**ASPIRATION TO REALITY; CHILDREN’S RIGHTS IN THE MAKING**

**Prof. Michael Freeman**

Children at long last have international recognition of their rights [ Freeman ,2017 ] . The Convention on the Rights of the Child has been in operation for more than a quarter of a century .

1 Only the U S A has failed to ratify it ,and is unlikely to do so in the foreseeable future .The rest of the world has given it their explicit endorsement .States which have no intention of putting the convention into practice nevertheless affirmed their commitment to it , states like North Korea . A charade ,yes ,. But not an altogether worthless exercise . It offers support to rights advocates in these countries and the knowledge that “ right “ is on their side , though “ ;power “ rests elsewhere .

2 The Convention endorses rights of “ the child “ , not rights of “ children “ ,a clear signal rights are intended to be universal [ Bentley , ] But the reality is that the interests and the values of the Global North are dominant. And , despite an emphasis on participation by children [ see Article 12 and Daly , 2017 ] , children played no part in the construction of the convention . How different it would look had they done so is a matter of speculation , but there are clear areas where questions of concern to children are nor addressed , for example the right to vote or to work (Liebel 2013).

3 The Convention is stronger on rights than on remedies . There is no court, or global police force or global legal order. .the main enforcement agency is a Committee of Experts . to whom states are expected to report every five years . But reports are commonly late , often evasive , and do not tell “ the truth “ .[ vvvvv , 2017 ] There are no sanctions for failure to comply with the provisions of the Convention. Thus ,as an example , Pakistan executes juveniles in clear breach of Article 37 . Much of the Islamic world still discriminates against girls , this infringing Article 2 [ as to which see Malala , 201x ] One of the reasons the U S A hasn’t ratified is that in 1989 it still employed the death penalty against murderers of 16 .This is no longer so [ see Roper v Simmons ]Indeed , one of the triggers for reform was he c R C , the judicial branch of government being more in tune with sentiments of human rights than the legislature and executive .

4 Remedies to be effective demand the injection of resources: subsidised access to good legal services , the support ,of fact – finding agencies and research institutions , respect for

NGOs which offer alternative visions and perspectives. It is vital that the Committee on the Rights of the Child is given the opportunity to receive evidence from non-official sources, which challenge the authorised version of the truth. Input from children’s lobby groups and from children themselves is crucial on questions such as child poverty and education .The need to probe , challenge and correct increases in a world whose leaders have no respect for the truths provided by the evidence [ Blair on weapons of mass destruction , Trump on more or less everything . If you believe that the universe was created less than 6000 years ago , you can easily dismiss scientific evidence of global warming .Concern for the health of our children can all-too-easily marginalise their mental health , and their environmental health [ but see Heywood ,2013 ]

5The question of resources extends far beyond the substantive matters thus far addressed It is relatively easy to tackle child poverty or improve child representation before courts if there is a w ill to do so .Think what could be done with the money spent on arms if it were diverted to improving the lives of children . This is my concern , of course. But here my concerns go deeper . Rights only flourish in a culture where rights are respected .We can only begin to talk of rights when and where we recognise that there is a right to have rights , Hannah Arendt recognised this when she wrote of the Nazis removing even Jews’ names-they were branded with a number- before their lives were taken from them .One and a half million children suffered this fate , most famously Anna Frank who lived a few kilometres from here and the 192 in the care of Janusz Korczak ,the 20th century’s greatest advocate of rights for children .He emphasised the need to respect children. The importance of respect and through this empathy [ see Baron- Cohen , 2014 ]puts this into a contemporary context; think of the plight of refugees today , drowning in the Mediterranean because no one will take them in. Greece denied starving babies milk , no doubt to deter other babies having the audacity to attempt to enter that country .[ on refugees and the right to have rights see Benhabib,,204 ]

6 Rights flourish best in a culture of democracy . Democracy is more than majoritarianism.. But extending the franchise to all is important ., but more is needed .Russia is not a democracy , nor is China or India [though this claims to be the world’s largest democracy-can democracy exist where there is a caste system in operation ? A quarter of the world’s population are children, A few states grant 16 year-olds voting rights but no one under 16 has the vote a anywhere . A proposal to allow 16 year-olds to vote in the referendum on leaving the E U was rejected By the Government of the day on the grounds of cost , apparently about £ 7 million .But if 16 year-olds , why not 15 year-olds and 14 year-olds? Where should the line be drawn , if anywhere ?If the test is competence , then many adults would have to forfeit the privilege

7 Liberal democratic governments tend to be better at protecting rights than illiberal or non - democratic ones .A liberal democracy builds on the recognition of the right to human dignity of all citizens , and ideally also of non- citizens . Liberal democracies tend to be better at protecting civil and political rights than social and economic ones

Why do states renege on their obligations ? For much the same reasons as criminals break the law. They do so when they have the opportunity . Criminologists explain crime in this way , and this thinking easily transfers to human rights violations , the Srebrenica massacre . for example .and to violations of the rights of children .Mengele ‘s “ twin experiments “ were conducted by an evil “ professional “ , but only because he had the opportunity to do so , and because the children were merely objects , not persons

It is important to be able to empathise with the other. This applies to children as well . Hence the importance o seeing children as “ beings “. If they are only “ becomings “ ,they are “ the Other “, and less deserving of respect .This has implications for abortion .which I will not pursue here ,save to sas I support the pregnant woman’s right to terminate her pregnancy [ which English law denies her ] , but remain unhappy about what this says about children’s rights .

The Charlie Garde case being pursued at this very moment [mid July 2017 illustrates the problems and dilemmas very well Parents object to the clinical decision to remove life support from their very severely disabled 11 month old baby and want to take him to the U S A for experimental treatment. This may preserve the child’s life . but it is believed by clinical opinion that his brain damage is such that he will never have a meaningful life .The courts originally approved the decision of the hospital but met the opposition of right to life groups .as well as the Pope and Trump The law is clear : Charlie’s welfare is the paramount consideration. All those involved in the case purport to be doing just this . There is a school of thought which subscribes to the view that parents know best , and argues for parental autonomy [ Goldstein , Freud and Solnit , 19 xx , 19 xx ; Guggenheim , [2005 ].,In the run-of - the mill everyday decision-making this is probably right and anyway the state could not possibly take every decision in relation to a child’s upbringing . The state is no substitute for flesh and blood parents , We take the luck of the draw with what parents we get , though some of us may be seeded Returning to Charlie one cannot help but think that his parents are putting their own interests first. Charlie has the right to die with as much dignity as is possible in the circumstances . The C R C does not give this right to children . A few legal systems do , albeit to much older children, The right was not even discussed when the Convention was being drafted , which is hardly surprising , given how controversial such a right remains even for adults. But significantly , Janusz Korczak , who must have witnessed thousands of children dying , put the right to die with dignity as the first right children should have. There is now a draft convention , the Trieste Convention , which would confer on children the right to die .

The Charlie case is not novel and there have been more complex ones. Think , for example of the “ conjoined twins “ litigation ,nearly 20 years ago—the surviving twin is now an adult-- { Re A , 2001 ]>. Had the parents prevailed , neither twin would have survived .Or the “ liver transplant “ case [ Re T , 1998 and Freeman , 2017 B for a child –oriented version of the judgment ] [ ] , which in my opinion he courts got wrong , over – identifying the rights of the child with those of the mother. In this case the parents eventually relented and the child lived .The case perfectly illustrates the point I have been making: children’s rights require a culture in which empathy can flourish . And this is not a me first society which isn’t really a society at all –remember Thatcher ‘s “ there is no such thing as society “ Moore 201x ] .

8. It may be asked what the value of a convention is when it is regularly flouted . I turn to studies in the sociology of law for an answer .Many of these studies relate to laws relating to questions of equal opportunities for ethnic minorities , It is now 50 years since these laws were first passed , and it is clear that they have not yet been totally successful. There may well be lessons here for child laws which also come with the expectation that social engineering will successfully transform society .

9 A law is an unequivocal declaration of public policy .It is a symbol. The symbolic value of law as law ,the fact that most people want to obey the laws and will do so has important consequences for long-run compliance , Law shifts the balance of power. I am not suggesting ,some Scandinavian jurists do . that law is the primary factor in influencing moral standards [ Olivecrona .,1939 ; Lundstedt , 1956 ] . If they were right . it would be difficult to explain resistance to laws which changed social patterns What they overlook is the internal attitude towards law , which makes the enactment of law possible . Where law fails completely , as Prohibition did in the U S A did , it fails because opinion is widely spread , strongly felt and deeply rooted in opposition. Law cannot operate in isolation , but it can provide the final push ,

Law projects compulsive images . According to Olivecrona,, the constitutional law-has access to a psychological mechanism .” We are so familiar with this situation that it seems to be a part of the order of the universe like the rising and setting of the sun

10 Law thus connotes authoritative , legitimate action ..Some institutions are more prestigious than others- this observation is particularly significant where the new law is to play an educational role . the average citizen perceives Parliament to be the appropriate and legitimate forum for the enactment of new laws . It is an attitude which permeates the judicial mind as well .Wahke and Eulau attribute this to the fact that legislatures are more sensitive to public pressures and feelings than are other sources of law-making

11 The Walker Berkowitz research followed an experiment by Walker and Argyle , which had seemed to establish that people were more influenced by the results of a fictitious survey of the opinions of peers than by he the information that a particular act was or was not a criminal offence . This conclusion was amplified in later research . which demonstrated that a sample of university students tended to shift their opinions as to the moral propriety of an act in accordance with what they were told the law now was , though the shift in the direction of the new law was greatest where they were told of the existence of a national student survey .

12 Where there is resistance it can be overcome unless it is overwhelming and sustained , as it was with Prohibition in the USA which is an example where the opposition was such that the law was totally ineffective

The legitimacy behind law and the social consensus underlying it are usually sufficient

to ensure the modification life patterns projected by law making authority

13 It is important that laws which modify mores should be compatible with major existing values. To Gunnar Myrdal, the “American dilemma” was the tension which existed in the US between received ides of “fairness” and estimates of what was involved in producing the equality of races at a practical level. Thus the US Supreme Court in Brown v Board of Education could ground its reasoning upon the constitutional value of equality before the law, and the British Race Relations Acts could be presented as an embodiment of entrenched ideals of equality, justice and social welfare.

Secondly, resistance may sometimes be overcome by setting up a model of compliance which is visible and even an object of admiration by potential objectors to the implementation of a similar law. Thus the law-maker in England was able to point to the success of similar law in Scotland when Divorce reform was mooted in 1937. A.P Herbert, the progenitor of English reform was able to point to Scottish practice in this case dating back to the days of John Knox and to the fact that no dire consequences of social disintegration followed the reform.

A third condition of success is that deliberate and conscious use be made of the element of time. There are two schools of thought. One argues that old patterns cannot be broken overnight, that the incremental approach is appropriate. The opposite view is taken by those who press for rapid change to minimise the capacity for resistance. The US Supreme Court emphasised the first approach when it ordered schools to desegregate “with all deliberate speed”. A second example is found in the British Race Relations Act 1968, allowing for staggered implementation of the Employment provisions to increasingly smaller firms adopted the same philosophy. An interesting comparison is between laws which removed corporal punishment from schools and the laws which limit the punishment that parents can give to a “a safe smack” There is no definitive solution to this problem but the success of the second approach depends to a very large degree on rapid and complete conversion of enforcement agencies to the new law. The adoption of the second approach also calls for an imaginative demonstration of the value of the new social pattern by for example rewarding those who confirm to it. The effect of positive sanctions, cash incentives or tax rebates may be more valuable than traditional negative sanctions. A carrot may work better than a stick.

14 It is important that the law be used in conjunction with other policies government can deploy in every area. The law needs to be used not in isolation but together with policies such as education in schools. Law may coerce and indirectly change social patterns but it ultimate success depends upon reason and reason upon education.

15 A distinction needs to be drawn between two areas of life, usually designated the expressive and the instrumental. It is clear from much research that it is easier to shift opinion and behaviour in instrumental areas, most obviously commercial practice , than it is in areas of life concerned with the emotions. Research on family relations from Turkey, Israel and Poland are three examples of the inability of law to shift family behaviour. For example Lipstein has shown that when Turkey adopted Western codes of legislation in a conscious attempt to modernise its society the new laws introduced a considerable impact on the commercial life of the country; the business community adapted their practices in line with Western law, those aspects of social life involving expressive as opposed to instrumental activities, and basic beliefs in institutions such as family life and marriage customs were very little changed.

Perhaps the most important studies on the displacement of entrenched customary practices are those of Aubert. He looked at the impact of the Norwegian Housemaids legislation to understand why this legislation failed. A sample of Oslo housewives and housemaids showed that little more than one tenth of relationships exhibit conformity to the law and that barely half observed the 10 hour working day law. Aubert noted that in spite of the law and general economic and social development, the working conditions of many housemaids preserved many important traits from old customary patterns. Why?

In part the problem was the insufficiency of the law’s information channels. Those rules which were fairly well known were those which corresponded to existing occupational culture. Further there was a significant relationship between information and the number of violations. Ignorance of the law may not be an excuse but it is a severe obstacle to active legislation. Another reason why the law was unsuccessful was that the Housemaids saw themselves as slightly inferior members of the family. Paternalistic (in this case maternalistic) are traditionally very strong. The law concerned an area traditionally protected against public inspection and control, the home. This incidentally is one of the many reasons why child abuse emerged as a social problem so slowly.

In introducing Berger’s Equality by Statute it was noted that law should not require people to change their attitudes. In a democracy we don’t punish people who do not like income tax as long as they pay it. However by altering the situation in which attitudes and opinions are formed law can indirectly reach the more private areas of life it cannot touch directly in a democratic society. There is considerable evidence that a change in behaviour can lead to a change in attitudes. Thus for example it was found that where there was some degree of school integration in the American south “official action preceded public sentiment, and public sentiment then attempted to accommodate itself to the new situation.” There are also some findings that law may influence attitudes without first changing behaviour. This accords with the argument already presented that law is a symbol of legitimacy: the mere existence of the law may affect attitudes, not least attitudes of prejudice.

16 This brings me to a neat conclusion that the CRC may have a positive effect on changing our attitudes to children and go some way towards extirpating prejudice against children. This will give us a better base upon which to build rights of children. We have a good beginning but it is only a beginning.