

THE WEIGHT OF MEMORY - CHILDREN'S RIGHTS IN A CHANGING WORLD

The Hon. Mr Justice MacDonald

Opening Address to the 28th Conference of the Association of Lawyers for Children on 24 November 2017

INTRODUCTION

It is a great honour to speak to the 28th Conference of the Association of Lawyers for Children. Having stood on this stage in a different capacity in years past, it is a privilege to stand here now to give this opening address. It is also a particular pleasure to give the opening address to a conference examining children's rights, which is a subject close to my heart. The title of my address to you this morning is "*The Weight of Memory*¹ – *Children's Rights in a Changing World*"

It has been said that the only certain thing in life is change. That the world turns is, of course, inevitable. Within this context however, there is no *inevitable* link between the arrow of time and the virtues of increasing enlightenment and justice. As Martin Luther King Jr. cautioned:

"Human progress is neither automatic nor inevitable... Every step toward the goal of justice requires sacrifice, suffering, and struggle; the tireless exertions and passionate concern of dedicated individuals."

That this is the case has very often been taken to mean that to deal with a changing world, whether in the context of children's rights or otherwise, we must forever be seeking the new, the innovative and the pioneering. To mean that we must always pursue reform, restructuring and reorganisation if we are somehow to 'deal' with change. Change as the perfect antidote to the effects of change, if you will.

Innovation and reform have their place. But it is also vital, if we are to properly interrogate the subject of children's rights in a changing world, to recognise that sacrifice, suffering, and struggle, and the tireless exertions and passionate concern of dedicated individuals *can* give rise to progress and in doing so can found principles that remain relevant across the ages. The baffling and tragic human capacity, over our long history, for violence that ignores our common humanity and our claims to civilization, the capacity for hate and fear and for making false distinctions between one and other,² will often brutally divert us from progress, but can also act as the catalyst for great leaps forward that continue enhance our lives and those of our fellow human beings.

In examining children's rights in the context our changing world in this, the early part of the 21st Century, I want to suggest that whilst it is vital that we continue to ask ourselves what we can do differently and better in ensuring the wellbeing and protection of children in the face of

¹ Tim O'Brien '*The Things They Carried*' (1990).

² Edward Kennedy, '*On the Mindless Menace of Violence*' 5 April 1968.

new global, regional and local challenges, when considering children's rights in a changing world it is also of *cardinal* importance that we remember that which we already have in place to achieve this aim, given where what we already have in place has come from.

HISTORICAL FOUNDATIONS

When considering how we might ensure children's rights remain relevant and effective in a changing world it is thus necessary first to place matters in a historical perspective. If we do not remember our history we are condemned to repeat it.³ In particular, when examining children's rights in the changing world of our early 21st Century, it is important to recall that children's rights (and human rights more generally) developed in the context of, and partly in response to, the rapidly changing world of the mid to late 19th and early 20th Centuries, shaped by the fast changing economic, social, cultural and political circumstances of those eras.⁴

There is no deep mystery as to why the change and upheaval embodied in human history has led to the development of children's rights. As Feldman has pointed out:

“...the idea at the root of human rights thinking is that there are certain rights which are so fundamental to society's wellbeing and to peoples' chance of leading a fulfilling life that governments are obliged to respect them, and the international order has to protect them.”⁵

Within this context, the concept of children's rights recognises that upon the birth of the child, that child becomes part of the human family, benefiting from all the rights attendant on his or her equal status in human society. The corollary of this position is that human society benefits from the addition of the child as a member of that society.

However, such benefit is dependent upon the child developing to his or her full potential physically, emotionally and educationally under the protection of the human rights conferred upon him or her. The development of children and the development of society are thus intrinsically and, indeed inseparably, linked. In a very real sense, the health of our society is dependent upon the physical, emotional and educational health of our children. As was recognised in the American case of *Brooks v Brooks*⁶ in 1861, the sound development of the child in all aspects is indispensable to the good order and the just protection of society.

Thus, as Shulman observes,⁷ in the Lockean tradition, what is due to the child is defined, in a general sense, by basic developmental needs and, more particularly, by the developmental needs of the child destined from birth to be a member of the community at large. Whilst Shulman articulates this argument within the context of what is due to the child from the parent, by extension society itself has a responsibility, and indeed a self-interested responsibility, for ensuring the development of the child not only to the benefit of the individual child, but also to ensure the child is able, in due course, to assume his or her place in that liberal, democratic society such that that society can flourish to the benefit of each and all its members, including that child.

³ George Santayana 'The Life of Reason – Vol I Reason in Common Sense' (1905-1906).

⁴ Alaimo, K. and Kulg, B. *Children as equals: exploring the rights of the child* (2002) University Press of America

⁵ Feldman, D. *Civil Liberties and Human Rights in England and Wales* (2002) Oxford.

⁶ *Brooks v Brooks*, 35 Barb at 87-88

⁷ Shulman J, (2014) *The Constitutional Parent*. Yale p7.

The process of the development of children's rights has, accordingly, in part been the process of recognising that if a society is not to be subsumed by the baser instincts of its nature, if it is to survive and flourish, that society must prioritise and safeguard the life, survival, development, participation, and protection of its children in a changing world. Within this context, it is no coincidence that the development of children's rights during the course of our recent collective history coincided with a change in the way society conceptualised its children.

The early history of children's place in society is characterised by children being seen as objects or property. Thus, in Plato's dialogues children, or at least those who would become guardians of the state or philosopher kings, were considered to be objects to be moulded rather than people in their own right.⁸ The Aristotelian concept of the child was of a being 'important not for himself but for his potential'.⁹ Under Justinian, selling a child was justified where the family was in extreme poverty. In a demonstration of the truth of Martin Luther King Jr.'s observation that human progress is neither automatic nor inevitable, the view of the child as object or property persisted at least into the middle of the 19th Century and, in context of the patriarchal approach of the domestic private law, arguably much later.¹⁰

Even so, by 1663 Locke was recognising that a child's needs and interests should be recognised for what they are by observant parents, and that the child should be reasoned with.¹¹ A century later, in 1762, Rousseau insisted that 'childhood has its place in the order of human life' and that 'the man must be considered in the man and the child in the child'.¹² Although, in the early 19th Century, the Romantics viewed children in a way which looked back towards Plato and Aristotle,¹³ progress towards the recognition of the child as an individual had been established. Whilst in 1859 John Stuart Mill considered that the concept of 'liberty' applied only to "human beings in the maturity of their faculties", he recognised too that children must be protected,¹⁴ as increasingly did the public and the law.¹⁵

Thus, the perception that children have no more than potential or economic value began to change and be replaced by the concept of children as unique group that society had the responsibility to maintain and protect from various dangers to which this group was exposed.¹⁶ The child was becoming a person in his or her own right, albeit at this point in time a person requiring protection, rather than one with the rights of self-determination and participation in society.

Within this context, as human civilisation continued to move slowly and incrementally towards a recognition of the child as an individual in society, the changing world, in the form of economic and technological revolution, social upheaval and war, came increasingly to be the

⁸ Plato *Republic* 369a-376b and 503b-505d

⁹ Aristotle *Politics*

¹⁰ Stier, S. 'Children's Rights and Society's Duties' (1978) *Journal of Social Issues*

¹¹ Locke, J. 'Some Thoughts Concerning Education' (1663)

¹² Rousseau, JJ. *Émile or On Education* Trans. A Bloom (1979) Basic Books

¹³ Heywood, C *A History of Childhood* (2001) Polity Press, p 3 citing Egle Becchi Le XIXe siècle in Egle Becchi and Dominique Julia (eds), *Histoire de l'enfance en Occident* (Editions de Seuil 1987), pp 147–217 (pp 151–53). The view of the Romantics harked back to the classical view of the 'preparatory' nature of childhood.

¹⁴ Mill, JS. *On Liberty* (1859).

¹⁵ See Jackson, L *Child Sexual Abuse in Victorian England* (2000) Routledge, p 31 and Flegel, M *Conceptualising Cruelty to Children in Nineteenth Century England* (2009) Ashgate, p 40

¹⁶ Hart, SN. 'From property to person status: Historical perspective on children's rights' (1991) *American Psychologist*

engine that drove thinking on, and the development of children's rights. It is, of course, far more likely that such marshal turmoil and social revolution, and the perceived need to protect children from its resulting ills, will encourage the development of children's rights if children are seen, as they now were, as individuals rather than mere objects or property.

Within the context of social, economic and technological revolution, in the mid to late 19th Century, children were considered to be endangered by the emerging high technologies of industrialization and urbanization.¹⁷ In the context of the technological advances of the industrial revolution, Anthony Ashley-Cooper, 7th Earl of Shaftsbury introduced to legislation to seek to reduce child labour that had grown during the economic and social upheaval of that revolution, as well a child prostitution.¹⁸ The child labour reform movement, based on the view of child laborers as defenceless victims of high technology, undertook an eventually successful campaign to regulate and ultimately eliminate industrial child labour.¹⁹

Within the context of war and armed conflict, in the early 20th Century, following the great conflagration that was the First World War, and the ruination of economies and displacement of populations consequent upon it, in 1920 Janusz Korczak published his view that the child must be seen as a separate being with the inalienable right to grow into the person he or she was meant to be.²⁰ In 1924, having worked hard to address the depredations on children of the First World War and the Bolshevik revolution, and within the context of her experience of the economic, social and physical consequences of war and population movement on those children, Eglantine Jebb drafted the basis for the 1924 Declaration on the Rights of the Child.

Whilst it is probably going too far to describe the 1924 Declaration as 'the formal establishment of an international movement for children's rights',²¹ in that it regards children as being recipients of specific treatment rather than holders of specific rights,²² as Van Bueren observes, the Declaration that arose out of the horrors visited in children by war and revolution helped to establish internationally the concept of the rights of the child, laying the foundations for future international standard setting in the field of children's rights.²³ As Alston and Tobin point out, the Declaration provided the inspiration for much that was to follow during the second phase of international efforts on behalf of children during the twentieth century.²⁴

Van Bueren considers that the Universal Declaration of Human Rights 1948, in articulating the child's right to special care and assistance directly protects the rights of the child. Following the Second World War, and the defeat of the extremist ideology of Nazism, the European Convention on Human Rights and Fundamental Freedoms 1950 reflected a desire amongst the nations of Europe that the human tragedies and the physical and economic dilapidations caused by total war should be consigned to history by codifying the basic human rights applicable to all, including children. Also, in the aftermath of the Second World War the first, second and third Geneva Conventions were updated and a fourth Convention added, the Geneva

¹⁷ Hart, *ibid*.

¹⁸ Best, G. 'Shaftsbury' (1964) B.T. Batsford.

¹⁹ H. Kosher et al., 'Children's Rights and Social Work' (2016) Springer Briefs

²⁰ Wollins, M (ed) *Selected Works of Janusz Korczak* (1995) Warsaw and Freeman, M *Laws, Conventions and Rights* (1993) *Children & Society* 7:1, pp 37–48, p 38. Janusz Korczak died with the children of the Warsaw Ghetto in Treblinka, having refused to leave the children of his orphanage alone.

²¹ Black, M *The Children and the Nations: The Story of Unicef* (1986) Unicef, p 199.

²² Van Bueren, G *The International Law on the Rights of the Child* (1998) Martinus Nijhoff, p 7

²³ Van Bueren, G *The International Law on the Rights of the Child* (1998) Martinus Nijhoff, p 8

²⁴ Alston, P and Tobin, J *Laying the Foundations for Children's Rights* (2005) UNICEF, p 4.

Convention relative to the Protection of Civilian Persons in Time of War. For the first time, children were included as a category of protected persons, leading to a very significant extension of the protections afforded to children during times of war and armed conflict.²⁵

All these steps, taken in response to war and technological, economic and social upheaval in a rapidly changing world, helped lay the foundations of the Declaration of the Rights of the Child 1959 and the UN Convention on the Rights of the Child 1989, the seminal international instrument against which we today measure the progress in respect of children's rights. The 1924 Declaration had continued to emphasise protection of children and their welfare over autonomy, in line with the thinking of the time.²⁶ However, with the 1989 UN Convention, children's rights moved from being concerned solely with protection and provision to encompassing the seminal human rights of participation, autonomy and self-expression in a free society.

THE MODERN WORLD

Thus, I turn to what we presume to call the modern world. On the face of it, the world today is fundamentally different from the world in which the foundational principles of children's rights were laid down. I will come to the validity of that assertion in more detail later, but for the present purposes, a whole range of current issues serve to highlight the seemingly unprecedented level of change with which we must grapple, and within the context of which children's rights fall to be examined in our age.

Notwithstanding that some in the media would have you believe otherwise, judges do not make political decisions nor do we engage in politics. The role of the judge is to interpret and apply the law that our democratically elected Parliament lays down. As the former Lord Chief Justice of England and Wales, Lord Thomas said at a speech at the Mansion House last year:

“Whatever may be the speed or nature of changes in matters political, the judiciary does not comment. The business of the judiciary is not politics. It is the business of upholding the rule of law.”

In examining and commenting on the state of the modern world, I am not seeking to make political points. Rather, what I say next simply reflects the need for any examination of children's rights in a changing world to engage properly with those changes and to be realistic in its recognition of their impact on children. In making the observations I do, I also recognise that I am a judge and not an expert in technology, in economics or in international relations.

That technological, economic and social change continues apace, and that war and conflict continues to be a blight on the community of nations is self-evident to all but those most detached from the twenty-four hour news cycle. Conflicts continue in Afghanistan, Syria, Libya, Yemen and Ukraine. Tensions that have led, or that have the potential to lead to violence exist elsewhere in the Middle East, Central, West and East Africa and in Central and South-East Asia. The nature of the conflicts currently being fought are different from the world and regional wars of the 20th Century not only in degree, but also in nature. They tend not to be fought between national armies along clearly defined extended frontlines and according to the normative rules of war, but by more amorphous groups fighting in the towns, in the streets and

²⁵ Alston, P and Tobin, J *Laying the Foundations for Children's Rights* (2005) UNICEF, p 6.

²⁶ Freeman, M (ed) *Children's Rights* (2004) Ashgate, p xii.

in the homes occupied by the civilian population, without reference to the rubrics of the Geneva Conventions.

Partly, although not exclusively, within this context and in the context of the economic upheavals I will come to, the world has in this century also witnessed the growth of new forms of religious extremism that exist far outside the moderate norms of the religions they claim to reflect and far outside the moderate norms of modern liberal democracies. Extremism is a complex phenomenon on which there is much debate and dispute,²⁷ and a detailed treatment of the subject is far beyond the scope of this address. However, it is beyond realistic dispute that the rise of religious extremism has resulted in violence, harm, the risk of disruption of established social relations and a threat to the basic human rights from which members of society benefit.

Current armed conflicts and the rise of religious extremism take place within the context of, and I suspect in part because of, the significant economic upheavals of the early part of the 21st Century, manifested in the global financial crisis of 2008 and the Great Recession that followed it. Since that time, issues of slow economic growth and growing wealth inequality have come to the fore. Alongside this economic situation, there have been significant changes geopolitical relationships formerly founded on historic treaties and conventions, of which the most well-known currently is the United Kingdom's vote to leave the European Union.

The consequence of conflict, the rise of religious extremism and economic and social upheaval are many and complex. However, one consequence that is well recognised is that of large population movements. Those moving populations comprise refugees from conflict and war, refugees from religious extremism and intolerance and migrants reacting to changes in regional and local economic conditions. In addition, very wealthy families live and conduct their lives across multiple jurisdictions. The UN Food and Agricultural Organization has contended that migration is the critical population issue of our time, from both an analytical and a policy point of view, in addition to the significant population flows that result from refugees or displaced people.²⁸

Finally, added to this complex local, regional and global situation has been rapid technological and social change. The march of technology has encompassed all fields from communication to human reproduction. Developments in the field of access to information and communication have impacted on the way we conceive the concept of privacy and has allowed increasingly easy access to material, both legal and illicit, that was previously confined to print and, accordingly, easier to regulate. The globalisation of communication through technology has allowed social, political and religious influence to be exerted across borders with far greater ease than in the days of the political pamphlet or the local television or radio broadcast. Technological advances in the field of human reproduction have led to changes in the way in which children emerge into the world and the legal relationships that surround them when they do. Advances in life saving medical technology presents us with questions centring on the value and quality of a human life. These technological advances sit alongside social change which has increasingly recognised the importance of choice, of equality and diversity and the

²⁷ Coleman, P. and Bartoli, A. *Addressing Extremism* (2003) New York: International Center for Cooperation and Conflict Resolution, Columbia University.

²⁸ *Migration, Agriculture and Rural Development: A FAO Perspective*, Eighth Coordination Meeting on International Migration, New York 16-17 November 2009.

validity of relationships and identities that transcend binary views of human partnerships and gender.

CHALLENGES

This modern world that is changing on so many planes and in so many dimensions has a manifest and acute impact on children and on the manner in which their human rights are engaged. I only have to look back at the issues that I dealt with as a young barrister practising in the Midlands and compare them with the issues that I deal with now, some twenty years later as a judge of the Family Division, to see the power that the changing world of the 21st Century exerts on the position of children and the manner in which the human rights from which they benefit are given effect.

In the lists of the Family Division and the lists of Family Courts around the country can now be found cases involving allegations of child trafficking and modern slavery, cases of alleged child sexual exploitation, applications for orders designed to protect from female genital mutilation or forced marriage and cases in which the allegations centre on the risk of radicalisation or abduction to zones of armed conflict. Judge's, practitioners and professionals are increasingly concerned with cases that arise from surrogacy arrangements between individuals, litigation arising out of IVF treatment and cases in which a dispute has arisen between a child's parents and the doctors treating that child about where his or her best interests lie in the context of life limiting conditions. The demographics of the population of children with whose welfare the court is concerned more often involves children born in other jurisdictions, unaccompanied asylum seekers and child refugees. The volume of child abduction cases has increased markedly over recent years. The court is now also regularly concerned with the arrangements of families whose wealth allows their ordinary family life to span several countries. These are all matters I would have rarely, if ever come across twenty years ago, and I am confident that the same could be said for barristers much more senior than I was then.

These developments consequent upon a rapidly changing world pose significant challenges when it comes to seeking to ensure the integrity and efficacy of children's rights. The challenges are legion, but I wish today to concentrate on four by way of example. It is by no means an exhaustive list, not least because it does not include the pressing issue of resources.

The first challenge is that, in the context of the changes that I have recounted, the task of ensuring the proper implementation of a child's rights is an increasingly complex one for those charged with that responsibility. The issues of identity and of best interests provide good examples of this. Identity is the condition of being a specified, identifiable person both as a unique separate individual and as a recognised member of a group.²⁹ Identity also has an important cultural content and is essential for relationships between each individual and the rest of society, for his or her understanding of the outside world, and his or her place in it.³⁰ However, the changes I have recounted mean that a child will often be separated in space and time from the place where he or she formulated a personal history from birth and the place of his or her race, culture, religion and language. Further, this means that those who are seeking

²⁹ Jenkins, R *Social Identity* (2004) Routledge.

³⁰ Dissenting judgment of Judge Cançado Trindade in *Serrano-Cruz Sisters v El Salvador* IACHR 1 March 2005 Series C No 120.

to implement the rights to identity, from social workers to judges often do not have first-hand knowledge of the social, geographical, cultural, religious and linguistic traditions that underpin the child's identity.

A similar issue arises with respect to determining a child's best interests. In so far as the State may intervene on the grounds welfare through the medium of the family justice system or social care provision to ensure the physical, emotional and educational development of the child for the benefit of the child and society, how do we properly locate within this paradigm children who do not share the same cultural, linguistic and social heritage as the system making decisions in respect of them. Whilst the welfare principle will provide relatively clear answers in cases of forced marriage, female genital mutilation or alleged radicalisation, in cases concerned with religious freedom, physical chastisement and other issues at the boundary between different social, political and religious perspectives it may be harder to separate, as we must, issues of child welfare, in which the court may legitimately intervene, from legitimate social, cultural and political aspects of a child's life in which the court has no business interfering.

The second challenge presented by our changing world in the context of children's rights is the speed of that change. In the context in which I am addressing you, many of the questions to which the changes I have discussed will give rise are social, political and philosophical in nature as much as they are legal questions. As such, they will be properly the province of Parliament. More broadly, the question of the proper nature and extent of children's rights, their interrelationship with the rights of other members of society and of their proper implementation in the context of the changes I have outlined is also a matter for Parliament insofar as these matters are required to be prescribed by laws.

Within this context, such complex and multifaceted questions should, in the ordinary course of events, be decided by a democratically elected Parliament. It is undesirable for a small cadre of judge's, however fair, impartial and enlightened they may be, to dictate what the law should be with respect to complicated social, political and philosophical questions of interest to society as a whole. For example, cases of alleged radicalisation deal with what may be considered a new type of harm to children. That alleged harm, which may justify State intervention in family life, occurs in a context that may also touch on complex and controversial social and philosophical arguments. In these circumstances, as I observed in *HB v A Local Authority*,³¹ there are powerful reasons for ensuring that the harm alleged is evaluated by reference to, and addressed within the *statutory* framework for regulating State intervention in families based on actual or likely significant harm put in place by Parliament after careful and fully informed debate, rather than under the wide inherent jurisdiction of the High Court.

The difficulty presented in this context by the fast changing world however, is that many of the problems for children to which that rapid change gives rise will require a solution before Parliament has time to legislate. Thus, the courts will be required to be the first to decide how to deal with these complex issues that touch and concern society as a whole, using the courts inherent jurisdiction to craft bespoke solutions to emerging problems rather than legislation crafted by Parliament after considered and fully informed public debate.

³¹ [2017] EWHC 524 (Fam)

Thirdly, even where the court has the legal tools, whether by way of statute or common law or both, the changing world means that more children find themselves in situations that, for all practical purposes, fall outside the jurisdiction of the court or where the court has jurisdiction, outside the orbit of those ordinarily charged with ensuring access to justice for children. It is widely accepted that children are entitled to certain fundamental rights carrying the force of international law. However, there remains a stubborn distinction in practice between children's *entitlement* to specific rights and the ability of children to enforce those rights.³² To be of real value to children, the rights articulated by international and regional legal instruments must, in concert with domestic legal provisions and procedure, be capable both of effective practical application and of effective enforcement, so as to maintain the integrity of those rights and to achieve proper redress on those occasions when they are violated. As Fortin observes, this leap from the theoretical to the practical presents considerable difficulties.³³

For example, the court is well able to protect a child who has been abducted by one parent from their jurisdiction of habitual residence because the child has available to him or her a parent who will bring an application before the court and the court has available to it a certain legal framework in the form of the 1980 Hague Convention.

But as Martha and Debbie have touched on this morning, how much more difficult it is for the court to intercede on behalf of an unaccompanied asylum seeker fleeing from war or a child abducted and sold into modern slavery in circumstances where there is no one to bring an action before the court on their behalf and no clear legal framework, beyond the inherent jurisdiction of the court, to ensure that the child's human rights are given effect. I echo all that the President has said recently on this issue.³⁴

The final challenge I wish to highlight is that the changes in the world that I have emphasised, and which I would suggest are the changes that most impact upon children, have a tendency to emphasise the child's need for protection, to the potential exclusion of other hard-won rights. For example, the opportunity for children to participate fully and directly in the formulation of their own destiny is a cardinal right, enshrined in Art 12 of the UNCRC. The child's right to participate articulates with the greatest clarity the status of all children as equal members of human society able to hold and exercise rights and, accordingly, a key element in the process of securing children's rights is ensuring the participation of the child in accordance with his or her age, development and understanding.

However, in meeting the type of challenges thrown up by war, economic upheaval and technological revolution, it is easy to see protection as the primary aim of the rights of the child when the problems created by our changing world upon which those rights are brought to bear so often affect a child's safety and wellbeing. This has been recognised in other contexts as a 'protection imperative'.³⁵ It is nonetheless very important, even in the midst of the grave issues thrown up by the changing world, that we caution ourselves not to slip back into a solely protective paradigm characteristic of the 19th Century approach to children's rights. We must be careful not to allow the fact that the changing world often places children in positions of

³² See Van Bueren *The International Law on the Rights of the Child* (1998) Martinus Nijhoff, p 378.

³³ Fortin, J *Children's Rights and the Developing Law* (2005) 2nd edn, Cambridge, p 27.

³⁴ Sir James Munby, 2017 Parmoor Lecture to the Howard League for Penal Reform, 30 October 2017.

³⁵ See *Oldham MBC v GW and PW* [2007] EWHC 136 (Fam).

grave risk and danger to stop ourselves from asking children what they think about their position and what they think should be done about it, and listening to the answers.

‘THE WEIGHT OF MEMORY’

How then do we ensure the integrity and efficacy of the rights of children in such a seemingly chaotic and shifting world and meet successfully the seemingly complex, and multifaceted challenges that arise out of that situation? It is, I am sure you will understand, simply not possible to provide the answers in a little under an hour, if it is possible to provide a comprehensive answer at all. I will however, if I may, identify what I think is the proper starting point when seeking to examine the questions raised by children’s rights in a changing world.

As many of you will know, I was an archaeologist before I came to the law. The study of archaeology confers a very long perspective. Over the thousands of years of our pre-history and history wars have been fought, civilisations and economies have risen and fallen, and technologies have emerged and declined. In concert with these changes, migrations have taken place, populations have been assimilated and cultures have been changed and enriched amidst social upheaval, debate and conflict. As Faulkner tells us, “The past is never dead. It isn’t even the past”.³⁶

The history I recounted earlier in this address demonstrates that children’s rights were born of a rapidly changing world of technological revolution, economic and social upheaval, war, conflict and extremism. Within this context, when compared with the picture I have painted of the modern world, it might be said that our world is different but also the same. It can begin to be seen that the changing world that comprised the crucible in which children’s rights were developed is not so different, in nature if not in degree, from the world in which we now live. Within this context, I think the starting point in examining the question of children’s rights in our changing world must be to acknowledge that whilst humanity does not remember well its history and seems doomed to repeat it, children’s rights are able, I think, to bear the weight of memory.³⁷

By that I mean that in examining children’s rights in *our* rapidly changing world, it is very important to remember that the past circumstances in which those rights arose mean that the fundamental and inalienable rights of children already established and enshrined in international and domestic law will provide very many of the answers we need in our rapidly changing world, if those rights are *properly* brought to bear on the situations to which that changing world gives rise.

This is emphatically *not* an argument for stasis. It would be foolhardy in the extreme to suggest that, for example, no account need be taken of the modern nature of war, the particular species of extremism to which our age has given rise or the particular characteristics of our form of modern technology when seeking to implement children’s rights in the modern world. Just as it is important to recognise childhood is not a single, fixed and universal experience between birth and majority but rather one in which, at different stages of their lives, children require different degrees of protection, provision, prevention and participation, so to it is important to recognise that different generations of children will have different experiences. In seeking to

³⁶ Faulkner, W. ‘*Requiem for a Nun*’ (1951)

³⁷ Tim O’Brien ‘*The Things They Carried*’ (1990).

ensure the integrity and efficacy of children's rights it is important to locate children properly in the context of their own era.

There are, of course, always lessons to be learnt from the myriad of human problems that are manifested by the changing world. There are also significant challenges of implementation and enforcement of children's rights still to be addressed that have led some to question the moral and legal reality of social and welfare rights.³⁸ There remains, and will always remain, the need for the tireless exertions and passionate concern of dedicated individuals to ensure the emergence of adaptations and developments that help towards solving the problems of implementing children's rights in a changing world.

But, having regard to the nature of its long genesis, I suggest that the foundation provided by the UNCRC as presently constituted, and indeed the other human rights instruments relevant to children including the ECHR, is a strong one. Within this context, the first step in seeking to ensure the integrity and efficacy of children's rights in a changing world must be to use *properly* the *existing* system of rights that has been so carefully and meticulously constructed in circumstances very similar to those facing us now. War, economic upheaval, the march of technology and fast moving social change.

CONCLUSION

In conclusion, whilst it may be said that the centuries change but the problems they bring do not, we nonetheless each must work in our own time to address and solve the difficulties that face us. As it has done in the past, and as it will do in the future, implementing children's rights in a changing world presents very real and complex challenges. But one of the key features of children's rights in today's changing world is that those rights were born in an age of rapid change and upheaval that was, in fact, not so very different from our own. Once again, if we do not remember our history we are condemned to repeat it.³⁹ In this regard, children's rights, indeed all human rights, may be seen as memory, urging us to recall the past in order to secure the future.

In this context, our changing world has bequeathed the tools needed to ensure the integrity and efficacy of the rights of children in a changing world. This means that, if applied with diligence and vigour by those of this generation charged with that task, the rights enshrined in instruments like the UNCRC and the ECHR can help to meet the challenges to children that our own tumultuous times present. As history demonstrates, progress will no doubt be slow and sporadic. The world will continue to change and there will be set backs. However, as Theodore Parker rightly observed, the moral arc of the universe is long, but it bends towards justice.⁴⁰

Thank you.

³⁸ Wellman, C. *The Proliferation of Rights: Moral Progress of Empty Rhetoric?* (1999) Westview Press, pp. 20-29.

³⁹ George Santayana 'The Life of Reason – Vol I Reason in Common Sense' (1905-1906).

⁴⁰ Theodore Parker 'Ten Sermons of Religion' (1853).