

Coram Human Rights Lecture

It is an honour to be here in the new Queen Elizabeth II Centre.

And to speak in today's seminar on "Upholding Children's Rights in the Future."

There can be no better host for that topic than Coram...

350 years ago, Thomas Coram challenged the prejudices of a society which tolerated child poverty and abandonment as necessary evils ...

... stigmatised unmarried women and their so-called illegitimate children ...

... and was yet to recognise the need for girls even to receive education or have rights of inheritance.

That children's lives are significantly better in the UK than they were three centuries ago is not in doubt.

But the cycle of emotional deprivation and loss, tangible inequality and deliberate exploitation still places young lives at risk.

That is why the work of the Coram today is just as vital as it was 350 years ago.

Let me give just a couple of real-life examples.

There was a mother of two young children abandoned by a British partner, evicted from her home and living on the streets.

She was not able to receive support from children's services due to her immigration status and that of her children.

Coram helped her and her children to find emergency accommodation.

And secured exceptional case funding to help them resolve their immigration status issues.

3 lives put back on track thanks to Coram.

There was another mother whose son was excluded from school several times as he started secondary education.

Missing months of valuable of learning and development.

Her son had an undiagnosed borderline deficiency order, but his school had made no attempt to assess his special educational needs.

And they were seeking to circumvent the scrutiny of an Independent Review Panel by forcing her son out rather than formally exclude him.

Coram provided independent legal advice, so the child's mum understood his rights and that legal aid was available to for a judicial review of unlawful exclusion.

This sort of indispensable day-to-day legal advice is a fraction of the good Coram do.

Having started as a charity for foundling children in 1739, Coram today is a group of charities encompassing adoption, social care, law and education.

In the past year, Coram worked directly with 100,000 children, families and professionals and with a further 453,000 through licencees.

As the MP for Holborn and St Pancras I am enormously proud that Coram are based here in Bloomsbury.

And I am thankful for the great work that you do in our local community and for my constituents.

177 legal enquiries from my constituents were answered by Coram in the last year.

Dozens of homeless young people from the area were helped to assert their rights by Corman Voice.

And local schools were helped with the provision of a variety of vital services from music therapy to one-to-one reading support.

I hold Coram in high esteem not just for the outstanding work they do in my community....

... but also for the fundamental values and beliefs we share.

A belief in the potential of every young person to live a happy and fulfilling life.

A commitment to provide services so that every young person has the best possible chance to realise that potential.

And an understanding that legally enforceable rights are often the key to allowing children to flourish.

It is that last point—the importance of legally enforceable rights—that I would like to focus my remarks on today.

Human Rights History

I want to start with developments in human rights in the aftermath of the Second World War.

Not the origin of human rights – many legal instruments and charters were drafted before then.

But it was the beginning of a determined global effort to change and improve the universality and enforceability of human rights.

As we all know, after the Second World War - and the horrors of the Holocaust - nations came together to say, "Never again."

They established the United Nations and agreed a simple set of universal standards of decency for humankind to cling to going forward.

These standards were set out in the Universal Declaration of Human Rights.

And were intended to protect the individual from the state.

To uphold the rights of everyone universally, especially minorities.

To provide support for the vulnerable.

To allow the not so powerful to take on the powerful ...

... or simply to be protected from the powerful.

To take a local example.

The so-called McLibel case where I had the privilege of working for ten years with Helen Steel and Dave Morris in their epic battle with McDonalds.

Not amused by Helen and Dave's campaign to highlight McDonald's wrongdoing as they saw it ... from their small office just up the road in Kings Cross.

McDonalds issued libel proceedings ...

Abyly assisted by a team of expensive lawyers, McDonalds took on the virtually penniless Helen and Dave.

There was at the time no legal aid whatsoever in libel cases.

So with me behind the scenes, Helen and Dave had to defend themselves in person.

A long battle ...

The longest civil case in our legal history.

But in the end – having exhausted all remedies in the High Court and Court of Appeal – Helen and Dave were victorious in the European Court of Human Rights ...

On the very simple proposition that absent legal aid for Helen and Dave, their free speech rights had been violated by over-bearing libel proceedings

The not so powerful protected from the powerful.

That is why human rights are so radical – and so vital.

But ...

And it's a big but ...

Only if those rights are effective ...

... and enforceable.

And here I want to focus on our theme for the night ...

Children.

Although in many ways a breakthrough after the Second World War –

especially by ensuring international accountability for human rights breaches –

it soon became apparent that the UDHR and the regional treaties such as the ECHR flowing from it ...

... were couched in language about the rights of 'adults.'

Children did not really feature.

And there was no conception of children as rights holders.

Yes, rights applied to all individuals irrespective of age, but no express provisions were included to deal with the special place children have in our society.

And the special protection they may need.

So for example ...

In criminal proceedings the ECHR recognises the right of all to a fair trial through Article 6.

Because it applies to all individuals, it applies to children.

But Article 6 does not, on its face, provide for the extra protection that is appropriate for children accused of crimes.

Such as consideration of their emotional and intellectual capacities.

And their ability to understand the charges against them and defend themselves.

Powerful interpretation techniques have helped – particularly the ‘living instrument’ rule requiring human rights instruments to be interpreted in light of present day thinking not frozen at the point of drafting ...

A critical tool for children given the sea change in attitudes to children over the past 75 years or so.

And the notion of positive obligations was developed in case law– the idea that in certain circumstances the authorities must actually take steps to protect individuals from others – again a critical tool in respecting the rights of children.

But there are limits to interpretation.

And hence in 1989 a children specific instrument was agreed: the Convention on the Rights of the Child.

Hailed as a victory for the children's rights movement.

As you know, the Convention on the Rights of the Child is a broad-based treaty providing comprehensive protection for children's social, economic, cultural and civil rights.

UNICEF described the Convention as “the most complete statement of children’s rights ever produced.”

A double breakthrough ...

A children specific human rights instrument ...

And one that pushes beyond the narrow remit of civil and political rights.

So, for example, Convention on the Rights of the Child promotes age appropriate justice systems.

And punishments which are proportionate to both the offence and the well-being and circumstances of the offender.

Four overarching “general principles” inform the entire Convention.

1. Non-Discrimination

So that a child in care has the same right to an education as a child who lives with their parents.

2. Best-Interest of the Child

So when adults or institutions are empowered to make decisions for a child they must always do so in the child's best interests.

3. The right to life

So Government should ensure children develop and live healthily.

4. The right to be heard

So when adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account.

Taken overall, it's an approach that sees children not as the property of parents but as the holder of age-appropriate rights.

So far so good.

But whilst the UK has signed up to the Convention on the Rights of the Child.

It has not been incorporated in domestic law in England.

Contrast that to the position in Wales where the Rights of Children and Young Persons (Wales) Measure 2011 imposes a duty on Welsh ministers to have regard to the Convention on the Rights of the Child when exercising any of their functions.

It can be done.

Surely the case for the full incorporation of the Convention on the Rights of the Child has become too powerful to be ignored.

Not least because of the threat to human rights protection posed by our exit from the EU.

The EU has committed to the fundamental rights of children through the Charter of Fundamental Rights which contains provisions inspired by the Convention on the Rights of the Child including adopting the 'best interests' principle, and the child's right to be heard.

Yet under the EU Withdrawal Act, the EU Charter of Fundamental Rights is singled out as the only EU provision now in existence not to be transposed into our law when we leave the EU.

Does that matter?

Yes.

Coram have highlighted the right to be forgotten and data protection.

All of us spend an increasing amount of our time online and on social media.

And when we are online we leave a digital footprint which we may live to regret.

Trust me on this—I'm a politician active on Twitter.

But joking aside, this is a serious matter for young people.

Who are now making the inevitable mistakes of childhood and adolescence online.

Where an event from the past can be dug up in an instant.

And where an image or a message intended for the eyes of a few is shared with millions with the click of a button.

The right to require third parties to remove and erase online material was originally established via Article 7 (right to a private life) and Article 8 (right to protection of personal data) of the Charter of Fundamental Rights.

It is now enshrined in Article 17 of the General Data Protection Regulation ..

... and EU instrument!

But it is a clear example of the risks involved when states seek to restrict rather than enhance human rights protection.

The right to be forgotten in relation to online information is of course a recent development – reflecting the times we live in.

It raises the wider question of the rights of children in the future.

30 years after the Convention on the Rights of the Child, this is an issue we need to address.

Rights must evolve if they are to stay radical and vital.

Let us consider briefly the question of climate change.

Everyone in Parliament was impressed by the clarity and moral purpose of Greta Thunberg last week.

And her central argument that climate change is an issue of inter-generational justice is surely correct.

A clean, healthy and functioning environment is integral to the enjoyment of fundamental rights to life, health, food and security.

The present generation owe it to the next generation - and to generations to come - to provide such an environment.

So climate change is a human rights issue as well as a political issue.

And we are currently failing to protect the next generation.

Children.

How do we start to rectify this failing?

First, we need to identify the rights-holders.

Which in this case are citizens including and, in particular, children.

Then we have to identify the corresponding duty-bearers and their obligations—be it states, corporations or individuals.

And finally, we need to ensure that rights holders can hold duty-bearers to account.

This is difficult, but it needs to be addressed.

One approach might be to adapt existing human rights instruments to make explicit the link between human rights and climate change.

But another, arguably more radical approach would be to drastically improve the effectiveness of existing environmental commitments.

This short journey through the challenges in ensuring rights and, in particular children's rights, are effective – important through it is – should not tempt us to pay less attention to the other vital pillar of human rights protection ...

Enforceability.

Rights are only powerful tools when citizens have access to justice.

The legal aid system, introduced in 1949, was based on the belief that every person should have equal access to and protection under the law, regardless of financial position or status.

It was designed to ensure that those who could not pay for legal advice and representation were not left without.

Prior to April 2013, legal aid was available to help people access justice in almost all aspects of civil law.

There is no denying that, since then, there has been a dramatic and deliberate reduction in spending on legal aid.

600,000 fewer criminal cases received legal aid last year in comparison to 2011.

And 640,000 fewer civil cases.

Family law has been amongst the hardest hit, with all the consequences that has for children and for victims of abusive relationships.

And children with unresolved immigration issues and cross-border adoption arrangements have been directly impacted.

The conclusion of Coram's report *Rights without Remedies* is compelling if depressing:

“Children, young people and families who cannot afford to pay for legal advice, assistance or representation are, in many cases, unable to use the justice system to take action to secure their rights or access services to which they are entitled.”

In a report commissioned by the Labour Party, Lord Bach drew similar conclusions:

“Children have been forced to become litigants in person, obtain advice and support pro bono or from the already stretched voluntary sector.”

Lord Bach’s core recommendation was a new Right to Justice Act.

The Act would create a new individual right to reasonable legal assistance.

And a new Justice Commission to enforce the right to justice.

The new right would sit alongside a simpler and more generous scheme for legal aid.

But in relation to children, Lord Bach was very clear and very specific:

“all matters concerning legal support for children should be brought back into the scope of funded legal aid.”

International Co-Operation/Brexit

Having managed to avoid the word Brexit for most of this lecture, I do now have to confront the challenge it poses to the protection of human rights.

We have already seen the importance of the Charter of Fundamental Rights, which as it stands will cease to have effect our law.

Add to that new challenges.

Kamena Dorling, on our panel, has spoken of the risk that thousands of children could become undocumented after Brexit.

There is a Home Office registration scheme for EU citizens.

And Coram has found that vulnerable children have difficulty providing the necessary documentation, with more than half needing legal advice.

About 5,000 children of EU nationals are separated from their parents and are in care.

So this is not a small problem and I hope Coram can work with the Home Office and local authorities to help these children formalise their status.

But, I want to finish on a political point.

And a point which is important to me as the Shadow Secretary of State for Brexit.

I have said that the 'Right to be Forgotten' and 'Rights concerning climate change' both disproportionately effect children.

They also both depend absolutely on international co-operation.

Pollution produced in one country can disproportionately effect citizens in another.

And data can move across the world instantly.

More and more of the rights that individuals depend upon will require international co-operation.

The threat posed by Brexit to individuals isn't primarily the loss of this or that instrument.

Or the legal status of articles as they are transposed into domestic law.

Important though these issues are.

The real threat is that with Brexit, Britain tries to “go it alone” and becomes less willing to enter binding international agreements.

That we turn our back on international standards, obligations and enforceability.

If that happens the international co-operation necessary to create the next generation of legally enforceable rights simply will not happen.

The protection of existing rights may be at risk.

And on issues like climate change and online safety and privacy the next generation will suffer.

That’s why I’ve put maintaining and furthering rights and protections front and centre of Labour’s response to Brexit.

It was one of our six tests for the Government’s Brexit deal.

It was a central plank of our manifesto.

And it has been one of our key demands in the current cross-party talks.

Internationalism and a belief in the radical power of human rights is at the heart of my thinking and beliefs.

We owe it to the next generation to continue to champion internationalism and the radical power of human rights.

And to continually push further as we face new and different challenges.