classed as independent), and 444 were secondary schools (with 57 of these independent). In terms of 'vulnerable' students, there are a number of comparable sub-populations of children between the two nations. Children known as 'looked after' in Scotland and those 'in care' in British Columbia are similar in proportion with approximately 1% of the total population of children in each setting. Outcomes for Scottish and British Columbia young people are similarly discouraging. Being in care is often reflected in the child's ability to learn, concentrate, behave, or to progress successfully through the school system (British Columbia Office for Children and Youth, 2002). Furthermore, figures throughout Canada reveal a disproportionate number of young people in care are from Aboriginal families (Blackstock, 2005).

Before concluding this section, an additional contrast between the two nations is also notable. Across Canada, a social and political re-construction of the CRC has occurred grounded by the ideological belief that family rights are excluded by children's rights (Hainsworth, 2000; Canadian Coalition for the Rights of Children, 2003). The federal opposition party currently in power represents these views strongly in Parliament and could realistically find themselves in government. Denominationally based, non-governmental organisations such as "the *Coalition for Family Autonomy* ... which

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<sup>5</sup> The overall context for Scottish education differs from the system used elsewhere in the UK, but broadly speaking, there are two systems: one covering England, Wales and Northern Ireland, and another in Scotland. Traditionally, the Scottish system has emphasised breadth across a range of subjects, while the English, Welsh and Northern Irish system has emphasised greater depth of education over a smaller range of subjects at secondary school level.

The majority of Scottish schools are non-denominational, but by legislation separate Roman Catholic schools with some oversight by church officials are provided. Thus English, Welsh and Northern Irish students tend to sit a small number of more advanced examinations and Scottish students tend to sit a larger number of less advanced examinations. It should also be noted that local English practice can vary from this general picture although across Scotland the system is well nigh universal (see also Wikipedia, 2006).

includes *Real Women* and *Focus on the Family*” (Canadian Coalition for the Rights of Children, 2003, p. 1) are part of a growing international *World Congress of Families* that regularly lobbies UN summits and agencies (Butler, 2000). These political and legal “perturbations” (Luhmann, 1997; King, 1994) have excluded young people from policy discussions in Canada particularly during the CRC reporting processes, and once again, appear in sharp contrast to the Scottish experience (see *Article 12 in Scotland*, 2002).

### ***Summary***

From these initial comparisons, theoretical disjunctures in the CRC’s reconstitution into domestic legislation and institutional practice are readily observable. Indeed, Scotland has a much clearer legislative framework for adopting the CRC (Mitchell, 2002, 2003a, b, c), and the most noteworthy of the additional distinctions along with similarities in approaches from both nations follow.

First, The Children (Scotland) Act 1995 has embedded the principles of the UN Convention on the Rights of the Child, most notably Article 12, into national legislation. This has resulted in a wide variation of rights-based policies and practices in contrast to Canada. Second, The Commissioner for Children and Young People (Scotland) Act 2003 was broadly debated and passed in the Scottish Parliament while in contrast some Canadian provinces have disbanded similar offices, or have actively threatened to dismiss their provincial children’s ombudsmen. Third, legal, social, and theoretical constructions directly linking children’s human rights and childhood theories are quite visible within the Scottish discourse. At the same time, divergent ideologies permeating Canada’s political landscape have re-constructed children’s rights within the context of the family alone. Fourth, two populous and dominant southern neighbours provide historical, socio-cultural and political mirrors within which children’s rights are being compared and contrasted. Finally, neither nation in the study has yet to establish core curricula to educate children’s professionals in basic CRC information even though each has been repeatedly requested to do so by the UN Committee on the Rights of the Child.

The final selection of literature returns to the common, underlying postmodern themes previously noted in the children’s rights/human rights discourses underpinning much of the educational reform literature from both nations.



## **Local Educational Policy Arenas: Postmodernism, Pedagogy & Power**

In order to compare educational rights, CRC Article 29.1 is highlighted as it confirms the education of the child to be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in a spirit of understanding, peace tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

The UN Committee on the Rights of the Child suggests these qualities of education have far-reaching importance, and are interdependent upon CRC Article 28, and "the need for education to be child-centred, child-friendly and empowering" (Aims of Education, p. 1). Thus, human rights education must necessarily provide information then on the content of human rights treaties, they contend. As we have seen to this point, however, these educational provisions within the CRC are little known within childhood studies discourse, or in the classrooms of either nation, due to the emphasis on participation rights (Lee, 1999; Kjörholt, 2002; Prout, 2000).

Canadian and British educational systems seem equally challenged to support democratic engagement. Fullan (1991) asks "in a democratic society, [why] should an individual's first real contact with a formal institution be so profoundly anti-democratic?" (p. 170, citing Bowles and Gintis, 1976). Collins (1998) also looks at organizational change in British education and disdainfully comments at the movement towards managerialism and "guru theory ... with its attendant baggage of buzzwords such as empowerment, TQM, re-engineering, downsizing ... that infest current forms of discussion!" (p. 9). Hart (1992, 1997) echoes a similar perspective regarding structural inequities within education, and observes that schools are "rarely democratic

institutions". He cautions teachers who adopt principles of participatory democracy who are "in effect engaging in 'radical democracy' and should be prepared for conflict with some over their orientation" (1997, p. 25). It is this basic fear of encountering political and cultural conflict, suggests Hart, "that makes many teachers withdraw from community participatory activities and rely on textbooks within the safety of the unthreatening classroom" (both cited in John, 2003, p. 216).

Similar to Prout (2000), Jeffs (2002) is neither sanguine nor hopeful when discussing rights and education in British schools, and his discontent with "post-Bulger"<sup>6</sup> control issues (p. 54) in authoritarian, repressive and standardized "creaking Victorian institutions" is palpable. He quotes one 12-year-old who provides "perhaps the most articulate advocacy" for opting out altogether:

Children have no choice over their education, you tell us, but for as many as 150,000 home-educated children this isn't true. These children don't want any kind of school. School is a training ground for bullies and victims. School is a place where you learn what someone else has decided for you .... The choice that children need is whether to be there or not (Fortune-Wood, 2001, cited in Jeffs, 2002, p. 55).

Reform prospects concerning young people's rights in British schools are not good, claims Jeffs, with ample cause cited in his scathing critique. "No institution impinges upon the daily lives of the overwhelming majority of children more than the school and none is so contemptuous of their opinions or the concept of democracy" (p. 57). Wyness (1999) is nominally more optimistic, declaring that in spite of the shift towards localized provision of services, education systems have "singularly failed to redefine the pupil as agent" (p. 361). Moss and Petrie (2002) also argue that within children's services "incremental change avoids addressing questions of gender, the social value of the work and the true costs entailed". They consider that European social pedagogy is an educational approach pedagogically aiming at emancipation and not control. Social pedagogues look to children as citizens exercising their right towards fuller citizenship

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<sup>6</sup> The tragic abduction of two-year-old James Bulger by two ten-year-olds from his mother's care while shopping resulted in the toddler's violent death on a train track, and sweeping moral and political outrage throughout the United Kingdom.

engaged with adults in the ongoing transformation of society towards emancipatory ends (p. 147).

### *CRC in Scottish classrooms*

In a study of educational reform in Scotland, Nixon, Allan and Mannion (2001) contend that the “New Community Schools Initiative” offers clear “potential for professional renewal across a range of occupational groups... community, health and social workers as well as schoolteachers and pre-school practitioners”. This approach to renewal has two stated aims: the encouragement of interagency working at the level of service provision and the promotion of closer collaboration between schools and communities at the level of institutional delivery. The authors also observe that the “traditional emphasis on egalitarianism and ‘getting on’ [was] part of the powerful and prevalent ‘Scottish myth’; a myth which ... masks underlying codes of inequality and exclusion ... that Scotland finds hard to confront within its own institutional and organizational structures” (pp. 330-31). In response, they recommend the following:

- The need for local authority. Without backing of statutory powers divested locally, the New Community Schools project will be “insupportable”.
- The need for “an alternative paradigm” for educational change. Schools need to progress beyond dominant notions of ‘school effectiveness’ towards a more inclusive ‘community engagement’ paradigm.
- The need for a “politics of redistribution”. For a national programme of NCS to thrive, a strong level of national and local leadership is essential to see underlying principles of both “equality and difference are carried forward”.
- The need for professional renewal and training that extends professionalisation into specialist practices and new mores. The university is “central in ensuring that, across the caring professions, professionalism is outward looking, theoretically grounded and divergent, and independent” (ibid., p. 348).<sup>7</sup>

Similar in tone to earlier UN directives within the UN’s Concluding Observations, their findings are also reminiscent of Freire’s (1970, 1999) arguments regarding educational reform. Pedagogical plans are designed either to maintain existing power structures

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<sup>7</sup> Again leading the way for England, Scotland’s New Community Schools Initiative began in 1999 to bring teachers, social workers, family workers and health care personnel together to serve children holistically during early stages of this study’s fieldwork concurrent with new citizenship and child rights pedagogies. The Scottish Executive continued to “roll out” the project with 62 pilot programmes involving over 400 schools at the time of the study’s initial write-up, and increased funding for 2006-07 year announced during the final editing.

through an implicit imposition of values from the dominant class or designed to liberate and assist learners in becoming critical, creative and free thinkers. Roche's (1999) concerns are sublime in this light: "In our arguments about childhood, children's rights and citizenship we are arguing about ourselves and our place in the world: it is an argument about politics and how we want to be and live our lives" (p. 484).

The suggestion is that racism, bullying and delinquency in the schoolyard are challenging educators to respond and the location of children as a social grouping within schools often obscures these factors (Wyness, 1999; see also Epp and Watkinson, 1996). A shift towards the possibility that "pupils have to participate and have some sort of control over their education" is occurring but "head teachers and schools have become steadfastly more bureaucratic and more adult centred through the need to measure output and regulate ... the activities of school children" (Wyness, 1999, pp. 362-363; see also Prout, 2000). Notwithstanding Carnegie Trust's (2002) enthusiasm regarding Scottish educational reform and the CRC (p. 8), there is also evidence of Saunders and Goddard's (2001) "textual" denial of children's rights within this literature. As highlighted, educational authors frequently discuss 'empowerment', 'democratic practice' and 'educational rights' without any reference to the CRC. Nevertheless, many of these authors include extensive references to postmodern critical thought within educational systems (see Brown, 2002; Beyer, 1996; Kelly, 1995; Leithwood, Fullan and Watson, 2003; Slee, Weiner, and Tomlinson, 1998; Trowler, 2003; Witty, 2002).

### *CRC in Canadian classrooms*

Unlike Scotland, in Canada there are no national statutes guiding children's rights within education, a fact which compelled Newfoundland parents to launch a provincial campaign of their own against such an ad hoc approach.

We believe that there ought to be national standards to ensure equal access to a quality education for all Canadian school children. We apply that value to health care, why not to education? There's a federal Minister of Health. Why is there no federal Minister of Education? (Davis, 2002).

Such a lack of consistency among federal, territorial and provincial education policies frequently results in a great disparity of values (Leithwood, Fullan, and Watson, 2003;

Levin and Young, 2000), and a multiplicity of agendas that do not include direct input from children and young people.

Two Canadian case studies are now discussed highlighting this omission of the CRC in relevant discourses. Both studies also foreground the modernist/postmodernist divide and the pedagogical distance looming between the two nations as they grapple with democratic principles in the classroom (see also Four Nations Child Policy Network, 2004; Howe and Covell, 2005; Institute for Citizenship, 2003; National Children's Bureau 2003). The first case study explores Covell and Howe (1999) who are one of two dominant Canadian researchers in post-secondary education exploring rights-based approaches in the classroom (for elementary perspectives see Murray, 1995, 1996).

Similar to the main research question in this study, Covell and Howe started with CRC Article 42 obligations to make the principles and provisions of the Convention widely known (see also John, 2003, p. 216; Mitchell, 2000, p. 343; Wyse, 2001, p. 210). By starting with this Article, they "wished to avoid the curriculum being perceived as an extra burden by already overworked teachers", and they developed pedagogical materials for adoption by Nova Scotia's Ministry of Education and its teachers. Reflecting the dominant medicalised constructions of childhood and children's rights within Canadian discourses, their pilot studies were designed to fit within the year-long health studies curriculum. Using a quasi-experimental design and methods they "hypothesised that receiving the rights education throughout the school year would have a contagion effect", and they "administered" the curriculum in seven classrooms with a total sample size of 101 pupils. Regarding CRC Article 42, they concluded that "children's rights education in late childhood may serve as a catalyst for attitudes supportive of human rights in general" (p. 182).

A second case study comes from high school human rights educator Hainsworth (2000) who provides another analysis of child rights education based upon a pivotal, pan-Canadian children's rights election held in 1999. To celebrate the CRC's 10<sup>th</sup> anniversary, UNICEF and Elections Canada extensively advertised a "National Election for the Rights of the Youth using the internet and polling booths from Elections Canada". Students under 18 years of age would "go to the polls for the first time in Canada to select from a slate of 10 rights that would appear as 'candidates' on the

ballot” (p. 6). However, an “international counter-attack against UN anti-family imperialism” was successfully launched at the same time in the Canadian media.

Described by Hainsworth as “an expanding and sophisticated alliance, rooted in a shared belief in the importance of the natural family, [they stand] ready to contest the radicals at every level, from the smallest community to the United Nations” (ibid.). Identified as a “family-values” lobby, these groups successfully thwarted the initiative by canvassing educational policy-makers, newspapers, elected representatives and church leaders. As noted previously, Butler (2000) observed this same anti-CRC lobby in the US and the UN: “Since its formation in the 1970s, the Christian Right ... has viewed the United Nations with suspicion, preferring to work towards its demise and rail against the dangers of global governance rather than trying to shape the institution” (p. 351; see also Howe and Covell, 2005, pp. 3-5; Mooney, *et al.*, 2004, p. 183). These anti-CRC ideological movements have impacted the dissemination of the treaty throughout Canada (and the US).

### *CRC in postmodern classrooms*

Similar to Mouzelis’ (1993, 1995) structural critiques, Christensen and James (2001) recount that ethnographic studies now constitute a large body of research that strongly contrasts with traditional analyses of educational systems. This earlier body of work has tended “to play down the agency of both teachers and pupils within the context of the school”, and the two research traditions “have created a micro-macro division which is in need of remedy” (pp. 71-72). In contrast, a case study by Moss and Petrie (2002) describes how a local authority situated in Stirling, Scotland has “set up an integrated ‘Children’s Service’ within the education department” including “pre-school, out-of-school and play provisions along with social work for children, young people and families”.

There was a very strong and explicit engagement with children’s participation and rights; despite some gaps there was, it was felt, a ‘culture of children’s participation’ running through the services ... the Director of Children’s Services emphasises their approach based upon children’s rights which ensures ... children are viewed as ‘active learners and active citizens [whose] views are sought about the quality of services and how they should be delivered’ (p. 168).

Nonetheless, Moss and Petrie (2002) complain that attempts “to ‘modernise’ children’s services, without modernising the workforce, [are] relying on incremental change within an unchanged framework” (p. 145).

In another study of human rights, conflict management and the culture of boy’s school bullying come under the lens of Carter and Osler (2000). They observe that there is “no hierarchy of rights....By incorporating economic, social, cultural, civic and political rights, the CRC gives emphasis to the principle of indivisibility” (p. 337). Smith (2000) has also looked at the issue of school bullying within a vague context of “the rights of children”, but similar to Prout (2000) and Archard (1993), Smith leaves out specifics from Convention texts. As noted previously, Lee’s (1999, 2001) ambiguous approach adopts CRC Article 12 alone and its ‘participation’ principle as the quintessential rights-based analysis. These non-specific rights-based references reinforce the concerns expressed by Carter and Osler (2000) and Saunders and Goddard (2001): when rights are decontextualized and reduced they are in fact ineffectual and tokenistic (see also Matthews, 2000; Wyness, 1999b).

Davis, Watson and Cunningham-Burley (2000, in Christensen and James, 2000) argue further: “[O]ur idea of empowerment...is grounded in the belief that people [adult or child] empower themselves” (p. 220). Wyse (2001) has also investigated child rights in the classroom, and while the education system in England has come under sustained attack from the children’s rights lobby, it appears to continue to repeat the same mistakes as it has in the past (see also Jeffs, 2002, p. 55). Similar to my initial Canadian investigation (Mitchell, 2000), these UK educational studies found that “children’s rights to participate in matters affecting their education were rarely being upheld” while “the requirement to inform children and adults about the CRC itself (Article 42) was not being adopted in schools” (Wyse, 2001, p. 210). His findings reflect my own underlying assumption for the current investigation: “Meaningful participation is clearly difficult if you are not sufficiently aware of your rights” (ibid.).

Furthermore, in a comprehensive evaluation of children’s participation in UK policy initiatives, Kirby and Bryson (2002) also contend that “empowerment seems to have lost its radical and transformative edge, and the concept has become de-politicised. Ultimately, participation is about establishing democracy and this raises questions about what are the most appropriate democratic structures for all community members” (p. 60,

citing Cleaver, 2001). Nixon, Allan and Mannion's (2001) research within Scottish New Community Schools offers a similar theme regarding classroom power relations in the context of rights-based interventions.

I cannot empower anybody. Nobody. Who empowered Václav Havel or Nelson Mandela? But I do want to create the circumstances in which people can exercise their professional or community responsibilities by seeking empowerment. I think that's very different. We structured NCS with a potential for radicalism... I think they'll surprise themselves (p. 347).

To create such radical circumstances, the Scottish local authority noted above has adopted CRC principles to guide how power is shared in their classrooms. Congruent with these researchers, Atkinson (2002) points out that postmodern critical approaches in education come "as something of a shock" providing the "intellectual jolt" necessary to detach Enlightenment thinkers from "their own innocence" (p. 78, see also King and Thornhill, 2003, p. 132-133). She is also highly critical of postmodernism in the class, citing many who "deride this whole field of thinking as irresponsible nihilism whose protagonists, in Soper's (1991) terms 'refuse to do anything but play'".

In contrast, Atkinson (2002) discusses Hartsock's (1990) critique of Foucauldian notions of epistemic power in education reasoning that postmodernism offers little in the way of improving oppressed social groups (pp. 74, 76; see also Popkewitz, 1998). Atkinson contends further that postmodernists have no overall theoretical scheme, and cites Kelly's (1999) preference of a Marxist/feminist critique over postmodern approaches in education. Kelly claims that postmodernism actually "disempowers those to whom it claims to give voice and its appeal is solely intellectual. It denies the possibility of the construction of a new social order". In line with arguments for a congruent theoretical stance when working with young people, she claims further that without the use of a theory that can link together the different aspects of the lives of women, analyse and develop strategies to overcome oppression, "postmodernist theory has to be rejected in favour of a more useful theory" (Kelly, 1999, cited by Atkinson, 2002, p. 76).

Similar to the more moderate tone of the thesis to this point, Atkinson (2002) draws upon views of the postmodernist as a *responsible anarchist* in the classroom who stands



against the fantasies of grand narratives, recoverable pasts and predictable futures. “Postmodernism is not safe”, she claims, and it does not purport to achieve a specific aim. It is perhaps “more honest about its own uncertainty than more secure ideological positions” (pp. 73, 75). Is this project of casting postmodern pedagogues as freewheeling anarchists truly realistic for practitioners who are only slightly *more* powerful than their pupils? (See also Carter and Osler, 2000; Elkind, 1997; Ruddock and Flutter, 2000). Pedagogues Osler and Starkey (1996, p. 13) disagree entirely with the postmodern intellectual thrust, especially vis-à-vis CRC education, and assert this approach “is extremely unhelpful in schools”. They maintain when cultural relativity is “accepted without reference to some universal standards or norms, it is possible for any parent or pupil to claim legitimacy for any action” (pp. 12-14).

To close out this final selection of literature, a seminal discussion of youth on the margins and educational reform from Giroux (1999) is highlighted as representative of the potential for recreating power relations in the classroom. Giroux contends that the task for educators is to “get to grips with the passage to postmodernity that has opened up since the late 1960s ... to achieve an understanding of the emerging new culture ... and related transformations in forms of knowledge and experience in the (post)-modern world” (p. 93). He also observes that the “dialectical nature” of the relationship between modernism and postmodernism “warrants a theoretical moratorium on critiques that affirm or negate postmodernism on the basis of whether it represents a break from modernism”. Similar to Rorty’s and O’Byrne’s (2003) arguments for re-conceptualising human rights in postmodernity, Giroux suggests the way forward for critical educators lies in appropriating postmodernism as part of a broader pedagogical project while simultaneously engaging the most progressive aspects of modernism. This approach to moderation may prove to mediate tensions between schools as modernist institutions and their interface with postmodern youth culture.

### *Summary*

Returning to UN sources for both traditional and new thinking about human rights education, this section of literature has focused upon postmodern calls for pedagogical reform being heard within both nations under study. As I have contended within the previous human rights discussion, many contemporary pedagogical authors in policy and practice have concerned themselves with postmodern intellectual trends while

overlooking the potentials within child rights pedagogy. Similar to arguments for embracing a “sociological Enlightenment” (King and Thornhill, 2003, 132), I have argued that critical educators need to appropriate aspects of postmodern sociological thinking while retaining the most progressive elements of modernity’s project (see also Moss and Petrie, 2002; hooks, 2003).

Giroux’s measured analysis of the tension within most schools - including those within Canada and Scotland - also appears congruent with the potentiality within a children’s human rights pedagogy. To that end, participatory citizenship initiatives introducing CRC awareness and accurate knowledge are more prevalent within Scottish educational system although some Canadian educators are making isolated efforts to bring accurate Convention knowledge to students. Instead of the ontological nihilism found within extreme postmodern approaches, I posit that a responsible attitude towards anarchy in the classroom may yet be required for real educational transformation. While educational theorists may be required to leave behind the safety of grand narrative ‘fantasies’, human rights educators have both politically and legally sanctioned invitations to share power through such rights-based pedagogical approaches.

## **Discussion and Conclusion of Chapter Two**

Within this review of literature, a number of key arguments have been brought forward as well as a number of deficits identified within relevant contemporary discourses. A unit of comparative analysis for the study was established through CRC Article 42 as educational institutions within each country are striving to respond to children’s rights dissemination in policy and practice. Comparative perspectives from Canadian and Scottish educational policy arenas reveal how the CRC has travelled divergent roads within two nations. Ideological and disciplinary debates over the influences and biases within the treaty texts also reveal disjunctures within childhood studies, but concerns with whether the CRC favours universalist values over relativist ones are simply missing the central point.

Unlike other perspectives on the nature of childhood, the Convention is not a theoretical framework, and may actually represent a paradigm shift in power relations between adults and people under-18 years of age. The treaty appears as the most significant expression of international human rights law in history, and has within its Articles

reflexive, even autopoietic, implications in light of the reporting process. (In subsequent Chapters Three and Six a fuller discussion of the importance of the systemic, communicative features of social autopoiesis are considered – see also Glossary). While postmodern ambiguity and uncertainty are certainly applicable to the status of childhood theories, the CRC's approach to the status of children offers a minimum standard for innumerable cultural, historical and political expressions within world society. Under close scrutiny, the CRC presents dozens of interconnected, interdependent Articles integrating pedagogical and developmental approaches from a range of perspectives thrust forward since the end of the cold war (see also Beck and Beck-Gernsheim, 2002; Hardt and Negri, 2000).

Throughout this critical review, I have been highlighting literature that addressed a kind of postmodern poverty within sociological theory building. By selecting human rights as the conceptual *Leitmotif* for the study (Esping-Andersen, 2000; Mouzelis, 1993, 1995), I have also argued for an epistemological approach to human rights research rather than the ontological deconstruction prevalent within this discourse and within childhood studies. To take this a step forward, I have provided a rationale for re-conceptualising the CRC and related notions of children's rights within a discrete, though still emerging, sociology of human rights (Lindgren Alves, 2000; O'Byrne, 2003; Turner, 1993; Verschraegen, 2002; Luhmann, 1965, 1982, 1997).

When viewed from their earliest historical origins, the evolution of human rights thinking and international law contradict much contemporary postmodernist thinking while at the same time suggesting that the highest achievements from the Enlightenment project are still relevant today. Some important thinkers further argue that human rights represent the first legitimate postmodern ideology (Bobbio, 1996; Douzinas, 2000; Lindgren Alves, 2000). In light of these considerations, I contend that a sociological human rights framework provides a more congruent sociological *leitmotif* for the study than concepts regarding the nature of childhood since children's rights are being problematised as though conceptually unrelated to their intellectual antecedents (Lenzer 2002). An empirical approach to utilising the CRC as a "paradigm" (Woodhead, 2000) offers both childhood and human rights sociologists comparative possibilities within which to build new theoretical models. Moreover, theoretically reconnecting children's

rights within a human rights epistemology allows new gains to be appreciated from the rapidly evolving body of children's social policy.

Rather than seeing postmodernism as intellectually or politically dangerous, I also contend that such approaches in the classroom may be respectful of multiracial and multicultural human rights expressions. These approaches appear congruent with how the CRC works on the ground. Notwithstanding the ever-present bullying, racism and calls for young people to reject the school system completely, it is likely that most Scottish and Canadian children will continue to find their way into classroom seats for the foreseeable future.

Thus, international, national and local policy arenas impacting upon human rights education within Scotland and Canada were reviewed, and through the gaps identified in the literature, I offer the following arguments. First, whatever the failures of the 'Enlightenment project', an extremely postmodern intellectual thrust appears unhelpful within children's pedagogy. Nevertheless, some of the critical aspects of postmodern thinking also appear quite congruent with human rights pedagogical approaches and aims towards educational reform. Second, while the severest forms of anti-universalistic, postmodern critique used to deconstruct human rights may have currency in the academy, such views have ignored or misread ongoing systemic implications behind the institutionalisation of children's rights.

Third, as many feminists are arguing it appears short-sighted and ironic to dismiss the Convention on the Rights of the Child just at the time when women and children are beginning to acquire hard-won civil, political and social rights. Fourth, the language and insight of those who drafted the CRC have yet to be discovered by many current authors of childhood studies while researchers may even be contributing to a "textual abuse of childhood" by denying those rights within English speaking discourses. Finally, a fundamental re-situating of children's rights within the more congruent sociological study of human rights suggests new possibilities for theorists, legislators, policy-makers and practitioners.

In Chapter Three a rationale for adopting autopoietic systems theory as the conceptual framework for data analysis, and its integration with grounded theory methods undertaken during fieldwork, are presented in greater detail.

## CHAPTER THREE: METHODOLOGICAL THEORY & METHODS

### Introduction

In Chapter Two, postmodern theoretical notions of childhood and human rights were compared through a critical review of children's rights education in Scotland and Canada. Chapter Three provides the explanation of methods and theoretical framework adopted for the study within the next four sections. First, a rationale for adopting legal sociologist Niklas Luhmann's (1965, 1982, 1997) autopoietic theory as an epistemological framework is offered. Second, underlying beliefs and assumptions supporting my research standpoint, along with ethical considerations and the methodological rigour established within the research, are discussed. Third, a review of the research design and procedures is presented along with an overview of fieldwork.

Finally, an account of the core features from grounded theory that were adopted during fieldwork, a methodology originated by Glaser and Strauss (1967), expanded upon by Strauss and Corbin (1997, 1998a, b) and further critiqued by Glaser (1992), is provided. In keeping with the study's main aim of discovering and building new theory, a rationale for integrating the two research perspectives into a grounded systemic theoretical approach is articulated. Three examples of open, axial and selective coding illustrate this process of integration after its antecedents were revealed during constantly comparing data with the emerging sociology of human rights literature (Luhmann, 1965; King and Schütz, 1994; O'Byrne, 2003; Turner, 1993, 2000a, b; Verschraegen, 2002).

### Rationale for Systemic Epistemology

As articulated in Chapter One, this methodological approach is fully in accord with the aim of new theory development, and is supported by the views of Denzin and Lincoln - authors of *The Handbook of Qualitative Research* (Vol. 1, 1998).

The constructivist paradigm assumes a relativist ontology [there are multiple realities], a subjectivist epistemology [knower and subject create understandings], and a naturalist [in the natural world] set of methodological procedures. Findings are usually presented in terms of the criteria of grounded theory (p. 27).

James, Jenks and Prout (1998) also carefully consider the adoption of theoretical approaches within social constructionism and childhood studies, and drawing upon Bulmer (1977), they argue that the highest consideration should be given to the research strategy and the styling of sociological work. “It is at this moment of choice that ‘the particular crystallization of theory and method’ in any research study becomes clear” (cited in James, Jenks, and Prout, 1998, p. 170). Furthermore, they observe that “problems, theories and methods in social science are interrelated and cannot easily be separated out” (ibid., p. 169).

At the same time, Campbell (1996) roundly criticises social constructionism and its highly regarded but obvious truism that scientific beliefs are relative, a stance that often implies “the total absence of competent reference to a mind- and language-independent world” (p. 153). In so doing, he recalls Quine’s (1951) pre-constructionist critique of scientific positivism that was “full of skeptical content....[which] emphasized that no observations can unequivocally confirm any theory, that any belief in the truth of a theory is undermined, never proven, and that all of our beliefs, including logic, must be open for revision” (Campbell, 1996, p. 154). I had also observed within the initial phases of the study that “theories are important and inescapable ... there is no choice between ‘theory’ and ‘no theory’ or indeed between ‘theory’ and ‘practice’”. Nor is it possible for “evidence” and “experience” to be neutrally produced or interpreted (Moss and Petrie, 2002, p. 17).

Moreover, O’Byrne (2003) argues for an increase in cross-disciplinary theoretical integration within human rights research, going so far as to suggest that a new discipline is emerging that must be viewed discretely. A “discipline of human rights is more than a *pot pourri* of interests drawn from other, more traditional fields” (p. 2). This interdisciplinary stance appears reasonable when recalling how children’s rights are reconstructed in much of the literature as another theoretical approach to childhood studies while overlooking ongoing international legal and policy developments. By identifying the need for a discrete epistemological approach to human rights study - in contrast to philosophical and ontological arguments about the nature of rights or even the nature of childhood - researchers such as O’Byrne have established the parameters of “the sociology of human rights”.

O’Byrne further observes how traditional disciplinary blinders have created confusion in the human rights discourse, and he considers this sociological study from various postmodern perspectives. Highlighting Bauman’s (1989) “deeply ethical” stance, theorists and empiricists alike are urged to rethink the Enlightenment project in light of the horrors of the twentieth century. Bauman reflects that in our “postmodern habitat” the great ethical issues “like human rights, social justice, [and] balance between peaceful cooperation ... individual conduct and collective welfare have not lost any of their topicality” (in O’Byrne, 2003, pp. 58-59; see also Smart, 2000).

In a similar vein, Verschraegen (2002) argues for the adoption of sociologist Niklas Luhmann’s systemic approach towards rights as institutional boundaries that have now become permanent features of modern society. Luhmann has linked “human rights to specific societal structures; human rights are thus not considered in an ethical or juridical way, but seen as a social institution” (Verschraegen, 2002, pp. 258, 262). He observes that Luhmann’s (1965) *Fundamental Rights as Institutions* has received little attention and has not yet been translated into English or French like much of the rest of his *oeuvre*.

Unlike criticisms of the Anglo-American academy noted by Bechmann and Stehr (2002), Verschraegen suggests that this “striking lack of interest in a systems theoretical approach to human rights” may be partly due to “a more general aversion to systems theory in the post-Parsonian age” (2002, p. 259). King and Schütz (1994) argue that Luhmann’s thinking offers social scientists a broad framework for theory building in keeping with the grand theories within European tradition. But Luhmann’s is an approach which runs contrary to claims for universal competence “and exhaustive accounts of reality associated with ‘grand theories’. It is a theory which acknowledges modestly that it cannot answer many of the important questions that face modern societies” (p. 261).

While unknown at the outset, I “discovered” Luhmann during the latter stages of analysis of findings. During selective coding, I deployed core constructs from Luhmann’s theory to re-conceptualise thematic categories from the study regarding CRC dissemination within the educational systems. This reinterpretation came after realising that Luhmann’s systems theory - similar to the CRC - traverses the modernist/postmodern divide while remaining broad enough to embrace human rights law within

various cultural contexts. As we have also seen, there is limited evidence for a congruent children's human rights theory within the sociology of childhood approach to date.

Furthermore, both Turner (1993, 2000b) and O'Byrne (2003, pp. 164-197) concern themselves with ontological concerns for "human frailty" relative to the international abuse of human rights through political use of torture. Mindful of these approaches, and increasingly aware of the inadequacy of childhood theories to make sense of children's rights, I adopted Luhmann's (1965, 1982, 1997) autopoietic systems thinking to reconsider human rights as systemic forms of communication. Luhmann appears to offer a way forward from the contentious ontological and philosophical debates over the nature of childhood, as well similar debates about the nature of human rights, within related discourses. In this regard, Lenzer's (2002) stance is unequivocal: "It is important to discuss the UNCRC within the larger framework of human rights" (p. 216). To make these links tangible, I contend Luhmann's systemic approach is better suited for a broad-based understanding of the interconnectedness of children's rights law and educational policy.

### *Luhmann's autopoietic systems theory*

Luhmann was a prolific legal sociologist who described how "world society" (1982) has evolved into numerous complex and highly differentiated systems such as law, education, human rights, medicine, religion, science, and art. Each of these are specialised to such an extent that they operate independently from one another to reduce complexity. King and Thornhill (2003) maintain that Luhmann's theory acts as a catalyst for completely rethinking the role of theory in the social sciences.

Departing from his doctoral supervisor Talcott Parsons, Luhmann established the notion that society "has to be world society" (p. 8) encompassing all possibilities of meaningful systemic communication as distinct from individual social interactions. Where Parsons used systems thinking as an analytic tool to understand society, Luhmann theorises that systems exist both ontologically and epistemologically. What he means by this varies historically and culturally since different organisations of communicative systems provide different versions of what the world comprises. He describes this notion of world society in autopoietic terms (1997, pp. 72-73), literally as self-replicating.



This description for functionally differentiated communicative systems was first described by Maturana and Varela (1980) within the study of cognitive biology to explain how organic entities reproduce themselves, but was reconstituted as an important sociological concept by Luhmann (1982, 1997). This does not mean that society or its systems are isolated since they adopt resources from their environment to accomplish this systemic reproduction. “It is like physical autopoiesis, organisationally closed but interactively open” observes Mingers (2002, p. 288). Moreover, Mingers agrees that Luhmann’s controversial notion of social autopoiesis is “essentially ... a network of communications referring to other and past communications and leading to new ones. However, it is quite different from physical autopoiesis, for communications are events” (p. 287). As we have noted, congruent with these broad views of systemic communication Luhmann identifies that the basic unit of sociological analysis must now be *the system* and not individuals, social groups, ideologies or culture.

Recalling how the UN Committee on the Rights of the Child communicates with each nation state, and how the treaty texts are finding their way into domestic law and social policy, this autopoietic construct can hardly be overstated in its analytical significance. In Luhmann’s scheme, the portrayal of the individual as the preferred unit of analysis is no longer effective. “This is no longer possible for a society differentiated with respect to functions such as politics, economy, intimate relations, religion, sciences, and education ... Nobody can live in only one of these systems” (in King and Schütz, 1994, p. 264). He nonetheless contends that basic rights support the preservation of system differentiation and these rights “are in fact merely the form through which the state itself articulates its own interest in stabilizing its boundaries” (1965, translated by King and Thornhill, 2003, p. 115). Trained in the law, Luhmann developed precise and complex arguments. However, he did not undertake field study “in the sense of research projects involving empirical data collection and statistical processing or participant observation in the ethnological style” (Hornung, 1999, electronic cite), an important and pivotal consideration for my integration of Luhmann with grounded theory methods in this investigation. He did empirical work solely in terms of library research and case studies that correspond to the style of the legal sciences.

Luhmann’s approach to research foreground that “his passion was theory”, and Hornung (1999) highlights how this conformed more closely to his topic of “world society” as he

came to elucidate the notion. Luhmann analysed the function of social systems in terms of coding and programmes, each one operating with a binary code that represents the positive/negative for that system such as true/false or profit/loss (King and Thornhill, 2003, p. 10). His code for the legal system was legal/illegal. On the other hand, the programmes generated by these codes are more flexible, and allow codes to remain distinct – complementary coding fills the system with content (see King and Thornhill, 2003, p. 25). The binary code also provides guidance for the system without which self-referential operations could not function, and while the programme changes and evolves, the code does not (see also Mingers’ analysis, 2002, p. 288).

Critical to this work of self-referential communication is the ability of any system to address itself and to take into account its *own* communicative actions and functioning, such as in the case of law (King and Schütz, 1994, p. 263). Mingers (2002) also notes how employing autopoiesis to describe world society has “radical implications” (p. 279) since a closed autopoietic system does not transform inputs into outputs as earlier systems theorists had claimed, but “instead it transforms *itself into itself*” (p. 280, emphasis in original). Within Luhmann’s approach, exchanges of information are possible but these take place as meaningful communication between systems, and thus, the interference of any one system in the autonomous operation of another is precluded (Deflem, 1998). In order to understand Luhmann, one must go beyond social constructionist and linguistic accounts of social reality “while at the same time retaining the notion of the phenomenal nature of society and the possibility that many versions of social reality may exist alongside of each other at any one time” (King and Schütz, 1994, p. 267). According to Luhmann’s epistemology, humans are no longer the subject neither are they the authors nor the cause of systemic communications.

Moreover, systems theory conceptualises “human rights” sociologically as neither an ethical question of fundamental principles, nor as a question of human rights law. According to Luhmann (1965) core philosophical concepts of human rights such as liberty and equality, freedom of speech and expression are semantically symbolic of institutionalised expectations only. This “institutionalisation of human rights is a factual event... an event whose function and meaning have to be examined” (1965, translated by Verschraegen, 2002, p. 263). While unaware of Luhmann’s argument at the outset, my examination of this “factual event” was the study’s chief aim, and was achieved by

comparing how child rights communications are being re-constituted within the education systems of two nations. Luhmann argues that “human rights constitute the unnoticed and elementary condition for participation within modern society” (1965, in Verschraegen, 2002, p. 276).

Thus, the relevance of the study’s main research question underscores Luhmann’s relevance in an emerging theoretical discourse such as children’s rights. The institutional character and ethos of human rights for children (and at the same time for adults) is a clear prerequisite for pupil participation within the classroom. Furthermore, as the study concluded I could see that children’s rights were being widely re-examined in the theory and practice of both nations under study. As I began to re-think the CRC as a form of systemic communication, I also considered how critical deconstruction of the treaty’s texts might be obfuscating the transmission of new knowledge.

### ***Children’s human rights reconsidered***

As noted in the previous chapter, postmodern contention about children’s rights in schools and other institutions is caught up with notions about the nature of childhood, and the expression of institutional power relations with adults, but rarely as human rights issues. On the positive side, postmodern theoretical approaches have established a multiplicity of theoretical interpretations of the nature of reality, while on the negative, they lack “positive notions of the social, failing to provide normative accounts of intersubjectivity, community or solidarity” (Terpstra, 1997, p. 14, citing Jameson, 1991). Terpstra (1997, p. 13, citing Kellner and Best, 1991) describes Luhmann as an “extreme postmodernist” while his systemic approach to human rights thinking also allows the broadest possible appreciation for local customs and mores to be brought to bear within international law. To date, legal theorist Michael King (1994) has appeared singularly within the child rights discourse for choosing to analyse the Convention on the Rights of the Child within Luhmann’s scheme, and by reasoning that autopoietic communication may even be viewed anthropologically (pp. 390, 394).

King’s point here is subtle. Within Luhmann’s scheme, contentions between children’s advocates and child rights critics become less important, and what may be clearly observed as *meaningful* forms of communication are of greater relevance. King notes previous Declarations regarding children’s rights under international law were “not

legally binding, whereas a UN Convention is binding on those countries which ratify it, since through ratification, they become States Parties to the Convention” (1994, p. 388; see also O’Byrne, 2003, p. 375).

A significant issue to do with the CRC and law’s binary coding is also an ongoing source of confusion in the child rights discourse. Using autopoietic analysis, we can make better sense of why such ambiguities over legality and illegality in the child rights discourse have not prevented new precedents from entering into force. In the clearest example of this kind of anthropological thinking about human rights, citing Article 37(a) of the CRC, the Missouri judiciary commuted the death sentence of a prisoner on death row who had committed murder while under eighteen years of age (Supreme Court of Missouri, 2003). This *autopoietic* expression of international human rights law within domestic jurisprudence was subsequently upheld within the US Supreme Court upon appeal (Law Center, 2005) notwithstanding the United States is the only industrialised UN member-state *not to have ratified the CRC*.

Critical reflection about the drafting of the CRC prompted legal theorists such as King (1994) to question: By what authority have these new children’s laws been created? Although formally legitimised by the United Nations as an international human rights treaty, this kind of authority found its origins in no court or legislature. “Rather, the Convention is the product of a Working Group of national representatives, set up by the UN Commission on Human Rights ... [and] by the nongovernmental organisations (NGOs) who attended the meetings” (p. 389; see also Price Cohen and Kilbourne, 1998).

Non-governmental actors have loomed larger within world society in the latter half of the 20<sup>th</sup> century, and in addition to their participation in the drafting process, the CRC is the first international legal agreement to include ongoing NGO participation in reporting and monitoring systems associated with its obligations. However, King (1994) argues that the importance for sociologists is not so much to distinguish children’s rights law from non-law, but to be aided instead by thinking autopoietically about the CRC. Within Luhmann’s theory, the law now simply stands beside other social systems in its attempt to communicate order and meaning. I maintain that these integral, non-governmental aspects associated with the CRC’s genesis and ongoing self-replication in domestic legislation are quite congruent with Luhmann’s analysis.

We have also seen that adult/child relations are being fundamentally re-shaped through new legislation and public debate around the CRC by shifting both theoretical and political notions of childhood and children's rights. These social and theoretical constructions are re-presented in the study's findings within Luhmann's framework as autopoietic communications created through functionally differentiated systems. In the analytical stages, it became clear that these communications were being reproduced - within law, politics and education - in ways that are capable of being incorporated within their own specific "communicative operations" as social policy and practice (King, 1994, p. 393; also King and Thornhill, 2003, p. 10).

Also integral to systemic thinking, King notes that autopoietic theorists see the transformation of rights claims into fully-fledged legal rights as involving matters of "structural coupling" and "perturbation", the latter term literally meaning "interference". The former is sociologically defined as "the point at which general social expectations intersect with legal expectations" (Teubner, 1987, cited in King, 1994, p. 393). Such expectations may then become autopoietically replicated as, and when, they are "reconstructed within the legal system as law. From that moment the two systems are structurally coupled by synchronisation and coevolution" (ibid., p. 394). Beyond any of the new children's rights legislation within either nation under study, a practical illustration of structural coupling would be anti-pollution measures which have entered domestic and local legislative arenas after popular demand by environmental groups.

Luhmann (1992) argues that "without structural coupling there would be no perturbation and the system would lack any chance to learn and transform its structures" (in King, 1997, p. 186). King also posits that an underlying problem which the CRC represents for social scientists is the "rather vague political notion of rights for children seems to have been reconstructed in law as 'legal rights' without any sufficiently specific perturbation that would allow the kind of structural coupling that Luhmann writes about" (ibid.). While this may have been the case in King's early analysis, this final point provided critical comparative and interpretive findings within the study.

As postmodern critical analysis has shown we are rightly suspicious of explanations that rely upon essentialism or universalism, but there are two different autopoietic analyses useful for re-interpreting the kind of "law-making" we find taking place through the CRC's communicative events. First, it is necessary to view this dimension of the

international human rights programme as a global expression of Ehrlich's (1975) "living law ... not law in the sense of enforceable rules, or illegal/legal codes, but rather a system of cultural values within the setting of a national global village". Secondly, to view how the CRC may be expected to work, it is necessary to regard it as "a package of legal communications ... about the treatment of children, which lie ready and waiting to be unpacked and converted into local laws by all those countries whose governments ratify the Convention" (in King, 1994, pp. 394-95).

Through an autopoietic conceptual framework, the Convention may be appreciated as a form of meta-law, a conceptualisation that is consistent with Price Cohen and Kilbourne's (1998) analysis of the Concluding Observations from the Committee on the Rights of the Child as "draft jurisprudence". Stepping back from postmodern and socially constructed discourses underpinning much of the current children's rights research, I could more readily appreciate how systemic legal and political processes supporting the CRC represent an ongoing, reflexive sociological project. In support of this notion, there are now more than 300 national child rights reports reflecting new domestic legislation and social policy throughout world society (UN Office of the High Commissioner for Human Rights, 2005).

### ***Critiquing autopoietic theory***

Commenting on Luhmann's discussion of societal risk, Morales (1994) argues that his systemic, neo-functional approach "permits almost eternal elaboration of system interconnections without the need to address alternative theoretical possibilities" (p. 305). This feature is problematised by Mingers who suggests that while Luhmann offers a "bold attempt" to clarify systemic thinking, his "incredibly reductionist view" is that communications rather than people produce further communications (pp. 290-91). Also chief among Luhmann's critics was Jürgen Habermas who fundamentally rejected his closed systemic approach to the law. Deflem (1996, p. 12) notes how the question of law's "moral foundation ... the extent of differentiation of law from morality" was the central issue that set Habermas most clearly against Luhmann's project. King and Thornhill (2003) list a full chapter of Luhmann's critiques - a repeated argument suggesting he failed to "build into his concept of 'world society' any recognition of local variations" (p. 209).

At first, my ‘discovery’ of social autopoiesis in the comparative literature during the closing phases of fieldwork was challenging. However, throughout the analysis of thematic findings, previous theoretical approaches to children’s human rights - particularly the accounts within the sociology of childhood – were being contradicted by the data. Thus, I bracketed some of the more abstract ontological concerns of Luhmann - described by critics such as O’Byrne (2003) “as the theoretical separation of human rights law from morality” (p. 150) in order to deploy his core autopoietic constructs analytically. Unlike Terpstra’s (1997) postmodern appreciation of Luhmann, or the ultimately sympathetic interpretation offered by King and Thornhill (2003), O’Byrne (2003) holds deep reservations about Luhmann’s *modernist* approach decrying his “autonomous, hyper-differentiated, autopoietic” views (p. 159). Regarding this systemic approach towards human rights O’Byrne charges further that Luhmann’s framework makes theoretical sense of the thinking behind the Nazi holocaust (p. 150).

In contrast to Lechner’s (2000), O’Byrne’s (2003) or Verschraegen’s (2002) modernist analyses of Luhmann, Neves (2001) argues against Luhmann’s postmodern notion of autopoiesis. He contends Luhmann’s systemic scheme has no empirical potential within the majority of the world’s nations due to their circumstances of “peripheral modernity”, and through this approach to law and politics, “a miscellany of codes and criteria of communication are destructively imposed” in less-developed settings (p. 243). The lack of empirical validation for Luhmann’s ideas is a frequent critique within the legal discourse particularly, and I considered again how this shortcoming may be addressed within this study.

As I also grew to appreciate, Luhmann has been criticised as both a modernist and a postmodernist at the same time and often for the same reasons perhaps because his scheme embraces possibilities for any number of theories, accounts or interpretations of reality at the same moment. In light of this plethora of criticism, I prefer Rorty’s emphasis on epistemological rather than ontological issues within the human rights discourse, and this emphasis underscores Luhmann’s empirical potential. This holds true especially when considering how Luhmann ultimately transcended sociology’s moribund pre-modern, modern, and postmodern typology. Nevertheless, when adopting autopoietic theory to analyse how the CRC works, King (1997) cautions that “the

chances of success are small” and there is a likelihood of “producing new and surprising problems” (pp. 183-84).

Autopoietic thinking is also criticised as technical and filled with jargon, and Deflem (1998) argues that the difficulty with *all* systems theories is their “high level of abstractness” (p. 776; see also Turner, 2000a, p. 12). Contrasting critics of Luhmann the postmodernist, Lechner (2000) notes that “more than rival perspectives, systems theory embodies old hopes for a general theory of society. In these postmodern times, that project has fallen out of favour, but if it is revived, systems theory is bound to play its part” (p. 128). Lechner argues further that Luhmann challenges all contemporary systems theorists, indeed all social scientists, by not representing any particular value scheme. His communications are not the work of conscious individuals, his systems produce and re-produce themselves, his society has no particular political or moral centre, his world is fragmented and disenchanting, and his theory holds out no hope for any particular change.

To Luhmann, any theory could just simply be a selective construction, but his particular construction is so internally closed that ordinary scientific criticism may have little bearing on it. Curiously, Lechner also criticises Luhmann for not advancing much beyond the description of functional differentiation (p. 129). When looking at how ideologies have transmigrated into the courts along with human rights claims, such as those visible in US abortion law (see also Deflem, 1998), Lechner reasons how competing world-views are bound to enter the debate. There is a growing realisation that while “international law has substance, many of its provisions [such as human rights] do not yet have unambiguous legal meaning” (p.129).

Particularly in light of Lechner’s complaint, during data coding and analysis I found Luhmann’s notion of social autopoiesis became the most useful construct. Many of Luhmann’s constructs and systemic characteristics are quite applicable within UN international legal and policy arenas. Social autopoiesis makes clearer the sense of the re-constitution of CRC texts into domestic law and social policy in a fashion that transcends Lechner’s critique. A growing body of international law has emerged and is increasingly gaining systemic expression increasingly visible over the past half-century as Briggs observed to be the case over the first half (1952). However, Lechner observes that this process has been due to the increasingly visible work of “extralegal movements



and organizations. For now, international law's struggle for autonomy, to establish a capacity for autopoietic closure, continues" (p. 129).

In closing this section, I will account for my shifting views having become as contingent as those observed by Luhmann, and increasingly so throughout the phases of research.

### **Summary**

After assessing Luhmann's core theoretical constructs and their relative fit with events within this child rights investigation, I chose the following concepts to facilitate the analysis of data and the creation of new theory in this study:

- The international legal *system* and its human rights programme which offer CRC Article 42 as a common *unit of comparative analysis* between the two nations
- *Autopoiesis*, while originally a biological term stressing the closed nature of systems, denotes self-constructing, self-replicating capacities
- *Structural coupling* and *perturbation* to explain the transmission of knowledge between the legal, political and educational systems
- A *core distinction*, in contrast to a grounded theory *core category*, based upon the integration of Spencer Brown's calculus (1969) and Luhmann's use of *binary coding* within systems

Prior to moving into a discussion of the grounded theory methods chosen for this study, in the following sections I briefly discuss my own values, beliefs and assumptions described by many as a research 'standpoint' to illuminate how theoretical and methodological choices were integrated.

### **Standpoint of Researcher**

My efforts to capture each participant's standpoint have been influenced by grounded theorists Glaser and Strauss (1967) as well as the literature on institutional ethnography particularly that of D. E. Smith (1974, 1987, 1990). Smith (1990) contends that anti-oppressive research is being advanced only when researchers allow their own and others' voices to be heard with integrity. She also argues that only ideological descriptions are being produced when these do not account for the standpoint of those grounded in the everyday world. While not formally an ethnographic design, I have

incorporated Smith's perspectives as far as possible within the investigation while at the same time following an institutional methodology not unlike that of medical anthropologist Judith Justice (1986, 2000). Justice began her investigation into the planning and implementation of a children's health programme in Nepal by examining the international policy arena and then moving to local sites where delivery of services was taking place.

The use of ethnographic tools in social science is seen by many as an evolving approach to empiricism although there are elements and contradictions worth noting. Atkinson and Hammersley (1998) argue that ethnography is "subject to controversy" due to claims that "it refers to a philosophical paradigm" requiring a total methodological commitment. Less extreme designations see ethnography as "a method that one uses as and when appropriate" (cited in Denzin and Lincoln, 1998b, p. 110). During the study, I was guided by this latter definition because of concerns with ethical congruence that are deeply implicated when conducting qualitative research in the context of people's lives.

Ellis, Kiesinger and Tillmann-Healy (1997) also advocate for interpretive scholars to follow critical feminist theory which they claim debunks the myth of a value-free social science. Calling for "researchers to declare and acknowledge their interests and sympathies", they examine the "double subjectivity" experienced by researcher and interviewee alike (cited in Hertz, 1997, p. 123). Bolak (1997) comments further: "While doing the field research, my status was simultaneously that of an insider and an outsider" (cited in Hertz, 1997, p. 99). Notwithstanding such emic/etic viewpoints, Kluckhohn (1949) dryly comments: "it would hardly be fish who discovered the existence of water, an observation intended as a reminder that things taken for granted are likely to escape an ethnographer's attention in familiar surroundings" (cited in Wolcott, 1994, p. 177; see also Pike, 1954 in Headland, Pike and Harris, 1990). While recalling Kluckhohn's comments frequently during UN participant observations, I also discovered few empirical studies in the literature that include these sessions.

### ***Values, beliefs and assumptions***

The following are some of the preconceptions I hold that guided the research design. First, the research act is primarily a dialogic and interpretive account whether using quantitative or qualitative methodologies. Second, children possess competencies,

naturally and socially, and I have witnessed that all children exercise these competencies with considerable agency and interpersonal power. Third, through the CRC human rights law continues its evolution as the first truly “postmodern ideology” (Lindgren Alves, 2000). Fourth, children and young people may exercise their rights fully when they are informed and educated regarding their possession of such rights. Finally, human beings are interdependent within a “web of life” (Capra, 1996) that includes social, legal and ecological systems, an assumption similar to beliefs found within many indigenous societies as well as those within many Eastern traditions. Guided by these values and assumptions, interviews were undertaken with key informants in the cities of Geneva, New York, and Ottawa along with policy actors from Edinburgh and two local authorities in Scotland to develop “generative and concept-relating questions” (Strauss and Corbin, 1998b, p. 161).

### *Ethical considerations*

While the study has been informed by the ethical conduct described within the codes of the British Sociological Association, the British Psychological Society, the University of Stirling, the American Psychological Association and the United Kingdom’s National Children’s Bureau, Kvale’s proviso is perhaps most salient. “Ethical codes and theories seldom provide definite answers to the normative choices to be made during a research project. They are more like texts to be interpreted than rules to be followed” (1996, p. 110). Guided by these and my own previous research practice, I conducted interviews and participant observations with greater integrity.

Thus, many of the individuals interviewed are those with a public persona in politics or local human services that could have been easily identified even after employing an anonymised context for the interview during the research write up. In addition, I found the veracity or generalisability contained within the account could be compromised by an anonymous rendering. For example, in the context of members from Geneva’s Committee on the Rights of the Child, the usual ethical stance of complete anonymity could have proven difficult to guarantee.

Nonetheless, I offered all adult participants the choice of confidentiality, or the option of having their names and their offices openly associated with their comments within written and/or published accounts of the research. Almost every participant chose to be

identifiable while it is notable that most adult professionals waited until their interviews were complete before making their decision (see Appendix 2 for samples of the three Letters of Consent utilised during the study).

A second ethical stance was my effort to remain congruent with the values of the CRC, especially in light of Katz' (1995) discussion of how negative participation with adults could be less "empowering" than no participation at all. Indeed, participation of young people "is not intrinsically empowering" at all note Murray and Hallett (2000, p. 15). Thomas and O'Kane (1998) identify that most methodological and ethical issues arising in research with children are also present with adults. They note, however that "[t]here are important differences, and the process of addressing these differences can be educative for the researcher, enhancing the value of what is produced" (p. 336; see also Punch, 2002). Scott (2000) apparently agrees with this stance. Ethical approaches in interviews with children require "if anything, to be more stringent than with adults. Children are relatively powerless... despite the attention given to children's rights, have relatively little recourse to official channels of complaint... Interviewing children is no fad" (cited in Christensen and James, 2000, pp. 114-115). Thus, each of the identities of young people in this study who were less than eighteen years of age has been anonymised.

In light of these perspectives, I also wish to underscore the imperative for an expanded awareness of legal and ethical protocols for those engaged in children's rights studies during which disclosures of abuse may be forecast. Ethnographers who hold that research with participants less than eighteen years of age is equal in all aspects to that with adults must take fully into account a "continuum" of factors, contends Punch (2002). This continuum includes awareness of, and respect for, various statutory requirements regarding child protection and disclosures of physical and sexual abuse.

Guided by the literature, and by discussions with various colleagues, educators and non-governmental researchers, I discovered these stipulations were ambiguous in British law compared with Canadian statutes. In addition, from experience as a practitioner I was well aware of the prevalence of physical and sexual abuse experienced by children across all cultures and classes. Hence, I chose to comply with Canadian legislation that requires any adult who hears a disclosure of abuse from a child to refer the matter to protection authorities. For those young people who are beyond twelve years of age, I

have found the likelihood of their speaking out to be greater because of increased educational opportunities and peer influence (see Jenks, 2003 for alternative views on this issue).

In anticipation of disclosures of sexual or physical abuse during the study, I also chose to comply with the most recent Scottish legislation stipulated for those employed with children and young people, and requested a Criminal Record Check at my earliest opportunity. As a consequence, I experienced an expedited ease of access within two of three local authorities I studied during the research. During participant observations and lectures in one Scottish primary school, I discussed this potential for disclosures with the head teacher who was prepared to follow up any issues in a manner congruent with school protocol. There was a classroom instructor always present during my discussion, and as it turned out, no new disclosures of abuse were made during this contact.

Such ‘grounded methods’ of data collection through lecturing allowed me to gain greater access to important interviews with which to uncover and build theory, and I gradually developed the integrated research methodology - a *grounded systemic theoretical approach* - on the basis of these collaborative partnerships. In turn, this research value and methodological stance involved a new role in the power structure as I consciously moved from “the plunderer of information to facilitator which enables the child to be an active part of voicing their concerns” (John, 1996, cited in Thomas and O’Kane, 1998, p. 346). At the time of these public school lectures, written consent was provided by the Head of Education for the local authority, and there was nothing she deemed to require parental review due to the curricular nature of my visits. While not iron-clad, the fact that I showed a willingness to provide a police record check before attempting to gain access signalled my awareness of this ethical and statutory distinction from research with those over eighteen years of age.

### **Qualitative Evaluation within this Study**

Similar to Glaser and Strauss (1967), American ethnographer Harry Wolcott (1994) suggests that evaluation in qualitative research is a comparative process “in which some explicit or implicit standard supplies the comparability by which judgements can be made” (p. 33). For both qualitative and quantitative researchers to have integrity, Wolcott argues, investigations must be transparent to the reader such that the manner in

which the study as a whole was carried out is quite clear. In this way, readers may legitimately evaluate strengths and weaknesses and understand how the investigator's epistemological and theoretical positions have influenced design developments. I discuss these standards more fully in the following sections.

### ***Credibility***

Credibility of findings was established during every phase of this study as I logged my own insights and reflections in field notes, documenting the manner in which theoretical sampling and data collection proceeded. Through these means, I chose my participants while inductively designing the investigation. From the start, as I entered into various international and local child rights policy arenas, I was clear about my role as a doctoral researcher. As noted earlier, ethnographic research accounts that have taken on the voices and views of United Nations participants are under-represented in the literature, and indeed, I was unable to access one during the study's ongoing literature reviews.

In qualitative research, faithfulness to data and credibility of findings are supported by the use of triangulation of information, yet this concept has been critiqued for being rigid and two-dimensional since it begins with an assumption of a fixed point from which to proceed. On the other hand, Richardson (1994) argues that in postmodern contexts researchers "crystallize" they do not "triangulate" their findings, and through a process involving repeated questioning and re-reading of data "crystallizations opening to continual transformations of the meaning" emerge (cited in Kvale, 1996, pp. 243-244). In this regard, the constant comparative method (Glaser and Strauss, 1967) of re-reading and reviewing the research literature provided this triangulation for the study's thematic findings. To a great extent, this process accurately describes how I came to "discover" and integrate Luhmann's systems approach towards children's human rights.

### ***Criticality***

As a parallel process to this epistemological stance, the dimension of criticality was engaged fully during the review of literature as well as throughout comparative fieldwork, sampling and data collection. While proceeding with an inductive, grounded approach to theoretical sampling (Glaser and Strauss, 1967; Strauss and Corbin, 1998a), I presented two comparative policy papers during international conferences in 2002 and 2003, each being subsequently peer-reviewed and published (Mitchell, 2003a, b in

Appendix 1). These intersubjective, reflexive features are indicative of Giddens' (1976) "double hermeneutic of the social sciences" (cited in James and Prout, 1997, p. 8), and I saw that I was not only being influenced by others, but that I was repeatedly influencing the research through my own activities. In relation to Luhmann's autopoietic theory, Leydesdorff (2000) draws upon Giddens' metaphor as a phenomenon by which "observers are able to participate both in the variation and in the selection" of communications during sociological research. "Through language the distinction between uncertainty and meaningful information is communicated reflexively ... without becoming confused" (p. 273; see also King and Thornhill, 2003, pp. 29-30).

Hence, I sought key informants in both large urban and small rural settings for contrasting views. While negotiating access to acknowledged "experts" in children's rights, that is, governmental and UN representatives along with various authors and researchers, I travelled thousands of kilometres in both national settings. As comparative patterns began to emerge from the data, I invited later participants to engage in this critique asking for possible alternative explanations while I returned to initial transcripts as a way of re-evaluating new findings. Through use of reflexive field notes and related memoing - both handwritten and audiotaped - I continually explored and questioned my own and others' reflections, values, beliefs and assumptions.

I sought to ensure that the process of interpretation occurred throughout the investigation and not solely during analysis. Thus, critical questioning influenced my thinking as I grew to appreciate that anyone's particular account of children's rights education could always have been otherwise. How then to discover these divergent perspectives? The fruits of this approach to criticality in questioning, theoretical sampling, data collection and coding are discussed further in Chapters Four, Five and Six through description, comparative analysis and interpretation of thematic findings.

### ***Social construction and grounded theory validity***

Validity, argues Kvale (1996), pertains to notions of *truth* and *knowledge*. In this sense, there is a tension between modernist and postmodern accounts and these are addressed in this study using the following framework. Furthermore, classic grounded theory studies are evaluated on the multi-faceted nature of the need for grounded theories "to

capture fit, relevance and workability” within a given field of study (Glaser, 2005; pp. 131; Glaser and Strauss, 1967; see also Schreiber and Stern, 2001, p. 141).

Positivist approaches to scientific validity include textbook psychometric measurements directed by such questions as: “Are you measuring what you think you are measuring?” (Kvale, 1996, p. 238). In contrast, postmodern approaches include more socially constructed concerns such as “quality of craftsmanship” (p. 241). “Validity is not only a matter of the methods used; the person of the researcher (Salner, 1989), including his or her moral integrity (Smith, P., 1990) is critical for evaluation of the quality of the scientific knowledge produced” (Kvale, 1996, pp. 241-242). Within this investigation, both Kvale’s postmodern criteria and those utilised to evaluate classic grounded theory studies have shaped my approach, and each is briefly noted in turn.

- (i) To validate is to Check through use of criticality and in general play Devil’s advocate towards the interpretation of findings.
- (ii) To validate is to Question through descriptions of *what* and *how* before answering questions involving interpretation such as *why*.
- (iii) To validate is to Theorize through posing theoretical questions about the phenomena under investigation (ibid.; also Kvale, 2002).
- (iv) The Fit of the theory pertains to how closely the thematic categories fit with the incidents they are representing, and in turn, is related to how thoroughly the constant comparison of incidents to concepts was achieved.
- (v) The Relevance within this study deals with the real-life concerns of the participants, and is not only a concern of scholarly achievement.
- (vi) The Workability of the theory describes how well the emergent theory works to explain, predict and interpret the research problem or main concern being resolved across variations.

Taken overall, validation using the above criteria is both an interpretive and communicative process based upon the “logic of uncertainty and qualitative probability where it is always possible to argue for or against an interpretation” (Kvale, 1996, pp. 244-245).



## *Summary*

This section has reviewed the underlying personal and professional assumptions in this research, my ethical stance and the steps I have taken to ensure these standards, along with a qualitative evaluative framework established within the study. The main points are collated as follows. First, research with children is dissimilar to that with adults due to power issues and the potential for disclosures of sexual or physical abuse that may reasonably occur particularly during rights-based dialogue. Second, based upon these assumptions I took steps to abide by current legislation and requested a record check within one local authority to gain an awareness of child protection statutes within the Scottish jurisdiction. Third, evaluation was established by maintaining rigour through transcription efforts and within my personal and professional exchanges, taking a critical stance towards questioning and theory-building along with a social constructionist approach towards establishing validity of findings that incorporates classic grounded theory criteria of fit, relevance and workability of emergent theory.

## **Design Strategies, Procedures and Phases of the Study**

The following sections of the chapter discuss the grounded theory procedures adopted in this comparative study (Glaser and Strauss, 1967; Glaser, 2005; Strauss and Corbin, 1998a, b), and how these were integrated within Luhmann's epistemological framework. Mabbet and Bolderson (1999) have similarly called for "inductive and interpretive methods to understand the interaction of party politics, interest groups, bureaucrats and socio-economic factors in the formation of social policy" (cited in Clasen, 1999, p. 36). However, in comparative literature concepts such as "cross-country, cross-national, cross-societal, cross-cultural, cross-systemic, cross-institutional, as well as trans-national, trans-societal, trans-cultural" are used synonymously (Øyen, 1990, p. 4).

While comparative policy studies employing qualitative analyses are less prevalent in the literature, in a similar approach to the current research, one recent investigation into the rights of elderly individuals compared local authority responses in six European nations (Le Bihan and Martin, 2006). Adopting a case study methodology, the authors argued that "local variations are important" and these allow "concrete elements on the services" offered to individual groups to be made clearer as well as the difficulties faced

by public authorities delivering such services (p. 26). Arguing for postmodern policy analyses as well, Moss and Petrie (2002) employ a qualitative, deconstructive case study approach to compare national children's policies from four English documents (in contrast to British) "examining ... what is said, and what is unsaid, what is included and what is excluded" (p. 83). Drawing upon Dutch feminist Selma Sevenhuijsen, these authors describe their intent with "the process and purpose of this type of deconstructive exercise" (Moss and Petrie, 2002, p. 81).

Policy texts are sites of power ... By establishing narrative conventions, authoritative repertoires or interpretation and frameworks of argumentation and communication, they confer power upon preferred modes of speaking and judging, and upon certain ways of expressing moral and political subjectivity. Through examining official documents in this way it becomes possible to trace both the overt and hidden gender load in their vocabulary (Sevenhuijsen, 1999, cited in Moss and Petrie, 2002, p. 81).

In terms of uncovering hidden themes within a broadly based policy study such as this, the above qualitative, postmodern analyses are quite congruent with the aims from this grounded systemic investigation. Moreover, through descriptive, comparative and interpretive analyses of data, it should also be possible to uncover both overt and hidden thematic constructs with which to build new theory in this discourse. In view of this literature and my own earlier pilot study (Mitchell, 2000), I adopted the systemic unit of analysis provided by CRC Article 42 in order to access the broadest number of policy actors who might impact its implementation within local schools. In total, 50 key informants were interviewed between January 2002 and September 2003 during fieldwork in Canada and Scotland, and trips to UN human rights policy sites.

Data collection methods included international, national and local documentary analyses, participant observations and semi-structured, face-to-face, in-depth, audio-taped interviews (individual and group), along with audio-taped telephone and electronically obtained responses to an interview schedule. Finally, the fully transcribed interviews and policy documents were critically compared and contrasted with audiotaped and hand-written field-notes and memos.

The chronological account of the research includes these grounded procedures:

- legal and policy documentary review and analyses
- participant observations and archival research at the Office of the UN High Commissioner for Human Rights in Geneva
- interviews with members of the Committee on the Rights of the Child
- attendance at a formal CRC reporting session under Article 44
- negotiations for research access with Scottish educators and policy-makers
- guest lectures within a Scottish elementary school and university sites, and one interagency professional development presentation
- participant observations during Children’s Services Planning sessions in one Scottish local authority
- participant observations during the UN General Assembly’s 2002 Special Session on Children in New York
- Canadian fieldwork, library research and key informant interviews based upon theoretical sampling
- completion of fieldwork, interviews, and additional participant observations in Scotland during Children’s Planning sessions
- participant observations during Canada’s 2<sup>nd</sup> CRC Report at the Office of the UN High Commissioner for Human Rights in Geneva
- open, axial and selective/binary coding of interview data to allow emergence of research themes and discovery of new theory

**Table 3.1 - Key Informants Interviewed in this Study**

<b>CANADA</b>	<b>SCOTLAND</b>
<b>Adam Jones</b> British Columbia HS Graduate	<b>New Community School</b> Class of 27 P-6 Pupils
<b>Emery Jacks</b> British Columbia HS Pupil	<b>New Community School</b> Class of 21 P-7 Pupils
<b>Justin Avery</b> British Columbia HS Pupil	<b>Moira Rennie</b> Cornton Primary Head Teacher
<b>Candis Tatem</b> Saskatchewan HS Pupil	<b>Jo-Ann Scott</b> Killearn Primary Head Teacher
<b>Hanna Ramo</b> Alberta High School Pupil	<b>Article 12 YP NGO</b> Drumnadrochit Group of 10
<b>Lillian Tatem</b> Parent of Saskatchewan HS Pupil	<b>Margaret Doran</b> Stirling Education Director
<b>Myron WolfChild</b> Alberta High School Graduate	<b>Marion Wallace Gee</b> Stirling Ed. Policy Officer
<b>Gerry Baker</b> Alberta High School Pupil	<b>Joan Savage</b> Stirling Policy Officer
<b>Cindy Wisk</b> Alberta High School Pupil	<b>Andy Turnbull</b> Perth-Kinross SS/CSP Director
<b>Rowena Carder</b> Alberta High School Graduate	<b>Duff Gerrard</b> Perth-Kinross Ed. Policy Director
<b>Hon. John Godfrey</b> MP, Nat. Child Caucus	<b>Peter Willman</b> Scottish Exec. Ed. Committee
<b>Landon Pearson</b> Canadian Senator Ottawa	<b>Peter Nield</b> Fife CR Officer for <i>Barnardo’s</i>
<b>Ian Maas</b> Deputy Prov. Child/Youth Advocate	<b>Jim Paterson</b> Perth-Kinross CR Officer
<b>Sandra Griffin</b> Can. Coalition for Child Rights	<b>Jennifer Turpie</b> Scottish CR NGO Director

<b>Dr. Philip Cook</b> Child Rights Research Institute	<b>Dr. Pamela Munn</b> Edinburgh University HOD
<b>Dr. Ellen Murray</b> CRC Curriculum Developer	<b>Dr. John I'Anson</b> Stirling Univ. CR Researcher
<b>Dr. Vicki Mather</b> Alberta Teacher's Union Exec.	<b>Susan Fisher</b> <i>Save the Children</i> Director
<b>Jack Sprat</b> Provincial Child/Youth Advocate	
<b>Shirley Sarna</b> Quebec H. Rights Commission	
<b>Mary Rimer</b> Former BC Children's Commission	
<b>Eric Costen</b> Health Canada Youth NGO Director	
<b>Dr. Sonia McPherson</b> Univ. of Alberta Trainer	
<b>Gavin Hainsworth</b> British Columbia HS Teacher	
<b>Anonymous</b> Saskatchewan HS Teacher	
<b>GENEVA</b>	<b>NEW YORK</b>
<b>Mdme. Awa Ouedraogo</b> CRC Committee member from Burkina Faso	<b>Dr. Cynthia Price Cohen</b> CRC Drafting Group and Legal NGO Director
<b>Dr. Jaakob Doek</b> CRC Committee Chairperson	
<b>Dr. Katherine Covell</b> Can. Coalition for CR and Nova Scotia CR Researcher	

As highlighted previously, I began the study with an inductive approach in order to generate interviews and collect documentary evidence at UN sites while making additional contacts for key informants. This process allowed “theoretical sampling” (Glaser and Strauss, 1967; Glaser, 2005), and facilitated the identification of new key informants through a pattern of comparing and analysing early findings. During UN participant observations, active participation in Scottish Children’s Services Planning, and a series of guest lectures I immersed myself within multi-area policy arenas.

Key informant policy actors listed above are from the following groups: an NGO director from the original *Ad Hoc Committee* that drafted the CRC during the 1980s; elementary and secondary school pupils from Scotland; non-governmental organisation representatives from three nations including Scottish teens; secondary school pupils from Canada; educational policy-makers and head teachers from Scotland; Canadian Provincial Child and Youth Ombudspersons; children’s rights researchers and postgraduate instructors from both nations; Canadian and Scottish parents; elected and non-elected governmental representatives from both nations; Scottish Child Rights Officers from two local authorities; and two members of the UN Committee on the Rights of the Child in Geneva.

Following these procedures, an integrated grounded systemic theoretical approach emerged during the study’s coding and analysis of findings, and a description of the rationale and process is taken up more fully in following sections. The methodology took shape through an arguably postmodern approach towards investigating the CRC

within educational systems, policies and practices - one which shifted due to non-linearity and contingency. As the table above indicates, theoretical sampling methods eventually led to key informant interviews in four countries yielding forty-one audio-taped sessions between 30 and 150 minutes in length. Each of the interviews was fully transcribed to facilitate further theoretical sampling and line-by-line data analysis.

### *Phase I - Approaching the policy arena*

- (i) United Nations: Geneva
- (ii) Scotland: CRC Article 42 in Education

The interviewing of key informants began in Geneva in January 2002 at the Office of the High Commissioner for Human Rights while I attended a regularly scheduled child rights reporting session (Committee on the Rights of the Child, Twenty-ninth Session, 2002). This event opened the study formally and encompassed the months leading up to the 2002 General Assembly Special Session on Children. During this time I also grew to appreciate how invitations to provide guest lectures proved to be methodologically significant. One lecturing opportunity arose for a group of social workers, educators, residential care providers and managers from various local authorities throughout Scotland. In addition, a head teacher with a New Community School approached me with an invitation to lecture her P-6 and P-7 pupils regarding children's rights as part of their citizenship curriculum.

As noted, I had begun to negotiate access to this same local education authority by requesting a criminal record check that opened the way for further interviews with local policy makers and practitioners in that community (see Appendix 3 for Local Authority Access Consents). I subsequently visited a Stirling elementary school where I spoke with two classes totalling forty-eight pupils and their teachers. Their animated responses included exchanges about the rights to play and earn money, and how they might participate politically by requesting to visit local councillors to discuss matters that concerned them. I closed each lecture by conducting a child rights vote as part of the run-up to the Special Session in New York, and their hand ballots were gathered up and presented to Nelson Mandela in a Special Session event. (See ballot in Appendix 4).

In developing interview schedules, I took into account the main research question regarding Article 42 and CRC dissemination within education, and a standard set of six

other inquiries. This allowed discussions to move into an in-depth exploration and often led to rich, unscripted exchanges - the longest for 2½ hours. Interview schedules were modified to make them appropriate for age and role-remits for each nation and setting. (See interview schedules in Appendix 5). Having been invited to attend the General Assembly Special Session on Children, I took the opportunity to build the event into the overall design of the study, and I entered the second phase of fieldwork by gaining access to the United Nations in New York. (See Letter of Invitation in Appendix 6).

### ***Phase II - Immersion in the policy arena***

- (iii) New York: UN General Assembly Special Session on Children
- (iv) Canada: Article 42 in Education

During the Special Session and its numerous venues, I made contact with a number of Canadian governmental delegates. One of those delegates who agreed to become a key informant is known as the “Children’s Senator” - the Honourable Landon Pearson attending as the Prime Minister’s Special Representative to the UN. A second adult delegate was Saskatchewan’s Child and Youth Advocate Deborah Parker-Lowen, the chair of the National Association of Child and Youth Ombudspersons. Both delegates provided contacts that furthered theoretical sampling. I was also able to build relationships with young people who were part of the delegation which also led to key informant interviews. Perhaps most significantly during this phase, I interviewed a member of the NGO *Ad Hoc Committee*, Dr. Cynthia Price Cohen who had contributed to drafting of the CRC throughout the 1980s.

Returning to Canada, I undertook fieldwork with these participants that eventually totalled 21 interviews from six of Canada’s ten provinces. These participants also facilitated the adoption of comparative and theoretical sampling to allow a comparable dataset of key informants to be gained as was the case in Scotland. At this time, a pivotal event occurred which contributed to the ongoing design of the study.

I had anticipated that I could simply apply to the same School District in British Columbia where participants from my graduate research still resided to obtain longitudinal data (Mitchell, 2000). While initially asked to submit the overview of my research, I waited for a lengthy few weeks to received a “Disclosure for Research for Statistical Purposes” (see Letter in Appendix 7). I tried to gain access from a classroom

teacher with whom I had collaborated during the original pilot project and who offered this explanation: “Since the UNICEF Election of 1999 Richard, things have really changed regarding children’s rights in the District”. With this disclosure and upon further analysis of findings, I realized I was attempting to force my data to fit a preconceived theoretical framework regarding participation and the voices of children.

Thus, I made a pivotal decision to return to Scotland for the remainder of the study and collected as much Canadian data as possible during this period. I undertook journeys by air and car, and one important interview with young people took place near the largest First Nations Reserve in Canada or the US - southern Alberta’s Blood Reserve. These efforts brought to my attention again how issues of culture, geography, politics, poverty, ability and ideology intersect to transform notions of children, childhood and children’s rights. Certainly, I found a dramatic juxtaposition between these young Canadians and the young people from the non-governmental organisation Article 12 in Scotland interviewed the following year near Loch Ness.

### ***Phase III - Leaving the policy arena***

- (v) Scotland: Article 42 in Education Revisited
- (vi) United Nations: Geneva Revisited
- (vii) Analysis and Write-up

Nearing the close of data collection, two educators approached me to address an interagency group of children’s professionals formed in Paisley during the development of their Children’s Services Plans interested in hearing about this comparative study. Notably, the group expanded to more than 120 participants to accommodate their interests (see Letter of Invitation in Appendix 8). Also salient, this invitation strongly contrasted my recent Canadian experiences.

This phase yielded the study’s largest theoretical insight from library research, and I accomplished the Scottish interviews now totalling more than two dozen participants. As highlighted previously, this included a focus group interview with teens in the village of Drumnadrochit near Loch Ness in response to an invitation from the youth-led NGO Article 12 in Scotland (see also Carnegie, 2000; John, 2003, p.197).

The completion of theoretical sampling had provided interviews at the Scottish Executive, with university lecturers in education departments in Stirling and Edinburgh,

and NGOs involved within the Scottish Alliance for Children's Rights (SACR, 2002). During analyses of this data, Canada's 2nd CRC Report was being evaluated in Geneva and I chose the event as the appropriate termination point for this final phase of fieldwork (Committee on the Rights of the Child, Thirty-fourth Session, 2003).

The following section provides a rationale for the integration of methodology and conceptual framework, the format for presenting data and the interpretation of findings from the study.

### **Rationale for Grounded Theory and Integrated Methodology**

The inductive methods taken up during this study are described by Glaser and Strauss (1967) as the "discovery of grounded theory", a process by which data are coded, and through theoretical sampling, such codes guide further data collection and are then integrated into a theoretical statement (see also Wiener, 1981, p. 267). As within most academic discourse, contentious debate is also the order of the day, and Glaser (2002) cautions grounded theorists not to let constructivist thinking "remodel grounded theory in manifest and subtle ways" (Epilogue; see also Schreiber and Stern, 2001 discussions). Initially, Glaser and Strauss (1967) agreed that grounded theory studies can be presented either as "a well-codified set of propositions" or in a theoretical discussion "using conceptual categories and their properties" (p. 31). Following this line of thought, within this study the thematic categories and their conceptual properties have been derived from straight-forward adoption of grounded coding procedures that are introduced and illustrated in this final section.

Moreover, regarding this study's constructivist epistemology and my adoption of systems thinking to guide the selective coding of research themes, it must be pointed out that grounded theory coding is distinct from Luhmann's "binary codes" which he maintains are necessary prerequisites for the identification and continuity of individual systems (see Spencer Brown, 1969). This important theoretical dimension of the study has limited precedents within the literature (Gregory, Gibson and Robinson, 2005), and is discussed more fully during Chapter Six and the interpretive analysis of findings. However, Glaser's (2002) admonition has also been taken fully into account, that is, while allowing a radical constructivist epistemology to re-shape coding and analysis I have not also remodeled the grounded theory within the investigation. Indeed, the



study's integrated grounded systemic approach developed *solely* due to a rigorous application of inductive methods, a three-staged grounded coding and an autopoietic interpretive analysis in the latter stages.

Similarly, Strauss and Corbin (1998b) emphasise how grounded theorists must take responsibility for their interpretive roles, and theory denotes a set of well-developed thematic categories systematically inter-related through statements of relationship to form a theoretical framework. They do not believe it sufficient to simply report the viewpoints of the people or organizations studied, but contend that “researchers assume the further responsibility of interpreting what is observed, heard, or read” (pp. 160-161). Once new constructs have been uncovered in the data and are built into an explanatory framework the research moves beyond conceptual ordering to legitimate theoretical development. It was in this final capacity, and the integration of Luhmann's conceptual framework as an interpretive epistemology, that I achieved a theoretical model in relation to accurate dissemination of the CRC within and across systems such as education.

Finally, many grounded theory studies focus upon “developing substantive theory” (Strauss and Corbin, 1998b, p.160), but the integrated approach that emerged from this study indicates a potential for further development within both substantive and formal categories. Thus, substantive findings and the “model” are argued as workable within the child rights research and policy arenas, while the integration of grounded theory and social autopoiesis may also have relevance and fit within unrelated disciplines. Clearly, the central focus for adopting grounded theory remains the same: its emphasis upon new theoretical development and these aspects are taken up in Chapters Six and Seven.

### ***Critiquing grounded theory***

While Glaser and Strauss (1967) began their work as colleagues at the University of California San Francisco, they eventually came to disagree sharply on the canons of grounded theory (see particularly Glaser, 1992). Glaser (1992) has set out to “correct” the errors he felt Strauss and Corbin had introduced into the methodology, and authors such as Schreiber and Stern (2001) have followed the extent of this debate. Moreover, Babchuk (1997) contends that Glaser's stance is “more deeply committed to principles ... described as the qualitative paradigm” while Strauss leaned more towards the

prescriptive, detailed methods in keeping with the “canons of good science” (p. 3). One shortcoming identified by Strauss and Corbin (1998b) considers that many researchers do not aim to develop theory at all yet still claim to use grounded methods based on comparisons of data that overlook better suited alternative methodologies.

Theories, they maintain, are not discovered from pre-existing realities but are always interpretations offered from a given ontological and epistemological perspective. As such, these perspectives are always provisional and “researchers are not gods, but men and women living in certain eras ... subject to current ideas and ideologies” (ibid., pp. 171-172). Like Glaser, Strauss and Corbin (1998b) argue that theories are always traceable to the data through which they arise, and “within the interactive context of data collecting and analysing in which the analyst is also a significant interactant ... grounded theories are very fluid” (pp. 169-170).

While avoiding as much of the contention (and contradiction) as possible found within this literature, I took these salient critical concerns forward from the outset of the study within its design and sampling strategies. However, I soon found that neither originator’s approach fully accounted for an interpretive framework, and I fell into the trap of utilising my own preconceived notions during the early part of comparison and analysis. Hence, when I came to the comparative literature to re-interpret thematic findings, I found that explicitly integrating both grounded coding and Luhmannian constructs to develop the study’s grounded systemic theoretical approach offered an epistemological clarity that is critiqued as lacking by Babchuk (1997), Silverman (2001) and others within many grounded theory studies.

Wolcott (1994) also robustly criticises grounded approaches while arguing for qualitative studies to be profoundly “anticomparativist” and for novice researchers never to engage in the potentially mindless activity of simply cataloguing similarities and differences. He clearly states his preference to the “much touted ‘constant comparative method’ suggested by Glaser and Strauss for comparison only to the count of one” (p. 181). Silverman (2001) criticises the inductive approach arguing that through unintelligent use, grounded theory studies degenerate into a banal building of categories now “aided by computer programs” (p. 71). Adopting Wolcott’s three-staged approach for presenting this study’s data and discussing its emergent thematic properties and findings, I could not agree with his criticism particularly in light of Esping-Andersen’s

(2000) postmodern admonitions for comparative sociology to address theoretical atrophy.

Furthermore, while attempting to circumscribe the very sharp disagreements between the originators of grounded theory, I have attempted to find common ground between Glaser and Strauss (1967), and Strauss and Corbin (1997, 1998a, b). These include the constant comparative method of data analysis and literature review, use of fieldnotes and memoing, theoretical sampling that allows the researcher to seek congruence of populations, events, or activities, and open, axial and selective coding of data. While Glaser (1992) argues vehemently against the need for axial coding, in his most recent writing his version of theoretical coding supported this study's interpretive analysis (Glaser, 2005).

### ***Constant comparative method***

Throughout this study, the constant theoretical interplay of *micro* factors from interview and participant observation data were thematically compared and contrasted with *macro* human rights events impacting national policy arenas and re-constituted within respective educational systems. Glaser and Strauss (1967) reason how this "constant comparing of many groups draws the sociologist's attention to their many similarities and differences. Considering these leads him [sic] to generate abstract categories and their properties" (p. 36). Since thematic categories emerge from data, they are important to both theory-building and explaining the kind of behaviour under observation (ibid.). These methods fit quite congruently with my opportunities to engage in participant observations at UN human rights sites, and to subsequently discover a grounded theory from key informant perspectives and emerging human rights literature.

A second important comparative feature for building theory is argued by Strauss and Corbin (1998a) as necessary for directing the flow of theoretical sampling. They reason that a comparison of incident to incident is self-explanatory, and yet there are times during coding when the researcher comes across an incident and is challenged to understand its significance. At these times, they suggest turning to *theoretical comparisons* (p. 79), and such an example of this deeper level of comparison during the study is demonstrated in the following field note.

### *Field Note Excerpt (a)*

I have been repeatedly confused by the presence of neo-conservative religious organisations from Canada that are both ideologically and financially committed to excluding children's rights in favour of family rights at home and abroad. Also, after two years of investigating, I have found no evidence of comparable organised political or religious movements here in Scotland where the acceptance of children's rights in legislation, policy and practice has quantitative, qualitative and cultural distinctions.

When this theoretical comparison occurred repeatedly during fieldwork, I went back to the literature to trying to make sense of its significance. Moreover, this recurrent theme in the data presented a real tension for me. While Scottish NGOs were clearly moving towards the institutionalisation of children's rights with clear confirmation visible in both legislation and social policy, Canada seemed to be moving in the opposite direction. I found Strauss and Corbin (1998a) again provided insight by observing that comparisons at this deeper level allow researchers not to have to reinvent the world. When the researcher becomes confused or stuck about the meaning of an incident in the data, "or when we want to think about an event or object in different ways, we turn to theoretical comparisons" (p. 80).

The influence exerted by non-governmental organisations (NGOs) is embedded within and throughout the children's rights discourse. However, when I interpreted these (apparently) opposing dimensions in the data within Luhmann's autopoietic epistemology, a much deeper and richer development of theory took place. This development is explored further in remaining chapters.

### *Theoretical sampling*

I adopted a second important grounded theory method extensively in this study through use of theoretical sampling. Strauss and Corbin (1998a) define the process as a technique based upon emerging concepts within the data which aims to explore the range of "conditions along which the properties of concepts vary". This involves selecting groups or categories "on the basis of their relevance to your research questions, your theoretical position ... Theoretical sampling is concerned with constructing a sample" (p. 73). This procedure is methodologically significant because it allows thematic characteristics to be built into the research that facilitate theoretical explanation of the phenomena under study (Mason, 1996, cited in Silverman, 2001, p.

252). I was guided by Silverman's (2001) critique that researchers often treat "purposive" and "theoretical" sampling synonymously. Indeed, "the only difference between the two procedures applies when the 'purpose' behind 'purposive' sampling is not theoretically defined", Silverman argues (p. 251).

Thus, the building of a grounded theory requires an explicit, yet iterative and inductive process utilised throughout the research project whether collecting data, coding and analysing, or using early findings to generate additional theoretical sampling. This final strategy is fundamentally directed by the research logic that emerges through data coding, and is closely related to the sensitivity that a researcher develops to emerging concepts (Strauss and Corbin, 1998a, p. 205). Strauss and Corbin (1998a) also maintain the investigator's "purpose is to go to places, people, or events that will maximise opportunities to discover variations among concepts and to densify categories in terms of their properties and dimensions" (p. 201). Glaser and Strauss (1967) point out that while trying to reach theoretical saturation the researcher "maximises differences in his [sic] groups in order to maximise the varieties of data bearing on the category, and thereby develops as many diverse properties of the category as possible" (p. 62; see Snow, 1980 for further discussion).

Thus, I took on the role of being an active sampler pursuing various leads and groups, but without being driven by either notion of being complete or incomplete. This procedure was pivotal in the study and helped to make very clear sense of how the CRC was working across national and local systems within each nation. "Sampling is open to those persons, places, and situations that will provide the greatest opportunities for discovery" declare Strauss and Corbin (1998a, p. 206). By allowing initial interviews to accumulate, I was able to analyse responses and seek out and select similar and contrasting participants cross-nationally, and a demonstration from field notes illustrates the process again.

*Field Note Excerpt (b)*

I began the formal interviewing in this research with a face-to-face interview during a field trip to the UN Office of the High Commission for Human Rights in Geneva with Mdme. Awa Ouedraogo a member of the Committee on the Rights of the Child. While here, I also have the opportunity to explore the policy library at this place where all national child rights reports – over 250 at the time of this writing – are formally submitted, reviewed and evaluated under Article 44 of the CRC.

A lengthy comparison of policy documents also proved informative during this period of theoretical sampling. I had begun the study with a focus on CRC Article 12 and eliciting children’s views since I had observed how young people had not entered the child rights policy discourse in Canada in the same way as within Scotland (Mitchell, 2002, 2003a, b). Ultimately, an appreciation of how the UN’s children’s rights policy process impacts local education policy shifted my conceptual framework, and these autopoietic implications for coding are discussed in greater detail in following sections.

***From open and axial to selective coding***

This section explores how the technique of theoretical sampling was combined with open and axial coding in order to facilitate selective coding. Within the study, this three-staged coding process represents the methodology by which data are broken down, conceptualised and reframed first by their thematic categories, and finally, into new theoretical constructs. During write-up of the study, these same three stages of coding corresponded with the three-staged process of analysing and presenting qualitative data argued by Wolcott (1994) for explicating the distinctions in qualitative research most often simply implied. Guba and Lincoln (1989) have described this analytical process as a strategy combining inductive coding of categories simultaneously with comparisons of all observed incidents. Strauss and Corbin (1998a) identify the aim of open coding is to discover, name, and categorise phenomena within interview transcriptions according to their properties and dimensions. In the following table, segments of text illustrate how coding and theoretical sampling were combined during fieldwork in British Columbia and Kirkcaldy, Scotland.

**Table 3.2 – Open Coding of Texts from Comparative Interviews**

<b>BC Provincial Deputy Child Advocate</b>	<b>Scottish Child Rights Officer</b>
My work is both working individually with young people but also working collectively in training, around advocacy and rights	Trying to create a living document out of the Children’s Services Plan ... meaningful to both young people and to people who are working in support of young people
I don’t think the Convention lives very well in British Columbia	They are participating both directly and indirectly. ... various methods piloted in terms of young people’s involvement in CSPs
One of the Articles in the Convention talks about gov’t obligation to talk about the Convention. So that’s one of the reasons why I’m here today	Alongside the CSPs, Fife Council are developing a children’s strategy which will prioritise aspects of the plan with other strategies and other plans

Been a real failure both in gov't and in NGO's in British Columbia to make the CRC live ... certainly a big interest in the CRC but they're pretty low profile in bringing awareness	Under-pinned by both Children's Rights and a Children's Participation Strategy the rights and participation theme group have the responsibility for developing these strategies now
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As the study expanded, I found significant legal and political distinctions in the statutory application of children's rights in Scotland, one of which was the existence of local authority Child Rights Officers, a post currently not found in any Canadian jurisdictions. In the following table, similar texts are comparatively analysed through axial coding.

**Table 3.3 – Axial Coding of Texts from Comparative Interviews**

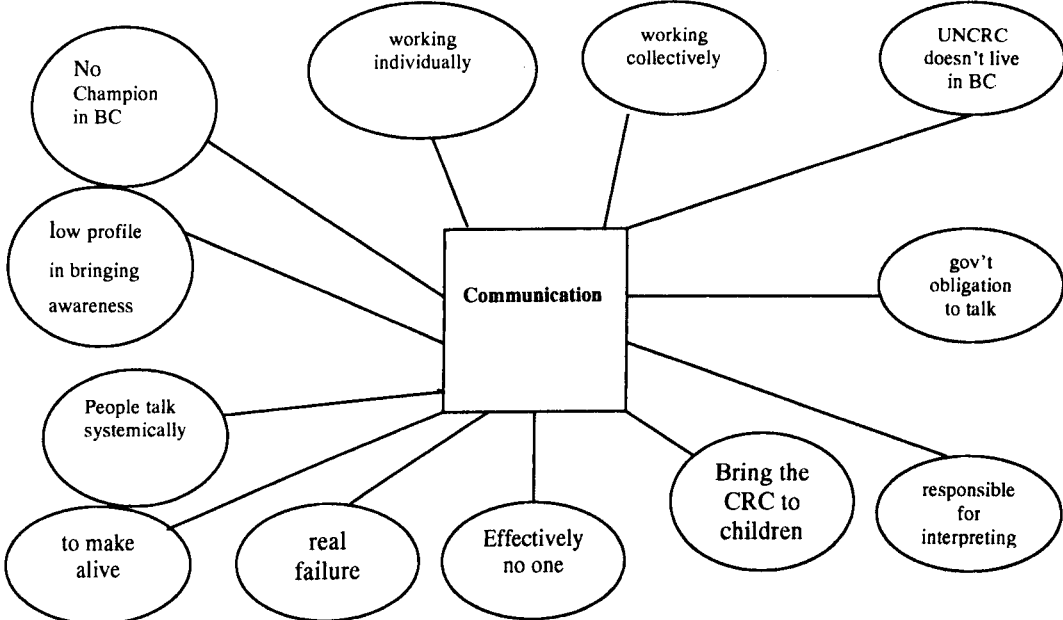
<b>BC Provincial Deputy Child Advocate</b>	<b>Scottish Child Rights Officer</b>
<u>Working individually</u> with young people	<u>create a living document</u> out of the Children's Services Plan
<u>Working collectively</u> in training, advocacy, rights.	<u>meaningful to both young people</u> and to people working in support of young people
I <u>don't think the Convention lives well in BC</u>	They are <u>participating both directly and indirectly</u> .
The Convention talks about <u>gov't obligation to talk</u> about the Convention.	various methods piloted in terms of <u>young people's involvement in Children's Services Plans</u>
Who would be <u>responsible for interpreting the Convention?</u>	Alongside <u>Children's Services Plan Fife</u> are <u>developing a children's strategy</u>
<u>Bringing the Convention into the lives of children and families?</u> In government?...	<u>prioritise and really connect the Children Services Plan with other strategies</u>
<u>Effectively no one</u> Been a <u>real failure both in gov't and in NGO's in BC to make the CRC live</u> they're pretty low profile in bringing awareness of the CRC	Under-pinned by <u>Children's Rights, Children's Participation Strategy - rights and participation theme group raising awareness of children's rights</u>

### Discussion of Core Category and Core Distinction

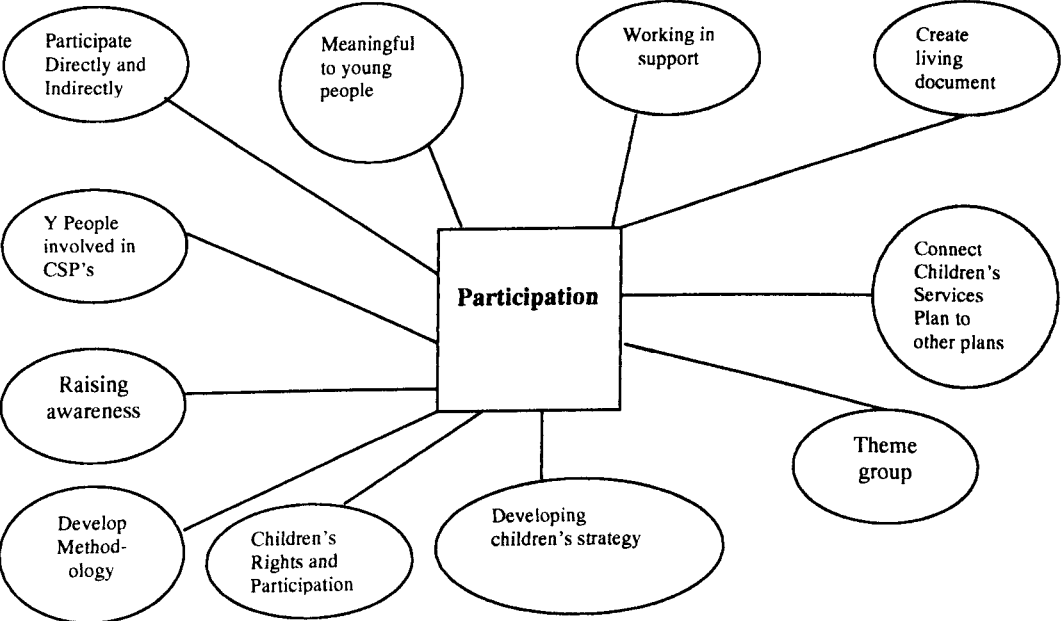
It was during this stage of analysis that the fullest integration of autopoietic theory and grounded methodology occurred. Glaser (2005) notes “all research is grounded in some way, but that does not make it grounded theory ... GT is a set of clear, rigorously set procedures that lead to a conceptual theory” (p. 127). For their part, Strauss and Corbin (1998a) observe that during open coding, the analyst is primarily concerned with generating categories and their properties to determine variation. During axial coding the various dimensions are then systematically developed into thematic categories. On the other hand, open, axial and selective coding procedures stand epistemologically

apart from Luhmann’s systemic binary coding discussed in positive and negative terms such as lawful/unlawful, having power/not having power, or governing/governed and government/opposition used to identify and delimit systems (Luhmann, 1986, cited in King and Thornhill, 2003, p. 24). The following two figures provide snapshots of how open, axial and selective coding of texts were integrated with autopoietic constructs.

**Figure 3.1 – Axial Coding from Canadian Interview**



**Figure 3.2 – Axial Coding from Scottish Interview**





During earlier grounded coding, I began to observe that data were indicating something radically different than I had first conceptualised within an investigation framed by the sociology of childhood. At this point, I returned to the comparative literature to try and find “fit, relevance, and workability” for the emerging theory (Glaser, 2005, p. 131; also Gregory, Gibson, and Robinson, 2005, p. 1861). Preceding **Tables 3.2** and **3.3**, and *Memos (a), (b) and (c)* illustrate both the process and the product through step-by-step, comparative coding procedures adopted from grounded theory. However, during selective coding, I found a re-interpretation of the data was possible by deploying core constructs from Luhmann’s conceptual framework.

A variety of subcategories were initially revealed within the texts which led axially to the thematic category in **Figure 3.1** identified as **Communication** - both formal systemic and socially interactive properties were underscored by key informants throughout the study. A similar comparison of texts using selections from a Scottish interview led to a different axial category identified in **Figure 3.2** as **Participation** - ultimately revealed as the study’s grounded core category.

While few references or precedents guided this phase of analysis, I was able to access an unpublished doctoral thesis by a Luhmann student in another discipline (Gregory, 2003). The key analytical and epistemological feature of this investigation occurred during this critical integration of axial grounded coding procedures with binary coding from Luhmann and Spencer Brown identified by Gregory, 2003, p. 127 as “distinction theory”. Both thematic categories above are empirically linked to informant responses to the research question regarding UN obligations for policy makers and educators to “make the Convention widely known”. During this study’s integration of grounded and systems data coding, I found that Luhmann’s notion of how observations or distinctions occur within functional systems impacted the analysis unexpectedly. In her unpublished thesis (subsequent portions peer-reviewed and published), Gregory maintains that adopting Luhmann’s “principle of the core organising distinction ... is congruent with the core category in grounded theory but operationalised through distinction theory. It is therefore a specific form of categorisation and thus a modification of classic grounded theory” (2003, p. 127). Subsequently, this pivotal analysis from Gregory’s thesis was peer-reviewed and published during the final editing of the epistemologically similar grounded systemic investigation (see Gregory, Gibson and Robinson, 2005).

Furthermore, I was mindful of the common critique in the literature that grounded theorists do not clearly explicate how it is that comparative analysis actually aids in new theoretical construction, and that Gregory had overcome this by adopting Spencer Brown's logic (1969) from systems theory. Within his constructivist epistemology, Luhmann argued this approach from calculus was necessary for making observations or *distinctions* that allow autopoietic systems to replicate.

Maturana and Verela (1980) had also earlier identified Spencer Brown's logic as the model that allows for cognitive processes to occur through binary codes. Subsequently, in a co-authored publication (Gregory, Gibson and Robinson, 2005), Gregory's discussion of "a grounded systems approach" offers additional clarity. "Combining grounded theory with systems theory means there cannot be a search for the main concern of the participants". Instead, these authors contend, the researcher "must search for the 'core distinction' underlying the participants' communications" (pp. 1860-61).

Thus, by selectively coding this study's thematic categories and explicitly adopting Luhmannian constructs and coding at this point, I found new interpretive meaning could be made from the thematic categories. Below, I have used fieldnote excerpts and memos to further illustrate how grounded analyses facilitated new distinctions within the study.

The text boxes containing *Memos (a)*, *(b)* and *(c)* demonstrate the observations and related analytical thinking underlying the process of obtaining a core distinction. The final memo records the reflexivity of the process during selective coding.

#### *Memo (a)*

In my initial enthusiasm, I moved quickly through the interview analysis in Canada looking for the voices of young people and/or their lack of voice conceptualising the study as a discovery of the views of young people and planning how I might access children as my participants. After comparison of the above key informant's discussion with his Scottish counterpart, I could quite clearly hear the voices of young people in Scotland, and while not driving the process entirely, they were being engaged in policy development and rights-based planning in a participatory manner that was not occurring in my own country.

*Memo (b)*

I had not fully appreciated how the separation between children's rights and human rights discursively was also being reflected in the interviews. On the one hand, the voices and views of children and young people were comparatively robust in Scotland while evidence from Canada frequently indicated a silencing within important policy discussions, but I can't simply repeat what I can see already established through the literature or within my own previous research!

*Memo (c)*

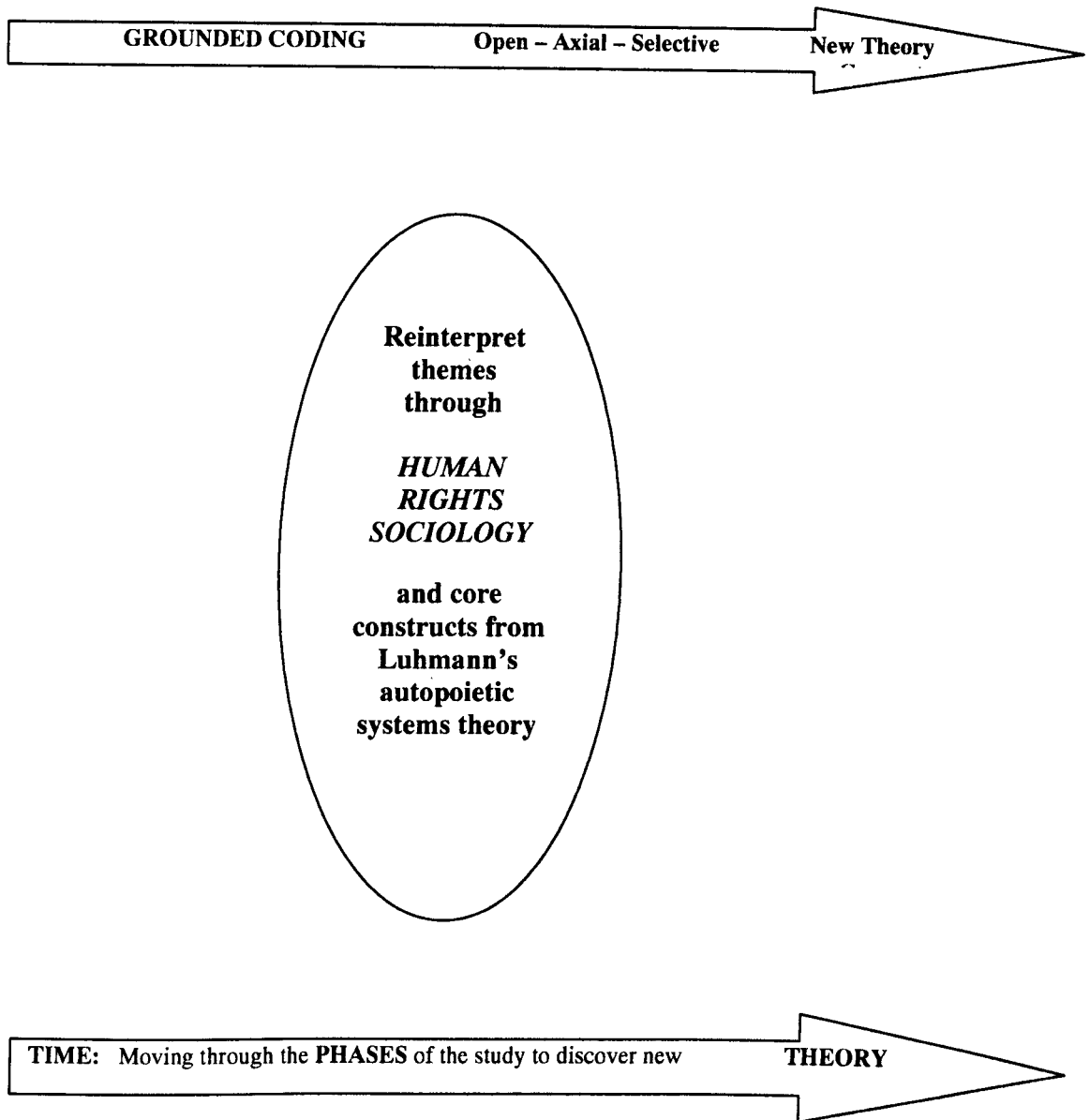
My discovery in the literature of Payne's (2002) review of the new legislation for the Scottish Children's Commissioner, as well as her reflections on the Concluding Observations from the Committee on the Rights of the Child for the UK's 2<sup>nd</sup> CRC Report (2002), coincide with Verschraegen's (2002) and King's (1994) interpretations of human rights systemically and children's rights as "autopoietic communication". These references suggest a different way to make sense of the whole study and how I've conceptualised my research up to this point.

In essence, the above memos capture the analytical processes that preceded the integration of selective coding from Luhmann's interpretive framework and the adoption of Spencer Brown's binary coding of the six main research themes. Strauss and Corbin (1998a) also reflect on the process in the following passage.

Watching theory evolve is a fascinating process. It does not happen overnight (although one might have a sudden 'insight') ... integration is an ongoing process that occurs over time. One might say that it begins with the first bit of analysis and does not end until the final writing ... integration is an interaction between the analyst and the data. Brought into that interaction is the analytic gestalt, which includes not only who the analyst is but also the evolution of thinking that occurs ... through immersion in the data (p. 144).

In this study, the gestalt occurred during comparison of data within the emerging sociology of human rights literature to discover Luhmann's sociological systems thinking.

**Figure 3.3 – Evolution of Grounded Systemic Theoretical Approach**



### **Discussion and Conclusion of Chapter Three**

This chapter addresses critical gaps identified in the theoretical literature through the integration of classic grounded theory research methods within the “sociology of human rights” framework posited by authors such as O’Byrne (2003), Luhmann (1965) and Verschraegen (2002). I have reviewed the methodological and theoretical choices that shaped the design strategies, fieldwork procedures, data collection, coding and analysis. A critical methodological feature of the study included participant observations at the

UN General Assembly in New York and two CRC reporting sessions at the UN Office of the High Commissioner for Human Rights in Geneva. Theoretically, there is scant literature to date supporting this discrete sociology of human rights, but where these arguments have been posited, theorists such as O'Byrne (2003) and Turner (1993) are concerned with human frailty and human rights and not explicitly with power or empowerment.

Initially, I chose grounded theory as the most appropriate methodology for such a broadly-based study because of the gaps in the literature and my main aims, and in the end, this rigorous approach to empiricism provided a counter-balance for Luhmann's abstract conceptual framework. Accordingly, throughout the study and its final write-up I constantly returned to the literature to discover and select new ways of conceptualising themes and their properties while critically re-appraising each category in turn.

It is argued here that through its integrated grounded systemic theoretical approach the study addresses Luhmann's critics who suggest his thinking cannot be applied to empiricism within the social sciences. In addition, my rationale for adopting autopoietic theory to re-interpret the study's data was shaped by the deconstruction of the Convention within the sociological literature based primarily upon ontological concerns while overlooking epistemological features such as Article 44 reports. Thus, Luhmann's sociological conceptualisation of human rights as autopoietic forms of legal and educational communication is presented as an interpretive framework (see also Glaser's 2005 comments on the use of autopoiesis as a theoretical code within grounded theory).

As I have argued within the literature review, the UN Convention on the Rights of the Child straddles the modern/postmodern divide, and similar to Luhmann's critics has detractors from both camps. During fieldwork, I came to appreciate that neither modernist nor postmodernist approaches to childhood theorising fully accounted for the variation in children's rights education policies observable across the two nations. The Convention also appears to have appropriated many of modernity's highest ideals by achieving the kind of postmodern ideology posited by human rights theorists while remaining open to a more reflexive, non-linear and critical approach to the Enlightenment project argued by Luhmann. Despite its conceptual and theoretical shortcomings, the CRC has been freely ratified and applied across scores of national,

political and cultural contexts. It has nonetheless retained its fluidity at the same time as it offers an unparalleled application of human rights for children and young people.

This non-linear fluidity forgoes western historical narratives eschewed by postmodernists and allows innumerable contexts to shape their own cultural notion of how 'childhood' might appear or fit through a 'child rights' lens. These are often guided by local views and voices of children themselves. While legislation and jurisprudence are concrete ways to interpret the CRC (for example, the US Supreme Court decision, Law Center, 2005), other theoretical approaches to the treaty as a form of living law are quite visible through the autopoietic methods outlined in this chapter. Organisationally speaking, autopoiesis is not a difficult premise to understand when one recalls how minutes taken during meetings are treated within bureaucracies, and how these move forward into different forms or actions. The discussion of Luhmann's systemic coding is also germane to the analysis by facilitating development of sociological theory.

In essence, I am arguing for a fundamental re-conceptualisation of child rights research, social policy, and practice within a more congruent human rights conceptual framework. References to the shift in power relations from the literature were also evidenced by the study's thematic categories, and provide a level of empirical support for this argument. Luhmann's functionally differentiated autopoietic systems, structural coupling, perturbation, and binary coding are the core constructs utilised as analytical properties. The selective coding and interpretive analysis provided by the Luhmann/Spencer Brown notion of systemic, binary coding facilitates another level of empirical support within the findings. Finally, the chapter concluded with an illustration of how the integrated grounded systemic theoretical approach developed during the study to allow the reinterpretation of thematic categories of participation and communication.

The following Chapters Four, Five and Six present the study's findings in depth through an explicit, three-staged analytical framework argued by Wolcott (1994) for greater clarity and explicitness within qualitative research accounts.

## CHAPTER FOUR: DESCRIPTIVE ANALYSIS OF FINDINGS

### Introduction

This chapter provides a descriptive analysis of thematic findings from interview data with 50 key informants, and is chronologically organised to correspond with the phases of fieldwork. In keeping with Wolcott's (1994) precise definition of qualitative analysis, this organisation of findings demonstrates "a scientific approach that is inherently conservative, careful, [and] systematic" (p. 25). Accordingly, Chapters Four, Five and Six utilise Wolcott's typology for transforming qualitative data through description, analysis and interpretation, a presentation format that is also congruent with the three grounded phases of open, axial and selective coding.

I have identified the integration of methodology and epistemology within this study as a grounded systemic theoretical approach, and due to an overall lack of precedents within relevant literature, during the latter period of constant comparative analysis I contacted a number of Luhmann scholars gaining insight into the coding procedures that facilitated this integration. While acknowledging the emphasis among these three analytical dimensions is relative for each researcher and every investigation, Wolcott (1994) observes the process is not arbitrary since the main aims of any study "offer signposts" (pp. 36-37). Recalling that the chief aim of the study is to generate new theory, how to best achieve analytical balance amongst these three dimensions while meeting the study's potential became the art of the matter.

Moreover, while integrating binary coding during the selective/interpretive analysis in subsequent chapters, I address Wolcott's contention that qualitative researchers rarely make such explicit distinctions choosing instead to mechanically list themes under the single rubric of data analysis. In keeping with a grounded theorist's preoccupation with building theory through inductive means, this has largely been an open and iterative process dependent as much upon contingency as any theoretical preconception. Indeed, the 'discovery' of Luhmann's autopoietic systems approach within the sociology of

human rights discourse occurred after I rejected the sociology of childhood as an incongruent conceptual framework.

### **Presentation of Data**

As highlighted, this approach for rendering large amounts of qualitative data into an authoritative account identifies three discrete dimensions that are frequently obscured in the literature. Wolcott (1994) maintains that for most ethnographically inclined researchers the larger task of interpreting often remains incomplete (pp. 10-12).

Therefore the following three chapters are organised as follows:

1. Description stays as close to the originally recorded data as possible. The analytical question guiding this stage asks: *What is going on here?* (Note: This stage of analysis corresponds with open coding).
2. Analysis extends the descriptive account of the data in careful, systematic ways that identify key factors and the inter-relationships amongst them. Analytical questions guiding this stage ask: *How do things work here?* Or in light of postmodern contingency: *How might things work differently?* (Note: This stage of analysis corresponds with axial coding).
3. Interpretation does not claim to be as scientific as the other two dimensions being neither as loyal to, nor as restricted by, observational data alone. The guiding question here is *What does it all mean?* (Note: This stage of analysis corresponds with selective coding).

Wolcott declares that description is both an art and a science, and “in its everyday sense ... is at the heart of qualitative inquiry”. Firsthand description is not the only basis on which provocative analysis and interpretation may be founded, he claims, but when this is “the basis of our claim it is worthy of our painstakingly thorough and adequately comprehensive efforts to try to get things right” (pp. 55-56). He cautions further that beginning researchers avoid the trap of attempting to provide a “pure” description light-heartedly referred to as “immaculate perception” by at least two authors - C. G. Beer (1973) and Nietzsche (cited in Wolcott, 1994, p. 13).



Nonetheless, Wolcott also observes that “data are tainted with an analytical or interpretive cast *in the very process of becoming data*”, and he refers to Pitman’s (1992) insistence that “data are already theory” (emphasis by Wolcott, 1994, p. 16). In this investigation, the integration of Luhmann’s interpretive scheme in the latter analytical stages mediates such bias. The emphasis in this chapter is on descriptions of the thematic categories as they emerged from key informant interviews. At this early stage, the analytical and interpretive conceptual properties in the same data “go largely unremarked” (Wolcott, *ibid.*) and are reserved for subsequent chapters.

## **Phase I - Approaching the Policy Arena**

### ***United Nations Geneva: High Commission for Human Rights***

The study’s fieldwork and formal interviewing began in Geneva in January 2002 with a member of the Committee on the Rights of the Child, Madame Awa Ouedraogo from Burkina Faso. She described the procedures involved with national reporting to the Committee, and the common framework required for developing these evaluations that uses Article 42 and the four core CRC principles. This opening session provided an additional opportunity to review and collect international policy documents discussing the UN’s Decade for Human Rights Education (1995-2004) from the library of the Office of the High Commissioner for Human Rights. Curiously, at that time I found none of the UN personnel with whom I spoke could recall ethnographic research taking place prior to my own visit. Concerning Article 42 within domestic educational systems, CRC Committee member Madame Ouedraogo observed:

*The easiest thing to do - what most countries do - is make public awareness of the Convention...also through radio and television. What I know is that most countries are doing professional training. We want professional training for teachers and other professions working with and for children. We want them to integrate human rights work not only for teachers but health professionals, the police, churches and social workers. We think the best way is to put it in the professional schools for each of these.*

This key informant was the first to describe the importance of human rights legal **communication** - a theme that ran throughout the study. Such systemic communication

takes place initially between international and domestic policy actors during the ratification of the CRC, and subsequent adherence to child rights monitoring and feedback. Moreover, her reference to the need for “professional training” of educators is recorded within all Article 44 Concluding Observations, and Canada and Scotland have each received this request on two occasions. Previous to beginning fieldwork, I undertook a comparative analysis of these legal communications as well as pertinent children’s rights legislation that also underscored the importance of this thematic category. This allowed theoretical sampling to occur more rapidly and facilitated negotiations for access to local policy arenas.

### ***Article 42 in education: Stirling local authority***

Within my interview schedules, I referred to the four core Article 42 principles as well as other treaty provisions. In Scotland, I found many of these CRC texts directly embedded within policy and programming as they had been embedded within the statutes of the Children (Scotland) Act 1995 and the Standards in Scotland’s Schools etc., Act 2000. As the study progressed, proposals for the new Children’s Commissioner and subsequent new legislation also contained core treaty principles, particularly with regard to Article 12 participation. These policy documents provided a critical disjuncture for early comparative analysis with Canada to begin (Mitchell, 2002).

During this time, I made contacts within two Scottish local authorities of Perth-Kinross and Stirling, and new thematic categories such as local approaches towards child rights *pedagogy* emerged. These entrances into local arenas for children’s rights education provided an early theoretical ‘fit’ for the highly inductive first phase of the study. (see Local Authority Letters of Consent in Appendix 3). Early impressions gathered from participant observations and guest lecturing were then critically analysed to facilitate theoretical sampling, and were fully supported by later interviews: pupil *participation* was clearly a priority for policy actors within both local authorities. Indeed, pupil participation was the central rationale for my invitation by a head teacher to discuss the CRC with two classrooms of P-6 and P-7 pupils at the New Community School

Cornton Road Primary in Stirling. After reviewing their notions of citizenship traceable from previous centuries, and analysing how these same concepts are linked with modern UN children's rights developments, these newest Scottish citizens became avidly interested.

*What about that new highway out there runnin' through the playground? Is that about our rights? Who can we talk to?... I wanna knoo about when I earn money at home – does my mom get to keep any of it? I think we should be able to earn our own and have our own bank account.*

*And those dirty needles sometimes in the yard - who should we talk to...? You mean we can just call the Council up ourselves?... I think we should remind the adults here in Stirlin' cause they might forget about this – about rights. We should write a letter to the Council and let them know about play – that we just want a place to play!*

The young man's comment about earning pin money that his parents then held in an adult bank account would be a rich area for future research since it generated an enthusiastic discussion. Their teacher volunteered how many of the P-6 students were involved in running a 'tuck shop' for their schoolmates and using the funds generated to help with fieldtrip expenses. While the responsibility of earning wages was a common experience for most class members, the actual spending of this cash was a highly contested area and still heavily weighted within the realm of adult power exchanges. These open discussions provided excellent examples of children's views of their own rights, and I observed that many young people believed themselves to be unfairly treated at home in this realm of personal agency and development.

Perhaps the most disconcerting response that morning came from an 11 year-old boy with a speech impediment. *My step-dad used to sometime hit me mum and me an' he said they was his rights.* While having anticipated this potential (these implications are reviewed in Chapter Three's section on ethical steps taken during the research), I did not respond right away and a glance towards the teacher appeared to communicate that these were known facts in the school. She confirmed this impression in private conversation afterwards. Once again, bringing Jenks' (2003) editorial into the analysis as well as Punch's (2002) discussion, it seems clear that there *are* ethical differences

when conducting research with children within a rights-based framework and that these are integrally linked with power issues. These descriptions are illustrative of how educational researchers, policy actors and classroom practitioners may adopt the CRC's core principles to explore various pedagogical and social issues all the while striving towards democratic exchanges of power.

Shortly before conducting this citizenship lecture and making these linkages with the CRC, I visited Stirling Council offices to interview the Head of Schools and her chief policy officer. I had responded to her electronic request for the interview schedule, and this strategy facilitated a dialogic, question and answer style of exchange. In addition, the Curriculum Development/Quality Assurance officer who attended the session offered unique perspectives about the recurrent theme of pupil participation as pedagogy, an ongoing policy initiative claimed as "central" within Stirling schools.

*It's fitting we're talking about children's rights here today. It was five years ago today the school children were murdered in Dunblane ... now in so many ways we've moved past the Convention on the Rights of the Child. We have moved beyond rights and moved beyond the curriculum... It is the active participation focus - that's how they learn... and you're constantly reminding people that children have a voice... children are expected to participate in local community forums and their views are very much valued.*

*We make sure there is some balance between 'Yes' you have been listened to and that an action has been taken... or other things that take longer. It is about encouraging schools to promote active citizenship where children can learn about local democracy and citizenship in action... if it's in our Children's Services Plan then it's a priority.*

The reference to statutory Section 19 Service Plans underscores the interconnectedness of rights-based education and social policy stemming from School Plans within the Scotland Schools Act (2000). These participatory planning sessions are an important contrast between the two nations that became ever more apparent during comparative analysis of texts, and critical questioning of how the CRC works within each national educational system.

The *cultural* distinction in children's citizenship education emphasised by the above policy officer is reflected in Scottish legislation, and is germane to understanding the

variations between the two nations. As with the majority of Scottish adult interviewees, the above participants gave similar responses to my query about what was culturally distinct regarding CRC Article 42 implementation in education within a whole community/whole school participation “ethos”.

*This business of local decision-making and devolution in Scotland, in the new Scottish parliament and now into 32 local authorities...for us as a Council, we've devolved decision-making to schools. There is a very strong local authority ethos in Scotland that is about a network of schools that share and collaborate when it comes to a policy agenda like the children's rights agenda – it is easier in Scotland than in England.*

These comments by Stirling's educational policy officers reflected the tone of difference between Scotland and Canada that I would see for the rest of the inquiry.

### ***Perth-Kinross local authority***

Thinking both critically and comparatively, I investigated the above claims through the method of theoretical sampling in a neighbouring local authority of Perth-Kinross. This resulted in an interview with the manager responsible for their integrated Children's Services Plan who assured me that these systemic policy initiatives were shaped upon the central CRC principle of active participation.

*My job is the Service Manager within the Quality Development Division of Education and Children's Services...I came into this from the social work side...and I work with the schools in the area. It's worth saying that this integrated approach is still developing and it's further ahead in some places and behind in others.*

*A lot of the new Children (Scotland) Act 95 is derived from the UNCRC and it was brought in in different ways...It's sort of dropped into the Act and you spot the rights as you go through...*

Subsequently, I was invited to observe and participate in the development of their latest statutory Children's Services Plan. Over the course of the next few months, I participated in numerous meetings attended by policy-makers and practitioners from statutory agencies, the voluntary sector and service delivery managers.

*What we've got to do now under Section 19 is produce a Children's Service Plan but it makes people ...say 'We have an actual duty'...we did work procedurally to try to make sure that children's views were taken into account.*

Most saliently for the comparative analysis, one of my participant observations included a community-based consultation during the development of the Plan that shifted from a focus on professional perspectives to accessing the views of young people within local schools. This first-hand observation allowed me to consider the distinctions between various qualities of participation such as child and youth-led consultation and practices of inclusion within local policy-making and implementation.

Furthermore, throughout these early phases I was received as an honoured participant whenever negotiating access or discussing the CRC in Scottish policy contexts. While attributing these responses as gestures of hospitality, I eventually concluded such exchanges were also related to the statutory relevance of the CRC and emergent children's rights social policies. Clearly, as this local authority policy officer suggested, "the journey" towards a rights-based ethos in both policy and practice was being facilitated by statutory developments (see Letters of Consent to Undertake Research in Appendix 3, and Children's Services Plan Cover in Appendix 12).

## **Phase II - Immersion in the Policy Arena**

### *United Nations New York: 2002 Special Session for Children*

My attendance at the UN General Assembly's Special Session for Children was methodologically significant since it provided me with access to many research participants. As noted, over 50 key informants considered as active in policy formation and/or implementation were interviewed and their names and titles - where consent was provided - are listed in **Table 3.1** (pp. 84-85). Most significantly, the research shifted epistemologically as I understood more clearly the ongoing emergence of human rights law and domestic children's policies generated by such systemic events. The constant comparative method proved integral to theoretical development during this phase.

I observed the thematic category of *non-governmental organisations* (or *NGOs*) clearly in evidence during this UN Special Session with civil society representatives from the following policy arenas in attendance: Educational, medical, environmental, denominational, child sex-trade, child-labour, anti-slavery, anti-torture, and anti-poverty organisations. While addressing a large gathering of NGOs, the UN Secretary General Kofi Annan also focused upon the growing international significance of children's and young people's participation (see Appendix 9 for a copy of his address during this participant observation).

*It is always a privilege for me to enter a room full of people whose goal is to make NGOs give life and meaning to the concept 'We the people'...you are a vital part of the UN agenda. Without you we cannot do what we do...Never before have so many young people participated. It is right and necessary that young people be heard and that we are prepared to take them seriously as participants in the Special Session.*

Furthermore, one of my key informant interviews during this Special Session was held with an NGO director, Dr. Cynthia Price Cohen, who had also participated during CRC drafting in the 1980s. She addressed the main research question directly by showing me archival documents and recalling the negotiations surrounding the choice of the exact texts for CRC Article 42 (see copy of archival documents in Appendix 10).

*It was 1987 and the NGO Ad Hoc Group suggested we have a proposal about the implementation of the CRC...Article 42 was then called 21-tare but they re-numbered everything at the Second Reading...*

*Article 42 did not have the word 'appropriate' in the First Reading for example and the word [now] appears something like 45 times in the Convention...It seemed that would be something you could measure if you were measuring the extent to which a country were living up to its obligations...*

*What's so significant is that it comes from NGOs...considering that the Committee on the Rights of the Child make such an issue of this...BUT you need to know the echo of that Article...if you are making the 'principles and provisions' known then the opposite to that is [Article 44] making the Reports widely available to the public...between the two it's like a see-saw [or teeter-totter].*

Price Cohen's observations as a direct participant in the treaty's historic drafting process were both authoritative and credible, and her recollection became one of the most significant findings of the study. The inter-relationship between basic educational knowledge obliged within Article 42 and new legislation created through Article 44 reports is continuously being built up by new human rights research and social policy. This key informant also provided reference literature wherein she had identified this balance as a form of "draft jurisprudence" (Price Cohen and Kilbourne, 1998, p. 643). Furthermore, this type of dynamic is also clearly reflective of autopoietic forms of systemic communication.

In light of this analysis, more than a decade after its formal presentation during the 1990 World Summit, the CRC was being autopoietically re-evaluated at the General Assembly by 70 Heads of State and hundreds of civil society representatives. Initially, the theoretical implications of Price Cohen's recollection and documentary evidence were not evident; however, these data took on greater significance in the later stages of coding and analysis after deploying core constructs from Luhmann's systems thinking.

In another Special Session participant observation, I noted that NGO director Jo Becker from Human Rights Watch identified the following CRC theoretical *tension*.

*I want you all to know that not all of the US is against the UNCRC...There are some organisations that feel by promoting the rights of children you are undermining the rights of parents and this will somehow damage American families...Public education is needed to change public attitudes about what the Convention is...families could be educated to look at the document in detail and see how it supports their own children's rights.*

This description highlights a common tension that creates conceptual conflict in both nations under study, but with dramatically different policy and legislative outcomes in Canadian contexts. Both formal systemic and informal dimensions of international communication were observed during these fora. Canadian delegates and NGOs were commended for their influential role during policy negotiations, a reputation promoted internationally and often taken for granted by members of the public at home. At the same time, I recalled that very small numbers of Canadian citizens, particularly



children and young people, have basic educational knowledge about children's rights or how the CRC works systemically (Mitchell 2000, 2002, 2003a, b; also Covell, 2001; Hainsworth, 2000; Howe and Covell, 2005; Williams, 2005). While initially such *cultural* distinctions were perceived as quite ordinary, over the course of the research and its constant comparative analyses, I grew to appreciate the extraordinary systemic impacts of these civil society actors within domestic law, education and social policy.

### ***Canada: Article 42 in education***

In Ottawa, I interviewed Senator Landon Pearson whose leadership within the children's rights community in Canada and abroad have gained her the title "Senator for Children and Young People". She offered in-depth reflections on participation, *culture* and tension regarding the CRC's implementation in provincial educational systems.

*The issue...is jurisdiction in the Canadian context and the provinces have absolute jurisdiction over education. The only role the federal government can play is to provide supporting materials on human rights...[Article 42] can't be implemented directly...it's a provincial government decision...if you're asking from a federal point of view there's nothing we can do.*

*You know about the experience we had when UNICEF and Elections Canada decided to have an election on children's rights. The Reform Party went back to their ridings and addressed all the School Boards that said they would have the election and put pressure on them. Many didn't have the election because of these arguments. I think that's always an impediment with School Boards - they tend to be easily spooked.*

*What I find when I talk with...high school students who come to Ottawa every week... when I ask them if they know about the Convention very few of them do. They know a lot about human rights so what's happened is that a lot of education programmes are around the general topic of human rights and not about children's rights specifically...*

Such jurisdictional ambiguities proved to be a large part of Canada's CRC tension and a significant cultural departure with Scottish educational law and policy. Senator Pearson's comments regarding discrimination and the potential within CRC education to ameliorate this tension were common to both countries, and were later reinforced by

interviews with young people from a First Nations reserve. Clearly racism, as well as the exclusion of children with cognitive and mobility challenges from participation within local and systemic democratic processes, are sources of tension and impede full implementation of the CRC within law and education of both countries.

*We do all this praising of culture and buy Aboriginal sculptures but if you look downtown at that teen-ager who's on the streets, they are very vulnerable... she's likely to be Aboriginal and at some level of increased discrimination... she might have other difficulties like FAS [Foetal Alcohol Syndrome] or is disabled in another way... it's about power and when you have people who are comfortable in their own skin, then they are comfortable with others in their own skin... if teaching about discrimination and children's rights doesn't get to that deeper part then we're missing it.*

The theoretical implications of adult/child power relations emphasised by Senator Pearson had been frequently highlighted within the literature (Devine, 2002; John, 2003; Mayall, 1994, 2000) and articulated by other key informants as well. Carrying this notion forward, ongoing theoretical sampling methods allowed new key informants to be identified.

In this regard, I contacted local officials in British Columbia to interview pupils from my previous research for follow-up (all now in secondary school). As noted in Chapter Three, I found that a policy shift in that School District's research protocols favouring statistically oriented designs (see copies of correspondence in Appendix 7), and clearly, being a valued researcher was not being reciprocated as I had noted in Scottish settings.

One British Columbia classroom educator responded to my interview schedule electronically, and reported his impressions of the changes in Canadian culture that had created such tension regarding the CRC within the educational system and within pedagogy.

*I implement Article 42 through school-based programmes and about five or six teacher awareness workshops per year. But this is ad hoc – there is no real system of contacts other than social justice listservs and magazines otherwise nothing happens. However, anything would be better than no knowledge. So many potential barriers and conflicts to count including racist, right-wing political party politics.*

These theoretical, political and pedagogical tensions were identified culturally in the literature by Hainsworth (2000), Butler (2000) and Howe and Covell (2005).

During this same phase, I attended an international conference in British Columbia that included members from the UN Committee on the Rights of the Child, legal experts, researchers and educators and provided access to additional key informants. The CRC Committee chair in Geneva is Professor Jaakob Doek who has a professional legal and social work background in Holland. As noted within the literature (Moss and Petrie, 2002, pp. 110-111), Doek also spoke of innovative approaches towards pedagogy and power-sharing the Committee has so far encountered during their hundreds of domestic child rights evaluations.

*In terms of the best kinds of schools, there are many good examples but one that stands out is those early learning centres in the north of Italy [Reggio Emilia]. They have innovative and very democratic styles of teaching, and of simply being with even very young learners...part of this new kind of rights culture also has to do with sharing power or perhaps losing a certain level of control, at least some of the control you were used to as a teacher (see also Devine, 2002).*

This linkage of knowledge with power was underscored by other research participants and noted by Moss and Petrie (2002) with regard to training new kinds of rights-based pedagogues in both European and Scottish contexts. To realise Enlightenment social hopes, they argue, “we need to translate them into a different kind of social vocabulary and vision of knowledge, power and society” (p. 28, citing Siedman, 1998).

Dr. Ellen Murray, a curriculum specialist, college instructor and child rights researcher in attendance at this same international gathering made similar assertions with regard to CRC pedagogy. In her previous research (Murray, 1995, 1996), she had developed a policy tool for evaluating the congruence of legislation and educational approaches with CRC Articles.

*I started with Article 42 but also Article 12 and the right for pupils' voices to be heard. Just because students are informed about rights does not mean adults in charge are going to apply it! You can have all the curriculum in the world but if the teachers don't buy into it...The evaluation mechanism was designed for*

*policy makers, politicians or administrators while initially my curriculum was written for, and implemented children's rights from, a teacher's perspective.*

Dr. Murray's approach to child rights pedagogy underscores a dualism commonly heard within the classroom - a conceptual and ideological dualism linking knowledge of children's rights with responsibilities. This approach was prevalent within Scottish venues as well, but was increasingly being subsumed within citizenship education (see Kirby and Bryson, 2002; UNICEF, 2004). Such a theoretical stance towards child rights pedagogy - - was reiterated by policy actors, educators, researchers and NGO representatives in both countries.

Another key informant, Dr. Philip Cook, is a researcher from the University of Victoria's International Institute for Child Rights and Development and was interviewed at this same venue. He articulated the common tension associated with CRC pedagogy by highlighting the lack of both formal and informal CRC communications and this influence within Canadian culture.

*There has to be a gap bridged between CRC ratification and meaningful implementation in children's lives...Article 42 is probably the best example. We still have a situation where hardly any kids know about child rights and if we cut to the chase, schools should be the best place to do that. If you look at the sociology of childhood, where are the kids? Most of them are in school most of the day...*

*If you look at it that election...nipped in the bud because of the rise of the power of the far right in Canada. A lot of school trustees and teachers see children's rights as a real threat and not a useful tool...If you look at current research on children's learning and the importance of citizenship teaching and children learning at an early age about issues of local governance...the effectiveness of involving children in their own learning...*

*We missed the opportunity by not educating professionals and policy-makers. Teachers would be a good example to be able to take the CRC principles and put them into practice. I think we also missed the boat by not educating children in their own rights and doing it in a Canadian way. The CRC is languishing in Canada at the moment...If you look at the NGO report we have actually gone backwards over the past ten years...we have dropped the ball.*

This "languishing" of CRC education across Canada has also been commented upon in the UN's Concluding Observations of CRC reports - the second report was reviewed

during fieldwork for the study. In addition, Cook's analysis regarding the 1999 child rights election pinpoints a key factor in Canadian culture and the systemic, even autopoietic, distinctions with Scotland's treatment of CRC's texts in legislation.

For a sample of young peoples' insights regarding the CRC within their educational experience, I interviewed four secondary school pupils ranging from fourteen to eighteen years old participating at this same conference. While the main research question is focused upon policy actors and systemic issues, these participants' views represent a 'litmus test' of how the CRC is being pedagogically re-constituted in Canadian classrooms. Not surprisingly, their views were consistent with those expressed by adult contemporaries and included the profound lack of participation opportunities and communication about rights in general. They further highlighted the role of non-governmental organisations and the diversity of Canada's culture. One fourteen year-old male student echoed these points:

*I just learned about the CRC here and at one of the earlier planning sessions. I think in Canada there is a general thought that this is more of a document for 3<sup>rd</sup> world nations and that we already have structures like the Charter of Rights and Freedoms...The education system hasn't changed in decades...things are changing all around us yet we are stuck inside a 4-walled classroom being taught the same way our parents and our grandparents.*

A fifteen year-old female colleague reported a similar experience:

*I actually just heard about it [CRC] through my Head Master at school so I could come to this conference...and that is how I got involved. This is a good opportunity for me to get immersed into what child rights are about...*

A sixteen year-old female revealed:

*Not in any of my classes and not by a teacher. I took the initiative to do a workshop on human rights in my high school, and as a result, those in Career and Personal Planning 11 could get credit for it. I got the materials from a conference...my Mom worked at Save the Children so I compiled those and I gave the workshop. That is all the child rights I have ever learned in school. I talked to a counselor at my school...and the fact that there was no child rights education, and she was like, 'We don't have the space'...*

An eighteen year-old male and a recent high school graduate reinforced their views:

*Zero and not even very much human rights stuff in my whole school career... We never even covered the Charter of Rights and Freedoms in Canada... There has been a very limited amount done, and with that child rights vote in 99... they attempted to suppress that. I participated in that vote as well... I got the ball rolling at my school cause no one knew about it. You had to get a teacher involved in it cause various districts got it abolished.*

Once again, the systemic power of the political right to impact communication and pedagogy in Canada was highlighted in this student's comments and validated from by many others - particularly the young woman's experience of bringing awareness of the CRC into her senior school through her own efforts.

I discovered these urban secondary students had very similar views as their rural counterparts from a neighbouring province. In addition, through constant comparison with Scotland each of the thematic categories from the research had been brought to light by key informant descriptions of the Canadian educational system. In Alberta, I sought out alternate views from young people far removed from the more privileged setting where I had accessed the first sample of pupil participants. The following CRC tensions were identified by a group of four young women and men aged fifteen to eighteen years who are residents of the largest First Nations reservation in North America near the town of Cardston, Alberta.

*I am from the Blood Tribe... I found out about the Convention when I went to Jamaica with Senator Pearson. 'We have a treaty?' I said. I then applied to Save the Children to go to New York and I learned lots of things there. They have to keep children informed they have rights but I think this is the first time these three [others in the room] have heard about it... the only way it was taught to me was through Senator Pearson.*

*I try to find root causes of problems for native youth, their influences and what they face. I basically want to hear their voice, youth on youth. In school, we went over human rights in general but not about the rights of the child... I had heard about it through foster care because my parents are foster parents.*

*I want to use the CRC... to... say 'Poverty is illegal'... it will be equivalent to [an NGO] because we want the same voice... this is my dream using the CRC as a tool.*

*Many reserves are corrupt and really negative, but also for me because I have been raised in white schools in a white society and I have my native*

*background and culture, I see that as positive...I don't want to put down the Blood Tribe but things take so long...I really want to get my education and come back and help...they have this term. I have been called 'apple' so many times, white on the inside, red on the outside.*

Themes of culture and tension are described literally alongside additional evidence that the CRC is being communicated to individual pupils by various policy actors from outside the educational systems completely. Re-thinking the CRC through autopoietic systems theory as a form of systemic communication allows the treaty's monitoring and reporting to take on an added significance with the following comments.

*I had one mechanics teacher and I tried so much to get him fired because of the things he was saying. He called us 'gophers' and 'savages'...things about killing natives...nothing was done. I said I am proud to be a savage and every time we see him we say: 'Yah, we are proud to be savages'...Also, I'm not going to blame any specific churches but because of the boarding schools it messed up the way we now raise kids cause they were never taught the whole circle is needed to raise a child.*

Similar to their urban peers, the ongoing lack of accurate CRC knowledge and the importance of educational and legal human rights communication were coupled with the absence of local participation initiatives. This interview was rife with themes of racism, poverty and passion at times both harrowing and inspirational, and these four young adults provided an important theoretical counterpoint in the study, one that foregrounds the significance of both geography and culture in the CRC discourse.

The critical sociological dimensions of pedagogy identified by these key informants were discussed only in muted references during UN summits I attended during fieldwork. A poignant moment in the research was also passing, but I could not know its true scale until later that year when I heard how one of these young people was hospitalised after an attempted suicide.

Also interviewed during this period was Alberta's Child and Youth Advocate John Mould who offered the following policy perspectives on the themes of culture, communication, tension and participation.

*From a policy perspective, the CRC doesn't show up at all in very many places. Right now for example, our Child Welfare Act is undergoing a review and there are some discussions about specifically mentioning children's rights and what they mean in the legislation...I do not think that will happen...There isn't anything that the government has done or Children's Services has done to identify something called 'children's rights' because it isn't a very popular thing to do in this province.*

This open acknowledgment of Canadian disregard for the CRC's obligations baldly contradicted the repeated declarations of delegates I observed and heard in New York and Geneva. Indeed, a (former) provincial Deputy Child and Youth Advocate - similar in legislative remit to Scotland's Children's Commissioner yet terminate due to a 2001 political shift - echoed his colleague's views of the lack of communication and the resultant lack of participation opportunities in that province.

*I don't think the Convention lives very well here in British Columbia...as far as government officials there's really no focus on the CRC here...I say this carefully and with good intentions not wanting to slam the NGOs but I think there's been a real failure both in the government and with the non-governmental organisations in British Columbia to make this thing live. The views of children and youth? Other than the Advocate's Office, there hasn't been a coordinated champion for the CRC here in BC...I just don't think it lives very well here.*

In contrast with these two western-most provincial children's advocates, an interview with a policy analyst from the Human Rights Commission in Quebec revealed a distinct cultural and pedagogical approach towards human rights legal communication and education. Madame Sarna described how *Le Commission des droits de la personne et des droits de la jeunesse* was responsible for promoting the human rights of young people, and unlike other Canadian jurisdictions, clearly promoted the CRC within that province's educational system.

*We amalgamated with other services including Justice, and are responsible for the rights of young people as well...we are a watch-dog organisation to see that human rights are implemented throughout Quebec society. With the rest of Canada, Children's Advocates are often working alone with no resources. Here, we have many resources including the Quebec Charter of Human Rights and Freedoms...Since 1975 we are the only province with its own Charter. There had been an accelerated push towards social democracy throughout the*



*Quiet Revolution of the 1960s...I would now include the sensitivity towards children's rights.*

This more fully integrated, systemic approach to Article 42 with pedagogical links within and across relevant systems is unique in Canada. In light of the three provincial Advocates' descriptions, and in terms of Luhmann's systemic thinking within the sociology of human rights, the following excerpts offer additional support for an integrated conceptual approach towards pedagogy and children's human rights research. Madame Sarna continued:

*How would you teach human rights without training in law? University training here in education doesn't integrate human rights unless into multicultural awareness. Otherwise, you will not find the CRC in training...The CRC is one of those areas that is more recognised by people in power here, top-down...less by teachers who feel they can't talk about rights in the classroom due to anarchy. You can't really talk about rights without responsibilities. Teachers are reticent...many don't understand what rights are.*

At the same time, the frequent dualism found within pedagogical approaches linking children's rights with notions of responsibilities was evident. Furthermore, theoretical integration of 'children's rights' within a distinctly 'human rights' framework was highlighted by both Lenzer (2002) and O'Byrne (2003) in the literature review.

As Canadian fieldwork closed, I interviewed a Member of Parliament in Ottawa, chair of a cross-parliamentary committee known as the National Children's Agenda. The Honourable John Godfrey coordinates federal, provincial and territorial resources and integrates policies for the one thousand Canadian children born each day. He spoke of how the CRC knowledge was being disseminated within education from his systemic vantage point.

*There is the impact of a kind of intellectual acid rain from the United States coming up when we look at how rights have evolved here. While a 1<sup>st</sup> order constraint that is site-specific to Canada is [religious] fundamentalism, a 2<sup>nd</sup> order constraint would be our proximity to the US where some of the arguments here against children's rights and the notion of the primacy of the family over the rights of children are buttressed by that influence coming north...*

This recurrent Canadian theme of far-right political tensions within human rights education was characterised adroitly by this MP as an “intellectual acid rain” recalling previous references to the perennial pollution issue between the two nations. I returned to Scotland reflecting upon the theoretical sampling from one week at the UN in New York that had led to key informant interviews from six of ten Canadian provinces spanning from Pacific to Atlantic coasts. As well, the study’s main thematic categories were well in evidence by this time, and had emerged from participant descriptions as Glaser and Strauss (1967) clearly argued would be the case.

### *Scotland: Article 42 in education revisited*

My return to Scotland at this point in the study was primarily a pragmatic research choice due to complicated access to schools within my home community. With hindsight, however, I can appreciate how this distance from the familiar firmly established a critical comparative component in the study through less familiar policy and educational contexts.

After participant observations during a number of UN human rights sessions, findings from early grounded coding and analysis of interview data were proving incongruent with childhood theorising. Thus, each subsequent Scottish informant within education and related policy arenas was chosen to correspond with a Canadian counterpart. Such theoretical sampling methods yielded a commensurate group of participants while at the same time allowing a richer comparative analysis and interpretation to be achieved.

Returning to Perth-Kinross, for example, a local authority child rights officer Jim Paterson offered his reflections about the implications of CRC communications in Scottish educational law, culture, and participation (see also Letters of Access in Appendix 3).

*There was a time where I was struggling in that group because you had health people, you had the police with their targets, and you had social work. It was really inappropriate for any young person to be involved because there was so much knowledge you had to carry into it.*

*Scotland is a relatively small country and its communication links are relatively small. The rights-agenda has a good chance of succeeding if it can get into the psyche...actually being a country where children's rights are being upheld in a way that is better than other parts of the world is something that can really drive that on.*

This integration of professional and disciplinary perspectives from education, health, police, social work and so forth within a rights-based framework has occurred statutorily under the Children (Scotland) Act 1995. This human rights **communication** takes place in community-based settings under Section 19 Children's Services Plans, but these have no legal or policy precedent in Canada to date.

A similar observation about this integration was described as "joined up service delivery" by a counterpart child rights officer in Kirkcaldy who was employed through the NGO Barnardos. Peter Nield responded to my question about youth participation in Kirkcaldy's Children's Services Plan with four key systemic elements that make up these legal communications from the CRC in that community. His responses also underscore the rising influence of NGOs in this discourse.

*We're trying to create a living document from the Children's Services Plan...young people are participating both directly and indirectly. What became evident was that we needed to re-model the whole way we were managing...the whole Children's Services model to ensure there was a connection with education, social work, police, the reporting service, health and whatever...*

*This will have four key elements: first will be children's participation, and clearly, we will need to explore the difference between consultation and participation. And equally we need to recognise some groups of vulnerable children are awarded additional safeguards in terms of their rights of participation through the Children (Scotland) Act i.e. those who are being prepared for adoption have protected rights...*

*The second component is the information and advice, and related support component. The third element is the advocacy component, and the fourth includes representation which would include legal and non-legal, monitoring and 'proofing' activities which are essential...That would be rights-proofing or informing the development of policy and practice...*

This same child rights officer described an additional theoretical tension identified within his community, but a common pedagogical and participatory experience elsewhere.

*I went to London when we were establishing the Service, and I really became more aware of the kind of emerging 'fear factor' where their Rights Services had tended to be more developed...I very much believe that we've been part of the problem [ourselves] up til now rather than part of the solution...*

*One of the limitations of the Convention is that it doesn't really provide the kind of principles you find within the European Human Rights legislation that allow balance, particularly in the principle of proportionality ... particularly in terms of the balance of competing rights.*

I took this notion of the tensions within culturally competing discussions of children's rights as described above by Peter Nield, and interviewed Peter Willman of the Scottish Executive's Education Committee in Edinburgh. Once again, Willman identified and emphasised the pivotal pedagogical role fulfilled by NGOs in the context of the drafting of new rights-based legislation.

*Awareness of the Convention is quite high in Scotland...and particularly within the voluntary sector that we deal with...Children in Scotland and Save the Children and there are a number of others...that have an interest in children's rights...like Barnardos...their focus is less on lobbying than Save the Children or Children in Scotland.*

*There has been a degree of pressure...in particular the Scottish Alliance for Children's Rights. They have set out at least one manifesto as to what a Children's Commissioner might do...and during the current Parliamentary Session, the Education Committee introduced a Bill to establish a Scottish Commissioner for Children and Young People.*

Balancing competing rights tensions and proportionality in practice are being communicated and addressed in Scotland by the NGO community, observed Willman. By this point in the study, a significant cultural and political distinction with Canadian NGO influences had emerged. Significantly, this thematic category also began to shape theoretical development particularly during later comparative and interpretive analyses.

Jennifer Turpie, Director of the national NGO Scottish Alliance for Children's Rights was mentioned as influential in new legislation by Scottish Executive Education Committee informant Willman. Turpie commented on participation rights, responsibilities and citizenship issues as well as CRC communication within and across the Scottish education system.

*The emphasis this year has been on the Reporting Process... [under Article 44] but I am not suggesting there isn't work to be done in schools to raise awareness. Getting the ethos of rights in schools goes well beyond what this organisation can do...it goes to 'teacher training'...goes to the whole ethos within a school.*

*[CRC] Awareness is a beginning but what is needed is a broader change in thinking, a broader kind of child strategy which incorporates more pieces of the Convention in legislation...whether that rests in London or whether its devolved because it's not a devolved Convention. I think the Scottish Executive are beginning to tease out: 'Right. What are we responsible for and what is the Children and Young People's Unit responsible for in London?' I think bodies that put pressure on the Scottish Executive are beginning to watch that closely...*

Human rights teacher training was previously described by the Quebec Human Rights Commission policy officer, and proved to be an important cultural distinction in Scotland.

Another NGO director, Ms. Susan Fisher of Save the Children Scotland, confirmed both Ms. Turpie's and Mr. Willman's systemic analyses of the role played by the Scottish Executive communicating the CRC while bringing to light important dimensions regarding the quality of children's participation.

*There has been some research...UNICEF I think has done some research and Kathleen Marshall and Rosemary Maguire were part of a consultation process regarding Scotland's Education for Citizenship curriculum. And they investigated whether children were learning about rights.*

*Their evidence suggests that children are not finding out about the UNCRC in schools and that is different than whether it is being taught...they report that they did not learn about rights. Teachers are meant to come out of their initial teacher education with three areas of core skills they should have...*

Comparative analysis of policy documents also showed the issue of teacher training has been repeatedly commented upon by the CRC Committee in Article 44 Concluding Observations to both nations.

In contrast with Canadian interviewees, however, there was ample evidence in the study that Scottish educators were beginning to introduce the CRC's principles to both teacher trainees and local pupils. Head teacher Joanne Scott from Killearn, for example, described how her youngest pupils were learning about CRC communication through a local authority ethos of participation.

*Actually learning about the Convention is one thing but also teaching the children what's contained within it, and what that's all about starts at a very early age. Telling them about rights and responsibilities starts from P-1 upwards. In fact, it starts here in nursery school because things like consultation we see as being a key element that we begin with three year olds...*

*We do a major piece of work with the P7s...about 8 weeks looking at government and citizenship very much based on the rights of the child so we teach them about all the different Articles...Part of the task is to share this with their parents at home...It's good for the children to consolidate their own thinking through talking about it with their parents and having that sort of discussion at home...*

As highlighted by an American NGO representative during the Special Session, this parental partner in CRC pedagogy is most often overlooked, or theoretically and ideologically constructed as a competing CRC tension.

While not identifying this parental partner, Professor Pamela Munn – Edinburgh Dean of the Faculty of Education - also spoke of CRC pedagogy within the teacher training agenda for Scottish higher education. In line with thinking from NGO interviewees, Professor Munn acknowledged that CRC education at all levels was being influenced by these policy actors, and as a result, was in theoretical transition.

*In the initial teacher education programme we've been thinking about in our particular school that student teachers would be introduced into the importance of the Convention... and we have also done a lot of work involving the children's charities such as the Save the Children Fund...*

*I think the short answer to that is 'No' if you mean curricula that every child in Scotland would be guaranteed to follow...These sorts of issues came up very strongly in the Review Group on Education for Citizenship that I chaired for the Teaching and Learning Scotland document. That would be I think the most obvious way into something that was national.*

Recent findings from Canadian researchers Howe and Covell (2005) acknowledge that the pedagogy of citizenship is still not evident in the educational systems across the nation.

Recalling my P-6 and P-7 New Community School lectures at the outset of fieldwork, I wondered how this approach was being communicated within other Scottish schools. My final interview in the Stirling area took place with child rights educational researcher and lecturer, Dr. John I'Anson of Stirling University.

*It's simply through initiatives that I've been involved with where we have come across aspects of the Convention...but there is no specific training on the document itself...I should say that our work is in partnership with Save the Children...*

*What we found is that to take children's rights seriously changes not only the space, space is not just a neutral thing. It has a real presence no matter what goes on. It also changes the nature of professional practice and changes the nature of relationships such that what it is to be an adult and a child is being re-negotiated...*

*Translating the 'formal speak' of the rights themselves into a language...which makes a difference in terms of seeing wider things within the school...The kind of classic classroom rules are then seen within the context of taking rights seriously...it's a profoundly ethical approach which enables them to see the consequences of their interactions with others so it is promoting a kind of reflexivity...It is going to make a difference to the very nexus of relationships and the ethos within the school...*

He spoke of his own training and current research initiatives, and his investigations to uncover an emerging pedagogy shaped by rights-based participation and framed by NGO partnerships. The underlying shift in classroom power relations, as well as those within the whole school, surfaced again and again during this interview, and the transformative potential within a rights-based approach is highlighted within I'Anson's research.

### Phase III - Leaving the Policy Arena

#### *United Nations: Geneva revisited*

As the pattern of responses emerged from participant descriptions during open coding, a process referred to as theoretical saturation occurred (Glaser and Strauss, 1967; Glaser 1978). At this juncture, it was clear that each thematic category that had emerged from the study had begun to coalesce. Accordingly, I made plans for two final fieldtrips to complete theoretical sampling - one to the Highlands community of Drumnadrochit and the other to Geneva for Canada's Second Child Rights Report under CRC Article 44.

In the former, I had responded to an invitation from Article 12 in Scotland, a youth-led child rights NGO. Their adult coordinator discussed recent difficulties encountered by the group with a local head teacher.

*I became involved with the Drumnadrochit Youth Club shortly after starting my post as Group Development worker for Article 12 here in the Highlands. The club here is held in the Community Section of the new high school which is a public/private partnership building built only last year...There was a minor incident that led to the club being banned from the High School. There was no notice given. Young folks in Drum were back outside again. It took over a month to communicate with the Head...there is still a lot of work to be done in the village in terms of getting young people's views heard.*

Emphasising how qualities of participation within local schools are quite dependent upon these influential pedagogical policy actors, the group's next open meeting occurred after having been reinstated in the new school building by the head teacher. Some young women and men responded to my questions about the nature of local child rights tensions, and quite explicitly, adult power relations and institutional interpretations of the CRC re-surfaced.

*We already know more than them about rights but we're not learnin it in schools! They might think we could just, like, use them against them or somethin... We would have the same sense of power...maybe we would have more power. We have to treat our teachers with respect because they're trying to help you but sometimes it goes to their haid a wee bit. It's just because*



*teachers don't know what rights are...They have more power and if you don't respect them in a certain way they will just turf you doon...*

Their candour in describing community efforts to bring life to CRC Article 12 and participation revealed how local relationships were not so very dissimilar to peers on the Blood Reserve in Alberta (see also Lee, 1999, 2001; Kj rholt, 2002; Mayall, 2000; Roche, 1999 for institutional comparisons).

The final interview of the study took place in Geneva with Dr. Katherine Covell who is one of a small cadre of Canadian researchers and post-secondary instructors who train educators utilising the CRC's core principles and provisions.

*I am one of the founders and directors of the Cape Breton Child Rights Centre as well as a board member for the Canadian Coalition for the Rights of Children. I think that overall Canada is doing a pretty abysmal job of teaching children about their rights and also teaching adults...*

*Without the systemic inclusion of the CRC in Canadian schools there will be no real education on children's rights occurring...the Department of Education in Halifax adopted our piloted curriculum provincially...and other than Ellen Murray's work in... Calgary...Nova Scotia is the first and only province to systematically include children's rights in its curricula...our work has been picked up more...in England.*

*There is clearly an ignorance of the Convention in Canada...As we saw in those UNICEF Elections, there is...an abhorrence of the United Nations and a sense of their interference in Canadian families...We saw today how Canada has an international reputation and doesn't like to be scolded...I think people are afraid of letting children know they have rights...this came out of the Department of Education in Halifax when parent groups started complaining...one official there responded: What kind of society is it that gives its citizens rights but is afraid to let them know they have them?*

It is clear from Dr. Covell's interview and her body of work with colleague Dr. Brian Howe that interconnected dimensions of rights-based participation, communication, NGOs, pedagogy, tension and culture were also thematically present in their work.

In marked contrast to the beginning of fieldwork at this UN site, I was initially refused entry to the Canadian report. Previously, I had passed into the Office of the High Commissioner for Human Rights for an African nation CRC report, but while

attempting to attend my own national CRC evaluation as a participant observer without a formal governmental invitation, I was being refused. Fortunately, a former colleague and official delegate intervened and I was eventually cleared by UN security for attendance. This anti-democratic tension was later explained as an official Canadian response to limit the number of neo-conservative NGO representatives also in attendance. Influence from fundamentalist Christian NGOs (many of whom who consider the treaty anti-family and even anti-church) during Canada's CRC evaluation in Geneva and during the 2002 Special Session in New York represents a predominant tension observed in many regions of Canada.

This 'anti-child rights' NGO influence closing the study had emerged as a pedagogical tension running thematically throughout the literature review, fieldwork and sample of Canadian interviews. Similar descriptions of this kind of lobbying, or "perturbation" as King (1994) and Luhmann (1997) describe this systemic activity, had emerged during early coding of interviews, but a comparative analysis of the role of ideologically divergent NGOs became clear only during selective coding and interpretive analysis with Luhmann's autopoietic constructs.

#### **Discussion and Conclusion of Chapter Four**

Utilising the first dimension of Wolcott's (1994) typology for presenting and discussing qualitative research, Chapter Four offers a *Description* of findings obtained during open coding of 50 in-depth, semi-structured interviews. During this phase, key informant descriptions of the study's six thematic categories emerged tentatively, and were eventually woven into a chronological account following the phases of fieldwork in Geneva, Scotland, New York and Canada. These categories were selected from responses to the main research question regarding CRC Article 42 within the educational systems. In-depth discussions of children's rights education revealed conceptual properties within *Participation, Communication, NGOs, Pedagogy, Culture* and *Tension* in both nations, and each are summarised within an interconnected discussion similar to the interrelated nature of CRC Articles.

Early in the investigation, it became evident that each nation had implemented the CRC within their educational systems with distinct approaches both culturally and pedagogically to these UN communications. As argued within the critical review of literature, contemporary deconstruction of the treaty within childhood studies, particularly within the sociology of childhood, does not account for the thematic variations that were evidenced during early analysis. Thus, the grounded methodology allowed an integrated research approach to emerge independent of ontological debates about the nature of childhood, or of human rights, repeatedly highlighted in the literature. By staying faithful to constant comparison and theoretical sampling methods, I frequently returned to the literature for analytical depth. Eventually these inductive methods led to the most important epistemological development of the study, and Luhmann's autopoietic systems framework allowed a more congruent comparative analysis and re-interpretation of the main thematic categories to take place.

Within this Chapter, various qualities of young people's participation were described as being influenced by unique cultural tensions, and frequently by policy actors from outside education within the NGO community. Throughout fieldwork, I was confronted with the important role of NGOs in the process of lobbying and shaping CRC-based law and pedagogical approaches of both nations. Again, this finding in Scotland was sharply contrasted with Canada's overall voluntary sector influence - a fact most accurately described by the former British Columbia Deputy Child and Youth Advocate who explained *the CRC doesn't live very well here*.

In addition, key informants repeatedly acknowledged that the whole treaty had been conceptually reduced to the Article 12 principle alone. Thus, practical deficits in applying the CRC were overwhelmingly identified from this theoretically narrow participatory perspective that emerged as the first thematic category. From Canada, the most repetitive view of CRC participation was described by secondary school pupils as zero, that is, the sum of rights-based knowledge and democratic engagement they had been provided pedagogically within their educational careers. This negative analysis of the first emergent theme was echoed by all young people during Canadian fieldwork.

However, these findings had been contradicted on many occasions by views from official Canadian delegates and governmental communications during my observations at UN human rights sessions. Furthermore, these participant observations support another main thesis argument: Scotland has re-constituted the CRC and its core principles in a comparatively widespread fashion within its domestic educational, legal and social policy systems (see also Howe and Covell, 2005; Williams, 2005 for recent similar findings). The participation of young people within draft legislative processes leading to the Standards in Scotland's Schools Act (2000) as well as Children's Commissioner Act (2003) was described repeatedly by informants such as those from Save the Children and the Scottish Executive Education Committee. This latter informant observed how the Scottish Parliament was facing *a degree of pressure...in particular [from] the Scottish Alliance for Children's Rights. They have set out at least one manifesto as to what a Children's Commissioner might do.* This NGO influence in the political and educational systems also facilitates rights-based participation of young people that was not described in the same way by any Canadian informants.

A systemic Canadian culture and pedagogy of racial discrimination for First Nations children within the educational systems was eloquently expressed by key informants from Alberta's Blood Reserve. Indeed, informants from both nations identified growing tensions emerging through local experiences of discriminatory child rights policy and practice. Sometimes these tensions were also based upon a common lack of accurate knowledge of the treaty's texts or its formal legal communications, but often, they were ideologically driven. Once again in sharp contrast to Canada, Scottish researcher Dr. John I'Anson of Stirling University described how his team responded to such tensions by researching the conditions through which *children's rights are taken seriously* within classroom pedagogy. His description of the shifting power relations that become visible after human rights were *taken seriously* and acted upon to guide classroom relations was used on ten separate occasions (see also Moss and Petrie, 2002; Allen and I'Anson, 2004 for similar analyses of Stirling's classrooms). Furthermore, I'Anson's descriptions represent the emergent qualities of authentic participation in postmodern, non-authoritarian educational contexts.

An advantage in adopting Wolcott's three-pronged approach became obvious during the early grounded coding and constant comparison of data by facilitating informant observations and descriptions to speak for themselves untainted (as much as possible) by any theoretical framework. This descriptive treatment of data from the open coding stage allowed the themes to emerge tentatively but quite clearly. Nonetheless, during the write-up, it has also been appropriate to allow Luhmann's core constructs into the discussion to reinforce how new meaning of the comparative distinctions are possible within such a conceptual framework.

As highlighted at the opening of the chapter, this analytical balance is not always easy to discern, and I found the need to fully accomplish each stage of description, analysis and interpretation before appreciating the subtle nuances delineating each one. Also as noted, the congruence and utility of viewing human rights interviews through autopoietic, systemic lenses emerged during the latter stages of analysis, and this contention is fully supported by descriptive texts. The process of NGO sector influence and lobbying, for example, was described quite negatively by Canadian participants and was reinforced by young people themselves as they described their efforts to educate their own peers and educators with accurate CRC knowledge. The comparative discrepancy in these findings between Scotland and Canada made greater sense during axial and selective coding when accounted for as perturbation and structural coupling through Luhmann's autopoietic theory.

Furthermore, as the investigation closed I grew to appreciate one of the most significant findings emerged during the 2002 Special Session for Children in New York. From the archives of legal NGO director Cynthia Price Cohen came reputable evidence of texts chosen during CRC drafting along with her specific history of how Article 42 was negotiated by the *Ad Hoc* group during the 1979-1989 period.

Chapter Five now moves to the second dimension of Wolcott's analytical framework with findings from the comparative analyses of Scottish and Canadian interviews that emerged during axial coding of thematic categories.

## CHAPTER FIVE: COMPARATIVE ANALYSIS OF FINDINGS

### Introduction

In this chapter, the presentation of data shifts from the inductive, iterative strategies employed during the description of thematic categories to a comparative *Analysis*, in response to the question: *How do things work?* When making this analytical shift, Wolcott (1994) maintains that many qualitative researchers sum up their stance with three terms: comparative, cross-cultural and holistic. He observes that all disciplines make use of analytical comparisons although all are not equally transparent about the extent to which this occurs (p. 177). Given these views, the aim of this chapter is to explicitly show how the analysis of data was achieved through a cross-cultural, comparative approach.

Beginning with the study's core category of participation, data tables are utilised to compare Scottish and Canadian texts revealing the research themes as they emerged more clearly during axial coding. As Wolcott (1994) suggests: "Here is where one reports or summarizes whatever was counted, measured, inquired about, and so on ... organized in such a way as to reveal those underlying properties and structures and relationships that are the stuff of analysis" (pp. 30-31). The chapter's five data tables are subsequently augmented by contextualised discussions of various analytical features to illuminate the underlying conceptual properties within each theme.

As highlighted previously, growing trends towards "transdisciplinarity" within the social sciences (Holmes and Gastaldo, 2004; Giroux and Searls Giroux, 2004; Esping-Andersen, 2000; Moore, Tulk, and Mitchell, 2005; O'Byrne, 2003) reveal broad definitions of the term "policy" complicated by, and dependent upon, locally produced cultural, political and legal factors (see also Le Behan and Martin, 2006; Mabbett and Bolderson, 1999, in Clasen, 1999, p. 34; Øyen 1990, p. 4). In spite of such ambiguities, the main research question refers to CRC Article 42 within the education system, and this human rights legal communication provided both a common unit for macro-analysis and an entry point into local policy arenas. Within each of these arenas key informants were selected through theoretical sampling, discussed by grounded theorists

Glaser and Strauss (1967), in order to allow new concepts to emerge during data analysis. Hence, each key informant within the sample is identified as an educational policy actor since they each possessed expert knowledge of how the CRC's principles and provisions are being enacted within the systems currently influencing school-based legislation and practice.

The dataset analysed in the following discussion includes interviews with human rights experts from the United Nations and officials from the Quebec Human Rights Commission; elected and non-elected governmental officials such as a Member of the Canadian Parliament and Cabinet Minister, a Canadian Senator and a Scottish Executive Parliamentary Committee member; Canadian provincial Child and Youth Advocates; policy actors within both national and international rights-based NGOs; child rights researchers and post-secondary educators influencing new curricula in both nations; a Canadian teacher's union executive; and influential teachers and local policy actors directly engaged with students in elementary and senior schools. Finally, the sample included the expert informants that are directly impacted by these new educational policies - individual and groups of students from Canada and Scotland.

### **Core Thematic Category of Participation**

Within grounded theory research, the central analytical dimension of the study emerges during the stages of data coding. Glaser (1978, pp. 94-95) suggests this "core category" meets these criteria: the concept must occur repeatedly; it takes more time to saturate but its connection with other categories comes quickly and richly; its implication for formal theory is obvious and it has transferable dimensions while avoiding both conceptual and theoretical impasses; the notion is completely variable while remaining a dimension of the research problem; it prevents both deductive reasoning and social sources from establishing its centrality since these are neither grounded nor inductive research processes; and the concept may be coded under a variety of criteria such as a consequence or as a conceptual dimension unto itself.

For their part, Strauss and Corbin (1998a) also maintain that the first step in the integration of any grounded theory - the place where data are recognised as theory – is to identify this core analytical and conceptual construct. These authors contend that the concept has additional analytical power due to its ability to pull together the other main themes to form an explanatory whole. As Glaser (1978) suggests and these authors also maintain, the key dimensions of the core category include its frequent appearance in the data as well as its capacity to lead to ongoing theoretical development. Congruent with all of these dimensions, the core category of participation emerged as the construct around which all the other themes in the study revolve. For comparative purposes, **Table 5.1** records just seven pairs from dozens of incidents and references to rights-based pupil participation described by informants. Recalling that each informant is named on p. 82 of this thesis, the texts below are identified solely by informant roles. While interviewees were chosen for a commensurate dataset, this comparison of texts also illuminates insight into the process, a strategy that allows conceptual properties and qualities of participation to be clearly identified.

**Table 5.1 - Texts comparing Core Thematic Category of Participation**

SCOTLAND	CANADA
{Scottish Executive Policy Analyst} CRC in schools? The Schools Act 2000 reflected child input ... looking at the draft [and] participation in Parliamentary processes	{Provincial Child/Youth Advocate} Children’s rights in child welfare legislation? I do not think it will happen ... the government is very uneasy about the notion of CR [here]
{Fife Child Rights Officer} They are participating directly and indirectly in the Children’s Services Plan	{Alberta First Nations Youth} Youth on the Reserve don’t have a voice at Chief’s Council Meeting; I can’t even vote
{Save the Children Director} Kids in primary are now much clearer that their views get heard and they contribute to decision making	{British Columbia Child Rights Researcher} Hardly any kids in Canada know, rights are not being promoted or sustained
{Stirling Education Director} ‘Children First’ and the UNCRC is part of that ... children being consulted, being participative	{British Columbia HS Graduate} I participated in the CRC vote – I got the ball rolling in my school because ... it was suppressed in 1999
{Perth-Kinross Child Rights Officer} Young Scots travelling <b>knowing</b> they could articulate views and opinions in ways not being met in other parts of the world	{Nova Scotia Child Rights Researcher} We found that children are astonished to have their views listened to and taken seriously. ... people seem to be very threatened by that.
{Perth Social Service Director} In the last Plan, we made sure we have a Children’s Rights Service in place	{Saskatchewan HS Student} I went to City Council an’ said ‘why don’t we have a Youth Council?’ I got kicked out
{Stirling Education Policy Officer} I could be	{Saskatchewan HS Teacher} Saskatchewan



invited to Pupil Councils to see how they are involved in running the school	pupils don't have representation in decisions that are based on legislation
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### ***Scottish constructions of participation***

As we have seen, there are three primary pieces of children's legislation in Scotland and each directly reflects various CRC principles and provisions. In addition, each one has embedded texts from CRC Article 12 with direct participation in political and legal matters that affect children and young people statutorily reaching throughout its 32 local authorities. This "quiet revolution" engendered by the Children (Scotland) Act 1995 (Scottish Office/British Agencies for Adoption and Fostering, 1996, p. 2) was in evidence during my interview with a Scottish Executive Education Committee member who described children's and young people's active participation and consultation in drafting new legislation.

In the first text, Peter Willman recalls the initial development of the Standards in Scotland's Schools Act (2000) that in his words had *reflected input from the voluntary sector and civil society looking at the draft, and participating in the Parliamentary process as it was going through*. This children's legislation clearly embeds CRC texts from Articles 28 and 29 on the right to education within its statutes. In Edinburgh, Susan Fisher from Save the Children confirmed Willman's recollection of the development of the new Education Act. She also maintains that as a result, *kids in primary are now much clearer that their views get heard and they contribute to decision-making. I had tiny little kids talking to an MSP and saying how they contributed to major decisions in their school*.

Perth-Kinross Child Rights Officer Jim Paterson also considered the wave of rights-based participation that was occurring in his community, and that the next generation of young Scots travelling internationally may well be able to articulate their political views more clearly because of CRC education and participatory policy initiatives. In Stirling, Education Director Margaret Doran supported both perspectives by reflecting that statutory obligations within the Education Act, as well as within Section 19 of the Children (Scotland) Act (1995), underpin the increased pupil participation while creating new opportunities for ongoing interdisciplinary Planning events. In addition, I

attended a total of ten Children's Services Planning events in Perth-Kinross - one co-hosted and co-facilitated by children and young people - to assess and verify these claims first-hand (see Appendices 12 and 13 for supporting documents). During comparative analysis, the Canadian situation emerged in sharp contrast.

### *Canadian constructions of participation*

In comparison to the legislative experiences and statutory outcomes for Scottish pupils provoked by the Scottish Executive, an Alberta Child and Youth Advocate candidly acknowledged that a current review of child welfare legislation would *not* include participation or inclusion of young people's views. Societal values based upon conservative ideologies were offered to account for why this Canadian provincial counterpart to Scotland's Children's Commissioner expressed strong doubts that CRC principles would be included in any new statutes. The *government is very uneasy about children's rights here*, he explained, indicating how social policy and legislative matters affecting young people were simply not open for direct consultation or participation.

While discussing systemic issues such as racism and poverty, Myron WolfChild recalled similar unsuccessful attempts at community-level political participation for young people on an Alberta First Nations Reserve. *In a perfect world, our youth council would run smoothly but you know it won't because money is needed and we don't know how to write proposals*, he claimed. One of his colleagues complained that *youth on the Reserve don't have a voice. When I go to the Chief's Council Meetings, will he take me seriously? Probably not - we can't even vote!*

Along with every Canadian student interviewed during the research, a high school graduate from Vancouver Island spoke of participation solely in pejorative terms describing how he had taken rights education into his own hands during his first senior year. Adam Jones recalled:

*The child rights vote was suppressed in 1999...there had been a very limited amount done. I participated in that after I got the ball rolling in my school. You*

*had to get a teacher involved at the school...various Districts on the mainland got it abolished.*

Dr. Katherine Covell of the University of Cape Breton Child Rights Centre and vice-president of the Canadian Coalition for the Rights of Children shared this student's appraisal.

*In our child rights research, we found that children are astonished to have their views listened to and taken seriously. People seem to be very threatened by that, and are confusing participation with self-determination which clearly it isn't. I think people who even appear to know the Convention seem to confuse [the two]. I would say there is ignorance about the Convention in Canada.*

While contested views of what exactly it is that represents *self-determination*, Covell's remarks regarding student *astonishment* when their views are taken seriously were nonetheless confirmed by every Canadian student during fieldwork.

Further illustrating this conceptual property, Saskatchewan high school student Candis Tatem had been a youth delegate at the 2002 UN Special Session, but was subjected to a distinct lack of political representation and participation when she returned to her local community.

*I went to a City Council meeting to have lower speed within school zones after we had a child hit by a car...but I got kicked out of that town meeting. When I came back from New York...I went to the Youth Parliament. It is only politicians' families that have gone into it. So I went back to the City Council and I said 'why don't we have a City Council of youth?' Once again, I got kicked out. I just asked them to consider these things and they said they wouldn't and asked me to please leave.*

Such an experience for any Scottish pupil would be most unlikely given the legislative and social policy climate within the local authorities I observed during this investigation. In fact, all of the key conceptual and analytical properties argued for by grounded theorists Glaser and Strauss (1967) as necessary to establish a core category are revealed within Candace's interview text above. Not surprisingly, active, democratic, statutory and political participation based upon this core CRC Article 12 principle emerged during axial coding as related to all the other research themes.

Additional conceptual properties of participation revealed by key informants are discussed further in the following section.

### *Comparative qualities of participation*

In stark contrast with educators in Saskatchewan, Education Director Margaret Doran dramatically claimed to have *moved past the Convention* with local efforts at building participatory democracy with, and for, Stirling students. Indeed, in neighbouring Perth Council the Social Service Director reflected a similar position, and key informant Andy Turnbull declared: *In the last Plan, we made sure we have a Children's Rights Service in place* to engage students locally. Fife Child Rights Officer Peter Nield further affirmed this statutorily-based initiative for engaging local pupils within in his remit as he observed: *They are participating directly and indirectly in the Children's Services Plan.*

While academic policies supporting various dimensions of participation also regularly led to political opportunities for Scottish pupils, such policies were consistently reported as non-existent by Canadian students. A Saskatchewan student's complaint regarding youth representatives coming from (in her words) *politicians' families* alone to represent the views of all young people in her community reveals a common concern over tokenism in the rights/participation discourse from both nations. Just *who* is called upon to consult and participate is a contentious question that conceptually links CRC Article 2 and the non-discrimination principle with this core category across cultures. The increasingly nuanced qualities of participation that emerged during axial coding and comparative analysis illuminated an answer.

Repeatedly in Scotland, I observed how the exercise of political and legal power has shifted to include the active participation of many pupils. I also participated in the development of Perth-Kinross Children's Services Plan and directly observed this shift (see Appendix 12). These observations allowed conceptual comparisons of participation to be made with Canadian perspectives. For example, Child Rights Officer Jim Paterson - a non-existent, local post in any Canadian jurisdiction -

acknowledged his sense that young Scots travelling the world may be more confident because of pedagogical and community-based experiences of participation. Congruent with Stirling's educational policy officer, Paterson also remarked that within his own practice it would be *inappropriate*, even *disempowering*, for pupils to participate at times when so much *professional* knowledge needs to be incorporated into local Children's Plans.

To observe the type of capacity-building he described, I attended a day-long event entitled "Consulting Children and Young People" (see Appendix 11). Very clear distinctions among the dimensions of consultation, participation and inclusion for young people were identified and discussed by stakeholders from the academy, elected local authority representatives, local education policy actors and practitioners, and representatives from statutory agencies and the voluntary sector in a dialogue largely directed by children and young people. One local councillor suggested:

*This is an unusual event but if we're serious about engaging young people then this is only the end of the beginning. It isn't about tokenism ...consultation needs to be front-end loaded. Young people need to influence the policy process right through and not just called in at the end. Consultation is challenging and we spend a lot of money in Perth-Kinross looking at how you do it and also on how you treat the results. It does solve problems for us since we find out things we've never known.*

I was certain I had observed an authentic experience of participatory democracy being guided by statutory notions of Convention-based rights and by young people themselves who repeatedly made the distinction between "consultative" experiences that were neither "inclusive" nor "exclusive". Participation was described as inclusive when actions were taken to follow up on young people's requests after consultative events (such as those within that day-long exchange of views) had taken place.

While Scottish participants were typically reticent to acknowledge the uniqueness of CRC-related educational policies or practices, I observed numerous political and legal distinctions with Canadian counterparts by comparing local efforts to build authentic Section 19 Children's Services Plans with local pupils. Not surprisingly, one key distinction was that such efforts had common qualities traceable to CRC principles that

are embedded in Scottish statutes. This is not the case anywhere in Canada at this time. This forum for democracy is argued for by Giroux (1999, 2003), but strongly contrasts the experiences of young Canadian key informants from Saskatchewan and Alberta.

Clearly, there are many adult-only policy venues, just as there are exclusively children's and young people's events, and common sense dictates how rights-based participatory policies may locally evolve. Nonetheless, in matters directly concerning young people's 'best interests' processes involving consultation, social inclusion and engagement are conceptual properties emerging through Article 12 participation.

Additional properties of this core category emerged during Child Rights Officer Peter Nield's descriptive accounts of engaging young people *directly and indirectly* in Fife Children's Plans that are *underpinned by both a Children's Rights and a Children's Participation Strategy*. His comments pointed to the dominant focus on CRC Article 12 identified in much of the literature, as well as a similar disconnect between rights-based participation and the other core principles of the treaty as though each notion came from a different conceptual framework.

However, as CRC Committee informants had observed in Chapter Four, Articles 2, 3, and 6 are interconnected and interdependent with the participatory dimensions of Article 12. Nield observed:

*In Fife Council...the Rights and Participation Theme Group have the responsibility for developing both of those strategies now. What initially emerged was that the Children's Participation strategy was being developed separately to the Rights Strategy but experience has shown that is not sensible. Of course, you cannot separate Participation and Rights.*

This theoretical rupture appears to have the antecedents noted by both Lenzer (2002) and O'Byrne (2003) that result in children's rights being separated from the broader discussions of human rights.

## **Summary of the Study's Core Category**

The chapter's first comparative analysis discusses the core category *Participation* after this research theme emerged as centrally and conceptually related to all others. In Scotland, participation also uncovered conceptual properties of consultation and inclusion, but, as in the literature, is frequently constructed as standing alone from other CRC principles as though it subsumes all other rights.

Scottish interviews and observations contrasted key informants from Canada where rights-based participation is not well articulated within legislation and has previously been construed as 'anti-family' (see Howe and Covell, 2005, p. 9; Williams, 2005 for discussions). Indeed, interviewees from all Canadian regions identified local efforts to implement Article 12 in pejorative terms, and at times, even through anti-democratic practice clearly incommensurate with the nuanced qualities I observed in Scotland.

During fieldwork for the study, new policy developments in Scotland were being premised upon three pieces of children's legislation which have embedded and interconnected with various treaty texts to guide participation in schools and local communities. However, as noted in the Canadian discourse the theoretical, legal and social constructions of "child and youth engagement" that have been disconnected theoretically and politically from rights-based participation.

On a final note, the study's core category was presented first to underscore how grounded coding procedures were utilised to obtain this central theoretical construct. These coding procedures are wholly dissimilar to the binary coding adopted in the later interpretive stages of this study and discussed in the following chapter to obtain the study's core distinction (see Glaser, 2005, p. 136; also Gibson, Gregory and Robinson, 2005 for additional discussions of integrating grounded and autopoietic coding).

## **Thematic Category of Communication**

A central thesis argument began to take shape during the literature review and emerged more fully during comparative analysis as I concluded that childhood theories are

inadequate frameworks to understand how the CRC works. This argument is further evidenced as one observes how the treaty's texts have been repeatedly re-constituted from UN policy arenas into the domestic legislation, social policies and new practices of many nation states (see Justice, 1986, 2000 for similar anthropological analysis). Contrastingly, Luhmann's sociological treatment of human rights has been drawn upon since systemic thinking about children's rights policies differs from the juridical or individualistic approaches within much of the literature. Modern social systems are functionally differentiated and based upon autopoietic forms of **communication** that allow systems to maintain boundaries. Indeed, this macro-systemic conceptualisation of the CRC and its constituent texts also provides a rationale for why research on children's rights has been largely excluded from human rights discourses and vice versa. While initially there was widespread moral panic within the US and Canada about re-constructing the CRC as a form of legal communication within domestic legislation, these fears are unfounded by current research. Luhmann's systems thinking also clarifies that communication within and between society's functionally differentiated systems allows CRC Article 42 and the CRC Committee's Concluding Observations under Article 44 to be transformed into useful programmes without which systems such as education and law would collapse (Verschraegen, 2002).

In strictest terms, this type of analysis creates formal legal communication of all the treaty's Articles. Furthermore, ongoing evaluation and monitoring operate as a type of pre-coding for new domestic laws premised upon an interpretation of law's binary code of legality/illegality similar to the arguments put forward by Price Cohen and Kilbourne (1998). Re-conceptualising the CRC from this perspective is congruent with Erlich's (1975) anthropological notions of 'living' or customary law (see King, 1994). As in the previous comparison, **Table 5.2** lists pairs of interview texts in support.

**Table 5.2 - Texts comparing Thematic Category of Communication**

SCOTLAND	CANADA
{Scottish Executive Policy Analyst} It is an Education Committee led Bill rather than a Scottish Executive led Bill and there has been a process of engagement	{U. Of Alberta Teacher Trainer} When people hear human rights, they think legalistically, like learning a set of rules and this is problematic approach



{Perth CSP/Social Services Director} Lots of myth around previous legislation that needs to be re-visited <i>radically</i> sometimes	{Human Rights Commission Educator and Policy Director} Quebec HR Commission is a para-governmental service to see that child/human rights are implemented
{Stirling Local Authority Policy Officer} When I worked with Children's Services, I developed a course that included the UNCRC in terms of Scots law with regard to education	{Former British Columbia Deputy Child/ Youth Advocate} There hasn't been a place to go and talk about the Convention in a regular way in British Columbia bureaucracies
{Fife Child Rights Officer} We're trying to create a <i>living document</i> from the CSP's... What became evident was that we needed to re-model the way we were managing these	{Saskatchewan HS Teacher} The CRC would help Saskatchewan educators to think more about transactional learning rather than the transmission of techniques
{Perth Ed. Policy Maker} Children's Hearings predate the Convention and started that whole idea of having children more involved	{British Columbia HS Graduate} Not much rights-related stuff in my school at all. Not even the Charter of Rights and Freedoms or the Universal Declaration of HR
{Scottish NGO Director} There is ambiguity about whose responsibility the CRC is, is it handled in London, or devolved?	{Canadian Member of Parliament} If housed in Justice, you would be treating it as a disease. We have kind of an odd ecosystem

### *Scottish policy actors and CRC communication*

As shown above, Scottish informants considered notions of children's rights through statutorily-based initiatives. Thus, repeated references to the CRC's texts within law and social policy underscore how this United Nations legal communication is being transmitted and re-constituted through the process of ratification within and across social systems. In one example, Perth Children's Plan Director Andy Turnbull illustrates this point in his textual reference to *legislation that needs to be revisited radically* from time to time.

Furthermore, NGO Director Jennifer Turpie discussed the focused attention being paid by Scotland's voluntary sector to legislative responsibilities for child rights reporting as these are impacting new legislation since devolution (a political process begun in 1997 that has resulted in the transfer of legislative and political powers back to the Scottish Parliament from the English). In her words: *There is ambiguity about whose responsibility the CRC is, is it handled in London, or devolved?* Peter Willman, a policy analyst for the Scottish Executive, observed how this uncertain devolved political and legislative process had also been informed by voluntary policy actors communicating formally with the Scottish Parliament and supported by the centrality

of participation found within the Children (Scotland) Act 1995 and other recent legislation. He discussed the historic precedents that had taken place when drafting the latest children's legislation:

*It is an Education Committee-led bill rather than Scottish Executive-led and there has been a process of engagement throughout...we held a couple of events with both children and young people. We held numbers of hearings where they gave evidence.*

Clearly, this arguably autopoietic transmission of individual CRC principles may be also traced through formal human rights legal communication within United Kingdom nations stemming from Article 44 reports and resulting in new statutory requirements. The appointment of attorney Kathleen Marshall as the first Commissioner for Children and Young People is one of the clearest illustrations of this process. Marshall's appointment also reveals how systemic legal and educational communications actually contain self-referential capacities as they move from international law into domestic legislation through to local policy arenas. Jenks' (2000) admonition to go back to the phenomenon and show how it is being built up - both in documentary analysis and participant observations - was integral in allowing this autopoietic conceptual property to emerge. Further textual comparisons show how Luhmann's systems theory 'fits' with a grounded coding and comparative analysis of themes.

Just as clearly, texts contained within the UN's 1995 and 2002 Concluding Observations for the UK illustrate how legal communications have been transformed into local educational practice even so far as the widespread appointment of child rights officers such observed in Fife and Perth-Kinross. Furthermore, it emerged during comparative analysis that Section 19 Children's Services Plans contain self-referential properties traceable to Article 42's principles and provisions within new educational law and social policy. Finally, and once again congruent with these analyses, Peter Nield recounted that the CRC is serving as the conceptual blueprint to re-connect local initiatives in Fife that were initially aimed at child rights and child participation as though these were also separately evaluated.

### *Canadian policy actors and CRC communication*

In sharp contrast, it is clear from Canadian informants that policy actors and other adults in authority are continuing to ignore, or simply do not know about the CRC in schools or other levels of the educational system. The previous British Columbia Deputy Child/Youth Advocate Ian Maas acknowledged this lack of legal communication: *There hasn't been a place to go and talk about the Convention in a regular way in British Columbia bureaucracies.*

Not surprisingly, the Canadian Coalition for the Rights of Children argues that such prolonged public silence about the treaty results from a profound lack of knowledge, and this stems from the absence of formal legal and political mechanisms to ensure education (Covell, 2001; also Howe and Covell, 2005; Williams, 2005). Ironically Covell (2001) notes that children's rights *are* a priority in Canadian foreign policy - a highly touted strategy during the 2002 UN Special Session for Children. "Since the Convention is not part of domestic law, it is not legally enforceable. Canadian legislation rarely recognizes children", they also contend (1999, p. 2; also Mooney, Knox, Schacht and Nelson, 2004).

During the latter stages of grounded coding and analysis, I began to consider how Luhmann's systemic approach towards legal and educational communications across systems may have the analytical salience within Canadian contexts I had recognised within Scotland. One quote from **Table 5.2** comes from a University of Alberta faculty member regarding the strictly legalistic approach towards human rights education as problematic for teaching children's educators about the treaty.

In Quebec, however, this critique of legalism was countered by an educator and policy analyst with the Human Rights Commission. This policy actor is associated with one of only two Canadian provinces that have retained the CRC education, promotion and monitoring within the same agency that promotes and protects adult human rights. This former educator and analyst further observed that Quebec's traditions are based more upon French civil law than upon English common law. In her words: *We are a para-governmental service attempting to see that both children's rights and human rights*

*are implemented in Quebec.* As noted within the literature as well, this provincial legal communication of ‘children’s rights’ being construed as ‘human rights’ was a rare conceptual link within key informant interviews from either nation.

A federal Member of Canada’s Parliament offered a second trenchant analysis with regard to the agency most responsible for children’s rights communication, education and monitoring - the Department of Canadian Heritage. While conceptually and politically incongruent with Quebec’s approach, this department supports museums and parks among many other responsibilities unrelated to human rights education. MP John Godfrey also pointed out that Health Canada played the predominant role in collating and presenting national child rights reports to UN bodies, and how CRC dissemination has taken a different political and legal path to that within Scotland.

*On the other hand if you housed it in Justice, you would be treating it as a ‘disease’. We have a kind of ecosystem here that is a little odd....the Americans are much more a rights-seeking society in the individual context. We have Human Rights Commissions...what really teaches people about rights are live cases.*

He further recalled a recent human rights legal case that had been in the national news at that time.

*I’m thinking about the gay high school student who recently took his date to the senior prom. From an educational point of view, perhaps we learn more about children’s rights, rights of the institution to oppose his values versus the rights of the church, state or individual in these instances.*

In addition, the ongoing development and differentiation of social systems was contrasted between the two nations through culturally distinct paths of human rights legislation, education and policy stemming from the same international legal communication. While living and working within Canada I had not stopped to consider, nor could I grasp the significance until living abroad, how *odd our rights ecosystem* appears. It became quite clear that the federal agency responsible for the maintenance and growth of Canadian museums has an incongruent mandate for human rights communication and education both within and beyond the country.

Moreover, Health Canada is also ideologically and theoretically linked to the dominant medicalised constructions of children's rights as a developmental issue, but not yet as a matter for inclusion or citizenship. In Canada, it may yet be that a high-profile court case moves the CRC agenda forward, and while there have been more than 100 rulings citing children's rights within jurisprudence (Society for Children and Youth, 2003), confusion about the treaty as a communication of international law to which Canadians have complied still reigns (see also Williams, 2005). In this light, MP Godfrey's contention that human rights education could be treated as a *disease* in the Department of Justice seems more than a little ironic. Canadian communication of children's rights as health matters still underpins many childhood discourses in Canada while any notion of citizenship is quite remote (Stasiulis, 2002; Howe and Covell, 2005).

### **Summary of CRC Communication**

As noted within Chapter Three, Luhmann's social systems are self-referential and each exists solely through its own meaningful forms of communication which build up the system and maintain its functional differentiation. Luhmann problematised the whole notion of communication as highly improbable, and ongoing ambiguities over the status of the CRC in Canadian education, law, and practice support his view. Although these communications have taken a distinctly different path in Scotland, Luhmann's thinking allows a common conceptual 'fit' to be established within both nations as the CRC passes through and between the legal, political and educational systems at the same historical moment.

Such an interdisciplinary, sociological approach also establishes a common framework for understanding systemic communication of core CRC principles often overlooked or misunderstood in education - those described by the Child Rights Officer Nield as separated local policy strategies for 'rights' and 'participation'. Furthermore, this comparative analysis facilitates understanding the reflexive, communicative nature of CRC's Articles in the non-linear, "rhizomatic" fashion described by Holmes and Gastaldo (2004; also Allen and I'Anson, 2004), one that accounts for replication of CRC texts within the domestic law, policy and practice of both states. The *living*

*document* described in Peter Nield's words in reference to Fife's Children's Service Plan supports this main argument.

As Price Cohen and Kilbourne (1998) speculate, the legal communications within the UN's Concluding Observations have indeed emerged as jurisprudence in Scotland although the process remains obscured from most educators and policy actors within the study. I contend that such systemic communications are, in fact, germane to making theoretical sense of the CRC in applied settings, and epistemological notions of 'children's rights' as 'human rights' within research. Through a comparative analysis, I found evidence supporting this notion of the CRC as an evolving form of human rights law based not upon ontological views of childhood nor even of human rights.

To accurately understand the CRC, one must move beyond juridical notions of legality and illegality, and consider the emergent human rights paradigm identified by sociologists such as O'Byrne (2003), Turner, (1993), Verschraegen (2002), and educators such as Woodhead (2000). Paradoxically, the sociology of childhood may have even contributed to laying out the boundaries of this emerging paradigm through various empirical studies focusing upon CRC Article 12. However, I would argue for a shift in thinking about the treaty that also accounts for its ongoing, systemic legal communications originating within the United Nations.

Through autopoietic theory, we see how child rights education should *at the very least* include these communications being produced and replicated through the UN. The ambiguity regarding postmodern approaches to both childhood theorising and children's rights dissipates through an analysis of human rights education as form of systemic communication. This autopoietic analysis also appears quite tenable when recalling how the movement for a national Children's Commissioner in England took on renewed significance influenced by Scottish NGO lobbying and parliamentary debate. Child and youth rights statutes within the Education Act 2000, and even the attempt at banning 'smacking' in Scotland which was ultimately defeated during an open parliamentary vote (Mitchell, 2002), further support this comparative analysis.

The analysis is supported by two additional core constructs - “structural coupling” and “perturbation” - from Luhmann’s constructivist approach originally theorised by biologists Maturana and Verela (1980). These theoretical constructs allow further comparative meaning to be drawn from the following texts of **Table 5.3**.

### Thematic Category of Non-Governmental Organisations

The research theme of *non-governmental organisations* (or *NGOs*) emerged most clearly during comparative analysis and axial coding. While I initially considered that their policy influences were opposed within each nation due to ideological and political variances, within Luhmann’s conceptual framework I began to see that these influences are, in fact, similar. The following **Table 5.3** lists salient pairs of texts that illustrate the conceptual properties of the recurrent NGO theme. Again, dimensional properties of the category are brought to light within the accompanying contextualised discussion.

**Table 5.3 - Texts comparing Thematic Category of NGOs**

SCOTLAND	CANADA
{NGO Director} As assistant Program Director with <b>Save the Children</b> Scotland, one of my roles is CRC education within schools	{Nova Scotia CR Researcher} Groups like <b>UNICEF</b> and the <b>Coalition</b> but without systemic inclusion in Canadian schools there will be no real CRC education in Canada
{U. of Edinburgh Ed. HOD} We have done quite a lot of work involving children’s charities particularly <b>Save the Children Fund</b>	{Deputy Child and Youth Advocate} There’s no CRC focus here. I say this carefully and don’t mean to slam NGOs, but I think there’s been a real failure in gov’t and in NGOs
{Stirling Policy Officer} As a parent, I was interviewed by the <b>Children’s Rights Alliance</b> and that was supported and encouraged by Stirling Council	{Canadian Senator} If <b>UNICEF</b> and Elections Canada were doing an election again, they would spend more time working with Parent’s Councils
{Scottish Executive} The Scottish <b>Children’s Rights Alliance</b> has been pressing the Scottish Executive for a Children’s Commissioner to be appointed	{British Columbia CR Researcher} The CRC is languishing right now. If you look at the NGO report, Canada has actually gone backwards on child rights in the past ten years
{Killearn Head Teacher} Other head teachers know this is the way Stirling Council works... we also had <b>Save the Children</b> come out and work with us on rights	{British Columbia HS Student} Mom worked at <b>Save the Children</b> and I compiled materials for a workshop that I gave at school – that is all the CR education I’ve had
{Stirling University CR Researcher} Two main initiatives I am involved with at the U of Stirling... I should also say the work is in partnership with <b>Save the Children</b> Scotland	{Alberta Teacher’s Union Executive} More than others we see the CRC as a restriction on the rights of parents... it has a lot to do with religious fundamentalism

## *Scottish NGOs and the CRC*

Beyond the legislative agenda and new policy arenas created by devolution with the English Parliament, the direct political and pedagogical influences of Scottish rights-based NGOs were highly influential within and across the educational system.

Compared with the NGO sector in Canada, the words *pervasive* and *powerful* come to mind particularly in regard to rights-based education and associated participatory policies. It was also noted by a number of key informants how NGOs were re-assessing the legislative and political aspects of the Convention taken over from the English Parliament. Ms. Jennifer Turpie of the Scottish Alliance for Children's Rights observed: *Many areas of the Convention are devolved issues but the Convention itself is not...bodies that put pressure on the Scottish Executive are beginning to watch closely to make sure that the pressure points are put where they need to be.*

A significant participatory and lobbying precedent was described by Save the Children director Susan Fisher during the drafting of The Standards in Scotland's Schools, Etc. Act (2000) which was wholly influenced by NGO activity to include children's and young people's input. She recounted direct consultations with *ADH children across Scotland on the Bill...that was the first Bill and the first time children were consulted...for a piece of legislation. It set a model.*

Moreover, Professor Pamela Munn, Head of Edinburgh University's Faculty of Education observes above how the Scottish academic community had created a network of research partnerships with the child rights NGO sector. Stirling policy officer Joan Savage also related how this network reached their local community by canvassing parents about their children's rights. Scottish Executive Education Committee member Peter Willman confirmed these participants' recollections, and how the process continued in the development of the newest children's legislation.

Reporting that NGO *pressure* has strongly influenced the evolution of the Children's Commissioner Act, Willman discussed the ongoing inclusion of children and young people in that legislative process. *The Education Committee had seen the draft of the*



*Scottish Alliance for Children's Rights publication looking at the benefits of a Children's Commissioner... We held a couple of events with children and young people and a number of hearings.* Clearly, this kind of political coupling and enfranchisement of young people has moved past the stage of rhetoric with these findings, and is indicative of a widespread series of rights-based outcomes from voluntary sector perturbation within Scots law, education and social policy.

### ***Canadian NGOs and the CRC***

During comparative analysis, widespread variations regarding lobbying outcomes exerted by NGOs became more apparent. A systemic communicative process identified by Luhmann as "perturbation" helped to make comparative and analytical sense of this type of political "irritation", such as those highlighted by descriptions of the lobbying of Scottish parliamentarians by school children diagnosed as Attention Deficit and Hyperactive. Furthermore, a number of key informants who are also researchers within a rights-based Canadian NGO acknowledged they have had much less legislative and educational impact from their lobbying efforts.

The point was further brought home by two provincial Child and Youth Advocates as they recounted how the Convention was almost irrelevant in their experience, and that NGOs were playing a minor role within their jurisdictions. For example, former Deputy Advocate Ian Maas chose his words carefully.

*I don't think the Convention lives very well here in British Columbia and I say this carefully and with good intentions. I don't mean to particularly slam non-governmental organisations but I think there's been a real failure in government and with the NGOs here to make the CRC live... The Society for Children and Youth have certainly a big interest in the CRC but they're pretty low profile in bringing awareness or attention to Article 42. Save [the Children] has also done some work... but the views of children and youth? There hasn't been a coordinated champion in BC.*

Notwithstanding Maas's observations, a powerful and very effective conservative Christian lobby in Canada has exerted a similar type of political "perturbation" as CRC-focused Scottish groups, but one which has resulted in very different educational

outcomes. My own UN participant observations also supported what key informant interviews and comparative policy analyses had identified. In addition, a Canadian Senator reflected on how this political “irritation” so strongly exerted during a 1999 UNICEF election, and during the 2002 Special Session for Children (see Butler, 2000), might be ameliorated in Canada. *If UNICEF and Elections Canada were doing an election again, they would spend more time working with parents’ councils*, she reflected.

In Edmonton, I interviewed an Executive of the Alberta Teacher’s Federation, Dr. Vicki Mather, regarding this NGO influence within provincial politics. *Our right-wing government avoided dealing with children’s right. Maybe more than any other province we see the CRC as some kind of restriction on the rights of parents, but I think it also has a lot to do with religious fundamentalism*. As a result of this same influence, Hanna Ramo shared how her mother’s affiliation with Save the Children Canada prompted her to introduce the CRC within her British Columbia secondary school to educate peers and teachers alike.

University of Victoria child rights researcher Dr. Philip Cook was also highly critical of the role of NGOs as he observed that the CRC is...

*...languishing in Canada... We have dropped the ball in Canada. There is a great irony in the way Canada is seen around the world as a champion of human rights... particularly when you look at the way in which we approach our own. Look at Aboriginal children. If you look at the NGO report, we have actually gone backwards in the past ten years. I don’t think they’ve done a good enough job, and I take some of that responsibility because we [at the Coalition] should have been more proactive in this area.*

King (1997) problematises this form of Scottish CRC lobbying in a critique of Glasgow’s Child Law Centre. “The strategy of these ‘child rights police’ is to wave the *United Nations Convention on the Rights of the Child* in the face of any official inquiry or law reform body referring to it as ‘international law’ ” (p. 79). The key comparative and analytical points being made here are clear: rights-based NGOs in Canada have had less impact politically and as a result within the education system than their Scottish counterparts. But what may be drawn *epistemologically* from such variations?

## Summary of NGOs and the CRC

Luhmann's systems theory facilitates sociological thinking about children's human rights and answers a portion of the above question. However, as this theme fully emerged during axial coding, Canadian participants related a much different outcome as a result of *NGO* political lobbying and educational efforts. Thinking critically about these differences, I also became conscious that my own participation at the UN Special Session as an NGO representative might be biasing my role as researcher and shaping the analysis. I determined to keep an open mind theoretically rather than allowing theory to drive the process as I had initially done during early fieldwork by forcing data to fit within a *childhood studies* conceptual framework. Eventually through theoretical sampling and access to a wide dataset of key informants, I found that each Scottish adult participant mentioned affiliation, partnership and/or representation within organisations from the NGO sector.

As highlighted in Chapter Four, the archival data and recollections from one of the CRC's drafters also underscored the growing significance and role of *NGOs* since the treaty's texts had been negotiated (see Appendix 10). Additionally, under CRC Article 45 the treaty is the only human rights document mandating the NGO role in reporting, monitoring and evaluation. While one might expect ample evidence of NGO activity during any child rights investigation, the widespread variations could not be accounted for epistemologically until I 'discovered' Luhmann's systems approach and his descriptions of communicative events such as perturbation and structural coupling.

Scottish NGOs frequently exert direct pressure on elected Members of Parliament which has resulted in more CRC texts being embedded within legislation and the appointment of the first Commissioner for Children and Young People. Moreover, throughout Scotland's legal, political and education systems, rights-based NGOs are engaged in partnerships while in comparison, Canadian rights-based NGOs are far less visible and far less effective. In contrast, fundamentalist Christian NGOs in Canada are highly visible in their lobbying efforts with the press, the federal and provincial governments, the Courts, and the Committee on the Rights of the Child. The following

thematic discussion continues with another significant comparative distinction revealed during analysis of the study’s findings by contrasting educational policies between the two nations, and viewing how these are translated into classroom approaches.

### Thematic Category of Pedagogy

Throughout the study, I heard references to rights, responsibilities and citizenship clustered together within the literature and within interview transcriptions. As theoretical sampling proceeded, I also came across examples of Moss and Petrie’s (2002) postmodern approach aimed at transforming educational services into child-rights friendly spaces, some of them referenced from Stirling, Scotland (p. 168). Also noted in the literature review, such non-linear thinking about this transformation of children’s services is in line with Giroux (1999), Freire (1999) and others with similarly radicalised notions of systemic, educational renewal. Hence, the following thematic discussion is framed as *Pedagogy* and un-couples the notion of *rights* from *responsibilities* while comparatively analysing significant key informant texts. Each of the following pairs of texts chosen for **Table 5.4** and the thematic discussion that follows were informed by Wolcott’s (1994) analytical question: *How are things working?* when children learn about their rights in an educational context.

**Table 5.4 -Texts comparing Thematic Category of Pedagogy**

SCOTLAND	CANADA
{Scottish Executive} CRC in schools ... most notable thing was the Schools Act 2000 ... in UK legal tradition you don't have rights, but you have privileges	{Member of Parliament} That election in schools started a huge resistance from the Reform Party. The ultimate irony? They voted for the right to have a family
{Stirling Ed. Policy Officer} In our initial teacher education programme we have been thinking about introducing the importance of the CRC	{Youth NGO Director} On a policy level, we get calls to supply a group of young people as though we were a warehouse
{U. of Edinburgh Ed. HOD} The Education for Citizenship framework is proposing schools introduce the CRC into curriculum in terms of the learning progression	{U. of Alberta Educator} A key thing that needs to be better articulated in rights education is that responsibilities are implicit. I think they need to be explicit
{Child Rights Officer} Fife had a big debate whether we should always mention rights and responsibilities together...children have some absolute rights	{Human Rights Policy Director} In Quebec, you really can't talk about rights without talking about responsibilities. Teachers have reticence about teaching children's rights

{Stirling Univ. CR Researcher} It's not just neutral - it changes the nature of professional practice such that what it is to be an adult and a child are re-negotiated	{CRC Curriculum Developer} I heard children were far too young in primary grades, these ideas were too abstract. Of course they were thinking from an adult perspective
{NGO Director} What babies have responsibilities? Tell me! Dirty babies have the same rights as clean babies! Bad kids have the same rights as good!	{Nova Scotia CR Researcher} In Halifax parents complained but Education officials said: What kind of country gives its citizens rights but is afraid to let them know?

### ***Scottish pedagogy and the CRC***

As discussed earlier, at the outset of this investigation I took part in a series of participant observations and conducted two guest lectures within P-6 and P-7 classes at Stirling's Cornton Road New Community School. An initial interview with the local authority Director of Education assisted in negotiating access to area schools, and in turn, facilitated direct exchanges with 50 ten, eleven and twelve year-old pupils. These lectures were illustrative of the "double hermeneutic" within the social sciences, and offered a reflexive opportunity to evaluate Educational Director Margaret Doran's claim that area pupils had actually *moved past the Convention*. Furthermore, these guest lectures took place within the pedagogical context of Scotland's nationally revised citizenship curriculum.

From these early days, it was reinforced by informants how devolution from the English Parliament in 1997 had allowed Scottish citizenship to take on new relevance. At the time of this writing, for example, discussions that 16 year-olds may be offered the opportunity to cast their vote in the next general election were taking place - prompted once again by NGO sector lobbying of Parliament. Such forms of pedagogy are the grounded coding categories through which core CRC principles are being translated, but in strictly Luhmannesque terms, these are also representative of communicative programmes within the educational system. As such, binary codes such as success/failure, or knowledge/lack of knowledge, may be brought to bear to evaluate CRC knowledge.

In order to assess how, or even if, the CRC was being introduced to teachers I interviewed a number of post secondary researchers including Professor Pamela Munn,

Director of the University of Edinburgh's School of Education. She acknowledged that awareness of the treaty's existence through Article 42 was simply not enough.

*I am interested in how they are translated into actual practice Period 1 on Monday. The Education for Citizenship framework is proposing schools introduce the CRC into that curriculum...but if you mean a curriculum that every child would be guaranteed to follow at present? No.*

Nevertheless, based upon her judgement and my own participant observations this form of curricular pedagogy appears to be an effective way to introduce civil rights, and other social and political rights-based knowledge, within Scottish schools. In terms of participatory forms of citizenship stemming from NGO activity, the issue of inclusion of children during the drafting of legislation highlighted earlier is revisited in the context of new Scottish pedagogy. Previously, key informants described various educational sites through which the Convention's principles were being translated that in turn impacted the drafting of new laws. Scottish Executive informant Peter Willman related historical tensions regarding how new citizenship for young people is an evolving form of arguably postmodern parliamentary democracy.

*In the UK...the notion of rights sits sort of uneasy within the drafting of legislation. At the back of the UK legal tradition you don't really have rights. You have privileges granted by the Crown. Going back to the Middle Ages... laws were framed in terms of duties and sanctions.*

This view is also reminiscent of Enlightenment philosophers such as Hobbes and Locke who also argued that the social contract between citizen/subject and the state/sovereign must be balanced by rights dispensed within a context of duties (Such and Walker, 2005). Thinking critically, however, there are many influential policy actors behind the scenes exercising pedagogical power in the translation of children's citizenship rights into practice (see also Mitchell, 2003a, b).

For example, having directly participated in a Stirling classroom discussion of citizenship, the institutional power of individual head teachers to control or deny civil rights teaching was highlighted. Moreover, in his rights-based pedagogical research in

the same area schools, Stirling University child rights researcher Dr. John I'Anson had observed their transformative role.

*We wanted to look at how changes in one space, e.g. the head teacher talking in the assembly space...does this permeate the classroom? Does the classroom change what goes on in the playground? The head teacher is one of these people with enthusiasm and she has done previous work in Stirling and it made a considerable difference.*

NGO Director Susan Fisher also discussed how Scottish history and culture are impacting the pedagogy of citizenship for young people.

*I think it's a culture that inhibits rights...there's a kind of docility that is feudalistic. We don't really have rights...it's not really nice, it's a little bit pushy, it's a little bit demanding. It's rights and responsibilities. But what babies have responsibilities? Tell me. Dirty babies have the same rights as clean babies! Bad kids have the same rights as good kids! If you start making conditions and say that you only have rights if you're a nice kid...our stance would be that children have rights. That's it! They may learn about them better if you put them into a context that appreciates others' rights. The reality is that you still have your rights anyway.*

Her comments illuminate the subtle pedagogical tensions within discursive and practice settings observed by most other interviewees. In Fisher's comments, however, we may also see how children's human rights may be conceptually disconnected to their many responsibilities of concern to educators and adults in authority.

Child Rights Officer Peter Nield reflected on the same theoretical and conceptual tension within local education and citizenship initiatives.

*We've had a big debate in Fife as to whether we should always mention rights and responsibilities together, and to some degree it has taken us off on a tangent. It's used as a kind of avoidance tactic. There are certainly two camps...one believes we should talk rights and responsibilities together, and one that we should not. I think there is a common sense approach that includes both. Children have some absolute rights and these should not be confused with responsibilities. What we found interesting...is that it is not a debate young people recognise, it's an issue adults have manufactured.*

This pedagogical debate is also clearly an issue of how power is wielded within particular school cultures, and this conceptual dimension brought forward by Stirling

University educational researchers came up again as Nield highlighted the role of head teachers.

*We have learned in Fife that they are far more critical than I would have imagined. When you have a School Development Team and a Senior Management Team that are committed, but they cannot overcome the barrier created by a head who is not enthused...they are very powerful figures.*

Since the CRC has entered law and policy, he observes that “citizenship has become something different. It’s more about community and involvement now, much more connected with inclusion, rights and participation. I’m not certain there is a clear boundary any more.” Within this study’s development of emerging child rights theory, Nield’s local experience in citizenship pedagogy is congruent with a sociological approach to human rights teaching and implicit power relations within educational institutions.

### ***Canadian pedagogy and the CRC***

Contrasting Scottish tensions regarding rights-based power shifts and pedagogical transformation, as had been the pattern previously, it was apparent from Canadian informants that educators are simply afraid of combining the two concepts of rights and citizenship in the classroom (see also Howe and Covell, 2005). Nevertheless, two innovative examples of children’s rights curricula stand out in the Canadian discourse, and both of these educational scholars were interviewed. The first of these extensively piloted and evaluated curricula was adapted for elementary pupils by Dr. Ellen Murray.

*I encouraged learning and practising responsibility, and I extended that even further. We need to know...more than rights and responsibilities the foundation to everything is respect! I created this document using UNCRC Article 42 very much as the framework.*

She recounted one of many public meetings leading to adoption of the curriculum in a neighbouring Alberta School District. She reviewed policy documents, the School District Philosophy, and its Mission Statement - *but armed with international law, a piece of curriculum that was pedagogically sound and piloted extensively...it was endorsed*, she recalled.



Professors Katherine Covell and Brian Howe of the Cape Breton Child Rights Centre have developed a mid- to senior-level series of curricula in partnership with that provincial Department of Education. Introduced into the health and social studies curricula, Nova Scotia is now the sole Canadian jurisdiction to adopt a systemic approach to accurate knowledge and awareness of the CRC in local classrooms.

*We started teaching at grade six levels because at that time children are able to understand the abstract concept of rights and what it means to have rights...When the Department of Education in Halifax started to institute the Convention...parents groups there started complaining and one of the officials said to them: What kind of society is it that gives its citizens rights but is afraid to let them know they have them? That kind of sums it up.*

Why indeed is it that Canadian parents and educators are more afraid to tell children about the CRC? Within the national context she also observed: *You have to be very patient and incremental. It is very evidence-based...show the outcomes before School Boards do anything.* During comparative analysis, I could see how Covell's more modernist assumptions about measuring the intellectual capacity of pupils before introducing the *abstract concept of rights* might be challenged. In the Scottish Parliament, for example, five-year-olds have lobbied their Members of Parliament, as well as within a Killearn primary school whose head teacher introduced rights-based participation within the nursery school level.

Other, perhaps more postmodern assumptions within Canadian approaches to CRC pedagogy came to light with another educator. Dr. Vicki Mather of the Alberta Teacher's Union Executive had these reflections:

*Human rights teaching has to be infused into the regular curriculum. There is much evidence that the learning is far superior as far as changing attitudes and behaviours of children if it is infused into all of their subject areas...in dialogue rather than as a separate lesson. A second strategy is finding the links within established curricula and a third enters through the selection of learning activities.*

From her theoretical perspectives, I captured a *zeitgeist* in some of that province's CRC *pedagogy* that countered the provincial advocate's earlier position.

## Summary of CRC Pedagogy

In this thematic discussion, informants frequently observed that notions of human rights are enmeshed with historically located concepts of duties and responsibilities. Thus, pedagogical approaches towards the CRC include notions that have roots stretching through millennia of religious, philosophical and intellectual discourse well beyond the aims of this study. Notwithstanding, it is well within the aim of the study in terms of theoretical development to reconsider the child rights discourse from a “transdisciplinary” (Holmes and Gastaldo, 2004) systems perspective. This analysis necessarily includes the emerging pedagogy of children’s citizenship and its connections with local and national democratic initiatives. Both historically and institutionally, rights as a UK citizen have been dispensed as privileges from the Crown and were based upon the subject’s concurrent duties being carried out. These feudalistic values are very much embedded within patriarchal and hierarchical approaches to child and youth rights-based pedagogy within the classroom (see also Devine, 2002; Jeffs, 2002; Such and Walker, 2005 for further analysis).

From this comparative perspective, it becomes clear again how the Scottish renewal of political and legal foundations after devolution have re-shaped emergent human rights practice while at the same time theoretical development remains static. Indeed, debates about the nature of children’s rights in regard to fuller citizenship challenge political and social discourse in a similar fashion to the women’s movement just a century ago. In this regard, Scottish key informants observed how these more feudal notions of citizenship are being re-constructed in Parliament, and within the context of CRC pedagogy that is being taken seriously in the nation’s classrooms.

Autopoietic systems theory allows comparative and interpretive analysis from a deeper level. While there is a place for traditional epistemological approaches towards classroom learning about children’s rights, there also appears to be an emergent and congruent fit for Luhmann’s sociological thinking about human rights. Thus, axially coded properties indicate the following important conceptual dimensions from CRC pedagogy in Scotland and Canada.

First, key informants from both nations integrate notions of *responsibilities* in the classroom and the community concurrently with new knowledge of Convention *rights*. Some Scottish NGO representatives in the study disagreed strongly with such a pedagogical combination since many CRC rights are part of systemic *adult* responsibilities. Other key informants believed this debate to be a *red herring* and an avoidance tactic of little concern to young people.

Secondly, the important role of head teachers (or principals in Canada) was emphasised and this conceptual property returns to the notion of systemic power relations exercised within schools, and how these are mediated in both national educational systems.

Finally, there is considerably more evidence of children's and young people's citizenship in Scotland being re-constructed within a CRC framework incorporating both participation and consultation in national legislation. Some of the conceptual properties noted previously within the thematic discussion of the CRC systemic communication appear relevant to an autopoietic analysis of pedagogy. Repeatedly, key informants highlighted theoretical dimensions regarding Luhmannian constructs of "structural coupling" and "perturbation" by NGOs within and between educational systems as researchers, advocates and sources of accurate knowledge. The impact of such processes upon local educational policy and practice is salient in terms of ongoing theoretical development and this point is explored again more fully within Chapter Six.

### **Thematic Categories of Culture and Tension**

The thematic categories of rights-based *Culture* and *Tension* were consistently interconnected within key informant responses, and they are re-presented in **Table 5.5** to capture some of the most important conceptual properties. While the discussion that follows also interconnects both nations, once again the conceptual properties within each comparison are illuminated to allow development of theory.

**Table 5.5 -Texts comparing Thematic Categories of *Culture* and *Tension***

SCOTLAND	CANADA
{Save the Children Director} Scots think we are not racist but it is actually having to deal with the fact that we are	{Youth on Alberta's Blood Reserve} If Indians become Mormon, they can't participate, is a separate Mormon native church
{Stirling Policy Officer} Overcoming barriers to citizenship for all... we looked at diversity and what it means to be a real Scot	{Former British Columbia Children's Commission Policy Officer} How do you provide for children's voice the way gov't is set up, the power brokers involved
{Scottish CR NGO Director} This Committee, a very knowledgeable group of people look at our country every 5-8 years	{CR NGO Director} We are a culture of cultures so individual people have rights... but there is a myth that children's rights conflict with family rights
{Scottish Executive} Since devolution there is a much greater awareness of rights since the European Charter of Human Rights into UK domestic law	{Member of Parliament} We started by recognising French Canadians, women, minorities, gay people, but rights are constrained in the West by fundamentalism
{Stirling Education Director} We're only 6 years into the new Parliament and it has shifted the way we are governed. We still have relationship to parts of the UK	{British Columbia HS Graduate} One difficulty is diverse geography and the huge differences that separate people
{Perth CR Officer} How are rights challenged, threatened, ignored by power structures, like Police? One impediment is adult power, after Dunblane, we saw systems should have been in check that weren't	{Saskatchewan HS Teacher} Poverty and systemic racism places Aboriginal children and their families at a disadvantage in schools
{Stirling Univ. CR Researcher} Two things are in tension – Scot tradition for innovation and ideas that things don't change	{British Columbia CR Researcher} We're not going to get a federal Children's Commissioner or an Ombudsman in the near future

***Comparing CRC culture and tension***

One common child rights tension facing both countries was described by participants as systemic forms of racism, and while representing distinct phenomena within each culture, intolerance and bigotry have similar theoretical roots which may be addressed within the sociology of human rights. When analysing the first quotes, I realised that in comparison few Scottish informants had actually identified racism when asked about cultural impediments to implementing children's rights in schools. This fact was identified as a cultural trait in and of itself by a Save the Children Director. *Perhaps being oppressed themselves and having to fight for the right to self-govern, there is a*

*willingness to be seen as rights-based and focused. Scottish people say we are not racist but actually having to deal with the fact that we are.*

While Scotland's largest city of Glasgow is home to tens of thousands of immigrant families from East Asian and many other geographic locations, the nation is still predominantly Caucasian with ethnic tensions and violence common during football and other cultural events. The tension was described by a Stirling local authority policy officer who made these comments regarding a conference she had recently organised...

*...on the UN Convention and human rights...diversity in citizenship and what it means to be a real Scot. Basically, what does that mean if you are from a different national group or disabled? That was a very hard workshop and one that certainly did not reach agreement.*

It is likely that racism and discrimination against those from other national origins is a commonly human characteristic that could be described by key informants from across all geographical regions of the world. Certainly, there was similar evidence of such tensions from informants who observed discriminatory cultural traits are prevalent across Canada, and the disturbing stories from youth living on the Blood Reserve in Alberta are simply one representative sample. "First Nations" and "Indian" young people - social, political and legal constructions that require carrying a "Status Card" for identity as many citizens in the formerly apartheid South Africa - reveal the inheritance of systemic racism from centuries of cultural assimilation. While the investigation did not focus upon such phenomena, it is not surprising that evidence came to light when informants identified the cultural impediments to children's rights education. This Canadian trait inhibits young people from their fullest social, political, and intellectual development, and was also evidenced in the stories from within Reserve life, and from the schools and churches the young people attended locally.

A comment by a federal Senator illuminated this predominant cultural tension in Canada while also pointing towards an interpretive concept that proved useful in the final stages of building theory within this study. *It's about power, and if you are comfortable in your own skin then you are comfortable with others in their own skin. If*

*our teaching about discrimination and child rights doesn't get at that deeper part, then we're missing it.*

Looking at local Scottish schools in Fife, Barnardo's representative Peter Nield spoke of various other CRC tensions he described as *fear factors*, as well as an absence within the child rights discourse of *the kind of principles you could find within the European Human Rights Legislation*. This lack of balance affects decision-making in schools, he argued. Comments by Peter Willman of the Scottish Executive were typical regarding the new-found political and cultural identity within the nation.

*Since devolution there is a much greater awareness of rights. The new Parliament had to comply with the European Charter of Human Rights when they came into being... human rights instruments are on the agenda in Scotland in a way they arguably were not before...another factor influencing the voluntary sector was the knowledge that in Wales there was already a Children's Commissioner.*

Jennifer Turpie of the Scottish Alliance for Children's Rights described another kind of tension that CRC Article 44 monitoring creates in and of itself for policy-makers.

*It is this Committee who...every 5-8 years has a look at our country...You think 'what are we actually achieving here?' The Concluding Observations came and went and...what exactly is the government doing about them? Has anybody even heard of them?*

Notwithstanding the new Children's Commissioner appointment Ms. Turpie argued that relatively little change was occurring within Scotland's borders. CRC researcher Philip Cook made similar observations on Canadian CRC tensions: *It doesn't look like we're going to get a Children's Commissioner or an Ombudsperson at the federal level...it looks like the task will fall to [Senator Pearson].*

Through comparing policy documents, we may also see how the matter of a national ombudsperson was raised by the UN Committee on the Rights of the Child to both nations in their 1995 Concluding Observations. This observation also points to a central analytical finding from the thesis: the national appointment of a Children's Commissioner is not likely to occur in Canada for some time, but how and why

Scotland has achieved this national policy actor within its own contexts of culture and tension remains a systemic distinction both comparatively and pedagogically.

Again identifying the dimension of power relations in the context of a child rights cultural tension, the Perth-Kinross Child Rights Officer observed:

*My interest in rights is not just the Articles but more fundamental issues. How are their rights challenged, ignored by the power structures? People who feel they are being hassled by Police? ...generations are used to the leftovers from the Victorian era - seen and not heard. The whole sense of children having rights is just foreign to them. That will also take generations just like sectarianism in this country.*

Paterson continued with an observation that was similar to adults and young people in both nations under study.

*One major impediment is the adult power scenario. A large number of pupils were killed in Dunblane Primary and...a lot of organisations and central government got involved ...saying that systems here that should have been in check haven't worked...But at what point does that allow young people to have a say in how the resources in the country are spent? The obvious example here is in education.*

Echoing Paterson's sentiments while signalling a recurrent conceptual property from the research, a former policy officer with British Columbia's Children's Commission observed:

*What I found is that young people knew nothing about the Convention, what it said or what it meant...my experience in government is how do you do that with the power brokers involved? The medical community, teachers and far-right parents' groups? I don't even think these are as much of an issue as the professionals though. I've always thought we professionalized and medicalised the care of children in Canada. To take on a rights-based perspective gives away far too much power.*

In closing this section of main research themes, Member of Parliament John Godfrey observes the following inherent strengths within Canadian culture, and its reputation as one nation that takes human rights educational issues seriously.

*We have built a cultural infrastructure and one of the key features in the national infrastructure is the whole development of rights regimes...Over time, we have gone at it group by group. We started by recognising the rights of French Canadians, women, minorities, language rights, gay people and those with disabilities. It has happened kind of topsy turvy but it has a relentless forward progress. And that is the particular dynamic of Canadian society. On the minus side, we have parts of the country where rights are constrained. The West and fundamentalist views of child rights - father is the master of the family and the house. It spills over into seeing children as property, a private matter.*

As Godfrey observes, Canada's early historical tradition of the French/English political divide has evolved into a national cultural strength that is most evident within the treatment and promotion of human rights. Indeed, Quebec has singularly developed a provincial Charter of Rights. Nonetheless, the *relentless forward progress* for human rights across Canada has been constrained with regard to children in recent years due to conservative ideological tensions and a lack of theoretical development. Indeed, upon comparative analysis it also becomes clear that intersections within both Scottish and Canadian history have been influenced by French civil law in response to cultural tensions created by English imperialist and colonial ideologies. For all of this, the likelihood of Canada emulating the child rights-based legislation and social policy espoused by its OECD neighbours remains greater in the long run based precisely upon this additional historical analysis identified by MP Godfrey.

### **Summary of CRC Culture and Tension**

This section of comparative policy analysis discussed interconnected conceptual properties that were coded during the study as issues of *Culture* and *Tension* regarding the CRC within various educational contexts. Most key informant policy actors also had careers working with young people, and yet, similar tensions from diverse social systems were repeatedly identified.

As both Scottish and Canadian informants had pointed out, these tensions are, in fact, located within the power structures impacting young people exercised by various adult power brokers reluctant to relinquish their stake. In one British Columbia example, an ideological swing in provincial politics resulted in the complete repeal of rights-based



legislation supporting that province's independent Child, Youth and Family Advocate. Also in evidence as an underlying conceptual dimension within Canadian interviews was the overt medicalisation of child rights issues exerting political and theoretical tension with regard to fuller citizenship not present in the Scottish cultural context (see Coppock, 2002; Mitchell, 2003a, b, 2005).

Another cultural dimension impacting CRC education was Scottish devolution, and it is important here to identify that most Canadians would be unaware of its socio-political implications. This historical event, and the opportunity presented to the NGO sector in Scotland as a result, played a large analytical role in the research that accounts for variances in CRC communications in law and social policy (Mitchell, 2002). Through comparative analysis, we may also see how jurisdictional contentions across Canada have constrained dissemination of accurate CRC knowledge among policy actors within education, and children and young people themselves. A majority of Scottish key informants observed how devolution had actually created increased cultural concern for human rights that in turn is shaping children's rights education. These comparative distinctions with Canada were re-emphasised by accounts of how the Scottish Parliament and NGOs are further orchestrating *devolution of the Convention* with their English counterparts in Westminster.

Nonetheless, Canadians such as Cabinet Minister John Godfrey frequently observe themselves to be reflected within *cultural* and political mirrors from the US, and thus, see their national identity as more respectful of minorities and in keeping with a *relentless forward progress*. Despite this international reputation, almost all Canadian participants also acknowledged endemic discrimination against First Nations citizens. Racism was a common tension in both nations and these experiences were frequently and eloquently described by participants as conceptual properties of rights-based education. Canada was further described by NGO Director Sandra Griffin as a *culture of cultures* but not yet one that is homogeneous when it comes to CRC education, particularly within the provinces of Alberta and Quebec. Conversely, Scotland's culture and history of being politically oppressed have most certainly created a strong national thrust towards issues of social justice. Compared with Canada and its large

southern neighbour, Scotland looks to Wales, N. Ireland, England and the Nordic nations for comparative children's policies, and rights-based legislation and policy are more widespread as a result.

## **Discussion and Conclusion of Chapter Five**

The presentation of findings in Chapter Five was supported by adopting the second leg of Wolcott's (1994) tripod and its rubric of *Analysis* - in this case a comparative policy analysis - that emerged fully during axial coding. The research themes that were initially identified during open coding and descriptive analysis in Chapter Four - rights-based participation, communication, non-governmental organisations, pedagogy, culture and tension - have been re-presented within data tables to allow a more explicit exploration.

In order to discover and build new theory, I set out to compare how contemporary constructions of the principles and provisions from the Convention on the Rights of the Child were being implemented in policies by Scottish and Canadian educators. Glaser and Strauss (1967, p. 5) argue that the adequacy of any theory cannot be divorced from the process through which it was created, and identifying the core category within grounded theory studies is fundamental to this process. From the outset of the study, my status as a visitor in Scotland provided me with a comparative lens, in fact, to 'not compare' was not possible. Thus a comparative policy study began immediately, and I found that any discussion of the CRC during fieldwork generated theoretical properties of participation almost perpetually.

Participation with young people, even very young pupils, was described both pedagogically and politically by numerous elected governmental and non-governmental or NGO representatives. The central thematic code or core category was highlighted by appreciating how each of the other thematic categories could be conceptually linked during axial coding. Since all other research themes revolved around the central theme like planets around the sun, the conceptual properties for building new CRC theory have been built upon this central notion, and numerous

qualities of participation came to light during comparative analysis. Each of these themes in turn may be analysed through use of this core CRC principle alone. For example, in Scotland constructions of children's rights are primarily grounded within statutory and political communications which inform the educational system and its policies. Statutory Children's Services Plans and School Development Plans, for example, allow adult policy actors and interdisciplinary professionals a measure of common ground.

However, not only was rights-based participation considered to conceptually stand apart from the treaty, whenever descriptions of consultation with young people were uncovered in interview data, these were proffered as though representative of the entire CRC. As the research concluded and I utilised more of Luhmann's analytical thinking, I grew to understand *why* the other three principles from the Convention had been omitted from these discussions: systemic forms of communicating accurate knowledge of the CRC's Articles have simply not been widely grasped by researchers, policy actors or educators.

Overall, this chapter's comparison of texts shows support for an autopoietic analysis of the CRC that is theoretically more congruent than social and theoretical constructions of children's rights within dominant discourses (see also Saunders and Goddard, 2001). Indeed, autopoietic conceptual properties emerged repeatedly in each of the accompanying discussions of research themes. Furthermore, this theoretical 'reconstitution' of CRC texts may be traced historically to Article 42 negotiations during the drafting of the treaty. When thematic findings are viewed through Luhmann's systemic lenses, they indicate Article 44 also contains self-replicating dimensions and properties. It was also observed that conservative non-governmental organisations within Canada, while moving in an ideologically divergent way, are also responding with autopoietic constructs of perturbation and structural coupling to achieve their own aims at the macro- and micro-systemic levels.

Key informants in both nations described pedagogical approaches that included notions of rights coupled with responsibilities as prerequisites for introducing CRC knowledge.

However, some clear arguments were also provided for conceptually *uncoupling* these notions due to considerations of power differentials. Accordingly, this pedagogical tension increases the need and potentiality for new interpretation and development of theory.

Becoming more apparent in the later stages of analysis, the inductive approach to empiricism on an international scale that was adopted during earlier phases confirmed its theoretical 'fit' for this study. Through constant comparison, memoing, and coding of interviews, I came to understand many previous assumptions about children, childhood and children's rights were inadequate to explain variations visible within the accumulating data. This understanding emerged most clearly during the comparative analysis within this chapter, and combined with the study's central design feature of UN participant observations, led to a re-conceptualisation within an autopoietic epistemology.

Indeed, Canadian informants observed how Health Canada and the Department of Canadian Heritage are the primary systems through which children's rights communication and education take place, while the nation's foreign policy has the strongest rights-based approach. Paradoxically, Canadian young people repeatedly described how they were restricted from exercising new civil rights under the CRC within their own communities. In a key policy contrast, Scotland's CRC rights were being introduced within discussions of citizenship in the classroom, and educators reported almost exclusively that debating civil and political rights within this revised national curriculum. This pedagogical approach also appears more congruent within a sociological study of human rights, but once again, young peoples' citizenship has not been conceptually un-coupled from 'rights' as 'responsibilities'. Furthermore, this present theoretical coupling does little to clarify *adult* responsibilities. Nonetheless, in an unprecedented comparative contrast, Scottish government representatives participate regularly with young citizens in drafting new, rights-based legislation.

It became obvious that Scotland has a more widespread and much clearer legislative, policy and practice agenda regarding the CRC than those currently visible in any

Canadian jurisdiction. As another example, Child Rights Officers are non-existent in Canadian jurisdictions while in Scotland these policy actors play an increasingly important role in building local CRC awareness and partnerships with young people. This also made some sense of why the main qualities of participation, consultation and inclusion were repeatedly identified by Scottish informants.

In Canada, contrasts with Scotland also enabled me to understand where CRC interpretations were similar, and most often, dissimilar. By default, key Canadian informants uniformly described the lack of participatory experiences for children and young people. When interviewees did speak of young peoples' *engagement* with adults, tokenistic, patronising, authoritarian and even racist qualities of participation were described, particularly by the young men and women from Alberta's Blood Reserve. Culturally, an undercurrent of racism acts as an impediment and tension within rights-based approaches in the schools of both nations making this issue an integral one for CRC pedagogy, policy and practice.

Some shifts were noted in the study's results that discussed an emergent pedagogy of citizenship and children's rights but this was still from within the ideological framework of responsibilities. Scottish rights-based NGOs are influential policy actors lobbying legal, political and educational systems, and are better understood through Luhmannian constructs such as structural coupling and perturbation. However, as I observed during participant observations at UN human rights session, neo-conservative religious NGOs are also very active. The influences within each nation's voluntary sector strongly account for variations in CRC pedagogy, but Luhmann's thinking allows an appreciation of how systemic phenomena of structural coupling and perturbation are similarly accomplished across cultures and national boundaries.

Many of these variations are directly related to Article 42 of the Convention, although succinctly put, it is safe to conclude that few educators are knowledgeably implementing its constituent principles in the schools of either nation. Having said this, through comparing thematic findings various theoretical properties from social and legal constructions of children's rights allow us to draw further conclusions.

First, domestic child rights reports and evaluations are regular events expected as part of the ratification process for all nations under Article 44. These evaluative reports occurred at the Office of the UN High Commissioner for Human Rights for each nation during the study and enhanced the methodological and theoretical breadth of the research. From documentary analyses and participant observations, I anticipated an understanding of these legal communications would be standard practice within education that were commonly referred to, or at least acknowledged to exist. Surprisingly, beyond CRC Committee members these legal communications were discussed by only one NGO informant when directly asked. Thus, while Article 42 will continue as the international framework for domestic Article 44 reports, its autopoietic influences upon new legislation and policy are not understood.

Second, CRC Articles 42 and 44 appear to have autopoietic, self-replicable qualities that were observable during the final stages of fieldwork and analysis. These autopoietic findings allow another argument to be empirically advanced: Luhmann's systemic thinking about human rights has every-day applicability in child rights policy and research discourses. By re-conceptualising the CRC as a form of legal communication, the thematic findings indicate that the UN's Concluding Observations have, indeed, contained draft legislation which guided Scotland's Education Act (2000), and the Commissioner for Children and Young People Act (2003). These communicative systemic events may be anticipated in other legislative and policy arenas within either nation under study, and elsewhere.

Finally, omission of basic CRC knowledge by key informants in educational policy and practice arenas is clearly linked with the absence of rudimentary knowledge of the Convention in core professional training. Perhaps by educating professionals, parents and children alike, common tensions such as children's rights usurping familial or parental rights will disperse. While autopoietic theory was increasingly drawn upon during these comparative analyses, in order to accomplish the study's main aim of building new theory I now turn to a fuller adoption of Luhmann's core constructs to re-interpret these themes within Chapter Six.

## CHAPTER SIX: INTERPRETIVE ANALYSIS OF FINDINGS

### Introduction

This chapter brings to a close the presentation of findings by drawing upon Wolcott's (1994) final analytical dimension. While findings in preceding chapters have been analysed both descriptively and comparatively, this final rendering of thematic or "substantive" research categories (Glaser, 2005, pp. 12-13) is built solely upon a theoretical *Interpretation* guided by the question: *What can we make of it all?* As noted previously, Wolcott acknowledges that the relative emphasis among these three analytical categories is imprecise although they are not entirely arbitrary since the research aims offer signposts for clarification. Within this research, as noted previously, the development of new theory is the main aim, and while previous chapters have provided a type of scaffolding, this interpretive analysis accomplishes the project.

Wolcott (1994) contends it is not so much a matter of where a researcher halts description to begin analysis or interpretation, but rather whether "description itself can ever be free of the analytical or interpretive frameworks that drive it" (p. 256). He also observes that while many theorists have taken sides for, or against, interpretive social science, "no one has yet paused in the game long enough to explain how one would go about non-interpretive science of any sort" (p. 48, citing Frankel, 1987). Wolcott (1994) further cautions doctoral researchers to be "wary of excess" since interpretation is more subtle than other forms of analysis. "Focused inquiry is not a soapbox from which researchers may make any pronouncement they wish ... research often enough serves as a ruse for presenting 'interpretation' as little more than a point of view in disguise" (pp. 36-37). To avoid such as "ruse", when claims are made that an interpretation derives from qualitative inquiry, the links to fieldwork must be relevant and clear, he declares.

In responding to these concerns for credibility, I have drawn fully upon Luhmann's autopoietic systems theory, and in the end, it is the researcher who must decide how the descriptive and analytical sides of the "see-saw" are balanced by the interpretive

fulcrum (Wolcott, 1994, p. 36). As in the case of the previous analytical accounts, this third presentation of findings has also taken great pains to make the supporting empirical links quite explicit. Considering how descriptions of the child's see-saw have played both analytical and empirical roles in the study, we shall return to reconsider this metaphor in Chapter Seven.

### **Integrating Luhmann's Binary Coding with Selective Coding**

As noted within the findings from Chapters Four and Five, descriptive and comparative analyses revealed theoretical properties of the six substantive categories. In the current chapter, however, core constructs from Luhmann's constructivist theory of autopoietic social systems are more fully deployed to reinterpret these substantive themes and to identify the study's emergent theory. These constructs are functionally differentiated social systems and autopoietic communications stressing their self-replicating capacities achieved through structural coupling and perturbation. Glaser (2005, citing Gibson, 2005) agrees that the "similarity between grounded theory and systems theory is evident in that both demonstrate that 'knowing' is contingent, emergent and reduces complexity ... systems theory shows us that all communications are contingent. Knowledge is instead verified through comparison or goodness of fit" (p. 119). Consistent with this "similarity" and "goodness of fit", Glaser also identifies "autopoiesis" as a "theoretical code" for grounded theory (2005, pp. 25-26).

In another salient interpretive point, Glaser (2005) observes that both grounded theory and autopoiesis "insist that they have no pre-set directional objective ontological state" (p. 119). Due to the bracketing of ontological matters in the study and a focus upon its epistemological features, the utilisation of an inductive, grounded methodology facilitated the re-theorising of children's rights through Luhmann's autopoietic lenses. This re-theorising was previously posited by King (1994) for child rights researchers and Verschraegen (2002) for sociologists of human rights.

Moreover, by integrating Luhmann's systemic binary coding within this final stage of grounded selective coding, the interpretive analysis allows for the 'discovery' of the



study's core distinction from its thematic categories. This theoretical construct facilitates, indeed completes, the study's methodological and epistemological integration. These constructivist, interpretivist procedures are also quite consistent with Luhmann's deployment of Spencer Brown's (1969) distinction theory which posits "*a form without another side dissolves ... and as such it cannot be observed ...*" This capacity for observation and for being observed is a necessary precondition for the existence of any society consisting of communications" (Luhmann, 2000, cited in King and Thornhill, 2003, p.14, emphasis in original).

Finally, the identification of a binary code clarifies how various systems like education, law and politics differentiate themselves through self-replicating and self-referential forms of new communication. As I had begun to note during fieldwork and early data analysis, the "form" taken by each substantive thematic category had been observed accurately and described repeatedly by informants until theoretical saturation occurred. However, the study's core distinction allowing systemic replication in the fashion argued by Luhmann argues as prerequisite for functional differentiation remained hidden until selective coding took place.

### ***Functionally differentiated systems within this study***

As I had come to appreciate, within Luhmann's writings we have a social theory that makes sense of both the historical and the continuing evolution of society. His theory provides a means to analyse specific events and their inter-relationships. Luhmann (1997) argues that we can no longer dispute the emergence of a complex, radicalised global system and innumerable subsystems as we watch events unfold simultaneously in Buenos Aires, Baghdad, Boston, Brisbane and Bangkok on our electronic news screens. As a feature within modern society, social systems are evolving as a response to this complexity through both differentiation and functional specification. This differentiation contrasts with previously stratified forms of power that was wielded within tribal, ecclesiastical, feudal or monarchical societies where "rights as a protected sphere of individual action are unthinkable" (Luhmann, 1965, translated in Graber and Teubner, 1998, p. 64). Graber and Teubner (1998) argue further that through

Luhmann's sociological gaze we see that 'human rights' as individual entitlements have come about only with social systems differentiation.

Luhmann (1965) argues that functional differentiation and the emergence of human rights are in fact "complementary processes" that appear as stabilising mechanisms to strengthen the structures within modern society for the protection and maintenance of systemic boundaries (pp. 79-80, translated in Verschraegen, 2002). Human rights also ensure that the differentiation established between various functional systems will be autopoietically maintained in the face of ever-increasing influences towards complexity and de-differentiation. Thus, the interpretive analysis of children's human rights policies became an obvious new dimension for theory-building within the study after childhood theorising failed to make sense of how the CRC was working in Scottish and Canadian educational systems. Luhmann's framework also aided in the conceptual organisation of the complexity I observed during international and local human rights policy events.

In the New York phase of fieldwork, for example, representatives from 167 nations took part in the General Assembly's 2002 Special Session, and each one discussed their own cultural interpretation of newly emerged (and utterly contingent) human rights boundaries. Empirically supporting this interpretation, legal experts, religious and political, cultural and artistic, scientific and medical, environmental and economic representatives were actively engaged with thousands of young people during this world society summit.

Luhmann's notion of world society, in contrast to systems of nation states, was evidenced during participant observations in both countries and their *systemic* communications with the UN during the study. In addition to their formal participation in the 2002 Special Session, both Canada's and Scotland's CRC reports were evaluated during fieldwork. During UN site visits in Geneva, I also observed how the quasi-legal Committee on the Rights of the Child (CRC Article 43) had expanded to eighteen members. Increasingly, they call upon national representatives and non-governmental policy actors to account for these emergent, systemic human rights boundaries.

The current Chair of the Committee, Professor Jaakob Doek discussed the new educational initiatives derived from the treaty and being adopted within new educational statutes and new curricula for many states. He argued:

*It's not enough to say we teach children's rights in the curriculum and they show us a beautiful kind of programme that is covering almost everything. No, no! That is not enough. If this is in your curriculum, then we want to see that you are also practising this in your school.*

As Doek and many others in the study observed, the core CRC principles have contributed to transforming authoritarian power structures in the classroom (see also Devine 2002; Giroux, 1999, 2003; Mannion and I'Anson, 2003; Mayall, 2000, 2003; and Scott 2002 for the interrelationship between power and pedagogy). This transformation of systemic boundaries noted in thematic findings and the literature, was accounted for by John I'Anson of Stirling University. *What it is to be an adult, and a child, are re-negotiated in the process of taking this discourse seriously*, he argued. Scarcely a decade ago, this child rights program within education was not being discussed, or considered as its own paradigmatic framework for the drafting of new legislation and social policy. I'Anson's research also supports Doek's contention that a curriculum is simply *not enough for practising this in your school*.

Furthermore, King and Thornhill (2003) note how law autopoietically serves society through two interconnected but discrete processes: the first by new legislation within the political system and the second through reconstructing these statutes within the courts as issues of legality/illegality (pp. 44-45). King's (1994) early discussion of the importance for CRC drafters to promote the treaty as international law also aids in this analysis. Excerpts from my interview with Dr. Cynthia Price Cohen, one of the CRC's early drafters, clearly support this type of interpretation of how children's rights communications work within functionally differentiated systems. Indeed, to answer Wolcott's query *What can we make of it all?*, one is compelled to adopt a more globalised set of organising principles with regard to the CRC. For example, the three new Education, Child Welfare and Children's Commissioner Acts within Scotland each reflect the transmission of core CRC principles by embedding treaty texts as

domestic forms of legal communication. In the Scottish educational system, Professor Pamela Munn noted how knowledge of the Convention was being translated into Scotland's national citizenship curriculum and teacher training. Canadian educators Ellen Murray and Katherine Covell discussed similar CRC-based curricula in British Columbia and Nova Scotia. However, as noted in the literature and in the previous analytical chapters, notions of political citizenship and participation are taking radically contingent paths within the two nations.

Citizenship for young people is an emerging discourse in Scotland both pedagogically and politically, while conversely, within the law, politics and education Canadian participants revealed that such notions have little systemic currency. From a Luhmannian perspective, once the CRC's core principles are activated within legislation, they set out what is to be regarded as lawful or unlawful conduct with regard to educational policy and professional practices.

This was noted by I'Anson, but is clearly not occurring in Canada and is unlikely to occur in the near future. Indeed, this process of systemic differentiation - establishing new boundaries in response to ever increasing complexity - was observed by Stirling Educational Director Margaret Doran who described School Development Plans that had *moved past the Convention*. In a Canadian contrast, Ottawa Senator Landon Pearson observed that because of jurisdictional boundaries confronting the federal government, there was simply *nothing we can do* since provincial ministries are in charge of the CRC within their educational systems.

This systemic interconnectedness is achieved through structural coupling among law, politics and education, and was clearly observed by Fife child rights officer Peter Nield.

*What became evident in early pilots of the Children's Service Plan was that we actually needed to remodel the whole way that we were managing...to ensure that there was connection with the Community Service, Education, Social Work, Police, the Children's Reporting Services, Health and so on... [This] would include legal and non-legal representation, monitoring and rights-proofing kinds of policy and practice.*

Also noted in the literature, such systemic inter-relationships were simply not visible a decade ago under the former regime in Westminster. In this regard, another comparative finding supporting arguments for systemic thinking about children's rights was identified. By the frequent acknowledgement of the impact of devolved governance in Scotland, Education Committee member Peter Willman observed: *I have a broad interest in the Convention as it applies across the Scottish Executive's business and not only including schools.*

Luhmann recognises social systems "assume distinct forms and follow distinct lines of evolution in different settings" (King and Thornhill, 2003, p. 210). These "distinct lines" of systemic evolution are clearly traceable to UN policy documents and the international forms of systemic legal communication they contain within a more explicit interpretive approach. While it may be true that the majority of any nation's legal work is carried on within its own borders, during this study I could also observe how such work is being shaped by policy actors from the Office of the High Commissioner for Human Rights and its Committee on the Rights of the Child.

Based upon the thematic findings, I contend that a comparative examination of how education, law and policy are developing across national settings also allows a clearer appreciation of why this is occurring when viewed through Luhmann's interpretive framework. Perhaps the clearest example of this is evidenced by the ubiquitous presence of non-governmental organisations during my UN and intergovernmental participant observations. Luhmann (1965) argues this "institutionalisation of human rights is hence a factual event - that is something which even the inclusion of fundamental rights in the constitution should not make us forget - an event which function (and thus not only intended normative meaning) has to be examined" (p. 13, translated and cited by Verschraegen, 2002, p. 263).

While contentions about Luhmann's autopoietic approach proliferate, for the purposes of interpreting the study's substantive findings I simply observe that children's human rights are "a factual event" within the educational systems of both nations. Their communicative function appears to be a permanent feature of systemic functional

differentiation in an epoch described as postmodernity, although not without human “irritants” as Mingers notes (2002, p. 288). New legislation is being interpreted in this light as a form of Luhmann’s “structural coupling” between the social systems of politics and law, and in the case of this research, the education system as well. These points are explored more fully in the following sections.

### *Autopoietic communication within this study*

Compared with the measured step taken into Luhmann’s functionally differentiated systems, adopting his autopoietic analysis to re-analyse the study’s thematic findings may be characterised as a bold interpretive leap (see also Wolcott, 1994). While I could readily appreciate how systems thinking had substantial interpretive contributions to make to new understanding of how the CRC actually works, the whole notion of self-referentially closed systems seemed daunting at first.

While King (1994, 1997) also speculated there could be interpretive value in an autopoietic understanding of children’s rights, more than a decade has passed with no further theoretical or empirical arguments within the discourse adopting Luhmann’s closed systems analysis. Mingers (2002) points out that autopoietic thinking “represents a major advance over previous systems theories in its sophistication” (p. 281-282). However, he argues that blind spots within Luhmann’s analysis exist in the following three essential dimensions.

1. Autopoiesis is centrally concerned with the production of those components which themselves constitute the system. It is therefore essential to identify what these components are and what are the processes of production.
2. Autopoietic organisation is constituted in terms of both temporal and spatial relations, and the components involved must create a boundary defining the entity as a unity, that is, as a whole interacting with its environment. In the case of social systems, asks Mingers, is it possible to identify clear boundaries constructed and maintained by the system?

3. Since the concept of autopoietic, closed organisation does not specify anything beyond self-production, it does not specify particular structural properties or components beyond these processes. The concept should not need to be modified to deal with social systems, but if so, can we still use the term ‘autopoietic’?

Through this study’s observations (i.e. my own and others’), I considered how these complex yet visibly autopoietic dynamics from neuro-biology and sociological systems theory were applicable.

Moving through each of Mingers’ concerns in turn, the essentially autopoietic properties needed to re-interpret the thematic findings are identifiable. These properties are evidenced by recalling how the Committee on the Rights of the Child uses core CRC Articles to produce and re-produce international legal communications within nation states. As a case in point, these have been re-constituted into new “components”, as Mingers has posited, within domestic legislation by the perturbations of NGOs. Dr. Katherine Covell discussed the same influences being exerted on the Canadian reporting process through ideologically opposed NGOs resulting in an apparently opposite outcome. Nevertheless, these similar systemic “components” are visible within both countries both temporally and spatially as they re-create and maintain system boundaries through the replication of CRC reports and draft jurisprudence contained within Concluding Observations.

Luhmann’s (1982) social systems thinking represent a radical new epistemology for the empirical study of children’s human rights although not without some earlier precedents (King, 1994). Previously, it was noted that social autopoiesis had its origin in the study of human neuro-physiology (Maturana and Varela, 1980). Simple amoeba-like cells create the perfect physical illustration of this through their own self-replicating capacities. To argue that social systems are autopoietically closed means they must first reproduce themselves with environmental resources that are then maintained as systemic resources. This is especially visible within Article 42 and its “appropriate and active means” for disseminating the CRC within education, as well as

the Article 44 monitoring and reporting procedures overseen by the UN Committee on the Rights of the Child (Article 43).

Of 192 nations that have ratified the treaty (UNICEF, 2005), more than 150 have voluntarily complied with this Article 44 reporting obligation - Canada and Scotland were noted for their second reports during the investigation. While it is true that these communicative events concerning the treaty were overlooked by many key informants, I contend that meaningful autopoietic communications, as Luhmann theorised, are nonetheless taking place and will continue. Once again, as Dr. Price Cohen observed:

*Considering that the Committee on the Rights of the Child make such an issue out of it. I mean they ask every single country about this, there's not a single country that they don't comment upon...But the opposite or the echo of this is [Article 44] States Parties will make their Reports available to the public...widely available. So between the two Articles, it's like a see-saw.*

These findings challenge Mingers' arguments. Furthermore, while the permutation of classroom boundaries was noted by John I'Anson, Susan Fisher, and other key informant accounts, the power relations involved in this structural shift represent an interesting departure from the neuro-biological critiques of autopoietic thinking highlighted by Mingers' concerns.

In addition, the central feature of autopoietically closed reproduction is the defining binary code (for example, good/bad or positive/negative) for each system. In the case of Scottish law - and all domestic law - the code is noted as legal/illegal. In the case of politics, it may be seen as government/opposition while one might also consider governmental/non-governmental. Another political binary code could be framed as those who wield power/those subject to power, while within this study, a binary code for the educational systems could be demonstrated by the knowledge/lack of knowledge of core CRC principles and provisions.

Following on with Spencer Brown's reasoning (1969), Luhmann's arguments for binary coding necessary for making such distinctions provide basic guidance for each system without which "self-referential operations would be undermined" observes



Mingers (2002, p. 288). King and Thornhill (2003) also note that “Luhmann [1993, 1986] emphasizes the importance of the distinction between codes and programmes for the autopoietic self-determination of the system” (p. 59). Each of these authors also points to the boundaries between legality and illegality that have become “increasingly difficult to maintain at times when human rights legislation ... creates more and more situations to be decided upon by applying the binary code of the legal system” (ibid.).

As we have noted, Luhmann’s binary codes are quite distinct from grounded theory procedures of open, axial and selective coding adopted to discover substantive codes and their underlying theoretical properties. Using Luhmann’s closed systems criteria during selective coding and interpretive analysis of interview data, my impression was that of an emerging, functionally differentiated human rights system more in keeping with the emerging “sociology of human rights” (see O’Byrne, 2003; Turner, 1993; Verschraegen, 2002). This interpretive analysis supports the study’s main autopoietic argument for systemically re-thinking children’s rights.

My participant observations of Perth-Kinross council members consulting and participating with young people from local schools was a research interaction, and not solely an autopoietic social systems response to Section 19 of the Children (Scotland) Act 1995. Nonetheless, here was empirical evidence that various formal aspects of the CRC’s “principles and provisions” were being systemically replicated within local institutions based upon law’s binary code of legal/illegal. The Children’s Services Plans, for example, are systemic events within the nation as a whole, as well as local events that include all local authority stakeholders in partnership with young people. While each system is uniquely defined by the boundaries between themselves and their environment, each also has a distinct identity replicated through these binary codes as meaningful forms of communication, argued Luhmann. These autopoietic features are also evidenced by the study’s core category, for example, the specific texts of CRC Article 12 participation within the Children (Scotland) Act 1995. These features are further evidenced by CRC Articles 28 and 29 embedded within the Standards in Scotland’s Schools, Etc., Act (2000) making the CRC’s “principles and provisions widely known by appropriate and active means” an empirical, factual event.

Re-interpreting the research themes as systemic events and the research problem as a systemic problem, I had found empirical evidence for Luhmann's autopoietic theory by re-reading the 1995 Concluding Observations from the CRC Committee to both Canada and Scotland. I also highlighted within Chapter Five's comparative analysis of CRC communications that each domestic national report uses Article 42 as their framework. Furthermore, it seems reasonable to hypothesize that Scotland's new Commissioner for Children and Young People, a legal practitioner in contrast to a child welfare professional or pedagogue, will use her office to "perturbate" both legal and political initiatives based upon Articles 42 and 44.

In Canada, this autopoietic replication of CRC texts began in the mid-1990s in some provincial legislation, but many of these early results have either been repealed (as in the case of British Columbia) or blocked from entering the local political and legal arenas by the structural coupling and perturbation of conservative NGOs. American NGO director Dr. Price Cohen's archival data once again provided the clearest support for this Luhmannian analysis (see also de Sousa Santos' legal analysis, 1987).

*The Chairman would go through the Convention paragraph by paragraph – word by word – and if there was dissension he would take the group of dissenters off and ask them to work together. They would come back with a new draft that was quickly picked up by the Working Group and accepted. Article 42 did not have the word appropriate in the First Reading, for example, and the word appears something like 45 times in the Convention... We had a joke about it and asked: 'Well, what does it mean to be appropriate?' I do think of it is a definable measure. It seemed as though that would be something you could measure...the extent to which a country were living up to its obligations.*

In Chapter Five, it was highlighted how no one in the study seemed to be *knowingly* implementing Article 42. At the same time, everyone in the study is implementing various "components" (Mingers, 2002) of Article 42 without any accurate knowledge of its source or its fuller implication. Notwithstanding, these systemic components of the "see-saw" noted by Price Cohen are plainly visible within the new curricula and social policies of both nations, more particularly within Scotland. As a postscript to this autopoietic interpretation, I reflect again upon Alberta's Child and Youth Advocate.

*From a policy perspective I don't think Article 42 shows up very many places at all. Interestingly, right now the Child Welfare Act is undergoing a review and I am aware there are some discussions about specifically mentioning children's rights and perhaps even articulating what they mean in legislation. Now between you and me, do I think that will happen? No....There isn't anything the government has done or Children's Services has done to identify something called children's rights because it isn't a very popular thing to do in this province.*

In the earlier comparative analysis and axial coding stages, I could not make sense of this statement from a well-remunerated, politically appointed children's rights advocate. However, the conceptualisation of children's human rights as a form of legal communication aids in making sense of the differences between the two nations' educational, political and legislative policy arenas. Further, recalling that regular UN reports provide systemic communications allows the speculation that these may eventually impact the drafting of new laws in Canadian jurisdictions as they have in Scottish jurisdictions. These comparative distinctions are clearly indicative of how institutional power is wielded in regard to treaty interpretation, and the conceptual properties associated with dissemination within the educational systems of the two nations are discussed further within the following section.

### ***Structural coupling and perturbation within this study***

As noted, in his description of the conceptual gaps for social scientists in their understanding of how the Convention works, King (1994) also suggests that "a system is structurally coupled to its environment when it uses events in the environment as perturbations" (p. 394). One example of this process is illustrated by recalling how anti-pollution measures have entered the law and ongoing scientific and technical developments, while outside the system of law, nonetheless have allowed the development of new legal regulations. In this way, *perturbation* may also be understood as an irritant that instigates social change while *structural coupling* manifests between and among clearly differentiated systems. These two constructs allowed conceptual properties of the six thematic categories to clearly fit within this interpretive analysis and allow enhanced workability of the emergent theory.

As we have also noted, in the later development of Luhmann's theory he adopted these neuro-biological concepts to make controversial contributions to his sociological systems theory. This societal process describes how two or more closed communicative systems interact with each other and/or with conscious systems (people). In many ways, this was the most obvious of Luhmann's abstract concepts to observe although initially I struggled with how *structural coupling* might be interpreted in the context of its relationship with Luhmann's other constructs and the study's substantive themes.

Interpreting and applying constructs from Luhmann's theory allowed empirical appreciation of how "in different locations different systems are likely to enter characteristic structural couplings" (King and Thornhill, 2003, p. 210). Saliently for this study, this does not mean that at the level where comparative regional differences in policy or legislation are present that they have any significance until they are coded into one or more of society's functional subsystems and become recognizable as meaningful communication. This analysis is congruent with both nations in the study where *structural coupling* and *perturbation* intersect with the Convention on the Rights of the Child. Both nations are actually quite similar, and this shift in the interpretive analysis is illuminated once again using Luhmann's logic.

At the time of his interview, Scottish Executive policy analyst Peter Willman noted how voluntary, rights-based organisations were applying *pressure* on the legislative process. In turn, this led directly to the Commissioner for Children and Young People Act (2003), and the appointment of Ms. Kathleen Marshall in early 2004. Meanwhile, the majority of Canadian key informants observed how conservative NGOs have influenced federal, provincial and local politics to shape social, legal and political constructions of children's rights. A different appreciation of the importance of CRC Article 42 knowledge, and of the Article 44 reporting process within educational systems could be extrapolated from these efforts. As well, the number and force of conservatively-oriented NGOs going to great lengths to promote family values over knowledge of children's rights is underscored (see also Butler, 2000). These systemic efforts are described as "perturbations" by Luhmann (King, 1994, p. 393), and in turn,

have led directly to further “structural coupling” between religious, political, legal and educational systems highly visible at UN sites (see also Canadian Coalition for the Rights of Children, 2003; Hainsworth, 2000; Howe and Covell, 2005).

This theoretical construct of structural coupling was recounted in earlier chapters in Scotland through the following interview with NGO Director Susan Fisher:

*I have been working with Save since the eve of devolution. The first Bill we did was the Education Bill...and my first piece of work with Save was to do a consultation with ADHD children [those diagnosed with Attention Deficit Hyperactivity Disorder] across Scotland on that Bill...that was the first time children were consulted in Scotland for a piece of legislation. It set a model. When I did my first piece of research with refugee children, I came in and said ‘I believe these children’s rights are not being protected. These kids have the same rights as all other UK children’. That fit in with the ideology of the schools I was going to...it was amazing...it was real life and these kids began engaging.*

On the other hand, similar to Fisher’s description I observed another type of NGO perturbation during the Special Session in New York, and again from a domestic perspective during Canada’s Second CRC Report in Geneva. As previously noted, there are two Canadian NGOs - *Focus on the Family* and *Real Women* - who have interpreted the CRC as an attack on “family values”. This stance is clearly visible within the following newsletter excerpt.

...ordinary people **can** and **do** make a difference if they raise objections to unreasonable schemes...this ill-conceived children's vote was turned on its ear through the efforts of individuals across the country who soundly rejected this manipulation of school children by UNICEF and Elections Canada (*Real Women of Canada*, 2000, emphasis by authors).

These conservative NGOs demonstrated that through lobbying within the UN human rights system as well as through the national and provincial legal systems, their aims have been recognised *in a similar systemic process* as rights-based NGOs in Scotland.

While conservative groups wield a more widespread form of political power in Canada, these efforts were clearly paralleled by the sophistication of Scottish rights-based NGOs who are pressuring elected officials regarding the *devolved aspects of the Convention*. These forms of perturbation and structural coupling were noted by Jennifer Turpie and Peter Willman among others. These perturbations are activities and partnerships repeatedly described by Scottish academics and policy actors such as Fife Child Rights Officer Peter Nield. Pro-CRC structural coupling by NGOs is more pervasive in Scotland, and included evidence from both academic and local education authorities, but as I looked at events over the span of the study I could appreciate how the structural coupling process was just as pervasive in Canada. This powerful NGO influence was noted by Scottish informants such as Willman and Turpie, by Price Cohen in New York, as well as Canadian informants such as MP John Godfrey. Indeed, Godfrey's adroit description of an *intellectual acid rain* creeping into Canada with US conservatism provides clear support for Luhmann's description of how structural coupling in world society is achieved.

This "direct line of command from the United Nations to nation-state to citizen" has been problematised by King (1994, p. 401) although these opposing yet equally influential perturbations were visible and have utilised similar systemic communications through CRC Article 44 in particular. Furthermore, these systemic communications were traced during the research through UN human rights sites through to local classrooms.

As I observed two opposing yet clearly ideologically-driven NGOs structurally coupling within Scottish and Canadian education, Luhmann's epistemological view of the complexity within such functionally differentiated systems helped elucidate this finding. If the UN Committee's Concluding Observations do not autonomously and completely "re-produce" the systemic structures that Mingers (2002), Leydesdorff (2000) and Lechner (2000) enquire about, *components* of these communications are nonetheless visibly re-defining system boundaries as highlighted by the research themes.

In the final section, I argue again for adopting Luhmann's interpretive framework to attain a new understanding of how the CRC actually works within the educational systems of the two nations.

### **Power as Core Distinction within this Study**

This chapter is focused on accomplishing the study's main aim by developing a child rights theoretical model through interpretation of data obtained from educational policy actors. Here a parallel from the study's substantive categories is drawn that allows for Luhmann's *binary coding* to be integrated with grounded coding procedures and to establish a *core distinction* from the research themes.

Supporting this integrative grounded systemic approach, Glaser (2005) also maintains that while substantive categories have recognizable conceptual properties and patterns, "theoretical codes" such as autopoiesis "denote abstract models, which are usually implicit in the theory, but unconsciously used, and which are seldom explicitly mentioned" (p. 12). While Glaser argues that "theoretical codes" are analytically unnecessary, "a grounded theory is best when they are used" and appears "more plausible, more relevant and more enhanced when integrated and modeled by an emergent theoretical code" (p. 14). For their part, Strauss and Corbin (1998a, p. 161) claim that selective coding is the final integration of theory within grounded studies, and while this is strongly contended by Glaser, similar to Glaser they argue that validating any grounded theory is not about "testing" in the quantitative sense since the theory has emerged from data. They contend that when integration occurs, "it represents an abstract rendition of that raw data" (*ibid.*, p. 159).

Nonetheless, Glaser (2005) cautions new researchers since "the theoretical code must emerge and not be forced" (p. 14). Following on with his analysis, the study's core category clearly emerged through the properties and patterns revealed during open and axial coding of data, and these procedures in turn allowed informant descriptions rather than theoretical pre-conception to identify the central themes. In the context of other findings, the core category of child and youth participation was abundantly clear since

the concept was identified verbatim on more than 75 occasions. This category emerged while informants discussed the CRC in terms of NGO influences, rights-based communications, pedagogical approaches in the classroom, cultural implications and tensions within their respective educational systems. Each thematic category in turn had axially related qualities of participation embedded within establishing this theme as the hub around which all other themes revolved.

After the core category had emerged, the study's methodology allowed for the two interpretive frameworks (one methodological and the other conceptual) to be integrated into one grounded systemic theoretical approach. This procedure hinges upon integrating selective coding with Luhmann's binary coding, and the resultant theoretical code which is "seldom explicitly mentioned" within grounded theory studies (Glaser, 2005, p. 12) was revealed. The integration of binary coding with selective coding also facilitated an important analytical departure from the only other previous "grounded systems" research within the literature (Gregory, 2003; Gibson, Gregory and Robinson, 2005).

As a central interpretive feature within this study, we have seen how binary coding of legal/illegal allows redeployment of CRC's texts into domestic legislation with concomitant new policies emerging within education. The likelihood of continued autopoietic replication is present, and this analysis was evidenced during the study by new legislation such as the Scottish Children's Commissioner, for example, previously discussed within the UN's Concluding Observations to the UK under Article 44.

Thus, after selectively coding each of the thematic categories of participation, communication, non-governmental organisations, pedagogy, culture and tension Luhmann's principle binary code for politics (those who wield power/those who are subject to power) emerged. Thus, the methodological and theoretical integration yields the study's core distinction from its thematic findings as *power* - both within its macro-systemic exercise and its micro-level individual experience. Rather than being axially related to all other themes as was the case with the core category of participation, I



found this new theoretical code (Glaser, 2005) an autopoietic core distinction was revealed as the same binary code within each theme.

Recalling Luhmann's theoretical analysis regarding structural coupling and perturbation, the identification of *power* as the binary code for distinguishing how political systems work also offers a useful re-presentation of how the CRC works within the educational systems (see also Glaser's 2005 comments on the emergence of autopoiesis as a theoretical code within grounded theory studies, pp. 26-27, 118-119).

Through the constant comparison of data with the human rights and theoretical literature, I found numerous arguments calling attention to how children's rights within the educational system resonate with postmodern approaches to pedagogical reform and this exercise of power. For example, Popkewitz (1998) argues:

Rather than focus on power as a question of who rules (or who is ruled – the sovereignty concept of power) my concern is how the different pedagogical knowledges 'make' (construct) the teacher who administers the child. I argue that knowledge of pedagogy is a constitutive, material element of the contemporary world (cited in Moss and Petrie, 2002, p. 32).

This shift in power relations within the classroom was also observed by John I'Anson, from Stirling University. Epistemologically, however, knowledge is not just a process of re-presenting the real world, but rather the means by which researchers construct particular understandings - "more of a lens than a mirror" as Moss and Petrie argue (2002, p. 32). There are two sets of inter-related concepts regarding this Foucauldian analysis of adult/child power relations articulated above, and notions of postmodern, social constructionism which are explored next.

Firstly, as King and Thornhill (2003) note, Luhmann's more "restrictive" interpretation of political power is controversial and dissimilar to Weberian, Foucauldian or neo-Marxist sociologies "all of which argue that power also manifests itself in the law, in the economy, in the education system and so on" (p. 107). Furthermore, in the strictest sense within Luhmann's terminology *power* is the exclusive binary code for functional

differentiation of the political system. King and Thornhill (2003) nonetheless acknowledge that “a certain degree of ambiguity in Luhmann’s limitation of power to the political system” (p. 107) exists. “Power in the political system is not a personal or static quantity, and is not a quantity which can be monopolised by one particular apparatus” (p. 77). From these arguments, it is clear that the exercise of democratic power is no longer the sole prerogative of political parties who hold office. In fact, in terms of the evidence from this study systemic power is being increasingly exercised by young people in Scotland as well while the withholding of rights-based institutional power from their Canadian counterparts was endemic.

Children’s rights communications dissipate locally, as O’Byrne (2003) and Lenzer (2002) have noted, because their conceptualisation has been located within the myriad definitions of “childhood” - a challenge also noted within early analysis of interview data and participant observations. On the other hand, in terms of the ongoing institutionalisation of children’s rights, a systemic appreciation for ‘how power is wielded’ is congruent with the study’s thematic findings. Furthermore, this analysis supports the main aim of theory building to proceed to its conclusion since the core distinction of *power* reflects the central criteria of fit, relevance and workability within grounded theory studies. This theoretical construct may also lead to broader development and application within future research, a point taken up in Chapter Seven.

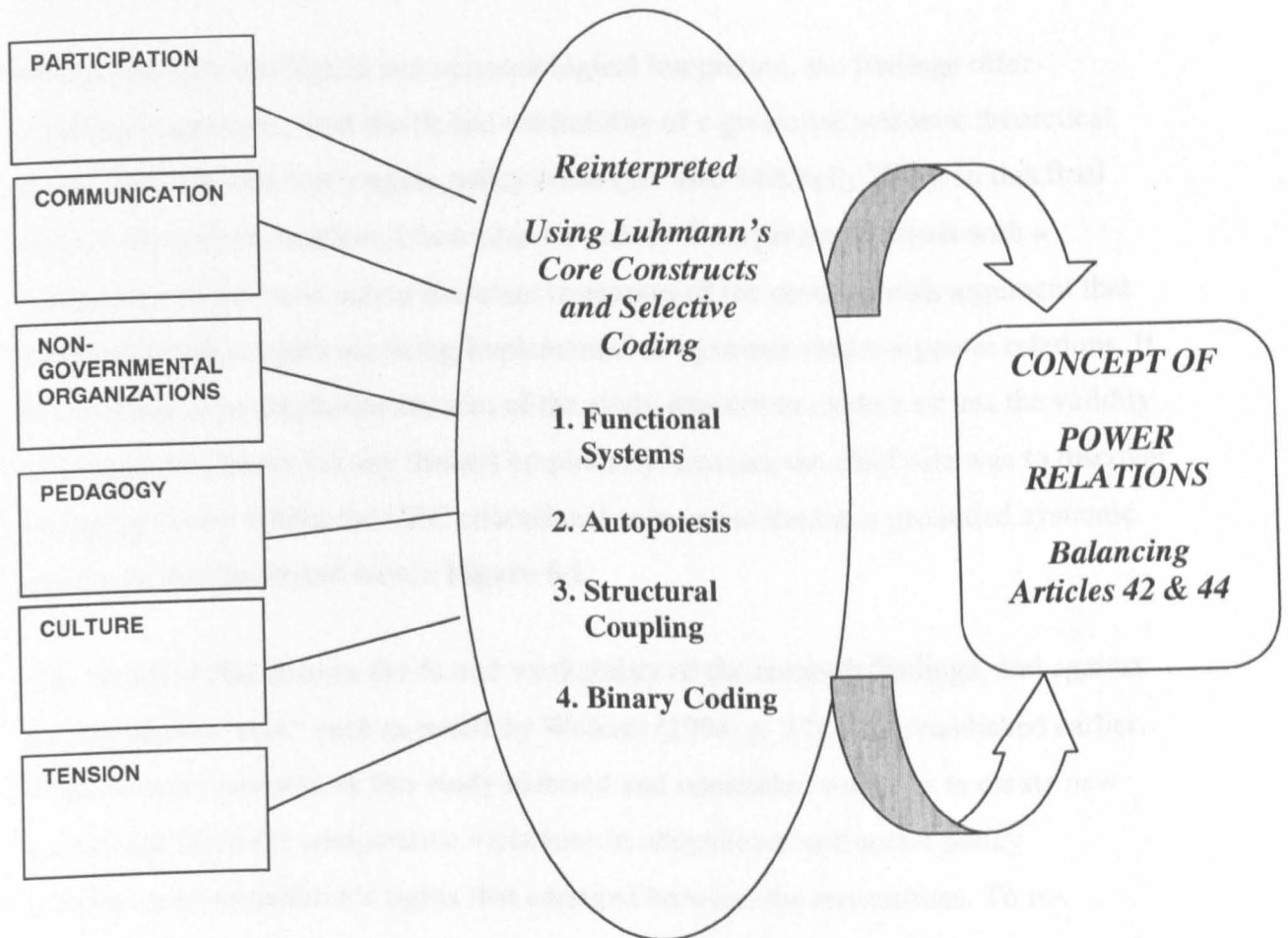
## **Discussion and Conclusion of Chapter Six**

Through selective coding of the research findings and deploying Luhmann’s core constructs of functionally differentiated systems, autopoietic forms of communication, structural coupling and perturbation as an interpretive framework, the substantive findings revealed a core distinction.

This *Interpretive* analysis of thematic findings is re-presented below within **Figure 6.1**. Within this model, the six thematic categories from the research have been selectively coded and re-interpreted by integrating Luhmann’s binary coding. Following on with Glaser’s (2005) suggestions, I found that one code emerged that was common to each

substantive category - the notion of *power* and how this dynamic within adult/child relations is shifting institutionally within rights-based pedagogies.

**Figure 6.1 – Grounded Systemic Theoretical Model**



This study's core distinction of *power* has conceptual properties that are quite different from its core category of *participation*. In this study, I found that *participation* was axially related to each substantive theme like a sun and its revolving planets. In contrast, by integrating the grounded and binary coding procedures illustrated within **Figure 6.1**, I discovered that the core distinction had the same underlying code within each substantive theme. As noted by Glaser (2005, p. 119), "there is usually an implicit TC [theoretical code]" in many grounded studies, and in the case of this study *power/less power* emerged to illustrate this concept during the interpretive analysis of

findings. As we have also noted, this finding is commensurate with Luhmannian arguments that systems autopoietically replicate through the same binary code. Finally, this analysis expands upon the integration of grounded theory and Luhmann's autopoietic systems thinking achieved by Gregory (2003), and identified as a "grounded systems approach" (Gregory, Gibson, and Robinson, 2005, pp. 1860-61).

Within this methodological and epistemological integration, the findings offer empirical support for both the fit and workability of a grounded systemic theoretical approach in the children's rights policy arena (see also Mitchell, 2005). In this final chapter of data presentation, I have also woven the *Interpretive* analysis with a comparison of the most recent literature in support of the central thesis argument that children's human rights are being implemented as systemic shifts in power relations. It is important to re-emphasise the aim of the study was not to explore or test the validity of Luhmann's theory (or any theory) empirically. Instead, the chief aim was to discover emerging theory within the CRC educational arena described as a grounded systemic approach, and illustrated within **Figure 6.1**.

One standard that ensures the fit and workability of the research findings, and against an interpretive "ruse" such as noted by Wolcott (1994, p. 37), was established earlier. What became essential as this study matured and concluded was how to create new knowledge from the comparative variations in educational and social policy constructions of children's rights that emerged between the two nations. To re-emphasise, my discovery of autopoietic theory in the comparative literature occurred during the late phases of the study.

In closing, the common question of whether the Convention on the Rights of the Child will ultimately lead to better outcomes for children and young people depends primarily upon one's ontological view of childhood. Many such views were critically examined within Chapter Two. Conversely, an inductive epistemological focus for analysing the CRC across national boundaries facilitated a clearer fit for systems thinking when attempting to make sense of the variation. Critiquing Luhmann's approach, Lechner (2000) asks: "what makes world society a system?" and

furthermore, “how does the world, as a system, produce its own structures?” (p. 129). Luhmann (1986) himself contends that seen from this deductive point of view his theoretical formulations “are rather fruitless” though he also believed “they have a heuristic value because they stimulate and define the search for other possibilities” (cited in King and Thornhill, 2003, p. 209).

Building upon the descriptive, comparative and interpretive analyses of the past three chapters, the grounded systemic theoretical model in Figure 6.1 demonstrates the methodological and conceptual integration that emerged as the research concluded. This integrated approach may well have a modifiable set of constructs that transcend the study for future applications. The potential for heuristic value of the model is reconsidered within Chapter Seven which now turns to the main arguments and conclusions from this human rights study, its strengths, limitations and future potential.

## CHAPTER SEVEN: CONCLUSIONS OF THE STUDY

### Introduction

While postmodern critical thinking has invigorated children's rights research and theorising within childhood studies, the fundamental rejection of modernity's core aspirations within the relevant discourses drawn upon for this study appears incongruent with the UN Convention on the Rights of the Child (CRC) as it is being implemented on the ground. Moreover, the international human rights project challenges postmodern assumptions such as the end of grand theory and the failure of the Enlightenment project. Each of these core beliefs appear to be contradicted when looking at the continued international evolution of human rights, and particularly children's rights, in the current epoch. To compensate for this poverty of theory and the apparent breakdown of postmodern *leitmotifs* within sociology described by Esping-Andersen (2000), this investigation was framed by the emerging sociology of human rights (O'Byrne, 2003; Turner, 1993; Verschraegen, 2002).

Building upon a pilot study from Canadian health care that implemented CRC Article 42 (Mitchell, 2000), an inductive, two-year study was designed comparing children's rights policies and practices within a number of Scottish and Canadian educational policy arenas (Mitchell, 2002, 2003a, b, 2005). The exploratory investigation aimed towards augmenting children's rights theorising, and to accomplish this, grounded theory was adopted from the outset (Glaser & Strauss, 1967; Strauss & Corbin, 1998a, 1998b; Glaser, 2005). The investigation also began with the explicit assumption that knowledge and understanding of children's human rights are essential prerequisites for fully exercising those rights - knowledge that is concretely described within the treaty. Consequently, the research question was shaped by CRC Article 42, the most unambiguous of its 54 Articles (see also Covell and Howe, 1999; John, 2003, p. 216; Mitchell, 2003a, b; Wyse, 2001, p. 210):

*States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.*

Previously, the UN Committee on the Rights of the Child recommended “[Canada] should integrate the Convention into the training curricula for professional groups dealing with children, especially judges, lawyers, immigration officers, peace-keepers and teachers” (Concluding Observations, Section D-19, 1995). However, evaluation of the most recent Canadian report in 2003 offered the same assessment and critical feedback (Concluding Observations, 2003). A similar set of recommendations from the Committee had also occurred in 2002 for Scotland.

At first blush, Scotland’s population of just over five million is more commensurate with a Canadian provincial comparison than a cross-national one - indeed one estimate puts the number of Scottish descendants now living in Canada at the same total (Black, 2005). However, both nations presented their second domestic CRC report to the UN Committee on the Rights of the Child during the study, and these events were included in the research design, theoretical sampling strategies, data collection and analysis. As the study unfolded, the policy contexts for comparing children’s rights education between the two countries multiplied, and were found to be both quite similar as well as significantly different.

- Both nations have attempted to implement the CRC within children’s legislation, education, social policy and practice since late 1991
- Both nations are English speaking states with well-established parliamentary democracies as their form of national governance
- Both nations have similarly configured social service delivery systems dominated by huge tax expenditures within health, education, child welfare and youth justice
- Both nations operate within northern, industrialized, social democratic welfare economies bordered by large, influential southern neighbours
- Both nations have been socio-historically, socio-politically and economically shaped by the English Crown and colonialist/imperialist ideologies
- Both nations have political, social, kinship and cultural links due to Scots having explored and settled within Canada’s frontier for more than five centuries

As Jenks (2000) suggests, the investigation began by “going back” to the phenomenon under scrutiny and returning to United Nations children’s rights policy sites in an attempt to better understand the theoretical and ideological influences impacting children, childhood and children’s rights in an era of “radicalised modernity” (Beck and Beck-Gernsheim, 2002).

While augmenting children’s rights theory was the main aim of the investigation, research findings also support aims of the UN’s Decade for Human Rights Education 1995-2004 (UN General Assembly, 1994). These objectives included:

1. Formulation of effective strategies for the furtherance of human rights education at all school levels.
2. Building and strengthening of programmes and capacities for human rights education at the international, regional, national and local levels.
3. Coordinated development of human rights education materials.

As a contribution to this international initiative aimed at strengthening the capacity for human rights education at all levels, this final chapter presents the conclusions of the study, a theoretical model, the strengths and limitations of the study, and implications for future research, policy and practice.

### **Findings and Conclusions from this Study**

The following sections review the findings and thesis arguments in response to the main research questions below.

1. a) How are policy actors implementing Article 42 of the UN Convention on the Rights of the Child, the core “principles and provisions”, within the Scottish and Canadian educational systems?  
  
b) How are policy actors canvassing children’s and young people’s views on educational matters that affect them within the two nations?
2. a) Through which international, national and local policy sites are the CRC’s



“principles and provisions” being transmitted?

- b) Which cultural and ideological factors are shaping implementation of the CRC within the educational systems of the two nations?

As highlighted in Chapters Four, Five and Six the study’s qualitative findings were presented within a descriptive, comparative and interpretive format - a typology argued by Wolcott (1994) for explicitly demonstrating results and their underlying thematic properties. Through three phases of fieldwork spanning twenty months, and comparative analysis of fifty key informant interviews, participant observations and policy documents, six thematic categories were found and their concomitant conceptual properties were emerged as **participation, communication, non-governmental organisations, pedagogy, culture and tension**.

At the same time, contradictory and complementary issues within child rights education were revealed, and through utilising grounded coding and analysis the core category of the research emerged. As the study concluded, the integration of selective and binary coding also allowed an interpretive analysis to reveal the study’s core distinction contrasting ontological issues of childhood. As a result of the investigation, the following key findings will be discussed herein:

1. In contrast to postmodern approaches to childhood studies and an associated deconstruction of CRC texts, the sociology of human rights is found to be more congruent as a conceptual framework for re-theorising children’s rights.
2. Through archival UN documents and in-depth interviewing, a key informant revealed that CRC Article 42, the substance of the main research question, had been historically negotiated by treaty drafters as an international measurement indicator.
3. The methodological integration of grounded theory within an autopoietic epistemological framework is identified as a grounded systemic theoretical

approach, and within this analytical structure a core category of *participation* and a core distinction of *power* emerged as key theoretical constructs.

4. Scottish efforts to institutionalise the Convention on the Rights of the Child in the educational, legal, and political systems are more widespread than those currently underway within any Canadian jurisdiction.
5. Utilising the above constructs, a Grounded Systemic Child Rights Model (illustrated in **Figure 7.1**) was developed to contribute towards the UN's Decade for Human Rights Education (1995-2004), and is posited to have heuristic value in both children's rights research and pedagogy.

### *Article 42 in postmodernity*

Throughout the study, we have seen how contemporary childhood studies have stopped short of adequately conceptualising children's human rights. Arguments against the ongoing deconstruction of the Convention on the Rights of the Child within theoretical and applied literature were identified. Indeed, as noted by Saunders and Goddard (2001) postmodern approaches to childhood studies may even be contributing to a lack of accurate knowledge of the CRC's core principles evidenced by key informants in both nations. Based primarily upon ontological arguments about the nature of childhood, such deconstructive critiques have overlooked the broader, systemic and epistemological human rights issues at the centre of the debate.

In place of this tired dialectic, particularly visible within the sociology of childhood as well as within the pedagogical and human rights discourses I have chosen the emerging sociology of human rights approach and Luhmann's systems theory (1965, 1982, 1997) in order to re-conceptualise this study. The critical review of literature identified human rights as the first postmodern ideology (Bobbio, 1996; Douzinas, 2000; Lindgren-Alves, 2000) in supports of a broader analysis of how the CRC actually works within the legal, political and educational systems of both nations in the study. Like the Convention, Luhmann is criticised by modernists and postmodernists alike, but his radical constructivist approach contrasts mainstream

social science thinking, and he remains one of a small cadre of sociologists who have seriously considered the central place that human rights occupy in contemporary world society.

The CRC sits astride the highest aspirations of the period known in much of the Anglo-American academy as modernity while having emerged during a period of radicalised democracy and a reflexive era also being uncertainly described as late modernity. Although the path the CRC might take in the future remains contingent, it is clear from the past decade in world society that the processes surrounding domestic reporting and evaluation of children's rights has been voluntarily adhered to by many dozens of states - including the two under study. The investigation began with the question of how CRC Article 42 was being implemented by educational policy actors from the United Nations to national parliaments, academic institutions and local schools in both national settings. The study concluded by Article 42 being identified by one of the CRC's drafters as an international indicator for measuring national compliance.

While recalling the decade-long CRC drafting process at the General Assembly, legal theorist, lecturer and researcher Cynthia Price Cohen offered archival information on why, and how, Article 42 was developed as *if you were measuring the extent to which a country were living up to its treaty obligations*. She also recalled how this treaty text was intended to be implemented with its counterpart Article 44 as two parts of a human rights *see-saw*. Along with the central educational text within 42, the implicit systemic need to disseminate results of domestic CRC reports through the UN's "Concluding Observations" with regard to human rights education emerges as a central consideration within the discourse. Recalling the study's opening assumption regarding accurate child rights knowledge, the findings of the study also suggest that knowledge of children's human rights and the exercise of institutional power are in a dialectical, counter-balanced relationship within educational systems.

### *Integration of grounded and autopoietic theories*

Core theoretical and methodological constructs deployed during the inquiry came about through integrating grounded theory procedures within Niklas Luhmann's conceptual framework. While Luhmann has influenced numerous disciplines, he has also been identified within the emergent sociological study of human rights by O'Byrne (2003) and Verschraegen (2002). I contend this conceptual framework, and the epistemology of sociological systems thinking in particular, provide a more congruent approach for conducting children's rights research. By arguing for a fundamental re-alignment of the CRC within the sociology of human rights, this research makes its epistemological contribution.

Moreover, Luhmannian constructs utilised to analyse and interpret findings in this investigation are posited to have portability when integrated within a grounded methodology. For example: constant comparative methods to review the literature, to undertake theoretical sampling, data collection, and to analyse and present findings; identification of autopoietic forms of systemic communication, structural coupling and perturbation within and across social systems; and finally, the integration of binary and grounded coding procedures to identify both a core category and a core distinction.

A key conceptual property from the study's comparative and interpretive analyses supports this argument for portability with the evidence from numerous rights-based perturbations by non-governmental organisations. As one result, rather ironically it was noted by one Nova Scotia researcher that their well-researched provincial curricula have found more enthusiastic responses within England's Hampshire County than across any Canadian jurisdictions. However, such an outcome is unsurprising when the more pervasive structural coupling of NGOs within relevant educational, political and legal systems of Scotland is taken fully into account.

As highlighted throughout comparative and interpretive analyses, autopoietic forms of structural coupling and perturbation by neo-conservative groups demonstrated an

expertise in lobbying that is paralleled by rights-based NGOs in Scotland, yet ideologically opposed. Awareness of these influences as similar forms of systemic communication took time to fully appreciate, and they were discovered during a period of immersion in the data. While I initially perceived these lobbying activities as opposite in nature, through Luhmann's interpretive scheme I came to appreciate how such activities were actually engaged in the same communicative process in both countries. Critical to this interpretive analysis was the Scottish Executive informant who validated how new legislation for a national Children's Commissioner was driven by numerous rights-based NGOs.

Empirical evidence for adopting Luhmann's core constructs is strongly supported through the interpretive analysis of this study's findings, and new meaning of CRC education was facilitated through a refinement of methodological and analytical tools during the study. However, previous research literature was scant, and restricted to discussing the abstract potential of Luhmann's human rights thinking (Verschraegen, 2002), and a potential for re-consideration of the CRC through sociological systems theory (King, 1994; 1997). In addition, as highlighted previously one unpublished doctoral thesis in England was accessed towards the close of data analysis that combined grounded theory methods with sociological systems theory. In contrast with analysis of findings from this investigation, the author argued for the key analytical interpretation of a grounded core category was the same as an autopoietic core distinction. Her study was subsequently peer-reviewed and co-published (Gregory, Gibson and Robinson, 2005) as the final editing and write-up for the present investigation took place.

### ***CRC education in Scotland and Canada***

As highlighted above, ideological influences were another important comparative and cultural distinction that allowed the autopoietic findings within the study to emerge most fully. Noted within the footnotes of Chapter Two, Scottish education must be considered within the overall historical, political and cultural contexts of its neighbouring states of England, Wales and Northern Ireland. However, the New

Community Schools where some of the interviews and participant observations took place represents perhaps the most progressive aspect of Scottish primary education at this time, and offers a pedagogical context for new understanding within its citizenship curriculum. In contrast, Canadian informants almost unanimously reported the lack of rights-based knowledge was due in large measure to neo-conservative political activity. Pupils, professionals and politicians from six provinces described this as a form of *intellectual acid rain* from the US. During my own participant observations at the UN High Commission for Human Rights, I also experienced this form of Luhmann's systemic perturbation first hand with a highly unusual entrance restriction for attending Canada's Second CRC Report. Nevertheless, based upon similar macro-systemic perturbations in both nations, the structural coupling of NGOs between the educational and legal systems has resulted in two culturally distinct outcomes.

The continued lack of knowledge and awareness of Convention specifics noted in the discourse was reinforced by key informants, and indicates that few educational policy actors in either nation are using the CRC's central Articles for guidance. A Canadian educator and scholar highlighted how her elementary curriculum had also been based upon Article 42 and the core CRC principles (Murray, 1995). Similar research from Atlantic Canada asked a seminal critical question regarding adult tensions towards CRC pedagogy: *why are adults afraid to tell children they have rights?* The study's substantive thematic findings have provided one explicit answer to this question while its interpretive analysis has revealed the implicit dimension of institutional power as a key contributing factor.

During the study, I frequently heard and read in policy documents how Canadian Offices of Child and Youth Advocates are under increased political pressure, and one incumbent in Alberta freely acknowledged how the Convention was legally and politically irrelevant there. Other key policy actors within Canadian arenas struggle with a profound jurisdictional ambiguity, and find themselves politically disconnected from local communities and pupils as a result. In addition, the main agencies responsible on behalf of the federal government are chronically under-funded where human rights education is concerned. For example, one Quebec civil servant was the

sole participant from six provinces in the study whose provincial Human Rights Commission also houses responsibility for child rights education.

There are numerous systemically based legal and political reasons behind the variations noted in Scottish and Canadian child rights education. Influential Canadian human rights/children's rights policy sites were described as an incongruent *rights ecosystem* in Canada that includes the federal Department of Canadian Heritage, provincial and territorial Ministries of Education, provincial and territorial Offices of Child, Youth and Family Advocates, and provincial and federal legislatures. Each of these was repeatedly identified by informants as having failed to educate Canadian students about the CRC, and critically speaking most evidence collected during Canadian fieldwork supports their assessments.

Therefore, it seems fair to speculate that the lack of rights-based participation reported by interviewees young and old in Canada is much more likely to continue than in Scotland. On the other hand, Article 12 in Scotland NGO representatives in Drumnadrochit were critical of similar tokenistic efforts and violations of core CRC principles. As we have also seen, the entire CRC is frequently reduced to one Article alone: that concerning the participation of young people in new educational, legislative and policy matters that concern them. Policy actors in the study from both nations described how theoretical, social and legal constructions of children's rights have been adopted from Article 12 solely.

Frequently, descriptions of child and youth participation were discussed as though disconnected from the rest of the CRC. This nearly ubiquitous, reductionist interpretation of the treaty was highlighted in Scotland as well as within the research literature, and facilitated the identification of the study's core grounded category. What I could not initially interpret, however, was the far more widespread grounding of CRC texts in Scottish legislation that has in turn led to widespread rights-based educational policies and practices. Through participation and inclusion, Scotland's young people were directly observed, and repeatedly described by key informants, as

engaged within rights-based relationships with their elected national and local representatives, teachers, and policy-makers.

In contrast, young people interviewed from each of the three western-most Canadian provinces were unequivocal about the lack of CRC knowledge and resultant participatory experiences as they described adult apathy and discrimination within their schools, communities and local politics. These underlying adult beliefs about children, childhood as a family issue, and adult/child power relations were the largest impediments to CRC dissemination in Canada. Also in evidence of this comparative analysis, the attempt by UNICEF and Elections Canada to elicit the views of pupils across the nation and transmit CRC education through federal governmental systems came across as a highly charged event for key informants.

Furthermore, the lack of a national education Minister in Canada, and the appointment of a Scottish Children's Commissioner, also evidence contrasts in the policy arenas through which Convention knowledge is being transmitted into local classrooms. One Canadian Senator discussed the overall lack of efficacy while also accurately identifying the vulnerability of locally elected School Board officials. These influential local policy actors are the ultimate gatekeepers in charge of interpreting curricular matters, and the treaty dissemination under provincial and territorial guidelines.

The 'child' as future investment supersedes rights-based notions that young people are active citizens and this comparative analytical contrast is an important distinction when linked with devolved governance in Scotland, and the social and theoretical constructions of children's rights in Canada. To illustrate this distinction, the broad-based discussions and draft legislative initiative seeking enfranchisement for 16 year-olds in the next Scottish general election offers a postscript to the convergence of systemic influences utilising educational and legal communications of the two nations.

As another case in point, after participant observations within Perth-Kinross and interviews within Fife and Stirling Scottish local authorities, I was able to assess that



statutorily-based Children's Plans also cuts across the educational and child welfare systems due to the self-replicating properties of core CRC Articles. In addition, insofar as I could assess these are attended to with great personal, professional, and political integrity due to the statutory implications. One of the main research questions asked about ideological and cultural contexts, and is perhaps the easiest to answer.

Dissemination of CRC-based knowledge as a democratic exercise of civil rights to inclusive citizenship was a value held by the majority of Scottish participants as evidenced by participant observation and during in-depth interviews.

Frequent tensions and impediments to rights-based knowledge dissemination were also clearly evidenced in both nations. Racism of various minorities exists, as well as discrimination against young people with motor and cognitive challenges; these represent constant impediments to the fullest experience of rights-based citizenship within schools.

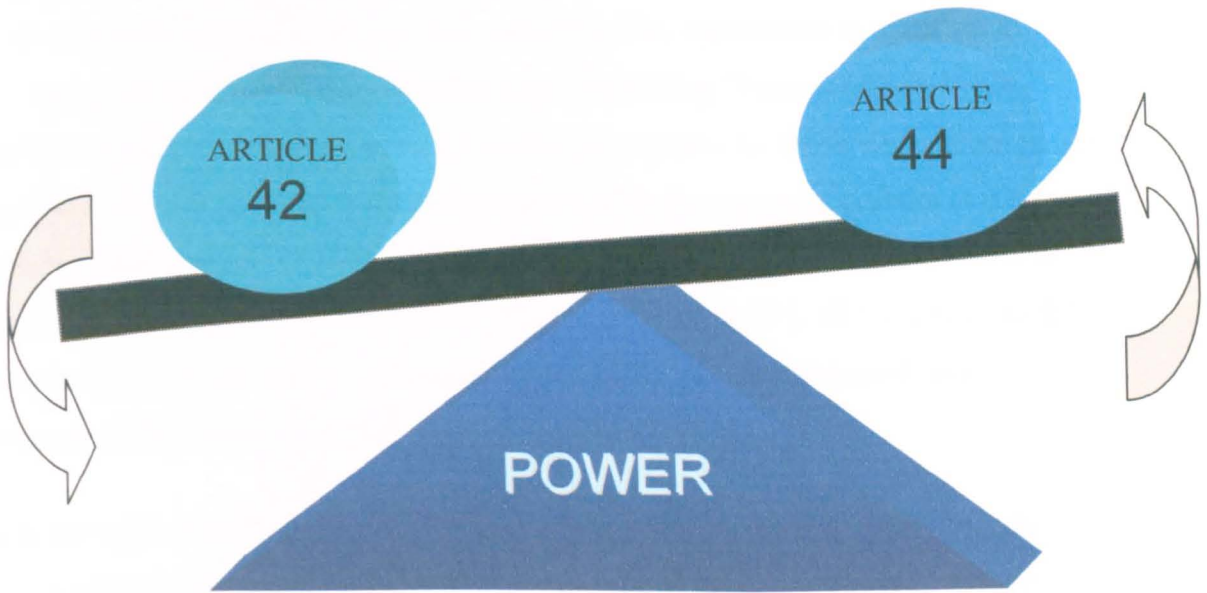
Both countries experience tension in this regard and are constrained by the Convention's Article 2 principle to pedagogically address such violations through an approach that takes the Convention past the rhetoric into the lived experiences of young people. As a Canadian Senator observed, if CRC teaching does not address the fundamental issue of systemic racism against First Nations and Aboriginal children, the rhetoric will remain inconsequential for the most socially excluded.

### **Grounded Systemic Approach and New Theory within this Study**

The following theoretical model re-presents the study's substantive findings and incorporates both analytical and interpretive perspectives. The theoretical model has been refined from **Figure 6.1**, and is also illustrative of Glaser's notion of a "theoretical code" (2005, pp. 118-119) that is often implied within grounded theory studies.

The model has been developed with conceptual brevity for adoption within practice settings although this economy belies the abstract nature of Luhmann's thinking underpinning the analysis.

**Figure 7.1 – Grounded Systemic Child Rights Model**



The model illustrates a grounded systemic theoretical approach to dissemination of accurate children’s rights knowledge within and across educational systems. The dynamic, cyclical process indicated by the arrows may be further illuminated by core analytical constructs from Luhmann’s social autopoiesis, as well as by reviewing the periodic UN evaluations which are framed by the CRC’s core principles and provisions. These systemic, communicative events (Articles 42 and 44) are illustrated as balancing upon a fulcrum of local, national and international power relations (Mitchell, 2005).

In **Figure 7.1**, we have returned to the familiar metaphor of a child’s see-saw, and may observe how autopoietic features of the CRC’s texts, the principles and provisions embedded within Articles 42, are held in balance by the institutional exercise of adult power. The heuristic model incorporates the assumption that accurate knowledge of the CRC is a prerequisite for exercising those rights as well as to appreciate their violation. Furthermore, Article 44 evaluative reports are periodically collated by various policy actors within ratifying states, and this requirement abides by and incorporates both the autopoietic conceptual properties within the treaty and previous UN communications.

Evolution of the model began during the early stages of open and axial coding of interview data and concluded with selective coding and re-interpretation of the study's thematic findings for peer-review and publication (Mitchell, 2005). Since Articles 42 and 44 frame all national CRC reports, would it not be appropriate to learn about, study and read the CRC, national reports and Concluding Observations stemming from UN sources? In addition, would it not be appropriate for those educational policy actors outside governmental systems to contribute to the reporting process as did the youth-led NGO Article 12 in Scotland in 2002? The simple answer is 'yes' to these questions. The more complex question 'What is to be made of it all?' leads us back to theoretical limitations within contemporary sociological, developmental and pedagogical discourses.

The final stage of grounded coding facilitated the re-interpretation of research themes and discovery of the study's core distinction of *power*. The binary coding argued for by Luhmann as necessary to identify a system from its environment allowed theoretical development in this study to emerge from and expand upon traditional grounded methods as well as capture emerging precedents within relevant human rights and grounded theory literature (Glaser, 2005; Gregory, Gibson and Robinson, 2005).

### **Strengths and Limitations of this Study**

The strengths and limitations of this study are also an expression of its boundaries. The study's cross-national comparative design brings to mind the assertion that it would hardly be fish that discovered the existence of water and by comparing two, northern industrialised social welfare states, the systemic similarities and contrasts have indeed come into sharper focus. Furthermore, after UN participant observations I discovered few empirical studies in the child rights literature included these monitoring and evaluation sessions. During initial phases of fieldwork and data analysis, a theoretical inadequacy to explain variations in child rights education came to light while viewing the research within the sociology of childhood framework. This gap in the literature was eventually argued to be due to a dominant focus upon micro-

sociology and an accompanying postmodern trend towards deconstruction of the CRC that ignores macro-systemic issues such as UN reporting and evaluation.

Notwithstanding, the study's grounded systemic theoretical approach was constrained by having few precedents in the literature except for an unpublished doctoral thesis by Gregory (2003), and a subsequent peer-reviewed article from that research (Gregory, Gibson and Robinson, 2005). Indeed, Verschraegen (2002) does not include the central concept of autopoiesis within his otherwise cogent argument for adopting Luhmann's social systems theory within the sociology of human rights. Recalling that Luhmann undertook no field study or participant observations involving empirical data collection, this study addresses critiques of his abstract theorising versus the demands of applied research. Another unique strength of the methodology included participant observations during human rights policy events such as the 2002 Special Session for Children in New York and Canada's Second CRC Report in Geneva in September 2003. These observations, the constant comparison of data to data, and of data to new literature allowed the late discovery of autopoietic systems thinking within the emergent sociological study of human rights.

Nonetheless, Glaser (2005) expresses legitimate concern for the weakness of novice researchers to be wedded "to systems theory" as "another example of not staying open in favour of seeing all GT's [grounded theories] using the same TC [theoretical code], self-regenerating systems" (p. 131). Clearly, this forcing of data into a preconceived or disciplinary "theoretical code" took place during the earlier phases of this research with the organisation of data themes within the sociology of childhood framework. However, the discovery of greater relevance and fit for thematic findings within an autopoietic conceptual framework emerged in the latter stages through rigorously adhering to grounded theory procedures of theoretical sampling and constant comparison.

The epistemological integration hinged upon two analytical coding procedures that facilitated new substantive theory to be built providing an explicit foundation for the

grounded systemic child rights model. This model is posited to have heuristic value for human rights/child rights in both applied and theoretical contexts.

In relation to qualitative inquiry, a limitation that is most commonly highlighted is the typically small sample size. This critique is further emphasised when the scope of investigation includes more than one nation since achieving a representative sample is clearly a challenge. Further, as noted in Chapter Three validity in postmodern research accounts pertains to multi-faceted notions of both truth and knowledge while classic grounded theory studies are evaluated on their need “to capture fit, relevance and workability” (Glaser, 2005, p. 131). Given these parameters, the current study focused upon theoretical sampling methods until saturation of thematic categories and their conceptual properties was evidenced. In this way, qualitative validity is argued in a similar fashion to the approach taken within case law wherein patterns are established in order to set new precedents (for similar arguments see Kvale, 1996; Mabbet and Bolderson, in Clasen, 1999, p. 36). These epistemological and analytical limitations were also addressed by utilising Wolcott’s (1994) typology for presenting qualitative findings.

While the study did not aim for representativeness, a constraining factor in the analysis is nonetheless revealed by this smaller number of Canadian informants, and the much larger population in comparison to Scotland’s equal number of informants within a much smaller national population. It is also important to recall that a previous pilot study (Mitchell, 2000) shaped the study’s questions and could have introduced a form of bias. Likewise, my participation as an NGO representative at the UN during preparatory meetings for the Special Session in 2000-2001 may have influenced the analysis. Notwithstanding, after a period of comparative policy analysis it became clear that Article 42 is the standard international framework for all domestic UN child rights reports and evaluations. Furthermore, I responded to these potential biases with memoing, reflexive field notes and critical theoretical sampling as well as constantly returning to new literature even to the final write-up.

## **Future Implications of this Study**

A number of future directions for application of the study's findings come to mind while publication of some key research findings and comparative analyses has already taken place (see Appendix One abstracts from Mitchell, 2002, 2003a, b, 2005; also Moore, Tulk, and Mitchell, 2005).

First, the integration of grounded and autopoietic systems theory is posited here to retain portable constructs for future directions, and appears viable for publication and continued research in both the substantive child rights field as well as formally within Luhmannian contexts. For example, qualitative and quantitative methodologies based upon this integration with Luhmannian interpretive constructs could suit both macro- and micro-sociological investigations into applied fields ranging from childhood studies, to social policy research, education, health, and political science.

The widespread dissemination of the CRC within Scottish education, law and social policy could very well have capacity-building potentials for the Canadian voluntary sector, particularly those organisations which are youth-led. Additionally, the grounded systemic CRC model may have pedagogical potential and further application within the broader child rights discourse (see Mitchell, 2005; Moore, Tulk and Mitchell, 2005).

Furthermore, the sociology of human rights discourse identified within the study holds important theoretical and applied potentials for new children's rights initiatives, and future research could help to establish more explicit links. Future directions might include a pilot study adopting the model within primary and/or secondary classrooms. As well, introduction into academic and professional discourses for professional training within health, social work, justice and education appears viable – as the UN Committee on the Rights of the Child has repeatedly requested for most nations – appears tenable. Indeed, further cross-national study and evaluation of the model within other cultural contexts using the grounded systemic methodology appears reasonable as well.

Mixed quantitative and qualitative research methodologies could be employed during future policy research to investigate a key finding from the study that Article 42 compliance was intended by the early drafters to have measurable properties and dimensions. Within relevant children's rights policy discourses, for example, an appreciation of Article 42 as an international social indicator could provide common conceptual ground for analysing ongoing legislative developments generated by Article 44 reporting as argued within Mitchell (2005). International and domestic non-governmental organisations engaged in children's rights evaluation and advocacy offer an additional widespread, global network for dissemination of the study's findings.

Locally, the assumption that children and young people require basic and accurate knowledge of the CRC's core principles provides common ground for policy actors and practitioners. In Scotland, the Children's Services and School Development Plans are the most viable and ongoing statutory and policy events where this implication could find currency for future application and development. Canada's jurisdictional ambiguities and ideological disjunctures have so far resisted the autopoietic replication of CRC communications. However, future policy development and new research may very well shift these contingencies (see Senate of Canada, 2005).

### **Conclusion of Chapter Seven and Thesis**

The qualitative findings presented within this investigation come at the close of the UN's Decade for Human Rights Education - a period relatively unheralded within the child rights literature. Several key findings emerged from the study's comparative analysis and interpretation of themes and these have been summarised within the Grounded Systemic Child Rights Model represented by **Figure 7.1**. This theoretical model is posited for further applied children's rights research and was built by considering how the entire CRC works in contrast to the reductionist accounts within much of the literature focussing solely upon Article 12's "participation". A new way of conceptualising children's rights within a human rights framework is posited that re-considers the ongoing postmodern deconstruction of the Convention within contemporary research.

A common unit of comparative analysis in the study was established through CRC Article 42 as educational institutions in both nations strive to implement accurate knowledge within research, policy and practice. Comparative perspectives from national and international policy arenas revealed that the CRC has travelled divergent roads within Scotland and Canada. The Convention on the Rights of the Child appears to straddle the modern/ postmodern divide and draws detractors from both camps. During the literature review and fieldwork, it became clear that neither modernist nor postmodernist approaches to childhood theorising fully account for the variation in national policies observable across the two nations. Through integrating two approaches to theory-building, one methodological and the other conceptual, a sociological reconsideration of the Convention becomes possible within a distinctly human rights paradigm.

While postmodern ambiguity and uncertainty may be applicable to the status of childhood theorising, the CRC's approach to the status of children and young people offers at least a minimum standard for cultural, historical and political expressions within ratifying nations. The Convention also appears to have appropriated many of modernity's highest ideals to achieve a kind of postmodern ideology while at the same time offering a more reflexive and critical approach to the Enlightenment project. Despite its conceptual and theoretical shortcomings, the CRC has been freely ratified across many dozens of national, political and cultural contexts retaining its fluidity while providing an unparalleled expression of the universality of human rights.

Ideological and disciplinary debates over biases within the CRC reveal disjunctures within childhood studies, but concerns over whether the treaty espouses universalist values over relativist ones overlook a fundamental point. Unlike perspectives on the nature of individual or collective childhoods, the CRC is not a theoretical framework for understanding children's studies. The treaty appears as a significant expression of international human rights law, and as such, has reflexive and ongoing implications in research, law, policy and pedagogical practice.



By arguing to re-conceptualise the CRC within the sociological study of human rights, the study makes its central contribution. The key interpretive dimension from this qualitative study, its core distinction of power relations, was derived by deploying binary coding argued by Luhmann as integral for distinguishing and maintaining systemic boundaries. While without precedent when the study began, autopoietic coding within grounded theory studies also appears more tenable due to new publications within the literature such as that by grounded theorist Glaser (2005). In this way, this study has achieved its aims with the discovery of an emergent grounded theory within the child rights comparative policy field.

## **Epilogue**

In closing, I recall how I managed to foster a life “free from enemies under seven years old” and consider this has been aided by adopting a human rights-based approach. This was affirmed on my final day of practice as a mental health counselor in a facility for children when the mother of a young woman diagnosed with schizophrenia acknowledged my qualities of compassion, kindness and dignity. Her daughter simply requested: “Don’t forget me”, and after traversing the path from front-line practice to academia, her request is even more prescient.

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**Appendix 1 - *Refereed and non-refereed publications from PhD thesis***

# Viewpoint

## Scotland's Hotbed of CRC Activity – A Comparative Overview

by Richard C. Mitchell

In 2001, I was the fortunate recipient of two scholarships – one from the Faculty of Human Sciences at Scotland's University of Stirling and the other from Universities UK Overseas Studentship Scheme. These were primarily awarded on the basis of my graduate research implementing the principles and provisions of the Convention on the Rights of the Child (CRC) in a Canadian healthcare setting.<sup>1</sup> These events also necessitated the end of one phase of my career as counsellor/advocate in a children's mental health facility to embrace the broader research, practice and advocacy implications that a doctorate in Social Policy might bring. Since my arrival, I've become convinced this nation of over five million may have some of the most progressive children's rights initiatives in the global community – it's a veritable hotbed of CRC activity. I have noticed much common sense, as well as innovative thinking supporting the social construction of a fertile environment for Scottish children's rights to proceed. To be certain, there are miles to go in the process of "turning principles into practice" before anyone sleeps peacefully, but consider the following.<sup>2</sup>

### A Children's Commissioner

As an outsider looking in, I have had a unique opportunity to make observations that would essentially escape the modest and often critical self-analysis of many Scots. Furthermore, although Canada has an international reputation of leadership where the CRC implementation is concerned, I would argue that there are progressive strategies adopting the rights-based approach taking place

in this country that deserve emulation in the policy communities at home and beyond.<sup>3</sup> Last week's announcement by the Scottish Executive's Education Committee, for example, backing the appointment of a Children's Commissioner is one such case in point. After an extensive inquiry, the Committee gave support to the appointment of a Commissioner to co-ordinate, monitor and promote issues affecting children's rights and interests in Scotland. Members felt that the post should be fully independent and have the power to report to the Scottish Parliament.

A Children's Rights Officer – a post non-existent in Canada and appointed by Scottish Local Authorities – put forward the following convincing case during dozens of parliamentary submissions by children's advocates within and without government. In contrast to frequent arguments opposing these appointments on the grounds of overlapping of services, this individual saw no duplication and contended that a Children's Commissioner would add value to existing arrangements by addressing the rights and interests of all children across all relevant policy areas. At present, Children's Rights Officers and Services are primarily restricted to children and young people in contact with the Social Work Department, and the service is not independent of the Local Authority.

“The Commissioner's post would provide all children and young people with the opportunity to make individual complaints and to take action where no other resource is available. This service would be complimentary to that of Children's Rights Officers. We should be seeking to be given a greater platform in the Scottish Executive by being able to raise formally and periodically our concerns about the infringement of children's rights. We should be able to campaign and contribute to amendments to legislation or indeed suggest that new and unique children's laws are introduced. I don't think a Commissioner can do this unless that post becomes a co-ordinator

of our work. What about young people who are unable to access services purely because there is no service available to them? This could be for a number of reasons, i.e. not being looked after, not knowing who to speak to, location, children and young people affected by disability and those not knowing their rights.

It is very important that Scottish children have their own Commissioner. This will highlight children's rights and effect change in a way that Children's Rights Officers working in isolation could never hope to do. A Commissioner could also be a very useful resource to Children's Rights Officers in their day-to-day work, as a Commissioner would be able to oversee national difficulties, offer information on good practice, keep us up-to-date with current legislation and more importantly case law. Most Children's Rights Officers work purely with children and young people who are looked after. This obviously excludes a large part of the population. This is discriminatory and unhelpful when other legislation touches on children's lives – health, education, housing, etc. Scotland is moving forward in its efforts to listen to children and young people – the Youth Parliament and Children's Parliament being two of many examples of this. There is a need however to have someone – the Commissioner – to collate the findings from all the consultation exercises that go on and to truly find out what children and young people's views are on ... a Commissioner would help to shape national policy and legislation as it affects young people – a national voice for children and young people in Scotland. ”<sup>4</sup>

### Stark contrast to British Columbia

These statements provide a stark contrast to the increasingly alarming state for children and youth in one Canadian province. In British Columbia, drastic cuts to services have anxious young people calling for help, while prompting an open letter to the government and to

### Scotland: smacking ban

In December of last year the Scottish Executive spelled out plans to increase the protection afforded to children under the law. A key part of the planned reforms, contained in the Criminal Justice Bill, is the executive's desire to make it illegal for parents to smack any child aged three and under. Other proposals in the bill include tougher sentences for child pornography crimes. However, a survey of parents conducted by the Scottish Parent Teacher Council (SPTC) has suggested that the majority are opposed to a ban on smacking. The survey, released on 15 February by the SPTC, involved about 2,500 parents. It said 56% were against a smacking ban, while the remainder were in favour of it. *Source: "Room for Debate" on Smacking Ban, BBC News Online 15 February 2002*

children and youth in care from the Acting Child, Youth and Family Advocate. An appeal for community-based boards for each region in the province to give local autonomy and influence over design and implementation of services for children was a recent request of the formerly independent Officer of the Legislature. One of Canada's most progressive pieces of rights-based legislation, British Columbia's Child, Youth and Family Advocate Act (and its Office of the Advocate) is being rescinded after only five years in existence by a newly elected, fiscally minded government.<sup>5</sup> There appears to be a reluctance on the part of civil society to describe these events in terms of a violation of human rights but, with no consultation aimed at eliciting the views of children and youth pushed further into poverty by these cuts, it is unequivocally so.

### Local autonomy

Canada's often-contentious federal, provincial, and territorial fiduciary and statutory boundaries could also take a page from Scotland's devolved local autonomy ongoing here for decades with regard to delivering children's services. A dream scenario for most Canadians would be the state of progressive devolution of Scottish governance, first from the English Parliament completed in 1998, but more importantly outward over the years towards its regions and communities, gradually shifting more resources to 32 Local Authority Councils. These integrated, democratic, local governance structures promote culture, education, public housing, child welfare, environmental concerns and health, among other services, while facilitating community participation.

As a comparative illustration, initia-

tives by the Scottish Executive aimed at tackling and eliminating child poverty over the next 20 years have a much better chance for success through direct, local input from policy stakeholders, children and families involved in these structures. The non-governmental (NGO) community in general, and the Scottish Alliance for Children's Rights (SACR) in particular, are cautious about the anti-poverty initiative known as Sure Start.<sup>6</sup> However, in comparative terms, there are no parallels in any of Canada's provinces, due most likely to centralised and complicated issues of governance and responsibility. Child poverty there continues without any kind of unified, co-ordinated national or local responses at the time of this writing.

### Children's Services Plans

Local Authorities are now also responding to key statutory requirements in Section 19 of the Children (Scotland) Act 1995 to engage children and youth in establishing joint Children's Services Plans. The Scottish Alliance for Children's Rights recorded 18 of the 32 had done so by summer 2000, and that two had gone further by adopting the CRC as the framework for this collaborative, interagency process.<sup>7</sup> These efforts will better integrate services while emphasising the importance of local authorities working in close consultation with National Health Service Boards in actively seeking – and following – child and youth consultations.

### Juvenile Justice

There are also longstanding and novel Scottish traditions on behalf of young people who commit criminal offences. Although the United Kingdom signed and ratified the CRC in 1991 with a res-

ervation to Article 37(d) regarding Scotland's 30-year old Children's Hearing System, the reform of child care law undertaken with the Children (Scotland) Act 1995 preserved these hearings largely unchanged. An international comparative evaluation of these hearings suggests a forward-thinking approach in the Hearings' child welfare orientation towards justice issues. The system was found from its 1968 statutory debut to have afforded children and young people the opportunity to participate directly in decisions that concern them. As changes in international attitudes have swung pendulum-like with various public sentiments through the decades, and moves towards "cracking down" on (falling) youth crime rates continuing to the present with Canada's federal reformation of its Young Offender's Act, "the Scottish system has maintained a unified approach in its response to offenders and those in need of care".<sup>8</sup>

Critics such as Tisdall do point out shortcomings that paradoxically leave Scotland with a high proportion of incarcerated 16 to 18-year olds, while the SACR argues that the low age of criminal responsibility commented upon by the Committee on the Rights of the Child in 1995 should be raised to 12.<sup>9</sup>

Notwithstanding legitimate critical concerns with the hearings, a significant point of comparative departure is provided by the following example illustrating the social policy rupture between the two nations, and a consistent concern for the rights-based approach in the Scottish discourse that is rarely present in Canada's. Perhaps most saliently, the following press excerpt also clearly identifies the social construction of children's issues in terms of "rights".<sup>10</sup> Although not explicitly naming the document or its specificities, all of the fundamental CRC principles can be identified: Articles 2, 3, 6 and 12, along with some of its other core provisions such as Article 4 and even the Article 5 notion of "evolving capacities".

In a test case at the Court of Session, three judges ruled that, in general terms, the children's hearing system provided a fair hearing but that in certain circumstances the absence of any scheme for children to be legally represented was a breach of their rights. Mr. McConnell said that the Scottish Executive was moving to adapt the hearings system to comply. "We welcome the court's judgment, which confirms that the principle of the hearings system is compatible with

## **Ideological Reflections on the DSM-IV-R (or Pay No Attention to That Man Behind the Curtain, Dorothy!)**

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**ABSTRACT:** Exclusive North American reliance on the Diagnostic and Statistical Manual of Mental Disorders 4<sup>th</sup> Edition-Revised (DSM-IV-R) to determine diagnoses such as Conduct Disorder or Attention-Deficit Hyperactivity Disorder occurs without sufficient critical regard for its ideologically and historically situated assumptions. The author argues for a parallel theoretical framework to guide interventions that is provided for children's practitioners through ongoing implementation of the United Nations Convention on the Rights of the Child. Rather than relying solely upon the deficit labelling of the DSM-IV-R with its underlying deterministic beliefs about child development, this holistic, rights-based approach assumes young people to be competent social actors whose lives are worthy of study in their own right. The author draws upon comparative theory within the sociology of childhood, practice insights and three case studies for support.

**KEY WORDS:** DSM-IV-R; rights-based approach; sociology of childhood.

### **Introduction**

Like characters in the 1939 movie when the Wizard admonished Dorothy to "Pay no attention to that man behind the curtain!", child and youth practitioners are being asked not to question inaccurate and culturally inappropriate beliefs about children supporting the Diagnostic and Statistical Manual of Mental Disorders—4<sup>th</sup> Edition, Revised (or DSM-IV-R, American Psychiatric Association, 1994). The author contends this diagnostic tool is inadequate in its approach to understanding various contexts for behaviours associated with diagnoses such as Conduct Disorder and Attention-Deficit Hyperactivity Disorder.

Rather than a full discussion about the features of these diagnoses,

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or indeed their very existence (see Coppock, 2002; Fewster, 2002; Richters and Cicchetti, 1993), a critique is presented towards their underlying ideological and theoretical foundations. In contrast, the author argues for a parallel adoption of the United Nations Convention on the Rights of the Child (CRC) to counter “deficit labelling” (Gergen, 2000; Fewster, 2002) of children and young people based upon invalid assumptions regarding children’s developmental incompetence. The author further contends the Convention offers an alternative theoretical stance for interventions that are holistic and contextually sensitive, a stance founded upon ideological and theoretical notions of a child’s inherent capacity and dignity. To support these arguments, the discussion is initially framed with an overview of current critical thinking influencing the global study of childhood, and secondly with the author’s insights from front-line child and youth care in mental ill health. To close, elements from three case studies from the United Kingdom and Canada are reviewed as successful practice applications of a “rights-based approach” (Collins, Pearson, and Delaney, 2002).

### Challenging Ideologies of Child Pathology

Manning (in Baldock, Manning, Miller, and Vickerstaff, 1999) has noted that ideologies are sometimes biased sets of beliefs held because they are in the interests of the groups articulating them. While Bell (1960) announced postmodernist arguments such as the end of ideology, Freire (1999) disagreed by maintaining that a hierarchical, authoritarian “ideology . . . remains quite alive, with its power to dull reality and make us nearsighted” (p. 90). In a similar analysis of the power relations embedded within particular ideologies, Rose (1999) describes the prerequisite process of thinking critically as:

[P]artly a matter of introducing a critical attitude towards those things that are given to our present experience as if they were timeless, natural, unquestionable. . . . It is a matter of introducing a kind of awkwardness into the fabric of one’s experience, of interrupting the fluency of the narratives that encode that experience and making them stutter. (cited in Moss and Petrie, 2002, p. 11)

As Rose suggests, let me introduce an awkward *stutter* with this notion of ‘ideology’ then, in an effort to interrupt some of its influences upon children and childhood in our present historical and cultural contexts. While underlying ideologies may be implied to be complete and static over time, the assumptions presented within the DSM’s various versions are, in fact, dependent upon incomplete and transitory notions that involve definition, ambiguity and interpretation (Wiener, 1981, p.

COMMENTARY

## Canadian Health Care and Child Rights – What Are the Links?

Richard C. Mitchell, MA

When the Convention on the Rights of the Child (CRC) was ratified in 1991, Canada undertook Article 24.1 obligations to provide both “the highest attainable standard of health” and Article 42 commitments to “make the principles and provisions of the Convention widely known to adults and children alike”. How are health care providers following up on these promises? How did the recently completed Romanow Commission engage, or even gauge, the views of young people in the reform debate? The author presents an argument for the wider adoption of a “rights-based approach” to facilitate health care reform and health promotion for young people, and clarifies a minimum standard for establishing this claim. While the approach has been discussed in a Senate of Canada policy paper,<sup>1</sup> the author cites qualitative findings from health promotion research in British Columbia to take the notion a step forward.<sup>2</sup> Further comparative theoretical and empirical support is presented to illustrate why this approach is germane to health care reform debates in Canada, and contemporaneous cabinet-level initiatives planning for children’s health and well-being.

### Comparative theory and children’s rights

While an explicit conceptual relationship connecting health and human rights has been well forged,<sup>3,6</sup> there are both theoretical and applied knowledge deficits in the discourse supporting Canada’s children.<sup>7-9</sup> Ongoing national efforts to promote this child rights/child health nexus have been coordinated primarily in Ottawa to this point.<sup>10-13</sup> Currently, a broad range of participants are developing and promoting children’s rights through Canada’s National Plan of Action for Children, with the Ontario Public Health Association a typical representative organization.<sup>14</sup> Notwithstanding these efforts, how aware are provincial, territorial and local health providers of their own obligations under this international treaty for children?

The United Kingdom has a policy discourse in health increasingly built upon notions of young people as competent rights-bearing citizens, well founded theoretically<sup>15-18</sup> and empirically.<sup>19,21</sup> For example, Lightfoot and Sloper discuss research from the National Health Service on the value of consulting with chronically ill and disabled young patients – a core child rights principle. Staff reported significant changes in their own professional behaviour. “It really did change my whole outlook on nursing... [I began to ask] have we asked patients what they want?”<sup>22</sup> In contrast, Dixon-Woods, Young and Heney report children have been given little voice in medical consultations to date, and are rarely consulted in the evaluation and planning of health services.<sup>23</sup> They concede that children’s rights will have little chance of being realized until more research on outcomes of shared decision making, competence of children, and sharing of information have been conducted. Alderson has researched effective methods for helping children as young as three years of age cope with major surgery<sup>24</sup> and suggests that childhood theories<sup>25</sup> are critical for health professionals to consider in issues of consent and a child’s right to express their views freely.

A decade ago, critical links to child health outcomes and a child’s rights to physical integrity were published by the British Columbia Institute against Family Violence.

*[P]hysical punishment is ineffective as a disciplinary procedure and is harmful in its long term effects on children’s social development. In an extensive investigation into physical*

*child abuse, most cases were found to have started as physical disciplinary actions that then escalated out of control (Kadushin and Martin 1981). Strauss (1991) found that physical punishment tended to “increase the probability of deviance, including delinquency in adolescence and violent crime both inside and outside the family as adult.” In a longitudinal study, Newson and Newson (1990) found, after controlling for poverty and unemployment, that frequent physical punishment as a child was associated with juvenile crime.<sup>26</sup>*

Still, rights for Canadian young people that facilitate participation in health care policy and practice decisions remain unfulfilled, perhaps even unknown, across much of the nation. Why might health professionals be reluctant to engage young people in this growing policy discourse? A comparative overview of childhood theories provides one useful entry point to begin to explain the apparent rupture between Canadian health professionals and many of their counterparts abroad.

From the mid-1980s, the “sociology of childhood”<sup>15</sup> has supported and informed British discourses, portraying children as competent, capable social actors. Notions of childhood as socially constructed, and children and young people as rights-bearing citizens inform policy-makers alongside dominant assumptions found in development literature. Oakley (1994) reflects on how children have been most often conceptualized in the past.

*We learn not about children’s perspectives, but about adults’ concepts of childhood. This is why the assumption of children’s non-competence is generic to all such theories, so that it becomes their prime distinguishing feature. In this sense, most work on the concept of childhood is adultist...also overwhelmingly classist.<sup>27</sup>*

This new social study of children and their childhoods has informed many of the new directions in policy. New appointments include local authority child rights officers, Children’s Rights Commissioners in Wales, Scotland, Northern Ireland, and the City of London, and a Children’s Rights Director for England,<sup>28,31</sup> each with their own remit that includes related health issues.

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## Population health links with children's rights

While the views of young people were significantly under-represented during consultations for the Romanow Commission,<sup>32</sup> the Prime Minister has apparently taken a different tack. In 2002, he appointed the Federal Health Minister and the Minister for Human Resources Development to prepare a National Plan of Action for Canada's Children "in fulfillment of its commitment undertaken at the United Nations Special Session on Children in May 2002."<sup>33</sup> These consultations provide new opportunities for dialogue with representative populations of young Canadians about their rights and their health care.

Perhaps unwittingly, Canadian health policy-makers and service providers have been committed to implementing the CRC since 1991, and as noted, Article 24.1 obligations to "the highest attainable standard of health and to facilities for the treatment of illness."<sup>34</sup> Further, Article 12 suggests that service providers "assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child" – including health care and health promotion. Concerns over falling standards of the health of various populations of children have been previously linked with child rights violations.<sup>35-37</sup>

However, without congruent policies among federal, provincial and territorial partners guiding health policies with young people, negative outcomes impacting the most vulnerable and socially excluded may continue. While the highest attainable standard of health was certainly achieved for most adults during the 1990s,<sup>3</sup> did it occur at the expense of the nation's children? In the *Health of Canada's Children – 3rd Profile*, Dr. Graham Chance acknowledges:

*The Canadian 1991 ratification of the UN Convention on the Rights of the Child (1989) was...of key importance for Canadian children. The Convention challenges its nation signatories to seek to attain benchmark behaviours towards the needs, rights and freedoms of children. As a co-signatory, the Canadian government is obliged to report on its progress toward full implementation of the Convention...When much of the*

**TABLE I**  
Links Between Population Health Policy in Canada and Children's Rights

Determinants of Population Health	CRC Articles
<b>Income and Social Status</b> – This is described as the single most important determinant of health.	Articles 2-4, 6-8, 12-17 & 27
<b>Social Supports and Networks</b> – Support from families, friends and communities is associated with better health.	Articles 2, 3, 6, 12-17 & 24-29
<b>Education</b> – Health status improves with the level of education.	Articles 24.2, 28, 29, 32 & 33
<b>Social Environments</b> – Social stability, appreciation of diversity, security, harmonious working relationships and cohesive communities.	Articles 2, 3, 6, 12-17 & 24-29
<b>Physical Environments</b> – Factors in the natural environment (air and water quality) are critical influences on health. The human-built environment is also noted as an important influence.	Articles 2, 6, 9, 19 & 32-37
<b>Personal Health Practices and Coping Skills</b> – Through research in such areas as heart disease and disadvantaged childhood, there is more evidence that powerful biochemical and physiological pathways link the individual socio-economic experience to vascular conditions and other adverse health events.	The entire CRC with special emphasis on Articles 2, 3, 4, 6, 12, 13, 19 & 23-29
<b>Healthy Child Development</b> – The effect of prenatal and early childhood experiences on subsequent health, well-being, coping skills and competence is very powerful.	The entire CRC with special emphasis on Articles 2, 3, 4, 6, 12, 13, 18, 19 & 23-29
<b>Health Services</b> – Maintenance and promotion of health, prevention of diseases, and restoration of health contribute to healthy populations.	Articles 24 & 27
<b>Gender</b> – Gendered norms also influence health practices, along with values, roles and power that are socially ascribed to each gender on a differential basis.	Articles 2, 3, 6 & 12
<b>Culture</b> – Some persons or groups face additional health risks due to a socioeconomic environment which is largely determined by more dominant cultural values contributing to conditions of marginalization, stigmatization, loss or devaluation of language and a lack of access to culturally appropriate health care and services.	Articles 2-6, 8-15, 18-20, 23-29, specifically 30, 31-36, 39 & 40

*information in the Profile is examined in the light of the 'best interests' standard, it is clear that it has not been attained in many instances.<sup>36</sup>*

The author contends that ongoing health care reform debates in Canada must also include those who stand to inherit the results – young people currently under the age of eighteen. There has been a broad consensus for some time regarding the factors that determine life-long wellness through support for healthy child and youth development.<sup>38,39</sup> Surprisingly, however, this 'population health' approach has a missing policy link<sup>40</sup> – the nation's international commitments under the UN Convention on the Rights of the Child.

### Population health and children's rights

Table I illustrates some of the links between current population health policy in Canada and children's rights, and is based on findings from participatory action

research in British Columbia implementing the Convention on the Rights of the Child in a healthcare setting.<sup>1</sup>

This analysis shows that the population health/healthy child development policies<sup>7,8,38</sup> guiding successive federal Health Ministers are also found in the CRC. Highlighted in Article 42 of the CRC are the core interconnected organizing principles of the treaty, which provided an entry point for health policy-makers and service providers engaged in the author's British Columbia pilot study.

- **Article 2** – the young person's rights to non-discrimination on the basis of race, religion, gender, or socioeconomic status
- **Article 3** – decisions will be taken in the best interests of the child – now an international legal standard
- **Article 6** – the child's right to maximum healthy development
- **Article 12** – the young person's right to be heard, to participate in meaning-

## **Postmodern Reflections on the UNCRC: Towards Utilising Article 42 as an International Compliance Indicator**

RICHARD C. MITCHELL

*Department of Child and Youth Studies, Brock University*

### **Introduction**

Building upon a Canadian pilot study (Mitchell, 2000), this paper presents selected qualitative findings from a two-year grounded theory study of UNCRC Article 42 conceptually framed by the emerging, yet discrete, sociological study of human rights. Six thematic categories are briefly presented that were derived through comparative and interpretive analyses of CRC education policies in Scotland and Canada, in-depth interviews with 50 key informants, and participant observations in Scotland, Canada and during UN children's human rights sessions. The researcher's main contention concerns the ongoing deconstruction of the Convention on the Rights of the Child as simply another approach to childhood theorising while overlooking UN human rights reporting implications. Contributions towards the sociology of human rights and children's rights compliance indicators are presented, as well as a CRC implementation model developed from the study's thematic categories and the treaty's "principles and provisions".

While postmodern critical thinking within childhood studies has done much to invigorate children's rights research and theorising, the fundamental rejection of modernity's core aspirations appears incongruent with the UN Convention on the Rights of the Child (CRC) as it is being implemented *on the ground*. The international human rights project challenges postmodern assumptions such as the end of grand theory and the failure of the Enlightenment project. Both of these core beliefs appear to be contradicted when looking at the widespread and continued evolution of human rights in the current epoch. To compensate for this poverty of theory and the apparent breakdown of postmodern *leitmotifs* described by Esping-Andersen (2000), the following study was framed by the emerging sociology of human rights (O'Byrne, 2003; Turner, 1993; Verschraegen, 2002).

Building upon a pilot study from Canadian health care that implemented CRC Article 42 (Mitchell, 2000), this paper presents selected findings from a two-year doctoral study comparing children's rights policies and practices

within a number of Scottish and Canadian educational policy arenas. The current, exploratory study also aimed towards augmenting child rights theorising, and to accomplish this aim, a grounded theory design was adopted from the outset (Glaser & Strauss, 1967; Strauss & Corbin, 1998a, 1998b; Glaser, 2005). As Jenks (2000) maintains, this approach is a basic tenet for investigating children's social realities. "What is it we want from children and childhood? My answer is to say: go back to the phenomenon and show how it is built up" (in Christensen and James, 2000, p. 67). Thus, the investigation began by "going back" to the phenomenon and returning to United Nations children's rights policy sites in the attempt better to understand the theoretical and ideological influences impacting children, childhood and children's rights in an era of "radicalised modernity" (Beck and Beck-Gernsheim, 2002).

### **Rationales for research**

While augmenting children's rights theory was the main aim of the investigation, research findings also support aims of the UN's Decade for Human Rights Education 1995–2004 (UN General Assembly, 1994). These objectives included:

1. Formulation of effective strategies for the furtherance of human rights education at all school levels.
2. Building and strengthening of programmes and capacities for human rights education at the international, regional, national and local levels.
3. Coordinated development of human rights education materials.

Previously, the UN's Committee on the Rights of the Child recommended "[Canada] should integrate the Convention into the training curricula for professional groups dealing with children, especially judges, lawyers, immigration officers, peace-keepers and teachers" (Concluding Observations, Section D-19, 1995). However, evaluation of the most recent Canadian report in 2003 offered the same assessment and critical feedback (Committee on the Rights of the Child, Concluding Observations, 2003). The inductive, interpretive policy investigation also began with the explicit assumption that knowledge and understanding of children's human rights are essential prerequisites for fully exercising those rights – knowledge that is described quite concretely within CRC Article 42.

The research problem addressed these concerns regarding the continuing lack of accurate knowledge and awareness of children's rights identified within the literature by Alderson (1999), Covell and Howe (1999, 2001), Howe and Covell (2005), Mitchell (2000; 2003, a, b), Roche (1999), Wyness

**Appendix 2 - *Letters of consent for research participants***

## ***Professionals' Consent Form***

Thank you for agreeing to participate in an interview for a research study investigating children's rights. This Letter of Consent is guided by codes of conduct set forth in the British Sociological Association, the British Psychological Society and the United Kingdom's National Children's Bureau codes of ethics, as well as that of in the American Psychological Association. In addition, statutory requirements directed by any and all appropriate legislation concerning children in your jurisdiction will guide the research. The purpose of this cross-national comparative study is to report how policy- and decision-makers in various Scottish and Canadian educational settings have implemented the Convention on the Rights of the Child for elementary, secondary and/or post-secondary pupils. The researcher is Richard C. Mitchell, MA, a Canadian doctoral student in Social Policy with a background in children's mental health counselling from Victoria, British Columbia. My Supervisor is Dr. Alan Prout, Professor of Sociology, Department of Applied Social Science, University of Stirling, Scotland, FK9 4LA.

### ***Research Aims and Methods***

This is a study looking at educational policies and practices from different stakeholders' viewpoints in Scottish and Canadian schools and forms the basis for my doctoral dissertation, portions of which may be published. Beginning with key informants from the United Nations in Geneva and New York, I will interview approximately 70 participants – those from the international arena along with policy makers, teachers and administrators, parents and pupils. At the end of our interview, I will ask for your referral of a colleague or contact that would also share their views on education of children and young people in human rights principles and provisions. The study aims are as follows:

1. To investigate how United Nations Convention on the Rights of the Child has been interpreted and implemented by policy- and decision-makers in selected Scottish and Canadian schools
2. To investigate how social constructions of children's rights converge and are divergent, and to discover young people's interpretations and constructions of their own rights in Scottish and Canadian schools
3. To discover human rights curricula and other pedagogical resources being utilised within Scottish and Canadian schools

You will be interviewed in person, by telephone or through electronic means through use of an interview outline. Where applicable, the audiotaped interview will take less than one hour. You may decline taping and simply answer the interview questions orally or in writing, depending on your circumstances. You will be asked about your knowledge of human rights educational policies, teaching resources and curricula in schools with which you are familiar. Your participation is completely voluntary, and you may withdraw from the study at any time. You may, of course, also refuse to answer any questions. The benefits of the study will be a contribution to local, national and international educational policy implementation in children's human rights.

Due to your professional role as someone in public service, it may be beneficial to others to share your viewpoints. Therefore, *you have a choice of allowing your comments, professional or personal identity to be recorded, or to remain anonymous.*

Should you choose to have your interview statements published along with your identity, you may request a written synopsis and/or an electronic copy of your comments before they appear in print or publication.

Should you choose anonymity, data collected from the interview will remain strictly confidential; the tapes will be transcribed and a record of the interview under key themes will be typed up and kept in a locked filing cabinet in a locked office. The tape will be erased immediately after your responses are coded in written form. Your name will not be attached to any published results, and use of a code number to identify your responses will protect your anonymity. For example, agencies will not be described by their particular location, and individuals will not be identified. These same conditions apply should I publish the study or to present the findings publicly. Your name will not be recorded on the data sheets or questionnaires, and signed consent forms will be stored separately from data.

Once the study is complete, all other forms of records and documentation will be archived for five years, and then destroyed. Whether you choose to participate or not will have no bearing on your professional status or advancement, or your receipt of services. If you have any questions now or later, you can contact me by phone in Canada at 250-721-3691; by e-mail at [r.c.mitchell@stir.ac.uk](mailto:r.c.mitchell@stir.ac.uk) or by post C/O the University of Stirling's Department of Applied Social Science – Stirling, Scotland - FK9 4LA, (Tel: (0)1786 467307 - Fax: (0)1786 467689).

I have read the above, and I have had the opportunity to ask any questions. I agree to participate by signing below. I also understand that my personal and/or professional identity and any information obtained from me by audiotaped interview or questionnaire in this research may be recorded after I have had an opportunity to read my comments.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Principal Researcher \_\_\_\_\_ Date \_\_\_\_\_

Alternatively:

I have read the above, and I have had the opportunity to ask any questions. I agree to participate by signing below. I understand that any information obtained from me by audiotaped interview or questionnaire in this research will be kept strictly confidential.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Principal Researcher \_\_\_\_\_ Date \_\_\_\_\_

**Appendix 3 - Local authority letters granting access to research participants**

**BEST COPY  
AVAILABLE**

**TEXT IN ORIGINAL  
IS CLOSE TO THE  
EDGE OF THE  
PAGE**



**BEST COPY**

**AVAILABLE**

Variable print quality

15 April 2002



Richard C Mitchell  
Doctorial Candidate  
University of Stirling  
Stirling  
FK9 4LA

**Children's Services**

Stirling Council

Viewforth

Stirling

FK8 2ET

DX. ST 28

Tel. 01786 442526

Fax. 01786 442782

Head of Service: Margaret Doran

E-mail: [doranm@stirling.gov.uk](mailto:doranm@stirling.gov.uk)

Our Ref: MD/DS

Your Ref:

Dear Richard

**Research Request**

Thank you for completing the pro-forma regarding research which you wish to carry out within Stirling Council schools.

I have no difficulty in agreeing to this request subject to headteacher and parental approval.

I enclose signed pro-forma.

Yours sincerely

**Margaret Doran**  
Head of Schools

enc.



Viewforth  
Stirling  
FK3 2ET  
(01786 442526)

**REQUEST FOR ACCESS TO SCHOOLS FOR  
THE PURPOSE OF EDUCATIONAL RESEARCH**

Your Name:	RICHARD C. MITCHELL
Your Post:	DOCTORAL CANDIDATE
Your Employer:	UNIVERSITY OF STIRLING
Title of your Project:	CROSS-NATIONAL COMPARATIVE STUDY OF IMPLEMENTATION OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD IN SCOTTISH AND CANADIAN SCHOOLS
Context and purpose of the research (e.g. M.Ed dissertation, personal study, project funded by SOEID)	DOCTORAL DISSERTATION
Give a brief outline of the research, indicating the kind of information you will be gathering and the main questions the research is trying to answer	USING ETHNOGRAPHIC METHODS EG: ANALYSIS OF INTERNATIONAL, NATIONAL, LOCAL REPORTS, POLICY DOCUMENTS, NEWSPAPER AND ELECTRONIC MEDIA, ALONG WITH PARTICIPANT OBSERVATION AND FOCUS GROUP, SMALL GROUP INDIVIDUAL INTERVIEWS, RESEARCHER WILL COLLECT AND ANALYSE 40-75 INTERVIEWS IN SCOTLAND AND CANADA WITH INTERNATIONAL, NATIONAL, LOCAL GOVERNMENTAL AND NON-GOVERNMENTAL REPRESENTATIVES, POLICY-MAKERS, UNITED NATIONS OFFICIALS, EDUCATORS IN PRACTICE AND ADMINISTRATION. PARENTS AND TEACHERS TO ANSWER MAIN RESEARCH QUESTION: HOW ARE POLICY- AND DECISION-MAKERS IMPLEMENTING ARTICLE 42 OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD IN SCOTTISH AND CANADIAN SCHOOLS? IF NOT, WHY NOT?

Stirling Council Children's Services

To whom will you be reporting your research, and in what form?

3 MEMBER COMMITTEE IN DRAFT PHASES 1+2 ⇒ POSSIBLY 3  
WRITTEN QUANTITATIVE ACCOUNTS AND ANALYSIS

Are you willing to provide Stirling Council Children's Services with a summary of your findings:

YES

Please list any specific schools you plan to involve:

OPEN ⇒ HAVE GUEST LECTURED  
PUPILS AT CONTON ROAD PRIMARY

Any other information you wish to add:

- THANK YOU FOR THE OPPORTUNITY
- HAVE HAD A POLICE RECORD CHECK  
ON FILE WITH LOCAL CHILD PROTECTION  
AUTHORITIES ... CONTACT PAT HUTCHINSON  
IF REQUIRED.

FOR AUTHORITY USE ONLY

This request for research access has the support of Stirling Council Children's Services

Signed:

Margaret Moran

Date:

15 / 4 / 02



## Applications to Undertake Research

### Notes of Guidance

Perth & Kinross Council is anxious to encourage and support educational research. Normally, the Director of Education will give approval to proposals to undertake research in schools and other educational establishments in Perth & Kinross, subject to the following conditions:-

1. All relevant details of the research project are disclosed on the appropriate application form.
2. The involvement of all Council staff with research projects is understood to be entirely voluntary.
3. The methodology involved in conducting the research does not in any way impair the educational process for students.
4. Any research project which examines directly the attitudes, achievements or learning processes of young people may require the parental consent of each young person involved to be obtained by researchers. Headteachers/Heads of Establishment will assist this process wherever possible.
5. All research staff working with young people in schools and educational establishments are required to disclose any criminal convictions and must have been cleared through the Criminal Records system.

#### **Disclosure of Criminal Convictions by those with Access to Children**

The Rehabilitation of Offenders Act 1974 permits certain criminal convictions to be regarded as 'spent' after the lapse of a number of years. This means that no reference need be made to such convictions or any circumstances relating to them.

However, the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 1986 excepts from the provisions of Section 4(2) of the Act any office or employment concerned with the provision to persons under 18 years of age of accommodation, care, leisure and recreation facilities, schooling, social services, supervision or training, being an office or employment of such a kind as to enable the holder to have access in the course of his/her normal duties to such persons and any other office or employment, the normal duties of which are carried out wholly or partly on premises where such provision takes place. Researchers who intend working with young people in schools and educational establishments are excepted under Section 4(2) of the Act and are therefore not entitled to withhold information about previous convictions (or impending prosecutions). All 'spent' and 'unspent' convictions must be disclosed and may be taken into account when determining the application to undertake research.

6. No disclosure of the findings of the research project is to take place before a date specified at the outset of the project, unless with the specific permission of the Director of Education.

- 
7. A copy of the findings of the research project is to be made available, free of charge, to the Director of Education on completion of the project.
  8. Strict observation of confidentiality must be respected and in particular the research must comply with the terms of the Data Protection Act.
  9. Copyright for the published research project rests with the researcher and/or the appropriate funding body.

---

Every effort will be made to convey a timeous decision to researchers regarding their application. In all circumstances, the approval of the Headteacher/Head of Establishment will require to be sought. The Head Teacher may also require to consult with the School Board if the project specifically relates to an area where they have a statutory function. There may therefore be an interval of several weeks between the submission of an application form and any approval or decision otherwise. Any researcher who wishes to discuss his/her project informally before submitting an application form is encouraged to contact **Hugh Macrae, Educational Development Officer, Education Department, Perth & Kinross Council, Blackfriars, Perth PH1 5LU – Tel: (01738) 476269 Fax: (01738) 476210.**

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EDUCATION DEPARTMENT

## Application for Undertaking Research

1. Title of research project:  
CROSS-NATIONAL COMPARATIVE ANALYSIS OF EDUCATION  
FOR CHILD RIGHTS POLICY, PEDAGOGY + PRACTICE IN  
SCOTLAND + CANADA.
  
2. Name and address of corporate body you represent (if appropriate)  
UNIVERSITY OF STIRLING Tel: 01786 466307  
DEPT. OF APPLIED SOCIAL SCIENCE Fax: 01786 467689  
STIRLING SCOTLAND  
FK9 4LA Postcode: ←
  
3. Name(s) and designation(s) of individual(s) conducting the research (first name should be head of project)  
RICHARD CHARLES MITCHELL PH.D. CANDIDATE  
PROFESSOR ALAN PROUT SUPERVISOR
  
4. Address and telephone number of research base (if different from 2. above)  
Tel: .....  
Fax: .....  
Postcode: .....
  
5. Details of funding granted/applied for (delete as appropriate)  
FULL FACULTY STUDENTSHIP UNTIL 2004 FROM  
UNIV. OF STIRLING

6. Please list all other agencies involved in this project, the nature of their involvement and a contact name. (This may be attached on a typewritten sheet)

X2 OTHER SCOTTISH LOCAL AUTHORITIES  
BUT CONFIDENTIALITY REQUIRES NON-DISCLOSURE

7. Anticipated timescale of project

Start ..... OCT/01 ..... Finish ..... OCT/03 .....

8. Synopsis of project (including methodology) (This may be attached in typewritten form)

THROUGH ADOPTION OF A MIXED QUALITATIVE  
METHODOLOGY, THE APPLICANT WILL USE ETHNOGRAPHIC  
TOOLS SUCH AS DOCUMENT ANALYSIS, PARTICIPANT & SEMI-  
PARTICIPANT OBSERVATIONS, AND IN-DEPTH INTERVIEWS, ALONG  
WITH GROUNDED THEORY METHODS AND ANALYSIS (CRASER  
& STRAUSS, 1967) TO COMPARE HUMAN RIGHTS POLICY AND  
TEACHING PRACTICES IN SCOTLAND AND CANADA.  
INTERPRETATION AND ANALYSIS OF APPROXIMATELY 70  
INTERVIEWS IN THE TWO NATIONS WILL TAKE PLACE  
BETWEEN OCT/01 AND OCT/03, AND WILL INCLUDE  
POLICY MAKERS INTERNATIONALLY AND LOCALLY, AS WELL  
AS PUPILS, PARENTS, AND PRACTITIONERS.

9. Describe the output of the project in terms of reports/theses/articles/books etc.

DOCTORAL DISSERTATION  
POTENTIAL FOR PUBLICATIONS  
(INITIAL OVERVIEW OF ANALYSIS OF POLICY  
BTWN THE 2 NATIONS IN THE "INTERNATIONAL  
CHILD RIGHTS MONITOR" MAY 02, PP. 11-14  
"SCOTLAND'S HOTBED OF CRC ACTIVITY: A COMPARATIVE  
OVERVIEW", RICHARD C. MITCHELL.

10. Are you an undergraduate/postgraduate? (delete as appropriate)

If so - what course are you studying? ..... SOCIAL POLICY RESEARCH DOC  
what stage are you at? ..... 2ND OF 3 YRS .....



11. Are you an employee of Perth & Kinross Council? YES/NO (delete as appropriate)  
 If yes, please give your work address if different from 4.

..... Tel: .....  
 ..... NO ..... Fax: .....  
 .....  
 ..... Postcode: .....

12. Please list the access and facilities you require from Perth & Kinross Council (describe data; names of establishments and categories of personnel as appropriate)

- ① OBSERVATIONS + PARTICIPATION IN VARIOUS CHILDREN'S SERVICES PLANNING SESSIONS
- ② INTERVIEWS WITH SERVICE MANAGERS, HEAD TEACHERS, CHILD RIGHTS OFFICER, STUDENTS, PARENTS, PRACTITIONERS REFERRED TO ME.
- \* ③ ANDY TURNBULL - SERVICE MANAGER  
 FRANK SAVAGE - SCHOOL PSYCHOLOGIST  
 HAVE BEEN CONTACTS IN P-K CHILDREN'S SERVICES

13. Any other relevant information (including any likely benefit to the Education Authority)

..... APPLICANT HAPPY TO SHARE CURRENT CHILD RIGHTS THEORY + PRACTICE FROM OWN + OTHERS' RESEARCH FINDINGS WHEN REQUESTED.  
 .....  
 .....  
 .....  
 .....

14. CRIMINAL CONVICTIONS

Please give details of any prosecutions for which you, or any of the research team, have been found guilty. If none, please state 'NONE'.

Date	Details of Offence	Sentence
	RECORD CHECK CARRIED OUT FOR STIRLING COUNCIL  NO PREVIOUS RECORD.	

15. DECLARATION by Applicant/Corporate Body

I certify that the information given in this application is accurate and complete and that I and all research staff working with young people in schools and educational establishments have been cleared through the Criminal Records system.

Signature K. C. Mitchell  
Date 7.11.02

Signature and name of officer of corporate body

Signature Alan Prout  
Name PROF ALAN PROUT, STIRLING UNIVERSITY  
Date 7.11.02

**To be completed by Perth & Kinross Council**

16. Approval of research request

- a Approved without conditions
- b Approved with conditions
- c Undecided
- d Refused

✓

Please tick the appropriate box and give further details/reasons below for categories (b), (c) and (d).

.....  
.....  
.....  
.....

Signature of establishment head [Signature]  
Date: 15/11/02

Signature of authorised officer Jayne P. Hasbun  
Date: 15/11/02

Please return this form to:

Hugh Macrae, Educational Development Officer, Education Department,  
Perth & Kinross Council, Blackfriars, Perth PH1 5LU  
Tel: (01738) 476269 – Fax: (01738) 476210

**Appendix 4 - *Global Child Rights Ballot for UN Special Session on Children***

# say yes for children

Add your voice to the call for a better world for all children. Pledges from people all over the globe will be delivered to world leaders at the United Nations Special Session on Children, ~~19-21 September 2002~~ **MAY 8-10**

I, \_\_\_\_\_ (name optional), believe that all children should be free to grow in health, peace and dignity, and that we must:

- 1 Leave No Child Out
- 2 Put Children First
- 3 Care for Every Child
- 4 Fight HIV/AIDS
- 5 Stop Harming and Exploiting Children
- 6 Listen to Children
- 7 Educate Every Child
- 8 Protect Children from War
- 9 Protect the Earth for Children
- 10 Fight Poverty: Invest in Children

In my country, the three most urgent issues are (check three of the numbers above).

## About You

Country \_\_\_\_\_

- Under 11    12-17    18-24    25+  
 Male    Female

Would you be willing to get more involved in the Global Movement for Children?

- Yes    No

Send your pledge to the nearest office of the Global Movement founding partners – BRAC, Netaid.org Foundation, PLAN International, Save the Children, UNICEF or World Vision. For further information, visit the Global Movement for Children website [www.gmfc.org](http://www.gmfc.org) or contact the offices above. Thank you.

# say yes for children

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In my country, the three most urgent issues are (check three of the numbers above).

## About You

Country \_\_\_\_\_

- Under 11    12-17    18-24    25+  
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I, \_\_\_\_\_ (name optional), believe that all children should be free to grow in health, peace and dignity, and that we must:

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- 4 Fight HIV/AIDS
- 5 Stop Harming and Exploiting Children
- 6 Listen to Children
- 7 Educate Every Child
- 8 Protect Children from War
- 9 Protect the Earth for Children
- 10 Fight Poverty: Invest in Children

In my country, the three most urgent issues are (check three of the numbers above).

## About You

Country \_\_\_\_\_

- Under 11    12-17    18-24    25+  
 Male    Female

Would you be willing to get more involved in the Global Movement for Children?

- Yes    No

Send your pledge to the nearest office of the Global Movement founding partners – BRAC, Netaid.org Foundation, PLAN International, Save the Children, UNICEF or World Vision. For further information, visit the Global Movement for Children website [www.gmfc.org](http://www.gmfc.org) or contact the offices above. Thank you.

**Appendix 5 - Interview schedules utilised during the study**

## *Interview Framework for CRC Policy- and Decision-makers, Key Informants (Scotland)*

1) Please describe your professional role in this organisation and your area(s) of responsibility for pupils under 18 years of age. Can you describe generally how you and those with whom you work you have been implementing the United Nations Convention on the Rights of the Child? What are the evaluation and monitoring processes for implementing children's rights in schools...are there Child Rights Officers whose remit is in education? How does Stirling Council education services account to the Scottish Executive for example or how are new policies regarding child rights transmitted to the local community?

2) Can you describe (1<sup>st</sup>) the statutory guidelines and (2<sup>nd</sup>) pertinent policy documents that offer direction for school-based UNCRC implementation? What are the tensions or contradictions between and among the relevant pieces of legislation...the Standards in Scotland's Schools Act...Children (Scotland) Act 95...the UNCRC...the ECHR...or any with which you are familiar? What were the changes on behalf of pupils in the Children (Scotland) Act for instance?

3a) I have read the policy documents you gave me and there are numerous references to the CRC such as the Council seeking to "underpin all services for children with a firm commitment to children's rights" (Citizenship in Stirling Schools...2000)... You remarked during our first meeting that "In many ways Richard we've moved beyond children's rights here in Stirling." Can you describe that process for me again? What are the cultural or contextual factors – here in Scotland in comparison with your neighbours for example, then perhaps even locally – that might facilitate children's rights education...or impede progress?

3b) I have read in the initial Children's Services Plan (1998-01, p. 33) that (1<sup>st</sup>) "Aim to develop a range of advocacy and rights services for children and young people"... (2<sup>nd</sup>) "Aim to ensure that children have a say in matters that affect their lives"... and (3<sup>rd</sup>) "publish information on Children's Rights"... In the most recent Service Plan (2001-02, p. 29) there were references to further development in this regard...Key Objectives B4.4, B5.1,.2,.3...etc. Can you discuss how these have taken shape...? Are there any schools where copies of the CRC are given to staff, students or carers?

4a) There are very progressive models of devolution and integration here compared to my home province or others for example...Can you review your important partners in the Local Authority...Interagency collaborators for New Community Schools for example...parents in the community or across the Council or perhaps in the Executive promoting children's rights in schools? In the Children's Services Plans? Can you describe any staff training or development on the CRC and children's rights that have taken place or are being planned? What do you see as advantages for young people in having the CRC more explicitly addressed in post-secondary education for those who plan to work with children?

4b) What do you see as the potential barriers, tensions or conflict regarding children's rights or critical incidents and events that may have shed light or threatened children's rights in education? Can you describe salient values, beliefs or assumptions on the part of teachers, other interagency professionals, and parents that promote children's rights...or conversely some resistance, tension, or of values that impede promotion of children's rights? What do you see as the next steps in promoting the CRC and children's rights education in public schools here in Stirling or throughout Scotland?

5a) Can you discuss how pupils have participated in school governance in any new ways since the CRC began to be implemented in Stirling schools? How have pupils in elementary and secondary schools participated in policy or curriculum development for example? How

have their views been taken on board and followed through? Can you tell me more about how the Student Councils – Children’s Committees... Youth Congress... and other participatory approaches... Are you aware of any “bottom-up” policy initiatives either in a local school or beyond that have come from your pupils?

5b) Please share some examples of how child development is taken into account when formulating policies... perhaps mentoring or capacity building for younger pupils according to their level of development? Any other ways that you have accommodated other pupils... especially those that might experience exclusion or other challenges e.g. teen moms or “looked after” young people? Those who have offended? Any pupils from families of Travellers? Can you discuss any anti-discrimination efforts in your schools?

5c) Can you discuss examples of policies that have implemented Article 23 with support for children and adolescents having mobility and/or cognitive challenges? Or disciplinary policies that honour and reflect CRC Article 28 (1) “the right to education on the basis of equal opportunity” and 28 (2) regarding discipline and school exclusions?

6a) Offering feedback on the first UK Child Rights Report, the UN asked all countries in the UK to offer training to professionals and child rights curricula to all pupils. Research throughout the UK and Scotland (Alderson, 1999) continues to reveal that very few pupils know about their rights. In addition, in a 1999 Save the Children Scotland Report – *Our Lives* – when asked who should be informing young people about their rights 82% thought that it was the duty of teachers and 75% parents... who do you think should be the key players involved in achieving rights education within Stirling schools or within schools throughout Scotland?

6b) What notable initiatives in children’s rights education have you heard about or perhaps participated in? ... Any from a post-secondary setting? What do you think might be some effective strategies for promoting children’s rights and the CRC within Stirling’s schools? What might be some of the advantages of having children’s rights education as part of the core curriculum in public education?

7) If I were to survey Stirling’s teachers and head teachers about the “principles and provisions” of the CRC, what do you think might be the outcome? Any other comments or final remarks on children’s rights education here in Stirling or beyond? Thank you very much for your willingness to participate and share this extremely valuable information...



## **Interview Framework for Policy- and Decision-makers, Key Informants in CRC Education**

*In light of both CRC Article 42 and responses from Geneva's Committee on the Rights of the Child after the First Report of Canada under Section "D. Suggestions and recommendations. 19. The Committee encourages the State party to pursue and develop its policy aimed at disseminating information and increasing public awareness of the Convention. It recommends that a nationwide education campaign be launched, in the framework of the United Nations Decade for Human Rights Education, to sensitize the population at large - including children themselves - to the principles and provisions of the Convention, and that consideration be given to incorporating the rights of the child in the school curricula. At the same time, the State party should integrate the Convention into the training curricula for professional groups dealing with children, especially judges, lawyers, immigration officers, peace-keepers and teachers" ...*

1a). Please describe your professional role in this organization and your area(s) of responsibility. b) Can you also describe how you and those with whom you work have been implementing Article 42 of the United Nations Convention on the Rights of the Child? c) How does this information reach your partners in other provinces and territories and who are those partners? d) How do you poll young people's views in your organization? e) Can you describe how your organization participates in the Article 44 reporting process?

2a). Who are the decision-makers in your area of jurisdiction that influence CRC implementation in schools? b) Are there any school districts where CRC implementation initiatives are taking place in your jurisdiction? c) Are there contradictions among the relevant pieces of legislation impacting CRC implementation in Canada's schools? d) Can you describe values, beliefs or assumptions on the part of political leaders, teachers, other professionals, or parents that promote children's rights...or conversely values or beliefs that are impeding promotion of children's rights in schools?

3a). Can you describe any public school- or post-secondary staff training or development on the CRC that has taken place in your jurisdiction? b) What do you see as advantages for students in having the CRC more explicitly addressed in post-secondary education? c) Do you think there are any additional effective strategies for promoting children's rights and the CRC within public schools and post-secondary settings?

4a). What do you see as the next steps in promoting the CRC in education here in this province or territory (or elsewhere in the country)? b) Who might be the most responsible parties, offices or institutions to take these next steps? c) What are potential barriers or conflicts regarding children's rights (critical incidents and events that have shed light upon or threatened children's rights) in the Canadian education arena?



5a). Are there any methods or initiatives with which you are familiar for bringing awareness of the CRC to pupils deemed vulnerable or those perhaps not having their rights to education met? ... e.g. some First Nations and other Aboriginal students, others who may be out of school or experiencing social exclusion or challenges such as teen mothers or young people in care, those who have come into the youth justice system? d) Can you discuss any anti-discrimination efforts in schools or the community? e) Can you discuss policies that implement Article 23 and support children and adolescents having mobility and/or cognitive challenges?

6. Are there cultural or contextual factors in this province or region, in comparison with your Canadian neighbours, facilitating children's rights education/ implementation? Any factors that impede progress?

7) Final remarks or comments on children's rights education in Canada? Thank you very much for your willingness to participate and share this valuable information.

**Appendix 6 - *UNICEF Letter of invitation to UN Special Session on Children***

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UNICEF

#4645 P.002



United Nations Children's Fund  
Fonds des Nations Unies pour l'enfance  
Fondo de las Naciones Unidas para la Infancia

3 United Nations Plaza  
New York, New York 10017  
212 326-2000  
Telex: 175289

## CONFIRMATION LETTER

### Invitation to the twenty seventh session of the General Assembly "Special Session of the General Assembly on Children" 19-21 September 2001 United Nations - New York

Dear representative,

This is to confirm receipt of your completed pre-registration form for the twenty-seventh special session of the General Assembly, "Special Session of the General Assembly on Children" to be held from 19-21 September 2001 at the United Nations Headquarters in New York.

As a representative of an NGO approved for accreditation, we welcome your participation on this special occasion. All pre-registered representatives, including representatives of ECOSOC accredited NGOs, must register to obtain their special conference pass which will allow them access to the meetings of the session. The NGO Registration Desk will be located in the trailer on 47<sup>th</sup> Street and First Avenue and will be open during the following hours:

Monday 17<sup>th</sup> September : 9 a.m. to 12 p.m. and 1 p.m. to 5 p.m.  
Tuesday 18<sup>th</sup> September : 9 a.m. to 12 p.m. and 1 p.m. to 5 p.m.  
Wednesday 19<sup>th</sup> September : 8 a.m. to 12 p.m. and 1 p.m. to 5 p.m.  
Thursday 20<sup>th</sup> to Friday 21<sup>st</sup> September : 8 a.m. to 12 p.m. and 1 p.m. to 4 p.m.

Any changes in the above times will be posted on the UNICEF website at <http://www.unicef.org/specialsession>.

In order to register and obtain conference passes, all confirmed representatives, including young people and their chaperones on NGO delegations, must bring the following items to the Registration Desk:

- 1) A valid Photo Identification (e.g. - passport, driver's license, etc.) and
- 2) Copy of this confirmation letter

You are reminded that each NGO delegation can nominate no more than four representatives including young people and their chaperone. Changes in nomination of representatives may only be accepted under *extreme circumstances*, with an official notification from your organization indicating the name of the substitute and the name of the representative being substituted. Please fax this revision to the accreditation office at one of the following fax numbers by 1<sup>st</sup> September. Fax: (212) 303-7990, (212) 326-7594, (212) 824-6466. Due to the increased number of pre-registration forms received, we WILL NOT be able to accommodate more than one revision to your pre-registration form. Changes received after 1<sup>st</sup> September 2001 WILL NOT be accepted and will not be made at registration.

A large number of Heads of States are expected to attend the special session. Due to heightened security measures, there will be limited NGO access to the UN during this time. Please note that only registered NGO representatives with a valid conference pass will be able to access the UN. Registered NGO representatives are requested to observe restricted areas inside the UN premises.

The plenary of the special session will be held in the General Assembly (GA) Hall. Due to very limited seating in the plenary, there will be limited tickets available for registered NGO participants to attend. The NGO facilitation team will identify the mechanism to ensure an equitable distribution of tickets for the plenary. The session will also be televised in Conference Room 3 in the basement of the General Assembly Building.

The NGO Steering Committee of the NGO Committee on UNICEF in collaboration with UNICEF, as the Substantive Secretariat, has organized a number of events for NGOs to facilitate their participation prior to and during the special session. NGOs are encouraged to attend the following events:

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UNICEF

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- **NGO Orientation session:** 2 p.m. to 4 p.m., 18<sup>th</sup> September, New York, venue to be confirmed.  
This session will provide information to NGOs on access to the UN, security arrangements and NGO events held during the week of the special session. NGO representatives who have not attended the PrepComs and are new to the process are particularly encouraged to attend this session.
- **NGO Welcoming reception:** 5:30 p.m. to 6:30 p.m., 18<sup>th</sup> September, New York, venue to be confirmed.  
The NGO Reception will provide an opportunity for NGOs, government delegates and other special guests to meet informally. The NGO Reception will also launch the NGO Exhibition.
- **NGO Exhibition:** 19 – 21<sup>st</sup> September, New York  
The NGO Exhibition for the special session will highlight the diverse and substantive work of NGOs from around the world. If your accredited organization wishes to organize an exhibit, you may obtain a form from the website of the NGO Committee on UNICEF at <http://ngosatunicef.org>. Kindly send the form via fax at (212) 824-6466 by 17 August 2001. If you do not have Internet access, you may request a form from the NGO Committee via fax at (212)824-6466.
- **NGO Plenary sessions ( 1 – 3 p.m.):** 19 – 21<sup>st</sup> September, Conference Room 4, U.N. General Assembly Building,  
The NGO Plenaries will highlight how NGOs can move the goals of the special session forward. The presentations will focus around the following themes:  
NGO Plenary 19<sup>th</sup> September: NGO review on the themes of the outcome document;  
NGO Plenary 20<sup>th</sup> September: Highlights from the regions;  
NGO Plenary 21<sup>st</sup> September: Under 18 participation.
- **NGO Side events:** 19 – 21<sup>st</sup> September, United Nations and vicinity  
There will be a number of side events organized by NGOs, governments and other organizations prior to and during the special session. A program of side events will be available on the websites of UNICEF <http://www.unicef.org/specialsession> and the NGO Committee on UNICEF at <http://ngosatunicef.org> by the end of August 2001.

In accordance with the decision of the Preparatory Committee, non-governmental organizations accredited to the special session may make statements in the Ad Hoc Committee of the Whole and in the plenary. The number of NGOs that may speak however, will be limited due to the very limited availability of time. The NGO Steering Committee in collaboration with UNICEF will co-ordinate speaking arrangements. Preference will be given to requests from coalitions, regional groups and networks of accredited organizations. If your coalition or network of accredited NGOs is interested in making a statement, please contact the NGO Steering Committee by fax 212-824-6466 or email [ngocommittee@unicef.org](mailto:ngocommittee@unicef.org). Further information will be available by 6 August 2001.

Please visit the following websites for updates on NGO activities for the special session:

<http://www.unicef.org/specialsession>

<http://www.ngosatunicef.org>

<http://www.crim.org>

We look forward to your participation in the Special Session of the General Assembly on Children.

Yours sincerely,



Kul C. Gautam  
Deputy Executive Director  
UNICEF

MITCHELL, Richard Charles

Results Canada

Suite 52

76 Dallas Road

Victoria, British Columbia V8V 1A2

Canada

FAX: (250)384-8548

***Appendix 7 - Letter of response from Victoria, British Columbia School District***



OFFICE OF THE SUPERINTENDENT OF SCHOOLS

556 BOLESKINE ROAD, P.O. BOX 700, VICTORIA, BRITISH COLUMBIA V8W 2R1  
PHONE (250) 475-4158 FAX (250) 475-4112

BY FAX: (Victoria) 721-3692

June 12, 2002

Mr. Richard Mitchell  
Doctoral Candidate  
Department of Applied Social Science  
University of Stirling  
Scotland

Dear Mr. Mitchell:

This letter is in response to your research request dated June 4, 2002 for permission to conduct a survey in our school district re: *Child Rights Awareness Campaign*.

Please be advised that you are required to complete the enclosed application form:

- Request to Use Public School Students or Staff in Research
- Enclosure for Research or Statistical Purposes (for your information only)

Upon receipt of your application, it will be forwarded to Sherri Robb, District Principal, for a decision. You will be advised by as soon as possible.

If you have any questions or concerns, please do not hesitate to contact me at (250) 475-4158.

Sincerely,

Mandy Conrad  
Superintendent's Office

enclosure(s)

cc: Sherri Robb, District Principal



REQUEST TO USE PUBLIC SCHOOL STUDENTS OR STAFF IN RESEARCH

Date of Request \_\_\_\_\_

Name(s) of researcher(s) \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Faculty or Department \_\_\_\_\_

Name of Supervisor (or sponsoring body) \_\_\_\_\_

Status of Applicant (undergraduate, faculty member, etc.) \_\_\_\_\_

If student, what year? \_\_\_\_\_

Reason for Project (eg. thesis requirement) \_\_\_\_\_

Title of Project \_\_\_\_\_

Brief summary of the project's nature, objectives, educational application, etc. in non-technical terms \_\_\_\_\_

Grade level of students preferred \_\_\_\_\_

No. of students requested: Male \_\_\_\_\_ Female \_\_\_\_\_ Not relevant \_\_\_\_\_

Other characteristics (social class, race, geography, etc.) \_\_\_\_\_

Preferred School(s) \_\_\_\_\_

Has preliminary contact already been made with a school or schools? \_\_\_\_\_

If yes, state which one(s) \_\_\_\_\_



Name(s) of person(s) contacted \_\_\_\_\_

Do you need access to students individually? \_\_\_\_\_ in groups? \_\_\_\_\_ both? \_\_\_\_\_

In school settings? \_\_\_\_\_ If outside the classroom, state needs (size of room, furnishings, etc)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Number of contacts: student \_\_\_\_\_ teacher \_\_\_\_\_ principal \_\_\_\_\_ parent \_\_\_\_\_

Length of time needed with each: student \_\_\_\_\_

teacher \_\_\_\_\_ principal \_\_\_\_\_ parent \_\_\_\_\_

Restrictions of day: a.m. only \_\_\_\_\_ p.m. only \_\_\_\_\_ either \_\_\_\_\_ other \_\_\_\_\_

How do you plan to get the child to and from the classroom? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Stimulus Materials and Evaluation Instruments:**

Please specify the general nature and intent of the materials and instruments to be used and attach a copy of the items to be presented.

Please comment on the CONFIDENTIALITY of the information you will gather.

If you plan to present a learning, problem-solving or related task situation, specify the general nature and intent of the procedure and attach an exact copy of your instructions including the type of feedback the student will receive.

If any form of deception is to be used, please justify its extent and rationale, as well as the details of the debriefing procedure. **BE VERY SPECIFIC.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Other Comments \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



Expected starting date \_\_\_\_\_

Expected date of completion in school(s) \_\_\_\_\_

Expected date of final report \_\_\_\_\_

*(A formal written report of the outcome is to be forwarded to the Greater Victoria School District. This is mandatory).*

**I/We certify the above information to be correct and agree to the conditions set by the Greater Victoria School District.**

**Signature of Researcher(s)** \_\_\_\_\_

**Signature of Supervisor**  
*(if different from above)* \_\_\_\_\_

Submit completed application to:

*Mandy Conrad  
Superintendent's Office  
Greater Victoria School District #61  
556 Boleskine Road  
Victoria, BC V8Z 1E8  
Phone: 475-4158 Fax: 475-4112  
e-mail: mconrad@sd61.bc.ca*

**ALL QUESTIONNAIRES, SURVEYS, ETC. TO BE USED IN THIS STUDY  
MUST ACCOMPANY THIS APPLICATION**

**Appendix 8 - Renfrewshire Council invitation to Paisley guest lecture**

North Paisley New Community School  
C/o St. Fergus' Primary School  
Blackstoun Road  
Paisley  
PA3 1NB  
Tel No 0141 848 6357  
Fax No 0141 848 6650



Renfrewshire  
Council

Education and Leisure Services

Richard Mitchell  
34 Flat 3/1 Battlefield Road  
Glasgow  
G42 9QH

Dear Richard

### Children's Rights Seminar

As requested, attached I have provided some information relating to the Supporting Children & Families Network (S.C.A.F.N.). We have a core membership of approximately sixty people who have come from a wide variety of workplaces and the numbers are growing steadily.

The Network was set up over a year ago by a colleague from the Renfrewshire Association of mental health (RAMH). At this time it was thought that it would be useful to have a forum for workers to get together to share experiences, impact knowledge and information.

The Network meet quarterly as a full group for approximately two hours. The function of the meetings has been designed to encourage full participation of group members. Normally, our meetings begin with an introduction to an area of work happening within Renfrewshire. In the past we have held discussions on topics such as: Community Schools, Drugs, Child/Family provision and Health issues. Our meetings allow for small/large group discussions and through contacts made it has proven to be a useful resource for workers to engage with others. Contacts made at network meetings has already shown positive results with many new partnerships being developed and new areas of work being taken forward.

For the input on Children's Rights it is anticipated that a number of schools would be in a position to be involved in the seminar. We are anticipating approximately one hundred plus workers will be involved in this. We have changed our venue to accommodate extra numbers, however, at the time of writing we are still awaiting confirmation of our booking.

On a practical note, wherever our venue is, I can confirm that someone will be in a position to collect you from the train station. There is a regular train service from Glasgow Central to Paisley. Trains travel via Gilmour Street or Canal Street stations and take approximately 10/15 minutes. We can confirm your travel arrangements nearer the 28th, and in the interim, if you require to discuss any issues relating to this topic. I can be contacted on the telephone number noted.

Yours sincerely,

Paul Kyle  
Social Worker







# United Nations Special Session on Children

8-10 May 2002 • New York

## The Global Child

There are 2.1 billion children in the world, accounting for 36% of the world's population. Some 132 million children are born each year.

Globally, 1 in 4 children lives in abject poverty - in families with income lower than \$1 a day. In developing countries, 1 in 3 children live in abject poverty.

One of every 12 children dies before they reach five, mostly from preventable causes.

### Of every 100 children born in 2000:

- 53 were born in Asia (19 in India, 15 in China)
- 19 were born in sub-Saharan Africa
- 9 were born in Latin America and the Caribbean
- 7 were born in the Middle East and North Africa
- 5 were born in Eastern Europe, CIS and Baltic States
- 7 were born in the industrialized countries of Western Europe, USA, Canada, Israel, Japan, Australia and New Zealand.

If social conditions remain unchanged, the following will most likely be their fate:

#### Birth registration

- The births of 40 will not be registered. These children will have no official existence or recognition of nationality.

#### Immunization

- 26 will not be immunized against any disease.

#### Nutrition

- 30 will suffer from malnutrition in their first five years of life.
- Only 46 will be exclusively breastfed for the first three months of life.

#### Water and Sanitation

- 19 will have no access to clean drinking water.
- 40 will live without adequate sanitation.

#### Schooling

- 17 of the children will never go to school. Of these, 9 will be girls.
- 25 of every 100 who begin 1st grade will not reach the 5th grade.

(over)

**Appendix 10 - C. Price Cohen's archival document on the drafting of Article 42**

CENTRE FOR HUMAN RIGHTS

Legislative History of the  
Convention on the Rights of the Child  
(1978 - 1989)

Prepared with the support of  
Rädda Barnen

**Preliminary Draft for Consultation**

ARTICLE 42

(DISSEMINATION OF THE PRINCIPLES AND  
PROVISIONS OF THE CONVENTION)



UNITED NATIONS

**Appendix 11 - Consulting children and young people in Perth-Kinross**



**Delayed Office Opening for Employee Training**  
*This Office will be closed from 8.45 am – 11.00 am on the 1<sup>st</sup> Thursday of each month commencing 6 February 2003*



**PERTH & KINROSS COUNCIL**

**Education & Children's Services**



Blackfriars Development Centre, Northport,  
PERTH PH1 5LU  
Tel 01738 477834 Fax 01738 477838

Contact Jim Paterson  
Direct Dial (01738) 477877

Our ref JP/CH/RH

Your ref \*

Date 20 June 2003

**Consulting children and young people in Perth & Kinross Conference**

Dear Participant,

Thank you for coming to the conference on June 4 and helping to make it such a successful day.

The organising committee aim to produce a conference report, summarising what happened on the day; it will also make recommendations in order to make consultation with young people work better in Perth & Kinross.

Since this report will not be available until next term, please fill out and return the slip below, only if you are changing school or work address after August. We want to make sure that everybody at the conference gets feedback, something that you all made clear was an essential part of consultation.

Yours faithfully

JIM PATERSON

Jim Paterson  
Rights Officer for Children and Young People

Return to Jim Paterson, Blackfriars Development Centre, Northport, Perth PH1 5LU

NAME:

ORIGINAL SCHOOL:.....

NEW SCHOOL / WORK ADDRESS:.....

.....

.....

**Appendix 12 - Cover of Children's Services Plan in Perth-Kinross**

**INTER-AGENCY**

**CHILDREN'S SERVICES PLAN**

**For PERTH and KINROSS**

**Review of Progress**

*Draft*  
**June 2003**