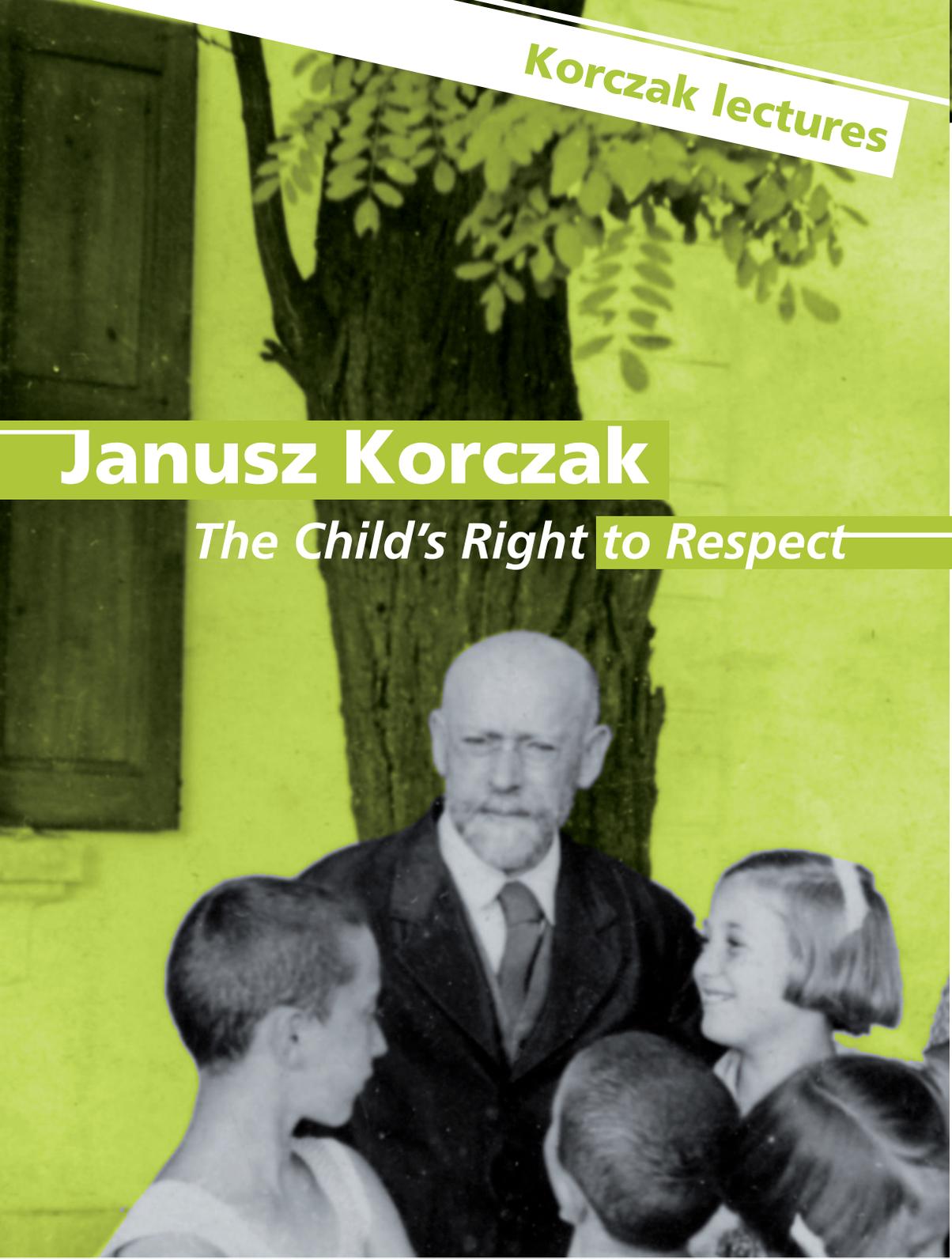


Korczak lectures

Janusz Korczak

The Child's Right to Respect



COMMISSIONER FOR HUMAN RIGHTS

Publishing
Editions



Janusz Korczak

The Child's Right to Respect

Janusz Korczak's legacy
Lectures on today's challenges for children

French edition:

Janusz Korczak – Le droit de l'enfant au respect

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Foreword

Korczak – our teacher on the rights of the child

Janusz Korczak is said to have once described himself as “a doctor by training, a pedagogue by chance, a writer by passion, and a psychologist by necessity”.

He was well known at the time in his native Poland in all these capacities, but what made him a legend was his desperate struggle to shield the Jewish orphans from the atrocities in the Warsaw Ghetto. He refused to leave them when the Nazis decided in August 1942 that they were to be executed, rejecting offers to save his own life. He died in Treblinka together with the 192 children and his co-workers from the orphanage.

Janusz Korczak is remembered by many for the way his life ended but by some also for how he lived and what he said and wrote. UNESCO declared 1978-79 as the Year of Korczak to mark the centenary of his birth – this coincided with the United Nations (UN) Year of the Child. Some of his writings have been translated into other languages, there are Janusz Korczak societies in several countries and child rights activists often refer to his writings.

No doubt he had an influence when the UN Convention on the Rights of the Child was drafted in the 1980s. Still, his teaching deserves more attention. Korczak was one of those thinkers who was ahead of his time. Some of his ideas are still not fully understood and they are absolutely relevant to the work for children’s rights today.

Janusz Korczak, whose original name was Henryk Goldszmit, was born in a Jewish, assimilated, middle-class family in Warsaw. His first years appear to have been happy, his father was a successful lawyer and there were no economic problems. This changed when Henryk was 11 and his father had a serious mental breakdown which ruined his family.

In spite of poverty he managed to write novels and get them published when he was still in his early twenties. This was when he started using his pen name, Janusz Korczak. However, having concluded that “writing is only words, medicine is deeds”, he focused on his medical studies. At this stage he was becoming more and more committed to the fate of destitute children.

Soon after he qualified as a doctor he was enlisted in the Russian army during the Russo-Japanese war. As always, he was writing:

War is an abomination. Especially because no one reports how many children are hungry, ill treated, and left without protection. Before a nation goes to war it should stop to think of the innocent children who will be injured, killed, or orphaned. No cause, no war is worth depriving children of their natural right to happiness. One must think first of the child before making revolutions.

From 1904, he acted regularly as supervisor at summer camps for poor children. He focused increasingly on child psychology and pedagogy. While spending more time on teaching and giving lectures, he continued his medical practice. He was known to demand high fees from wealthy patients and treat the poor free of charge.

At the age of 34 he was asked to become director of a Jewish orphanage – a position he would keep until his last day. As a doctor he cared for their physical well-being, weighed and measured them and gave them medicine. Seeing that the deeper wounds related to broken families, poverty and other social ills, he redefined the very concept of health care. There, he would develop his talents as medical doctor and teacher but also as author and therapist to support children and promote their rights.

He saw the importance of child-friendly learning methods, arguing that ethics was more important than pure facts. He introduced a democratic spirit in the orphanage in which the children themselves had a say in the decisions – but also had to carry the burden to ensure that decisions were enforced. This “children’s republic” had a parliament and a newspaper.

Best known is his experiment with a system of justice. A code was written in the orphanage and a court established among the children to deal with alleged injustices. Korczak himself was charged a couple of times for mistakes. The punishments after these trials were regularly to ask for forgiveness and be excused.

With an extraordinary capacity to listen and relate, Korczak had entered into a life-long study of children’s reactions, emotions and behaviour. He filled his notebooks with observations, reflected upon them and formulated aphorisms addressed to parents and other adults, many of them in poetic form. He became an interpreter between the worlds of children and grown-ups.

During a wave of anti-Semitism in Poland he was dismissed from the radio after several years as the popular “Old Doctor” – answering questions from listeners. His colleagues at the radio station wrote a letter of protest in which they described how he could “talk with children as if they were adults and with adults as if they were children”. His books for children, and not least *King Matt the First*, are indeed demanding and do not hide conflicts and sorrow – in this they are similar to the later writings of Astrid Lindgren. Korczak’s messages to adults are written with a large portion of child-like clarity.

He became the first and most radical campaigner for children's rights. When reading the Declaration of the Rights of the Child adopted by the League of Nations in 1924 he was disappointed. It was not clear enough, it was begging rather than insisting. He wanted rights – not charity – and rights now, not in the far future.

Children are not the people of tomorrow, but are people of today. They have a right to be taken seriously, and to be treated with tenderness and respect. They should be allowed to grow into whoever they were meant to be – the unknown person inside each of them is our hope for the future.

For Korczak two rights were particularly important: the right to receive love and the right to respect. He developed these in two longer texts for parents and teachers. *How to Love a Child* was prepared on the battlefields of the First World War and *The Child's Right to Respect* written in the 1920s.

Korczak pleaded for equality between children and adults.

People speak of the old with weighty respect. They speak of the child patronizingly and condescendingly. This is wrong, for the child too deserves respect. He is still small, weak. He does not know much, he cannot do much as yet. But his future – what he will be when he grows up – commands us to respect him as we respect the old.

Many children react against adult hypocrisy towards them. This is how Korczak formulated this feeling – while in language identifying himself with the grown-ups (using “we”) but in substance standing on the side of children:

We do not like it when children criticize us. They are not permitted to notice our mistakes, our absurdities. We appear before them in the garb of perfection. We play with children using marked cards. We win against the low cards of childhood with the aces of adulthood. Cheaters that we are, we shuffle the cards in such a way that we deal ourselves everything.

Korczak worked in the worst of circumstances and experienced how immensely important it was that at least some adults treated the child with respect and love. Abuse caused deep scars:

There are many terrible things in this world, but the worst is when a child is afraid of his father, mother or teacher.

Korczak dared to use the word “love” and did so repeatedly. But he was not sentimental – not even towards children. His education was not a *laissez-faire* approach, he pleaded for rights with responsibilities. In the orphanage each child had a task. He argued against too much protection: children should also have the right to learn from experience, they must be able to test and even to take the risk of harming themselves.

Many of the points Korczak made are about respecting the integrity of the child. He argued that the child must have the right to have secrets – reading a diary without permission is wrong. Another right he proposed – probably surprising to

some – was the child's right to respect for its own possessions and budget. Even if he or she owns almost nothing, it is important that the ownership of these few belongings is respected.

The 1979 Year of the Child was followed by the drafting of a United Nations Convention on the Rights of the Child. Korczak's thinking played a role – I know this for certain as I took part in the process. The final text was adopted by the General Assembly in 1989. Now another 20 years have passed and it is time to take stock again.

During 2008 and 2009 a series of five Korczak Lectures were held across Europe. The purpose was to assess to what extent Korczak's ideas have been made reality until today – and what remains to be done in order for his ideals to be met.

Five child rights experts were invited to give their presentations on areas of prime importance for children's rights. The first is about the principle of the best interests of the child; the second about protection against corporal punishment; the third about children and prisons; the fourth about children and institutional care; and the last one about respecting the views of children. All lectures proposed further work in the spirit of Janusz Korczak.

The publication presents an English translation of one of Korczak's more well-known texts, *The Child's Right to Respect*, in which he summarised his thinking on the relationship between children and adults. It is introduced by Sven Hartman, Professor of Pedagogy at the Stockholm University and followed by a moving testimony of Irena Sendlerova who herself tried to save children from the Nazi brutalities in the Ghetto and who saw Korczak, his colleagues and all the children from "My home" being marched to their death.

Thomas Hammarberg
Commissioner for Human Rights, Council of Europe

Janusz Korczak's legacy

Janusz Korczak – a brief biography

Janusz Korczak was the pen name of Henryk Goldszmit, who was born in Warsaw on 22 July 1878 or 1879, and murdered in the Treblinka death camp on 5 or 6 August 1942. He was a doctor, educator, writer, social worker, “guardian angel” and thinker.

Having completed his studies at Warsaw University, Korczak worked as a doctor at the Barson and Bauman Children’s Hospital (1905-12).

He managed the *Dom Sierot* orphanage for Jewish children (1912-1942) and took part in the creation of the *Nasz Dom* orphanage for Polish children, set up in Pruszków in 1919, then moved to Warsaw in 1928. Both establishments used Korczak’s own education system, which set particular store by the development and social life of the children living there.

He was a popular speaker, holding numerous seminars and lecturing at colleges and universities. He was also consulted by the courts as an expert on children.

He founded a children’s newspaper, *Mały Przegląd* (Little Review), and worked for the radio under the pseudonym “Stary Doktor” (Old Doctor).

His career as a writer, journalist and researcher began in 1896 and ended on 4 August 1942, when he jotted down his very last notes. Korczak’s writing, composed both with adults and children in mind, consists of more than 20 books and over 1 400 articles, published in some 100 magazines.

For Korczak, activism in the social and educational sphere went hand in hand with involvement in the struggle for national independence.

Korczak witnessed, took part in and ultimately fell victim to some of the most historic events of the first half of the 20th century, including the Russo-Japanese war, the Russian Revolutions of 1905-06 and 1917, the First World War, the Polish-Bolshevik war of 1920 and the Second World War. Having been drafted into the Russian army, he crossed central and eastern Europe and travelled as far as Manchuria.

To broaden his education, he also travelled in Switzerland, Germany, France and England. He visited Palestine twice, drawn by a fascination with the Holy Land of three religions (though deeply religious, he was not attached to any specific religious creed) and an interest in the revival of the Jewish national movement and the kibbutz experiment.



Janusz Korczak's legacy: an inestimable source of inspiration

Sven Hartman

The years preceding and following the First World War are a fascinating period. Circumstances throughout the whole of the western world demanded new initiatives on the part of society. International conflicts, poverty and deprivation generated major social problems in schools and in the community. Urbanisation and major migration movements necessitated a restructuring of health care and education. In response to these phenomena, many social and educational innovators around the world sought to combat the problems of the 20th century with new ideas and working methods. The majority of the educational traditions that we now consider innovative and “alternative” were in fact developed during that period.

The great social hardships of that time also appear to have led to considerable emphasis being placed on educational issues. The importance of children became fully acknowledged; in them lay the future and the hope for a better world. Education and child-care were regarded as a key means of creating a better society. In Sweden, Ellen Key had completed the second edition of her book *Barnets århundrade* (The Century of the Child); in Italy, Maria Montessori had developed working methods that placed the child at the centre; in France Célestin Freinet had developed alternative approaches to primary education; the Austrian Rudolf Steiner had founded what became known as the Waldorf education; in the USA John Dewey was exploring the theoretical assumptions of the new educational philosophy. And in reborn, newly independent Poland there was Janusz Korczak (Henryk Goldzmit 1878-1942). Through Korczak the world has inherited an inestimable contribution to the discussion on the rights of the child.

Janusz Korczak became aware at an early age of how profoundly war and social evils had afflicted children. It was children who had to carry the burden of history's atrocities. At the same time, Korczak saw children as humanity's hope for a better future. He felt that by providing them with the conditions for a good life and by bringing them up in a human-oriented and democratic spirit, it would be possible to lay the foundations for a better society in the future. In this way, Janusz Korczak the paediatrician became an educationalist as well.

“Come let us live for our children,” said pre-school educationalist Friedrich Fröbel. Janusz Korczak not only lived for his children, he also lived with them. At an early stage, he chose to end his practice as a well-to-do society doctor in order to work with orphans. In those surroundings he developed ideas that still inspire us and deepen our commitment as we work for children's rights. During the Nazi occupation of Warsaw he moved in with the children at the home that

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sheltered Jewish children. They were first forced into the Warsaw Ghetto and then sent to the Treblinka extermination camp. Even though he was offered the chance to escape he chose death along with his children. This poignant ending grew into the Korczak legend. However, those who hold Korczak's legacy in trust are keen to remind us that before Treblinka there had been 40 years of work with children and for children, 40 years of medical practice and educational work, 40 years of life. They urge us not to let the memory of Korczak's death make us forget the 40 years of enlightened education and child-care.

● The humanist basis

The humanist basis of Korczak's work could be described thus: in his writings the reader discovers a natural scientist's and mystic's fascination with mankind and with life. In the individual child and in groups of children he felt he was encountering human beings in their most imposing form. Korczak approached them with reverence and curiosity, and at times with melancholy and resignation.

The children themselves became the obvious starting point for Korczak's work. This expressed not so much an educational principle as a way of seeing mankind. Children are first and foremost human beings. They embody the whole mystery of the human race.

The child ... that little nothing, is the flesh-and-blood brother of the ocean wave, of the wind, and ashes; of the sun and the Milky Way. This speck of dust is the brother of every ear of corn, every blade of grass ... every fledgling from the nest... there is something in the child which feels and explores – suffers, desires, and delights ... loves and hates, believes and doubts, something that approaches, something that turns aside.

In its thought this small speck of dust can embrace everything: stars and oceans, the mountain and the abyss. And what is the actual substance of his soul if not the cosmos, but without spatial dimensions

For Korczak, his social and educational work with the child firmly at the centre was a way of showing reverence for what is human in the figure of the child. It was also a way of recognising, through action, the child's full human worth. In that sense, his work was based on humanistic foundations. This was also the reason for his involvement in international work for children's rights.

The company of children can indeed be tiring, Korczak conceded. But this is not because we have to strain to lower ourselves to their level. On the contrary: the exertion lies in our having to raise ourselves to their level, to their feelings, so as not to hurt them. Once we have learned to know children we realise, Korczak claimed, that we have no reason for boasting.

As to feelings, they outdo us with unbridled power. As to intellect, they are our equals, lacking only experience ...

All other differences are reduced to the fact that children do not earn money; they are dependent on us for their maintenance and must abide by our wishes.

This basic humanistic view recurs in Korczak's way of interpreting life, his own and others': life is fantastic but it is not easy to live. The course of a person's life is determined by hereditary factors, personal experience and shortcomings, social injustice and the tragedies of history. But the distinguishing feature of human beings is that they can affect their situation and their future. They not only can, they are obliged to do so.

● **Korczak, the scientist**

Like many other doctors in those days Korczak viewed paediatrics, educational reforms and improved public hygiene as an indispensable means of creating a better society. In a letter to one of his former pupils he wrote: "We cannot leave the world as it is." We are obliged to make the world a better place than it was when we first entered it.

Korczak tried to live according to this maxim; as a patriot in a politically unstable Poland; as a writer of children's books and popular science; as a paediatrician and educator. His work can also be seen as a peace project. He served as a medical officer in several wars. At close quarters he had seen that it was children that suffered the most in times of war. To lead history along a more favourable course, he felt it essential to start with children, the adults of tomorrow, and he turned to the children that were most exposed: the orphans. Thus he became an institutional educator and he worked with the educational leadership of two orphanages in Warsaw.

The effort to improve the world and do all that is humanly possible within science, art and technology to this end is one of the distinctive features of what is usually called the Modernity project. Men in white coats, who took over power and influence when the black coats had been obliged to make their exit, carried through social reforms founded on social engineering in schools and other social institutions.

Clearly, Korczak could be called a social engineer. But if such is the case, I personally would like to dissociate myself from the condescending connotation that usually goes with this concept. For the greater part of his professional work Korczak lived under the acute practical educational necessity to act. In my opinion this forms the background of his work, just as much as the social-medical theories of his time. One may wish to label this as social engineering, but in that case it is important to make a distinction between the tranquil drawing offices of the social architects and the heavy construction work of everyday practice in an orphanage.

There was in Korczak a conscious endeavour to create a scientific basis for education and child-care. Like other progressive physicians and educationalists, Korczak had great faith in the possibilities of research to provide exhaustive knowledge in most areas. He therefore felt able to find solutions necessary for building a new educational discipline. He concentrated on studies of children and young people. For him, children represented a forgotten part of humanity, forgotten even in scientific studies. Thanks to his broad education he was able to adopt an interdisciplinary perspective. In his educational work, he dreamed of

being able to present a synthesis of all contemporary knowledge about children. During the 25 years when he worked in children's homes he measured and weighed all the children regularly, noting the results systematically together with other observations. This eventually became an enormous corpus of data which he never had the chance to process scientifically and which was later destroyed in the near-obliteration of Warsaw in the final phase of the Second World War.

Korczak himself considered that he improved – rather than the opposite – his qualifications for paediatric research when he left hospital work to pursue his activity in children's homes. He wrote: “Most things about children demand years of clinical studies before one gains full insight. Studies must not only be undertaken when disease is raging and devastating, they must also consider the humdrum, with its periods of happiness and well being.” Korczak did indeed encounter such periods among his orphans.

As a doctor I note symptoms: I see skin flares, I listen to coughs, I feel the rise in temperature, my sense of smell detects the odour of acetone on the child's breath. Some symptoms I notice at once; and I seek those that are hidden.

As an educationalist, I also have symptoms to observe: smiles, laughter, blushes, cries, yawns, a cry, a sigh. A cough can be dry, hacking or choking; in the same way crying can be tearful or almost without tears.

I note the symptoms without anger. One child develops a temperature, another becomes erratic. I lower the temperature by removing its cause if possible; and I moderate the erratic period as much as possible without the child experiencing spiritual harm.

The parts of his research that still hold good today are probably his observations of children, particularly his way of reporting what he had noted. Here his interdisciplinary perspective and his literary talent come into their own. He gives the results of careful and patient observations of children in a language not normally associated with science and research reports. In an almost impressionistic literary style he conveys exact and sensitive pictures of children's situations and their way of being.

Play in the park could be used as an educationalist's exercise in child observation. There is so much of interest to note ... play is initiated, is born, gathers pace, stops. Who starts it? Who organises it, who leads and whose disappearance leads to the group dispersing? Who are the children who choose their playmates and who are those who grab whoever is nearest? Who is it that freely makes room for the newcomer and who protests? ... Who stands still and who impatiently stands on one leg and then the other; swings their arms and laughs out loud? Who yawns but goes on playing and who stops because they've lost interest in the game or because they have been wronged?

● The right to be heard

At international Korczak conferences it is often mentioned in solemn terms that it is desirable to reshape “Korczak’s system” so that it could once again be used in educational work among children and young people. This, in my view, is built on a false assumption of Korczak’s heritage. He never developed a system of his own in the sense that we can find, for example, in the work of Maria Montessori or the Waldorf tradition. The methods and ideas that he describes in his main educational work *How to Love a Child* can hardly be said to constitute a system. Some of the methods he himself stopped using when he noticed that they no longer worked in the child group. The composition of the child groups and the staff was constantly changing and so the ways of working had to change too. Many of the methods that Korczak developed in the years before and after the First World War are taken for granted in every educational environment today, but in those days they contributed to the reform movement.

The forms of work that have attracted the most attention perhaps are the Court of Peers and the Children’s Parliament. Here, self-government was experimented with, regarding both issues of discipline and order in the orphanages and the leadership of the activity. At the court, any child could “sue” a person or persons who had behaved in a threatening or bullying manner, who had unsatisfactorily completed their chores, who had cheated when playing, who had borrowed things without permission, or who had broken other rules. Judgments were made according to a code of laws that contained many paragraphs but where the first 99 stressed forgiveness. The staff too could be taken to court. Korczak himself writes about how he, for example, had been sued five times during half a year. Things became quite complicated when the children returned to the orphanage from school, wanting to sue a particular teacher who had behaved badly towards a pupil. Two educational systems were thus placed in opposition, where one system respected children’s rights and the other did not.

Different people live together ... the courts keep watch to ensure that big people do not hurt small, and that little persons do not disturb their elders; that the clever do not exploit or laugh at the less clever; that the quarrelsome do not pester others, and also that the others do not tease them; that the cheerful do not play foolish tricks on the downhearted ... The court may forgive but may also rule that somebody has acted unjustly and very, very badly.

All in all, Korczak’s idea seems to have been that the question of children’s rights should be understood as a fundamental democratic issue. I believe that there are some solid ideas behind these methodological approaches in “Korczak’s system”. The first is the emphasis on communication, on dialogue between the children, and between children and grown-ups. The goal for the court of peers was in a way to create a “communicative justice”. Mutual respect cannot be sustained if children do not also have the right to be heard. It is no coincidence that Korczak belonged to the pioneers in the field of books for children, magazines for children (written by and for children) and broadcasting for children. In the educational communities of Janusz Korczak communication was given high priority.

All of this does not constitute a clearly defined educational method. One could possibly term Korczak's education as an open educational system in contrast to other more closed traditions at that time. I think that there is a distinct parallel with how the Convention on the Rights of the Child today stresses freedom of thought and speech for children. In *How to Love a Child*, in a note added to the second edition, Korczak wrote:

... primary and irrefutable right of children is the right to voice their thoughts, to active participation in our considerations and verdicts concerning them. When we have gained their respect and trust, once they confide in us of their own free will and tell us what they have the right to do – there will be fewer puzzling moments, fewer mistakes.

Experience from everyday teaching often forms the starting point for Korczak's texts. The meeting between the doctor and the patient, between the educationalist and the child, must be based on respect for the child's situation at the time in question:

A hundred different hearts beat under shirts of the same sort and in each case there are individual difficulties, individual exertions, individual sorrows and troubles.

A hundred children – a hundred beings who are human – not at some time in the future, not just tomorrow, but now ... right now ... today.

Korczak's picture of everyday life in orphanages is a corrective to the educational vision, often with a self-ironical undertone. What does the job of an employee in a children's home normally involve?

A caretaker of walls and furniture, of order in the playground, of clean ears and floors; a cowherd seeing to it that the herd does not annoy adults in their work and at play; a keeper of torn pants and shoes and a stingy server of meals; a guardian of adult privileges and an indolent performer of unprofessional whims.

Korczak's cutting words on the adult role in traditional education is tempered, as I see it, with a dash of melancholy. The burdensome external conditions will always require some form of supervision. But if we let such aspects dominate and corrode the content of education, this leads to oppression of the children. And this is what Korczak found in contemporary education. In contrast to an oppressive educational system, Korczak placed children's rights – the right to speak and the right to be listened to – as central elements of his teaching.

As early as the 1910s, Korczak linked this work form in the small "child republic" to his first attempts in the large international community to produce a declaration on the rights of children:

If I devote a disproportionately large amount of space to the court, I do this in the conviction that the court can contribute to children's equality, can prepare the way for a constitution, can force a declaration on the rights of children. Children possess the right to have their problems dealt with seriously and thought through in a just manner. Until now everything has depended on the teacher's goodwill,

good or bad mood. The child has lacked the right to protest. This despotism must come to an end.

Korczak was a firm opponent of corporal and other heartless punishments commonplace at that time. He was also involved in the wider judicial system as an expert in the Warsaw juvenile courts. It was there that he would have seen the consequences of the severe punishment regimes of contemporary juvenile care. In contrast to this, the first hundred clauses of the comrade court codex were “forgiveness clauses”. This is typical of Korczak’s view on upbringing. Children must be able to learn their obligations and rights, they must be corrected when they err, but in an atmosphere of understanding and forgiveness based on the individual child’s right to respect.

The type of education for responsibility that developed in the children’s home which Korczak headed included the practice that everybody, both children and adults, was expected to take an active part in essential domestic tasks. This enhanced the contacts and discussion between children and adults, and among the children themselves. They could practise expressing themselves and speaking up for themselves in daily activities. They wrote and illustrated their own newspapers, and did everything to stimulate effective discussion and co-operation. In this way they practised working in democratic forms with mutual respect. And adults had to learn to listen and, as the more experienced party, assume a responsibility as partners in discussion, as guides, as discerning nurturers.

● The right to respect

The principle of “the child’s best interests” usually serves to sum up the basic idea of the UN Convention on the Rights of the Child. It is a fundamental ethical principle that can act as a guiding rule for all private, professional or political deliberations and measures that apply to our children. Janusz Korczak had his own formulation, summarising his educational visions and his work for children’s rights. The short formula runs: “The Child’s Right to Respect”.

The term “respect” may well surprise some people: it is children who must show respect for adults, not the other way round. This, I believe, was conscious provocation on Korczak’s part. He wished to go further than the diplomatic and watered-down formulations of which he had seen examples in his attempts to achieve a declaration on children’s rights. The word “respect” in Korczak’s thinking presupposes recognition of the human worth of all people and a reverence for the life dwelling in each and every one. He published his thoughts in a slim volume entitled *The Child’s Right to Respect*. This was in connection with a series of lectures held at the University in Warsaw. The lectures referred to the Geneva Declaration of 1924. This slim book may be viewed as an educational poem that brings together his own meditative reflections on international work for children’s rights.

A different side of his reasoning on a child’s right to respect was an appraisal of what surroundings best further educational work:

The work of many years has made it increasingly obvious to me that children deserve respect, trust and kindness. Their good sides emerge in a continual atmosphere of sensitive openness, of happy laughter, of the first fumbling attempts and surprises of simple and artless subjects of happiness. Such work is stimulating, fruitful and agreeable.

On the other hand, his demands for respect for the child also included an ethical and political demand:

We compel children to shoulder mankind's responsibilities tomorrow, but give them none of the human rights today ... were humanity to be divided into adults and children and life into childhood and adulthood, we should discover that the child occupies a very large part of the world and of life. But we ... are incapable of seeing the child, just as we earlier could not see women, peasants, oppressed social groups and oppressed peoples.

Korczak's plea for children's right to respect was grounded in his humanist view, and was manifested in his urgent questions to us about justice, equality and the shouldering of responsibility. His whole life presents us with a challenge to act, for the good of all children.

Korczak worked for the Modernity project. He was one in a long line of socially and educationally dedicated doctors who invested their professional skill to reform society.

According to some researchers' views on modernity there is a lack of personal morality in modern and post-modern society. There also seems to be a distorted communication between different roles within a person and between persons. But Korczak's commitment to the Modernity project to build a better world was subordinated to the commitment and personal moral conduct of the individual. It was not the party or the big projects that were the centre but the individual.

One of Korczak's fundamental ideas seems to have been the opposite of the separation of roles in modernity; he stressed integration of roles, the relationship between educational theory and practice, the relationship between children and staff. Korczak's life work contained many levels of formulation integrating his different roles as a doctor, educator and author.

Professional ethics was central to Korczak's work. Reverence for life and respect for the individual were two fundamental principles with Korczak. He espoused ideas usually to be found in the humanist tradition, but gave them a personal application in the way he related to children.

Science and technology do not appear to have had a natural advantage over ethical principles in Korczak's education. He gives prominence to ethics, underlining his strong emphasis on personal responsibility.

When you read Korczak you discover a paediatrician working for the Modernity project, but in his own way. You discover a human-oriented approach to education where the growth of the individual, personal moral conduct and communication between staff and children are key educational goals.

Many of Korczak's texts may be seen as a kind of meditation exercise regarding life's major questions: how did I become what I am? What was my life like when I was little? What was it like to be a child then, and what is it like to be a child today? How about children's right to respect? Do we respect their ignorance and their striving for knowledge? Do we respect their failures and tears, their possessions and assets? Do we respect what their life is just now? Each hour and day? Do we respect the mysteries and setbacks that growing up entails? For Korczak, all this lay in children's rights. But he also presupposes realism in practical action:

We aren't miracle-workers – nor do we want to be charlatans. Let us renounce the deceptive longing for perfect children. We demand that hunger be eliminated, cold, dampness, overcrowding, overpopulation.

And in the closing words of *The Child's Right to Respect*,

Respect, if not humility, toward the white, bright, and unquenchable holy childhood.



The Child's Right to Respect

Janusz Korczak

● **Indifference and distrust**

We learn very early in life that big is more important than little.

"I'm big," a child rejoices upon being lifted up onto a table. "I'm taller than you," another affirms with pride, measuring himself against his peer.

It's unpleasant standing on one's tiptoes and not being able to reach or to keep up with a grown-up with one's little steps. A glass easily slips out of a small hand. It's hard for a child to scramble up onto a chair, or into a vehicle, or up a flight of steps; he can't quite grasp the door knob, see out of the window, hang something up or take it down because it's too high.

In a crowd the child can't see anything; he isn't noticed or else he's jostled.

It's inconvenient and unpleasant to be little.

It is size and what takes up more space that elicits respect and admiration. Small is equated with ordinary and uninteresting. Little people mean little wants, little joys and sorrows.

A big city, high mountains, a tall tree – these are impressive.

We say: "A big deed, a great person."

A child is small and doesn't weigh much. There's less of him, too. We have to bend down, lower ourselves to him. Even worse – the child is weak.

We can lift and toss him up with ease, sit him down against his will, restrain him from running, frustrate his effort.

No matter how often he misbehaves, the adult has a reserve of strength to use against him.

I say: "Don't go, don't move, move away, give it back."

The child knows that he has to obey. How often does he make an effort unsuccessfully before he understands, gives in and, finally, surrenders.

A feeling of powerlessness summons respect for strength; anyone, and not just an adult, but anyone older and stronger can brutally express dissatisfaction, back up demand with strength and exact obedience: anyone can injure with impunity.

We teach indifference towards the weak by our own example. A bad school is a sign of gloomy things ahead.

The features of the world have changed. It is no longer muscle power that gets the

work done or serves as a defence against an enemy. No longer does that power wrest command, bounty and security from land, forests, and seas. The machine has become a subjugated slave. Muscles have lost their exclusive status and value. Knowledge and the intellect have increased in respect.

That heretofore sinister hut, the thinker's cell, has given way to the chambers and laboratories of research. Libraries rise higher and higher, their shelves groaning under the weight of books. The temples of proud reason have become filled with worshippers. The man of reason creates and commands. The hieroglyphs of figures and symbols pour forth new discoveries for the masses; they bear witness to man's power. All this has to be grasped by the mind and understood.

The years of tedious study grow longer and longer – more and more schools, examinations, printed words. While the child is small and weak, has lived but a short time, has not read, does not know ...

It's a difficult problem, how to share the conquered places, how to assign tasks and to reward, how to husband the inhabited regions of the globe. What kind and how many factories should be established in order to provide work for hungry hands and brains, how to maintain order and discipline in the human swarm, how to secure protection from an ill will or the madness of a single individual, how to fill the hours of life with activity, rest, and recreation, guard against apathy, satiety, and boredom? How to unite people into a law-abiding community, enhance understanding, when to scatter and divide? Push ahead here, slow down there; here to inflame, there to quell?

Politicians and law makers make careful attempts. But time and again they err.

And they deliberate and make decisions about the child too; but who asks the child for his opinion and consent; what can he possibly have to say?

Along with reason and knowledge a certain shrewdness helps in the struggle for existence and influence. The one who is alert will pick up the trail and be rewarded handsomely; contrary to reliable judgment, he'll quickly and easily gain his end; he dazzles and awakens envy. It takes cunning to fathom man – no longer the altar but the pigsty of life.

And then there's the child, plodding on clumsily with his schoolbook, ball and doll; he senses that something important and mighty is taking place without his participation, something that spells out fortune and misfortune, something that punishes and rewards. A flower foretells of the future fruit, the chick will become an egg-laying hen, the calf will give milk. In the meantime there is the matter of care, expenses, and worrying: will it survive or not?

The young stir up unrest, anxiety; there is that long period of waiting; maybe he will be a support in old age. But life knows of drought, frosts, and hailstorms which cut down and destroy crops.

We search for signs of the future; we'd like to be able to foretell, to be certain;

this anxious anticipation about what the future holds increases our indifference towards what it is.

The market value of the child is small. Only before God and the Law is the apple blossom worth as much as the apple, green shoots as much as a ripe corn-field.

We nurse, shield, feed, and educate. The child gets what he needs without any worrying; what would he be without us to whom he owes everything? Absolutely everything, without exception – only we.

We know the way to success; we give directions, advice. We develop virtues, stamp out faults. We guide, correct, train. The child – nothing. We – everything.

We order about and demand obedience.

Morally and legally responsible, knowing and far-seeing, we are the sole judges of the child's actions, movements, thoughts, and plans.

We give instructions and see that they are carried out; thanks to our reason and will – they are our children, our possessions. So, hands off!

(It's true. Things have changed some. It isn't just the exclusive will and authority of the family any more. There's social control now, however slight, from a distance, barely perceptible.)

A beggar can dispose of his alms at will. The child has nothing of his own and must account for every object freely received for his own use.

He is forbidden to tear, break, or soil; he is forbidden to give anything away as a present; nor is he allowed to refuse anything with a sign of displeasure. The child has to accept things and be satisfied. Everything must be in the right place at the right time according to his regimen.

(Maybe this is the reason why the child values the worthless little things which arouse in adults a surprised compassion: odds and ends, junk – his sole personal wealth – a ball of string, a little box, some beads.)

In return the child is supposed to submit and behave – let him beg, even cheat, as long as he does not demand. Nothing is due him; we give of our own free will. (A painful analogy presents itself: a rich man's mistress.) This relationship between adults and children is demoralised by the child's poverty and material dependency.

We treat the child with indifference because he doesn't know anything, doesn't suspect or sense anything.

The child knows nothing of the difficulties and complications of adult life, the sources of our excitement, disappointments, let-downs; what ruins our peace of mind and sours our humour; he knows nothing of adult reverses and losses. It's easy to deceive the child, keep him in the dark. The child imagines that life is

simple and straightforward. There's father and mother; father works and earns money and mama shops. He knows nothing about shirking responsibilities nor about how a man goes about struggling for his own well-being and that of others.

Free from material worries, from strong temptations and shocks, the child again does not know and cannot judge. We adults can guess what he's up to at a glance, see through him in an instant. Without having to investigate we detect his clumsy cunning.

Or do we deceive ourselves by judging that the child is no more than what we want him to be? Maybe he conceals himself from us, or suffers in secret?

We level mountains, fell trees, tame animals. Settlements keep on increasing where before there were only swamps and forests. We put people all at once in new lands.

We have subdued the world; metal and beasts have become servants. We have enslaved the coloured races, crudely organised the relationship between nations and tamed the masses. Justice is still a distant thing. There's more hurt and misery.

Childish doubts and apprehensions seem unimportant.

The bright democratism of the child knows no hierarchy. Only fleetingly does he take pity over a labourer's sweaty toil or the hunger pangs of a playmate, the fate of an ill-treated horse, a slaughtered hen. A dog and a bird are close to his heart, a butterfly and flower are his equals; he finds a soul-mate in a stone or a sea-shell. With the haughty pride of an upstart, the child possesses a soul. We do not take the child seriously because he still has a lot of hours of living ahead of him.

We feel the effort of our own steps, the burden of selfish movements, the limitations of our perceptions and sensations. The child runs and jumps, sees things without any apparent motive, is puzzled and asks questions; he sheds tears easily and is profusely happy.

A fine autumn day when there's less sunshine is highly valued, as is spring when it's green. It doesn't matter, so little is needed to be happy – effort is unnecessary. Hastily, carelessly we dismiss the child. We treat indifferently the multiplicity of his life and the joy which is so easily given.

For us precious quarter-hours and years are lost; he has time, though, he'll make it, he can wait.

The child is not a soldier; he does not defend his homeland although he suffers together with it.

Since he has no vote, why go to the trouble to gain his good opinion of you? He doesn't threaten, demand, say anything.

Weak, little, poor, dependent – a citizen-to-be only.

Indulgent, rude, brutal – but always indifferent.

The brat. Only a child, a future person, but not yet, not today. He's just going to be.

He has to be watched, never to be let out of sight; to be watched and never be left alone; watched at every step.

He may fall, bump himself, get hurt, get dirty, spill, tear, break, misplace, lose, set fire, leave the door open to burglars. He'll hurt himself and us; cripple himself, us, a playmate.

We have to be vigilant, permit no independence of movement, be in full control.

The child does not know how much and what to eat, how much and what to drink, does not know the limits of fatigue. So, you have to supervise his diet, his sleep, his rest.

For how long? As of when? Always. Distrust changes with age; it does not diminish; rather, it even tends to increase.

He does not distinguish the important from the trivial. Order and systematic work are alien to him. He's absent-minded. He'll forget easily, treat lightly, neglect. He doesn't know anything about future responsibilities.

We have to instruct, guide, train, restrain, temper, correct, caution, prevent, impose, and combat.

Combat whim, caprice, and obstinacy.

We have to impose a regimen of caution, foresight, fears and anxieties, presentiments of evil and gloomy forebodings.

We with our experience know how many dangers lie about, obstacles, fatal adventures and calamities.

We know that the greatest precaution doesn't give an absolute guarantee; and this makes us all the more suspicious: in order to have a clear conscience, not to have anything to reproach ourselves for in case of misfortune.

The child delights in the gamble of mischief-making, is curiously drawn to trouble.

He's easily spoiled and hard to correct.

We wish him well, want to make it easy for him; we share all our experience with him without reservation: all he has to do is to reach out – it's all ready for him. We know what is harmful to children; we remember what harmed us. Let him avoid it, be spared; let him not know it.

“Remember, know, understand.”

“You will discover, see for yourself.”

The child doesn't listen. As if deliberately, out of spite. One has to see to it that he obeys, does what he's supposed to do. Left alone, he avowedly seeks out trouble, chooses the worst path, the most dangerous one.

How can one tolerate senseless mischief, foolish escapades, crazy outbursts?

This to-be is suspect. He appears docile, innocent but, in fact, he's shrewd, cunning.

He manages to slip out from under control, lull vigilance, deceive. He always has an excuse in readiness, an alibi; he conceals or lies outright.

Indifference and distrust, suspicions and accusations. A painful analogy: so he's a trouble-maker, a drunk; he's rebellious, confused. How can one live under the same roof with the likes of him?

● **Resentment**

It's nothing. We love children. In spite of everything, they are our solace, our delight and hope, our joy and relaxation, the bright sunshine of our life. If we don't frighten, burden, or annoy they feel free and happy ...

Why is it, though, that there's a sense of a heavy load with them, as if they were an obstruction, an inconvenient addition? Where has this unfavourable opinion toward the beloved child come from?

Even before he greeted the inhospitable world, confusion and limits made their way into the domestic scene. Those brief, irretrievable months of that long-awaited joy seem to break down.

The long period of persistent discomfort ends in illness and pain, sleepless nights and an unexpected expense. Peace at home is disturbed; there is disorder; the budget is thrown out of whack.

To the sharp smell of nappies and the piercing cry of the new-born rattles the chain of marital slavery.

The burden of being unable to communicate, having to imagine, to guess. We wait, even patiently.

When at long last he finally begins to walk and talk – he gets in the way, touches everything, looks into every corner. He is equally obstructive and upsetting, the little sloven, the brat.

He causes damage, opposes our reasonable will. He demands and understands only what satisfies him.

Trifles aren't to be treated lightly: our resentment toward children is cumulative – their waking at wee hours, the crumpled newspaper, a spot on the dress, a smudge on the wallpaper, a wet carpet, broken eyeglasses or a treasured vase and, yes, the doctor's bills.

He doesn't sleep or eat when we'd like him to, when we'd like him not to; here we thought we'd make him laugh and instead he bursts out wailing in fright. And delicate: the slightest neglect and there's the threat of his falling ill, of trouble ahead. If one of the parents forgives, the other blames and nags all the more. In addition to the mother's opinion, there's the opinion formed of the child by the father, the nurse, the maid, the woman next door; against the mother's wishes, and even secretly, each one may mete out punishment.

The little schemer is often the cause of friction and discord among adults; someone is always nasty and getting hurt. For the indulgence of one, the child answers to the other. Often seeming kindness is simply foolish negligence; the responsibility for someone's faults falls on the child.

(Boys and girls don't like to be called children. Sharing that word with the youngest among them burdens the older ones with the responsibility for the past, with the bad reputation of the smaller ones, while, at the same time, suffering the numerous charges hurled at their own group.)

How rarely is the child like we'd like him to be; how often is his growth accompanied by feelings of disappointment.

“By now he ought to...”

The child should reciprocate our goodwill by trying to repay in kind; he should understand, and give in, control his wants. But above all he should be grateful. Responsibilities and demands increase with age and, as it happens, they are more apt to be different and less than what we should hope for.

A part of the time we relinquish the demands and authority of upbringing to the school. Care is doubled, responsibility increased; divergent authorities collide. Shortcomings begin to surface.

Parents forgive heartily, their indulgence stemming clearly from a feeling of guilt for having given life, for having committed a wrong in the case of a deformed child. It happens that a mother of a supposedly sick child seeks to defend herself against the accusation of others and of her own doubts.

As a rule, the mother's opinion is not to be trusted. It is felt to be biased, incompetent. We rely, rather, on the opinion of teachers, experts, and experienced professionals as to whether the child is deserving of kindness.

A tutor in a private home doesn't often find suitable conditions for co-existing with the children.

Confined by a distrustful discipline, the tutor is forced to vacillate between another's requirements and his own peace and convenience. While bearing the responsibility for the child, he also bears the consequences of dubious decisions of the legitimate guardians – his employers.

Being forced to conceal and to avoid difficulties, he may easily become corrupted by hypocrisy; he becomes disenchanted, apathetic. As the years of work progress, the gap between the adult's demands and the child's desires widens; familiarity with the abject ways of disciplining increases.

Complaints about a thankless job appear; whomever the Almighty wants to punish is called a teacher.

We grow weary of the active, bustling, fascinating life and its mysteries; we tire of questions and expressions of wonder; discoveries and experiments that frequently end with unfortunate results lose their appeal.

Rarely are we advisors and comforters; more frequently we serve as stern judges. A summary sentence and punishment yield the same result: less frequent but, at the same time, stronger and more contrary are the outbursts of boredom and rebellion. As a result, vigilance has to be strengthened, and resistance broken, while measures have to be taken to insure against surprises.

This is the course of the teacher's downfall: he's indifferent, distrustful, and suspicious; he spies on his charges, seizes them unexpectedly, scolds, accuses and punishes them; he looks for opportune ways of prevention; more and more frequently does he impose restrictions, practises tyrannical compulsion; he does not perceive the child's efforts to write a page neatly or simply to live one hour of the day; he declares dryly that it's just hopeless.

Infrequent is that bright blue patch of pardons; more frequent is it the scarlet of anger and indignation.

How much more understanding does educational work with the group require; how much easier is it to fall into the error of accusations and offence.

A single child, small and weak, is wearying. His individual misdeeds enrage. But how annoying, demanding, and limitless in impulse is the behaviour of the group.

How difficult it is for a new teacher to take charge of a class or school where the children were kept in the grip of a fierce discipline, where, riotous and alienated, they have organised themselves along the lines of criminal compulsion. How powerful and menacing they are when they oppose your will with collective force, trying to break your grip; they aren't children any more, but a primitive force.

How many aborted revolutions occur about which the teacher says nothing, ashamed to admit that he is weaker than the child.

Once taught a lesson, the teacher will seize upon any means to be able to overcome and prevail. No familiarity, no harmless joking; no mumbling in answering questions, no shrugging of shoulders or gestures of unwillingness; no stubborn silence or angry glances. He will get rid of the problem at the roots, stamp it out vindictively: by indifference and an angry restiveness. He'll buy out the ringleaders with privileges, recruit informers; he doesn't care about just punishment so long

as it is severe, to set an example, in order to squelch the first sign of rebellion, so that the group, that force, isn't tempted, not even in thought, to dictate demands or run amok. The child's weakness may evoke tenderness. The power of the group shocks and offends.

There is that false reproach that says that kindness spoils the child and that the response to gentleness is impunity and disorder.

But let's be careful not to label sloppiness, indolence, and silliness as kindness. We find among teachers not only cunning brutes and misanthropes but also rejects from every kind of occupation, persons incapable of maintaining any responsible position.

It happens that the teacher wants to gain the child's favour quickly, easily, and without effort, to worm his way into the child's confidence. He'll choose to banter and joke with the child when he's in good humour, rather than make a real effort to organise community life. At times his lordly indulgence is pierced by sudden outbursts of distemper. He makes himself look ridiculous in the child's eyes.

Sometimes it happens that someone who is ambitious believes that it is easy to reform a person by persuasion and kindly moral teaching, that it suffices to stir and coax a promise of improvement. This is offensive and boring.

It happens that teachers who, on the surface, appear to be friendly with their insincere phrases really turn out to be the child's worst enemies and offenders. These kind arouse aversion.

The response to humiliation will be indifference – to kindness resentment and rebellion, to distrust conspiracy.

Years of work have confirmed for me more and more clearly that children deserve respect, trust, and kindness, that it is pleasant to be with them in a cheerful atmosphere of gentle feelings, merry laughter, an atmosphere of strenuous first efforts and surprises, of pure, clear, and heart-warming joys, that working with children in such an atmosphere is exhilarating, fruitful, and attractive.

One thing, however, has caused me doubt and anxiety: how was it that occasionally the most trustworthy child would let me down? How was it that, though admittedly rarely, there would be a sudden eruption of unruly behaviour by a given group? Maybe adults are no better, only more self-controlled, more certain, more reliable and dependable. Persistently I sought answers to these questions and gradually the following began to dawn on me:

1. If a teacher is intent on seeking out traits and values which seem to him to be especially valuable, if it is his desire to force everyone into a single mould – he will be making a big mistake; some will pretend to follow his tenets while others will genuinely heed his suggestions – for a time. When the real face of the child shows itself, not only the teacher but the child as well will be surely hurt. The greater the effort in pretending to yield to influence – the stormier will be the reaction. Once the child has revealed his real intentions, he has little more to lose. What an important lesson is there in this.

2. The teacher uses one measure of evaluating while the group uses another: both he and the group sense the richness of the spirit; he waits for them to develop, while they wait to see what immediate good will come of those riches, whether he will share what he has, or keep it all to himself as an exclusive privilege – the conceited, jealous, and self-centred miser. He won't tell any stories, won't play games, won't draw or help out, won't be obliging – “he's doing a big favour”, “you have to beg him”. Alone and isolated, the child makes a strong effort to win the good graces of his own peer community which eagerly accepts his conversion. He did not become spoiled suddenly; on the contrary, he understood perfectly and reformed.

3. I found the following explanation in a book on the training of animals. I don't conceal the source. A lion isn't dangerous when angry, but when playful and eager to frolic; the group is as strong as the lion ...

Solutions are to be sought not only in psychology, but even more so in medical books, in sociology, ethnology, history, poetry, criminology, in the prayer book, and in handbooks on animal training. *Ars longa.*

4. The best but by far not the final explanation dawned on me. A child can become intoxicated with the oxygen of the air as an adult can with alcohol. Excitement, loss of control, recklessness, giddiness; as a reaction, embarrassment, a lump in the throat, a feeling of disgust, and guilt. My own observation is accurate – it is clinical. The most stable person can get tipsy.

Don't scold: this obvious childish intoxication arouses respect and emotion; it does not estrange and set apart, but draws us closer and binds us.

We hide our own faults and guilty actions. Children aren't supposed to criticise; they aren't supposed to notice our bad habits, addictions, and peculiarities. We pose as being perfect. Under the threat of the greatest offence, we defend the secrets of the ruling clan, the caste of the initiated, dedicated to a higher calling. Only the child may be shamelessly degraded and placed in a pillory.

We play with children using marked cards; we pierce the child's weaknesses with the trump cards of adult virtues. As card-sharks we so shuffle the deck as to juxtapose the worst of their hands with the best of ours.

What about our own careless and frivolous grown-ups, selfish gluttons, fools, idlers, rogues, brawlers, cheats, drunkards, and thieves? How about our own violations and crimes – public and private? How much discord, cunning, envy, slander, and blackmail is there among us? Words which wound, deeds which shame? How many quiet family tragedies where children suffer – the first martyrs?

And we dare to blame and accuse?!

To be sure, adult society has been carefully sifted and filtered. How many have been claimed by the grave, by prisons, and insane asylums? How much scum has gone down the gutters?

We urge respect for the elders and the experienced; we caution not to argue with or question them. Children have their own experienced elders among them, close at hand – adolescents with their insistent persuasion and pressure.

Criminal and deranged adults wander about at large; they shove, disrupt, do harm – and they infect. And children on the whole bear joint responsibility for them (because they even give us signals, however faintly, at times). Those few shock public opinion, smudge with conspicuous stains the surface of the child's life. It is they who dictate the routine methods of treatment: keep a tight rein even though it oppresses; be rough even though it hurts, and stern, that is, brutal.

We do not allow children to organise; disdainful, distrustful, unwilling, we simply do not care. Yet, without the participation of experts we won't be successful. And the expert is the child.

Are we so uncritical as to regard the caresses which we shower upon children as kindness? Don't we understand that on hugging the child it is we who are actually doing the clinging; that we are hiding, helpless, in that child's embrace, seeking in it help and escape in our hours of pain and loneliness? We burden the child with our own sufferings and longings.

Every other kind of endearment which is not an escape into the child or a plea of hope is a crass search for and an awakening of sensuous feelings in him.

"I hug you because I'm sad. Give me a kiss and I'll give you anything you want."

This is egotism, not kindness.

● The right to respect

There appear to be two lives, one serious and respectable, the other indulgently tolerated, less valuable. We say: a future person, a future worker, a future citizen. That children will be, that they will really begin to be serious only in the future. We kindly let them plod along beside us but, in truth, it would be more convenient without them.

No, not at all. They were and they will be. They did not appear suddenly by surprise, and not just for a brief period either. Children are not a casual encounter who can be passed by hurriedly or dismissed rapidly with a smile and a "Hello".

Children account for a large proportion of mankind, a sizeable portion of the population, of the nation, residents, citizens – constant companions.

Children have been, are, and they will be.

Is there a life that exists as some joke? No, childhood years are long and important ones in the life of man.

A cruel though legitimate law of Greece and Rome allowed for the killing of children. In the Middle Ages fishermen used to catch in their nets the bodies of

drowned infants from rivers. In 17th-century Paris, older children were sold to beggars, younger ones given away free in front of Notre Dame. Not so very long ago. And to this day they put the screws on children if they happen to get in the way.

The number of illegitimate, abandoned, neglected, exploited, and maltreated children is on the rise. The law protects them, but does it do so sufficiently? Much has changed; old laws need to be revised.

We've grown affluent. We don't get rich solely from the fruits of our own labour. We are heirs to an enormous fortune, shareholders, co-owners. What a lot of cities, buildings, factories, mines, hotels, and theatres we have; what an abundance of goods there is in the markets, how many ships transport them to and fro – the merchants assault the consumers to buy their goods.

Let us tally it all up. Let us calculate how much of the total sum belongs to children, determine the child's share of the profits, not as a favour nor as a charity either. Let us honestly check the amount we allocate for use by the children's portion of the population, how much by the under-age group, and by the working class. What does the inheritance amount to; how should it be divided; have we, dishonest guardians, not disinherited, expropriated?

They are cramped, stifled, poor, and bored.

We have, it's true, introduced universal education, compulsory mental work; we have registration and school taxes. We have also burdened the child with the weight of reconciling the opposing interests of two parallel authorities.

The school makes demands while parents are reluctant to give in. Conflicts between family and school weigh the child down. The parents support charges made against the child that are not always just, defending themselves against the care imposed by the school.

The exertion and effort of an army recruit is also preparation for the day when he might be called up into action; and the state supplies him with all his needs. It supplies him with room and board, a uniform, a weapon, and pay. These are his due; they are not charity.

The child, on the other hand, although subject to compulsory schooling, has to beg from his parents or the authorities.

The Geneva law makers confused duties with rights; the tone of the declaration¹ is one of persuasion not insistence: an appeal to goodwill, a plea for kindness.

School creates for the child the rhythm of hours, days and years. School officials are supposed to provide for the needs of today's young citizens. The child is a rational being. He knows full well what his needs, difficulties, and obstacles in life are. Needed is not a despotic order, imposed discipline, or distrustful control, but

1. Korczak is referring to the Declaration of the Rights of the Child, adopted by the League of Nations in 1923. (translator's note)

tactful understanding; faith in experience; co-operation and co-existence are the real basis of child care.

The child is not dumb; there are as many fools among children as there are among adults. Dressed in the clothing of age, how often do we impose thoughtless, uncritical, and impractical regulations. Sometimes a wise child is shocked by a malicious, senile, and abusive ignorance.

The child has a future and a past as well, full of memorable events, memories, and many hours of the most significant solitary reflections. No less than we, he remembers and forgets, appreciates and rejects, reasons logically – and errs when he doesn't know. Thoughtfully he trusts and doubts.

The child is a foreigner who doesn't know the language, isn't familiar with the street plan, is ignorant of the laws and customs of the land. At times he likes to go exploring on his own; when things get rough, he asks for directions and help. What he needs is a guide who will politely answer his questions.

Respect for his lack of knowledge!

A swindler and crook will take advantage of a foreigner's ignorance; he'll give a false answer or mislead deliberately. A boor will mutter something unwillingly. We're always yelling at and quarrelling with children; we nag, reproach, punish. We don't let the child know in a kind way.

How impoverished would be the child's knowledge were it not for his peers, for his eavesdropping; if he didn't pick up information from the words and conversations of adults.

Respect for the effort of learning!

Respect for the setbacks and tears!

Not only a torn stocking, but a scratched knee; not only a broken glass, but a cut on the finger and a bruise and a bump that are painful.

An ink-blot in his notebook is an accident, an unpleasantness and a misfortune.

“When Daddy spills some tea, Mama says: ‘It's nothing.’ But when I do it she gets angry.”

Children suffer acutely because they are unaccustomed to pain, wrong-doing, and injustice. More frequently they cry; even a child's tears are treated as a joke, made to seem less important. They make adults angry.

“He whines, bawls, squeals, sobs.” (A chain of words which the adult's dictionary invented for use against children.)

Tears of obstinacy and capriciousness – these are tears of powerlessness and rebellion, a despairing effort of protest, a cry for help, a complaint against indifferent care, evidence that adults restrain unreasonably, coerce, a symptom of a bad frame of mind, but always a sign of suffering.

Respect for the child's belongings and for his budget! The child painfully shares the material worries of the family, feels shortages, compares his own poverty with a friend's affluence. The few pennies that he does possess and that speak of his poverty hurt bitterly. He doesn't want to be a burden.

But what can one do if a new cap is needed, or a movie ticket, or a replacement for a pad or a pencil which was lost or stolen; or if you'd like to buy someone you like a present, or treat yourself to a cake or lend your friend some money? There are so many essential needs, desires, and temptations but no means to satisfy them.

Doesn't it mean anything that in juvenile courts thefts account for the major offence? This is the consequence of treating indifferently the matter of the child's budget, something no amount of punishment will change.

A child's possessions – not junk but a beggar's tools of the trade, hope and mementos. Today's cares and anxieties, the bitterness of the years of youth together with disappointments – these are not illusions but realities.

The child grows. He lives more strenuously. The breathing's faster, the pulse livelier; he's getting bigger – there's more of him all the time; growing deeper into life. He grows day and night, when asleep and awake, happy and sad, when he's afraid, and when he stands cowed before you.

There are spring bursts of double growth and slowdowns of autumn. At one time the bones grow while the heart barely keeps up; at another time there's a slowdown or an excess, a changing chemistry of diminishing and activated glands, a different anxiety and surprise.

At one time he has the urge to run and, like breathing itself, he wants to fight, exert himself, overcome; at another time he feels like hiding, daydreaming, spinning a web of wistful memories. For a change of pace there's a need for peace and quiet, for tenderness and protection. Or else there are strong and passionate desires alternating with fits of depression.

Fatigue, the discomfort of pain, a cold; it's too hot, too cold; drowsiness, hunger, thirst, deprivation, discomfort; or a feeling of having enough – this is not a whim or a school excuse.

Respect for the mysteries and the ups and downs of that difficult task of growing!

Respect for the present moment, for today!

How will he know tomorrow unless we allow him a conscious, responsible life today?

Not to step on, abuse, enslave for tomorrow; not to repress, hurry, drive on.

Respect for every separate moment because each will pass and never return, and always to be treated seriously; injure it and it will bleed, kill it and it will haunt with awful memories.

Let the child drink in the joy of the morning and let him be hopeful. This is how the child wishes it to be. Don't grudge him the time for a story, for a chat with his dog, for catching ball, for the careful study of a picture, or for copying letters. Allow time for this with kindness. The child is really right in this.

Naively we fear death, not realising that life is but a cycle of dying and reborn moments. A year is but an attempt at understanding eternity for everyday use. A moment lasts as long as a smile or sigh. A mother yearns to bring up her child. She doesn't see this take place because each day it is a different woman who greets the day and bids goodnight to a different person.

We ineffectively divide the years into more or less mature ones; there is no immature present, no hierarchy of age, no higher or lower grades of pain or joy, hopes or disappointments.

When I play or talk with a child two equally mature moments – mine and the child's – intertwine; when I'm with a group of children, I always say hello or good-bye on the run with a single glance and a smile. When I'm angry, again the feeling is mutual – only that my angry, vindictive moment oppresses and poisons the child's mature and vital moment in life.

Renounce oneself in the name of tomorrow? What attractions are there in this? We paint with excessively dark colours. The prediction is fulfilled: the roof caves in because of a flimsy foundation.

● **The child's right to be itself**

“What will he be when he grows up?”, we ask anxiously.

We want our children to be better than us. We dream about a perfect person of the future.

We have to diligently catch ourselves in lies, pin down our egotism disguised in phony elegance. Seemingly a generous resignation but, in truth, an ordinary swindle.

We have reached an understanding with ourselves, made amends; we have forgiven and freed ourselves from the responsibility of improving. We were badly brought up. It's too late to start now. Our defects and faults have rooted too deeply. We don't let children criticise us, nor do we watch ourselves.

Feeling absolved, we have resigned from the struggle, shifting its burden onto children.

A teacher eagerly adopts the adult's privilege: to keep an eye on the child, not on oneself; to register the child's faults, not one's own.

A child will be blamed for whatever upsets our peace and quiet, our ambition and comfort, for whatever offends and angers us, for whatever runs counter to our own ways, for whatever takes up our time and thought. We don't recognise transgressions without evil intent.

The child doesn't know, didn't quite hear or understand, or else misheard, was misled – it's his fault and ill will.

Not fast enough or a bit too fast, or a task not performed well enough – this is blamed on laziness, sloppiness, absent-mindedness, unwillingness.

Unfulfilment of a harmful, impossible demand – blame. A clumsy, angry suspicion – guilty too. Our anxieties and suspicions are the child's fault as well; he's even blamed for making an extra effort. "You see, if you want to, you can." We always manage to find something to reproach the child for; greedily we demand more.

Do we ever concede to the child tactfully, avoid unnecessary grievances, make living together easier? Aren't we rather the stubborn ones, fussy, offensive, capricious?

The child attracts our attention when he disturbs and causes trouble; we notice and remember only these moments. We take no notice when he's quiet, or thoughtful. We treat lightly those sacred moments of his conversing with himself, the world, and God. The child is forced to conceal his longings and impulses in the face of scorn and brusque attention; he hides his willingness to understand, will not acknowledge his desire to improve.

He dutifully conceals expressions of wonder, anxieties, grievances – and his anger and rebelliousness. We want him to jump and clap his hands, and that's why he shows us the smiling face of a joker.

Bad deeds and bad children make loud noises; they drown out the soft whisper of good. And yet there is a thousand times more good than bad. Good is strong and durable. It's not so that it's easier to spoil than to correct.

We train our attention and ingenuity to prying into wrongdoing, searching, sniffing, stalking, seizing red-handed in the act, full of suspicions of mischief.

(Do we keep old-timers from playing football? How awful is that incessant sniffing about for signs of masturbation in children?)

One banged the door, another didn't make his bed properly, another mislaid his coat, still another ruined his note-book. We scold and nag instead of being glad that these are mishaps that happen only singly.

We hear a lot of complaints and quarrels; but how much more forgiveness there is, giving in, helping, how much more concern and good-will, instruction and positive influence, deep and beautiful.

We want them to be docile, that not a single one of the ten thousand seconds of the school hour (count them) should be troublesome.

Why is one child, for example, seen as bad by one teacher and good by another? We demand uniformity of virtues and moments and, what's more, that children conform to tastes and habits.

Can we find in all of history a similar case of such tyranny? Generations of Neros have proliferated.

Side by side with health stands illness, alongside virtues and worth there are vices and shortcomings.

For a few children for whom joys and parties are the norm, for whom life is a fable and an inspiring legend full of trust and kindness, there is a mass of children for whom from the earliest days, the world speaks by way of crude words and harsh, sinister truths. They are corrupted by the contemptuous scorn of vulgarity and poverty, or spoiled by the sensual, caressing indifference of surfeit and refinement.

Dirty, distrustful, alienated from people – but not bad.

Not only the home, but the hallway, the corridor, courtyard and street serve the child as models. The child talks in the language of his surroundings, expresses views, imitates gestures, follows examples. There is no such thing as a pure child – every one is tainted to a greater or lesser degree.

Oh, but how quickly does the child free and cleanse himself. There is no medicine for this, just a good wash. And the child willingly helps in this, happy at the chance to rediscover himself. He had been longing for a bath and now he smiles to you and himself.

Such simple victories from stories about orphan children are celebrated by every teacher: these illustrations deceive uncritical moralists into believing that it all comes easily. A fool delights in them, a careerist attributes success to himself, while a tyrant is angry because it isn't the rule; some want to achieve similar results in all areas by increasing the dose of persuasion, others by increasing pressure.

Together with children who are merely sullied, we also meet children who are crippled and injured; there are those kinds of wounds that leave no scars, that heal themselves under a clean dressing. The healing of lacerated wounds, however, takes longer; they leave painful scars; they shouldn't be irritated. Sores and ulcers require greater attention and patience.

That folk adage says: "A healing body." One would like to add: "and soul".

How many scratches and contagions are there in schools and nurseries, how many temptations and troublesome whispers; and what a lot of fleeting and innocent activity. We need not have fear of dangerous epidemics where the atmosphere of the school is healthy, where there is plenty of fresh air and sunlight.

How wisely, gradually, and wonderfully does the process of recovery take place! How many wondrous secrets are concealed in the blood, in body secretions and tissues! How every disturbed function and damaged organ strives to regain normalcy, to be back on track! How many marvels are there in the growth of plants and in man, in the heart and brain, in the breathing mechanism! At the faintest emotion or exertion the heart beats faster, the pulse quickens.

The child's spirit has this same power and endurance. There exist both a moral balance as well as an alertness of the conscience. It isn't true that children are easily infected.

Correctly, though unfortunately late, pedology² found its way into school programmes. Without understanding the harmony of the body, it's impossible to acquire respect for the mysteries of healing.

A botched diagnosis lumps together all kinds of children – the agile, ambitious, critical – all awkward but clean and healthy – with the resentful, sullen, and distrustful – debased, tempted, frivolous, meekly following bad examples. An inexperienced, careless, and shallow observation mixes them all together and equates them erroneously with the fewer criminal and bad types.

(Not only do we adults know how to hurt the orphans of fate but we cleverly benefit from the work of the disinherited.)

Healthy children compelled to mix with such a bad lot suffer doubly: they get hurt and are drawn into delinquency.

While we, do we not accuse indifferently one and all, do we not impose collective responsibility?

“That's what they're like. That's all they can do.”

The worst of wrongs.

They are the offspring of drunkenness, rape, and insanity. The misdeeds are but an echo of commands not of an external but an internal voice. A gloomy moment indeed when the child realised that he was different, difficult, a cripple, that he would be ostracised, picked on. The very first decisions are to fight the force dictating bad deeds. What others have got so freely and easily, what in others is ordinary and trivial, he receives as the reward of a bloody struggle. He seeks help; if he is trusting, he will come forward, beg and demand: “Help me!” He has revealed his secret; he wants to improve, once and for all, all at once, in a single effort.

Instead of thoughtfully slowing down that rash impulse, delaying the decision to improve, we clumsily encourage and urge him on. He wants to free himself while we set a trap for him; he wants to break out while we, in turn, deceitfully prepare a snare. When he expresses a desire to be frank and sincere, we only teach him to conceal.

He offers us a whole day without a flaw, whereas we repel him because of a single bad moment. Is it worth it?

He used to wet his bed every day but now does so less frequently. It was better, then it got worse – no harm. Longer periods between the seizures of an epileptic. The fever of a tubercular has gone down; there's less coughing now. It's not an

2. Pedology: the study of physical and mental development of children. School of thought developed in the late 19th century. (translator's note)

improvement, but at least it isn't getting any worse. The doctor counts even this as a plus in the treatment. There is no cheating or coercing here.

Desperate, rebellious and contemptuous of the submissive, boot-licking virtues of the mob, these children stand up to the teacher; they have retained one and maybe the last of holies – a loathing of hypocrisy. And this we want to knock down and eliminate. We commit mayhem, resort to the use of starvation and torture to render them powerless; we brutally suppress not rebellion but its open expression. We fan to white heat this loathing toward deceitfulness and cant.

They do not renounce their plan for revenge. Rather, they postpone and wait for an opportune moment. If they believe in good, they will bury their yearning for it in the deepest secrecy.

“Why did you let me be born? Did I ask for such a dog's life?”

I reach for the greatest understanding, the most difficult enlightenment. Patient and sympathetic know-how are needed to deal with offences and misdemeanours; transgressors need love. Their angry rebellion is justified. One has to feel sorry for an easy virtue, measure up to the solitary, damned offence. When, if not now, will he receive the flower of a smile?

In correctional institutions inquisitions are still the rule, medieval penal torture, a united obstinacy and vindictiveness of ill-treatment. Don't you see that the best children feel sorry for the worst: what are they guilty of?

Not so long ago the humble physician obediently used to administer sweet elixirs and bitter tonics to the sick; he used to bind the fevered, let blood, and starve his patients in gloomy, funereal waiting rooms. He indulged the powerful and was cold toward the poor.

Finally, he began to make demands – and was granted them.

The physician won space and sunlight for children. Like a general – to our shame – he gave children movement, adventure, the joy of gentle service, the chance of deciding on a decent life, chatting near the camp-fire under a starlit sky.

What is our teacher's role, our area of work? A caretaker of walls and furniture, of order in the playground, of clean ears and floors; a cowherd seeing to it that the herd does not annoy adults in their work and at play; a keeper of torn pants and shoes and a stingy server of meals; a guardian of adult privileges and an indolent performer of unprofessional whims.

What is our teacher's role? A storehouse of admonitions, a dispenser of moral platitudes, and a retailer of denatured knowledge which intimidates, confuses and lulls rather than awakens, animates, and gladdens. Agents of cheap virtues, we have to force from children respect and obedience; we have to stir up sentimental feelings in adults, prod warm emotions from them. To build a solid future on a handful of pennies, to cheat and pretend that children are a number, a will, a force, and a law. The doctor rescued the child from the hands of death; the teacher's job

is to let him live, to let him win the right to be a child.

Researchers have affirmed that the adult is guided by motives, the child by impulses, that the adult is logical while the child is caught up in a web of illusory imagination; that the adult has character, a definite moral make-up, while the child is enmeshed in a chaos of instincts and desires. They study the child not as a different psychological being but as a weaker and poorer one. As if adults are everything – all learned professors!

And what about the adult mess, a quagmire of opinions and beliefs, a psychological herd of prejudices and habits, frivolous deeds of fathers and mothers – the whole thing from top to bottom an irresponsible adult life. Negligence, laziness, dull obstinacy, thoughtlessness, adult absurdities, follies, and drinking bouts.

And the seriousness, thoughtfulness, and poise of the child? A child's solid commitment and experience; a treasure chest of fair judgments and appraisals, a tactful restraint of demands, full of subtle feelings and an unerring sense of right.

Does everyone win playing chess with a child?

Let us demand respect for those clear eyes and smooth temples, that young effort and trust. Why is it that we show respect for that spiritless expression, that wrinkled brow, bristled greyness, stooped resignation?

There is a sunrise and a sunset, a morning as well as an evening prayer; every inhalation has an exhalation; for every systole there is a diastole.

A soldier, when he moves out to battle and returns, is covered with grime. A new generation is mounting, a new wave is gathering. They come with vices and assets; give them conditions under which they can develop better. We won't win a case against the coffin of a sick childhood; we can't order a cornflower to be wheat.

We aren't miracle-workers – nor do we want to be charlatans. Let us renounce the deceptive longing for perfect children.

We demand that hunger be eliminated, cold, dampness, overcrowding, overpopulation.

It is you who bear the sick and the crippled; it is you who create conditions for rebellion and contagion: your thoughtlessness, ignorance, and lack of order.

Beware: contemporary life is shaping a powerful brute, a *homo rapax*; it is he who dictates the mode of living. His concessions to the weak are a lie, his respect for the aged, for women's rights and kindness toward children are falsehoods. Such homeless sentiments wander about lost, like Cinderella. Rather, it is really children who are the real princes of feelings, the poets and thinkers.

Respect, if not humility, toward the white, bright, and unquenchable holy childhood.



I saw Korczak and the children walking from the Ghetto to their death

Irena Sendlerowa

I saw Korczak walking with the children from *Dom Sierot* (“My Home”) to their death! By then he was already very ill, and yet he walked straight as a ramrod with his face like a mask, seemingly under control.

He walked at the head of that tragic procession, carrying the youngest child in one arm and leading a second young one by the hand. It is described in various publications one way, and in others differently, but that does not mean anyone was mistaken. It must not be forgotten, however, that the road from the Orphans’ Home to *Umschlagsplatz* was long. I saw them when they were turning from Zelazna Street into Leszno Street.

The children were dressed in their holiday best. They wore blue denim uniforms. The whole cortège advanced four by four, buoyantly, rhythmically and with dignity to *Umschlagsplatz* – to the square of death!

Was this a vision or a dream?

Was this possible? Why had these small children and youngsters been sentenced to death? What had they done? What was their guilt?

Who had the right to hand down such an historically unprecedented sentence? And yet this was neither a vision nor a dream! This was the truth! The omnipotent ruler of Germany – Hitler – decided that Jewish children, in exactly the same way as Jewish adults, old people and the infirm, were destined for the gas chambers.

And how did the world react? The most powerful states? The world kept silent! But silence sometimes signifies consent to what is happening.

In what times was this happening? In what century?

After all, a century of great discoveries and inventions. A century of the spread of civilisation around the world. A century of previously unparalleled technological progress.

So how could it happen, how could it be, that small children and young people blossoming into adulthood – the pride and future hope of any nation – should be walking en masse, in Poland on 6 August 1942, to their collective death? For other children from other institutions and boarding schools had already gone. They were going to their death, which was planned for them by the wonderful scholars and scientists of the great German state. The creators of the greatest invention of that era – Zyklon B! The pride of their nation!

Irena Sendlerowa helped to save about 2500 Jewish children from the Warsaw Ghetto during the Second World War. This text is an excerpt from a testimony recorded by the Polish Academy of Sciences on 6 February 1997.

As they walked, the children's thoughts turned to Rabindranath Tagore's play *The Post Office*, which they had put on not long ago in "My Home".

For a better understanding of the purpose of showing children this fairytale under those circumstances, I shall provide a summary of it.

The little boy Amal is ill and has to stay in bed. His only form of entertainment is watching the world through his window. He sees a postman, a flower girl, a water bearer and a milkman pass by. Children are playing outside. The aroma of flowers is intoxicating. Someone can be heard singing. The little boy takes all of this in from his sick bed and is involved in the life beyond his window. He yearns for freedom, he wants to run away to the countryside, to delight in the sunlight, to kiss the flowers. But a severe and thoughtless doctor orders the window shutters nailed shut, to keep all signs of autumn and the sun out of the room. It seems to the boy that the huge mountain beyond the window has its hands stretched up to the heavens!

Amal loves those hands. He fights to get out of his stuffy room, so as to follow a road that nobody knows. But he calms down when assured that the doctor himself will lead him out when the time comes. Then someone bigger and wiser comes and frees him.

There were sometimes small breaks in the funeral procession. Especially since the summer that year was very hot. The children had to rest a bit.

And then the "Old Doctor" told them that a letter had just come from the King summoning them, like in the fairytale, to a long tramp along a broad highway, where beautiful flowers bloomed, streams murmured and babbled, and a high mountain stretched up its hands to the heavens.

For the children must not know until the last moment – until the moment when the iniquitous hands of a German criminal slammed shut the doors of their murderous wagon headed for Treblinka – until that time they must not know what death meant.

The children must not know the full truth. The youngest children's tiny hands were clutching dolls made for them out of plasticine by Professor Władysław Witwicki and sent across to his two assistants, Doctor Romana Wisznacka and Doctor Ester Merkizówna.

Although locked up in the Ghetto they lost no time. They ran so-called "toy corners" for the youngest children, to put some pleasure in their tragically sad childhood.

Clutching their dolls, specially made for them with love by a University of Warsaw Psychology Professor, the little dears did not yet know that in just a moment the beastly paws of Hitler's henchmen would lock them up in lethal wagons full of carbide and lime, and then they would set out on the last journey of their lives.

The recent performance of Rabindranath Tagore's *The Post Office*, organised by Korczak in the Orphans' Home, had the aim of diverting the children's attention from what was happening outside the windows of their home.

And what was happening was as horrible as could be.

The tragic summer of that year was quite simply hell. There were constant round-ups in the street of ordinary passers-by, famine and typhus were producing piles of corpses every day, and in addition entirely innocent people were being randomly shot all the time.

Turning the children's attention away from these horrors was something only Korczak could dream up and carry out; he had the most affectionate and tender heart for all the children of the world, and it was his brilliant mind that foresaw the worst in that Ghetto hell.

Indeed, the very worst was just around the corner, inexorably closing in on the Ghetto walls.

So Korczak chose a play that ends on an optimistic note. For that letter from the King, summoning and inviting the children to a beautiful land of freedom, had just arrived.

I was there for the performance. Now on the street on that 6 August 1942, as before at the performance, I observed the stooped "Old Doctor", who then sat in a corner of the room, with a depth of indescribable sadness lurking in his eyes. This unique genius and pedagogue wanted to put at least some distance between the children and the nightmares being played out on the Ghetto streets. He also thought perhaps that this evening, when they could be artists on a stage, might be their last joyful experience before dying in a gas chamber.

Remembering that tragic procession of innocent children marching to their death and the optimistic words of the doctor from the fairytale, I really wonder how the hearts of the eye-witnesses, myself included, did not break in two.

No, our hearts did not break, but to this day we have been left with thoughts incomprehensible for a normal human being.

Of all my most dramatic war-time experiences, including my "residence" and torture in the Pawlak Prison, being tortured by the Gestapo on Szucha Street, watching young people die in the AK (*Armia Krajowa* – Home Army) hospital where I was a nurse during the Warsaw Uprising, not one left so great an impression on me as the sight of Korczak and his children marching to their death.

Is it possible that we really could do nothing to oppose such bestiality? What was our role in all this? What does it mean to say we were powerless? One of the basic lessons in any upbringing is to help a drowning man. Always help others in need. And that nation so sorely needed help.

Yet on 6 August 1942 the witnesses to that funereal procession did absolutely nothing. The street was astounded, yet silent!

The street could not intervene, because it was defenceless, exhausted and mutilated by three years of daily criminal acts.

Without suitable weapons or a sufficient amount of ammunition, to attack tanks with bare hands and to confront German soldiers armed to the teeth would have been nothing less than suicide.

The Janusz Korczak lectures



How to protect the child's best interests?

Emily Logan

When I first read *The Child's Right to Respect* by Janusz Korczak, I was immediately struck by the clarity at the heart of his writings. He speaks of the need to afford more respect for the interests of children, not out of goodness or charity but as a right. His rights-based analysis is one we see more commonly these days but what differentiates Korczak's writing is that his analysis of the world is perceived through the lens of a child. It is this profound understanding of the value and meaning of childhood that gives such gravitas to his work.

In this paper, to which I will speak during the lecture, I want to reflect on the best interests principle set out in the UN Convention on the Rights of the Child (CRC). I want to think about what the principle means and what it demands of all of us: political leaders, members of the legislature, members of the judiciary, administrative authorities, international organisations and Ombudsmen for Children alike. At the heart of any discussion about the best interests principle is the relationship between the principle and the rights of the child, something which Janusz Korczak so eloquently touches on in his writings. I want to talk about the significance of that relationship and how the best interests principle can only truly operate when children themselves are viewed as individual rights holders.

● **Origins and content of the best interests principle**

The best interests principle was not in itself novel when the UN Convention on the Rights of the Child was being drafted. Indeed, it was included in a number of other international human rights instruments, most notably the 1959 Declaration on the Rights of the Child and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women.

The best interests principle is set out in Article 3(1) of the CRC, which provides:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

What was perhaps novel about this statement of the best interests principle was its scope. For the first time, it extended its reach to an obligation on states to ensure that children's interests are placed at the heart of government and of all decision making which impacts on children.

Emily Logan is Ombudsman for Children of Ireland. The lecture was given in the framework of the Conference "Building a Europe for and with Children, toward a strategy for 2009-2011" organised jointly by the Council of Europe and the Swedish Chairmanship of the Council of Europe in Stockholm on 9 September 2008.

The Committee on the Rights of the Child, which is charged with overseeing implementation of the CRC by states parties to the Convention, has identified Article 3(1) as embodying one of four “general principles” in the Convention, of relevance to implementation of the whole Convention. The others are non-discrimination; maximum survival and development and the participation of the child.

The basic premise of the CRC, taken as a whole, is the application of its provisions with the best interests of the child constantly in mind. In addition to Article 3, the best interests provision is set out in other articles of the CRC. In these contexts, the best interests principle is expressed in stronger terms – as a necessary requirement or as the paramount consideration:

- Article 9.1 (child protection) states that a child shall not be removed from its family unless it is necessary for the best interests of the child;
- Article 9.3 (custody) states that a child can maintain contact with both parents except if it is contrary to the child's best interests;
- Article 18.1 (parental decision making) states that parents have the primary responsibility for bringing up the child and that the best interests of the child will be their basic concern;
- Article 20.1 (deprivation of family environment) refers to situations where a child cannot be allowed to remain in a family in its own best interests;
- Article 21 (adoption) states that, in adoption systems, “the best interests of the child shall be the paramount consideration”;
- Article 37(c) (deprivation of liberty) states that a child in detention shall be separated from adults unless it is in the best interests of the child not to do so; and
- Article 40(2)(b)(iii) (criminal proceedings) sets out a right to have parents present in court, unless it would be considered in the child's best interests for them not to be there.

The best interests principle comprises a procedural rule: it governs how we go about decision making with regard to children. It is a legally binding rule that states must follow. The rule does not state that children's interests always come first. The aim of the rule is not to encroach on the rights of others, but to facilitate an examination of the interests of a vulnerable group. A child's best interests should be considered in relation to all actions concerning them, that is when the action directly affects them or regards or touches them.

In general, the CRC does not specifically define “best interests”. However, there is purpose to this lack of specificity – it allows for an appropriate balancing of considerations within a well-defined procedural framework. The CRC does define best interests in some specific instances as set out below:

- in the case of actions and decisions affecting an individual child, it is the best interests of that individual child which must be taken into account;

- it is in a child’s best interests to enjoy the rights and freedoms set out in the CRC. For example, it is in children’s best interests to develop respect for human rights and for other cultures (Article 29.1(b) and (c)). It is in a child’s best interests to maintain contact with both parents in most circumstances (Article 9.3);
- it is in the best interests of indigenous children to be raised in the indigenous community (Articles 5, 8.2 and 30);
- a child capable of forming a view on his or her best interests must be able to give it freely and it must be taken into account (Article 12).

Parents have primary decision-making responsibility on behalf of their children (Articles 5 and 18.1) but, if they fail to make the child’s best interests a basic concern, the state may intervene to protect those interests (see Article 9.1 for example).

● **The best interests principle at the heart of the rights of the child**

When considering the need for a clear articulation of the best interests principle, it is worth noting two related but distinct questions: why a best interests determination is needed in the first instance and how such a determination might be made. The first question relates more directly to the basic cultural assumptions which underpin our approach to children and young people, while the second question touches on the notion of determinacy.

What was wrong with the prevailing attitude to children and young people prior to the acceptance of the idea of children as individual rights holders? The basic assumptions which animated that approach are encapsulated in what is sometimes referred to as the welfare approach. According to this view, children’s needs are considered and determined by adults on their behalf and, more significantly, sometimes those needs are not given the weight they deserve because there is no conceptual barrier to having them subsumed into the needs of other individuals or groups. They are not always a full part of the equation.

Moving from a welfare approach to one that considers children as having an inherent value and active participants in the realisation of their rights, a rights-based approach, can overcome this barrier. With regard to an important decision affecting a child, it is perfectly possible for a welfare approach to come up with the same answer as a rights-based approach looking at the best interests of the child. But that is not the point. The point is to consider how we look at that question and what assumptions underpin our approach.

This potential difference in outcome arises from the fact that if children are not treated as individual rights holders, not only is it possible that a determination of what is in their best interests will not take into account all relevant rights, but the question may sometimes not be asked at all. That is where the need for a cultural shift regarding children and young people’s rights is placed in stark relief.

That is not to say that the change of emphasis to regarding children as individual rights holders means that the best interests principle always trumps other considerations. That is one of the enduring myths about children’s rights which

we work so hard to dispel. The issue is not about having a trump card but rather doing away with a blind spot. It is a question of redressing an imbalance rather than giving the best interests principle a disproportionate weight.

● **The best interests principle and the right to participate**

I have spent 26 years working for children. Much of my previous career was spent working with children with chronic illness. Sick children are very inspiring; their chronological age often belies their experience and ability to engage in difficult decisions. Their experience often means that they speak with ease about things that can often make adults feel ill at ease. In my four years as Ombudsman for Children I continue to see administrative authorities underestimate decisions they make and how those decisions can have a profound effect on children.

In order to assess the best interests of a child, those involved in decision making must fully consider the issue of the child's own view of the subject. Such consideration must be kept under constant review and take account of changing circumstances and evolving capacity. Article 12 of the CRC sets out the rights of children in this regard. It provides:

States Parties shall 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, the views of the child being given due weight in accordance with the age and maturity of the child.

The status of Article 3 and Article 12 as two of the four general principles of the CRC forges a procedural link between providing for a child's best interests and participation and progressing or securing other rights of the child set out in the CRC. Two ideas help to define this procedural link: first, participation in decision making should be consistent with a child's best interests and second, children's participation in identifying and/or securing their best interests must be secured. As regards the first, while States Parties to the CRC "cannot quote the best interests principle to avoid fulfilling their obligations under Article 12", decision making about whether to provide for a child's participation, how to do so, and how to treat a child's views/wishes needs to be informed by a commitment to the child's well-being and, at a minimum, to doing no harm to the child.

As regards the need to secure the participation of children, Article 12 recognises and promotes a conception of children as active agents. The status of Article 12 as a general principle of the CRC and as a procedural right recognises that, by making provision for children's participation in decision-making processes, we can enable children to play an active role in identifying and/or in securing their best interests.

The best interests principle is carried all the way through the wording of Article 12. It provides that we must focus on a child's capacity to form a view and not solely on their capacity to communicate those views. It provides that children have a right to express views freely. These provisions place an onus on all of us to facilitate the participation of children through a medium of their choice which

enables them to communicate their views freely and to the best of their ability. In essence, it requires us to step back from our normal ways of operating: meetings, interviews, and conferencing and to consider, together with children, what will work for them.

And when we are considering “what will work for children”, the wording of Article 12 and the best interests principle are guiding tools for our practice. For instance, Article 12 sets no arbitrary age for the determination of capacity. It simply provides that those children capable of forming a view should be provided with an opportunity to express it. This provision highlights the uniqueness of every child. It requires that we adopt an inclusive approach to participation which respects diversity and facilitates the recognition of a child who, despite his or her very young years, is capable of forming a view. In considering how to determine capacity and how to determine the “due weight” of any views expressed by a child, the application of the best interests principle is key.

I am very fortunate to have a team of young advisors to assist me in my work as Ombudsman for Children. This group of young people, selected through an open, nationwide, peer selection project were asked for their views on the participation work they have been involved in. In particular, they were asked to identify what they viewed as evidence of really being listened to by adults.

They said that the process of involving children is very important as regards demonstrating to children that you are committed to listening and taking their views into account. Ways that adults can demonstrate to children that they are really listening during and through the process of participation include:

- giving children enough time to share their views;
- conducting a dialogue with children that involves answering their questions and asking them questions in return;
- being open to critical comments that children may have;
- giving young people direct access to adults in positions of authority;
- trying to understand why a child holds a particular view, that is, not only finding out what a child thinks, but also seeking to understand why.

The clearest sign that adults can give children to demonstrate that they have really been heard is a tangible outcome that reflects children’s views and shows that they have taken part in effecting change.

Children can understand that being heard is not all about outcomes and outputs and that there can be very good reasons why adults may not act on children’s views. Regardless of the outcome, it is very important to provide feedback to children on what decision has been taken and why. Feedback of this kind is an outcome too and indicates to children that you value and respect their participation.

As we can see from the feedback from these children and young people, a real understanding and commitment to the best interests principle is a prerequisite for

the design and delivery, together with children and young people, of modes of participation that work for them.

● **The best interests principle as a procedural tool – implementation**

In my work as Ombudsman for Children in Ireland, I have come across many people working in service provision, in the public service, in schools who are truly committed to acting in the best interests of the children they come into contact with. Sometimes, however, there are barriers in the way of those who may wish to consider the best interests of children. I would like to give two examples to illustrate this point: one from a judgment of the Irish Supreme Court and one from the experience of my own office in examining complaints where children may have been adversely affected by the action of administrative authorities.

Both of these examples illustrate the lacunae in Ireland which stem from the fact that the best interests principle, and the procedural rule which it comprises, are not fully part of our legal or normative framework. Ireland is a dualist State and the CRC has not been incorporated into our domestic law. As such, it cannot be invoked before our courts. While there are provisions in our domestic laws providing for the consideration of a child's best interests in certain specific situations, the picture is not complete and I think the following two examples illustrate the impact of this reality.

The Supreme Court case of *N & Another v Health Service Executive and Others* (otherwise known as the Baby Ann case) is illuminating in considering the procedural importance of carrying out a best interests determination. I should stress that in commenting on this case, I make no comment on or evaluation of the decision reached by the Supreme Court but rather the absence of an important consideration in their deliberations.

The case centred on the future of a child who, in the interests of anonymity, was referred to simply as Ann. She had initially been placed for adoption and was with her prospective adoptive parents for a period of nearly two years when the case was decided by the Supreme Court. Her biological parents had changed their mind before an adoption order was made and had sought the return of Ann after she had been with the prospective adoptive parents for nearly a year. This led to a legal dispute between the parties and when the case went before the High Court, the judge found there to be compelling reasons why Ann's welfare was not best served by returning her to her natural parents – the judgment referred to the fact that she had become highly attached to her adoptive parents and other factors suggested that transfer of custody could not successfully be undertaken without causing her emotional and psychological harm. However, in November 2006, the Supreme Court reversed this decision, holding that the biological parents had not failed in their duty to their child and that the child should therefore be returned to them.

It should be noted that while variations of the best interests principle can be found in Irish legislation, it is not contained in the constitution. There is established case law in Ireland, based on the provisions of the constitution, that there is a presumption that the welfare of the child is best met within the natural, marital

family. As a result, the test that had to be satisfied for the prospective adoptive parents to become Ann's guardians was that the natural parents had failed in their duty to their child or that there were compelling reasons why Ann's welfare could not be met in the care of her natural parents. The Supreme Court found that neither of these tests was satisfied.

One of the Supreme Court Justices did, however, make the following comment relating to the absence of a separate consideration of Ann's rights in this case:

It is perhaps striking that the one person whose particular rights and interests, constitutional and otherwise, were not separately represented, whether by solicitor and counsel or through a guardian ad litem, was the child herself ... In my personal view, however, and bearing in mind the terms of such international instruments as the United Nations Convention on the Rights of the Child, or EU Regulation 2201/Nov. 2003 (Brussels 2 bis), this situation should at the very least give pause for thought.

As I mentioned above, it is possible that the same conclusion would have been reached if the Supreme Court had considered if there were compelling reasons in Ann's interests why she should remain with her adoptive parents. The crucial point is that, given the established jurisprudence outlined above, the Supreme Court Justices did not have to ask that question. While it may not have changed the outcome it would certainly have changed the process.

In the words of a prominent Irish academic commenting on the case:

While it is difficult to say with certainty whether the Supreme Court would have reached the same conclusion were it required to give due consideration to the rights of baby Ann as part of its decision-making process, it would nonetheless have resulted in a judgment that at least recognised that the child involved also had rights that are worthy of consideration. Of note here, of course, are the child's right to know and be raised by her natural parents, but also relevant is the child's right to have decisions taken that are consistent with her best interests.

This is one of the main reasons behind calls that have been made for many years by organisations working in the area of children's rights, including my own office, that the best interests principle should be enshrined in the Irish Constitution. This would equip judges to ask the question: given the rights of this child, and with due regard to the rights of other relevant parties, what is in the child's best interests?

While the foregoing refers to constitutional jurisprudence, it reflects a wider lack of recognition of children as individual rights holders. I feel that we in Ireland have yet to embrace that cultural shift. A constitutional amendment would be a significant step in the right direction and would provide important guidance to legislators, policy makers and administrative authorities.

The second example of barriers to the consideration of a child's best interests is one in the context of decision making by administrative authorities.

My office can examine complaints against public bodies where a child has or may have been adversely affected by the action and where there may have been

maladministration on the part of the public body concerned. I am obliged to consider the best interests of the child in examining a complaint. Very often we learn that a child's best interests have not been considered during the administration process by the public body concerned. The question of determinacy has not arisen because the question of best interests has never been asked in the first instance.

For example, in 2007, my office published the results of an investigation into an application for housing made on the basis of a child with a disability. The local authority conceded to having poorly administered the case. We found that the local authority concerned had not considered the best interests of the child when processing the housing application made by his mother. However, a review of policies and legislation guiding the administrative decision makers indicated no obligation on the part of the local authority for such consideration.

In that case, we met with the mother and child concerned. What the 12-year-old child spoke about was a lack of respect for both himself and his mother, his lack of dignity, and his lack of privacy, and his desire to live in a home which accommodated his needs and enabled both himself and his mother to live with some dignity. He made no reference whatsoever to the house itself. What he had missed out on in the administration process employed in this case was his right to have his best interests considered as a primary consideration in the process. While much of the debate about children's rights in Ireland has centred on cases heard in our courts of law, the most common obstacle to children's rights is the absence of administrative authorities to consider a child's best interests. My belief in the need for constitutional change is not directed at courts of law but a much more insidious obstacle that is public administration systems and other public sectors.

● **Some challenges linked to the implementation of the best interests principle**

In November 2006, the Taoiseach (Prime Minister of Ireland) announced that the government planned to hold a national referendum on the rights of the child. There had been many calls over many years for such a referendum prior to the announcement, including from my office. The announcement of November 2006 was perhaps in part prompted by the striking down of our statutory rape law as unconstitutional in the summer of 2006 and a commitment given by the government in September 2006 to conduct an article by article review of our constitution through the lens of the CRC.

I wanted to reflect on the discussions we have had in Ireland about the referendum as I think they illustrate some of the challenges inherent in seeking to incorporate and implement the best interests principle within a domestic legal order. All the signs were good when our then Taoiseach expressed his intentions for the referendum.

He said:

It appears increasingly clear that the inadequate recognition in our constitutional law of the rights of children as individuals has to be addressed. That is an essential first step in creating a new culture of respect for the rights of the child.

When it came to unpacking the concept of providing recognition in our constitutional law for the rights of children as individuals, a number of concerns arose. These included possible conflict between the rights of parents and the rights of children, and a perceived threat of unwarranted state intervention in family life. While many of these concerns are real concerns and ones that we need to engage with, the space for that debate soon narrowed. The focus of our national discussions shifted to the need to strengthen legal measures to protect children from sexual predators. Such measures are crucial and are something we have pushed for in our policy and research work at the Ombudsman for Children's Office. However, consideration of the wider need to give full recognition to the rights of the child is falling victim to the limited debate on measures to protect children from sexual predators. Proposals before the Oireachtas (Parliamentary) Committee provide for the consideration of the best interests of the child only in certain specific situations such as adoption. There is a real reluctance to give expression to the best interests principle along the lines of that expressed in Article 3 of the CRC to which the Irish State was a signatory without any reservation. I think it is incumbent on all of us engaged in work with children and in the children's rights sphere to engage with the sometimes complex topics of perceived conflicts of rights and the issue of state intervention in families.

For our part, in the context of this national discussion in Ireland, we have felt that it is important to recall the content of Article 5 of the CRC, which provides:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

I completely support the view that the family is to be respected. In fact, the state makes a poor parent. With 26 years' experience of working with children I know very well that the most vulnerable environment for some children is their own home and it is for all children that we seek change. The change I seek is not for the state to replace parents but to respond in a proportionate way, one that will support, not punish families in difficulty.

It is my experience as Ombudsman for Children in Ireland that parents and family are often the principal advocates for the rights of their children. Parents come to my office with complaints about a lack of service provision or about actions taken by public bodies which they feel may have infringed their child's rights. They often want to know where they can go to get assistance to ensure that those rights are respected. Article 5 is a very important provision because it recognises the key role parents and families have in ensuring that their child can access the rights to which they are entitled.

We also make sure to recall that the CRC is consistent with the Irish Constitution in terms of its presumption that the family environment is the optimal environment for a child's growth and well-being. The preamble to the Convention states:

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

A large proportion of complaints received by my office come from parents and families who act as the principal advocates for children's rights and welfare. This also demonstrates the vulnerability of children when they do not have a family or when the family cannot play, for any reason, this advocacy role. Where children do not have this family support, Article 5 of the Convention provides that the state shall respect the responsibilities, rights and duties of other persons legally responsible for the child to assist the child in the exercise of their rights.

I would also like to share my hope with you that, as more international organisations such as the Council of Europe and the European Union advance their work and new initiatives on children's rights, they will maintain a clear focus on the need to develop a culture of respect for the rights of the child. Embracing fully the principle of the best interests of the child can contribute to advancing such a culture. It can be tempting to pick certain themes or issues to focus on and think that this is the right thing to do. However, we must do our best to ensure that what may be politically expedient thematic choices do not adversely affect our collective work to promote more generally the rights of children and the core principles of the CRC.



Respect means stopping hitting children today – not tomorrow or the day after

Peter Newell

The purpose of the Korczak lectures is to promote the child, as Janusz Korczak himself did, long before the Convention on the Rights of the Child, as a rights holder who is due equal respect for her or his human dignity and physical integrity. The persisting legality and adult defence of corporal punishment and other cruel or degrading forms of punishment of children is the most symbolic reflection of the low status of the child as possession or object, not person, in far too many states around the world.

The underlying philosophy of Korczak's children's republic was that children are not the people of tomorrow, but are to be treated as people today. This theme was echoed by Professor Paulo Sérgio Pinheiro, who led the recent UN Secretary-General's Study on violence against children; when he reported to the General Assembly in 2007, he concluded: "Children are sick of being called 'the future'. They want to enjoy their childhoods, free of violence, now."

I am quite sure that Korczak would be excited to hear that his country, Poland, played such a major role in developing the first binding international legal instrument on children's rights; that it now has a children's ombudsperson with legal powers to safeguard and promote the rights of the child; and that it is one of the growing number of states committed to introducing in the very near future explicit prohibition of all corporal punishment of children, including in their homes.

This issue is not simply about prohibiting and eliminating one particular, very common – in fact the most common – form of violence against children. It is about challenging the very idea that adults have a unique right to hit, hurt and humiliate children, when their violence is disguised as discipline or control.

It is still proving extraordinarily difficult to achieve for children the right not to be hit and humiliated – to achieve equal legal protection of their human dignity and physical integrity. It has so far proved too difficult in my country, the UK, and in many other countries across Europe and the world. The resistance echoes traditional adult attitudes to children through the ages – childhood is a nightmare, as one of the rather few historians of childhood³ characterised it, from which we are only just beginning to emerge.

It should be a simple issue – hitting people is wrong – and children are people too. But in fact it is hugely difficult and controversial still in many states in all regions. The difficulty comes from the personal dimension. It is still true in almost every country to say that most people were hit as children by their parents.

Peter Newell is Co-ordinator of the Global Initiative to End All Corporal Punishment of Children. The lecture was given in the framework of an event dedicated to Janusz Korczak and organised by the Polish Permanent Representation to the UN in Geneva on 6 June 2009.

3. *The History of Childhood*, ed. Lloyd de Mause, Bellew Publishing, London, 1991.

Most parents have hit their own growing children. None of us likes to think badly of our parents, or of our own parenting. This makes it very difficult to move on and perceive this issue clearly as one of fundamental equality and human rights.

Whatever audience one is addressing on this issue, whether it is politicians, or human rights experts, or child protection practitioners, you can be fairly sure that the first responses will be personal responses, not professional ones.

Another difficulty in many countries is that some adults still believe their religion gives them a right or even a duty to use corporal punishment; there are minority groups of Christians who are among the most passionate defenders of violent discipline in my country, the UK, and in many others. Sharia law is still being used by some to justify the most barbaric punishments of children from puberty, including stoning and amputation. We all enjoy freedom of religious belief. But belief cannot be allowed to lead to practices which breach others' rights, including their rights to respect for their human dignity and physical integrity. Globally, faith leaders are increasingly speaking out against all violence against children, and supporting law reform to prohibit all corporal punishment.

The Eighth World Assembly of Religions for Peace, in Kyoto, Japan in 2006, brought together more than 600 faith leaders from all regions and agreed a resolution calling on governments to “adopt legislation to prohibit all forms of violence against children, including corporal punishment”. Individual leaders including Archbishop Desmond Tutu and His Holiness the Dalai Lama are strong supporters of this prohibition.

In the Islamic Republic of Mauritania, following research showing the very high prevalence of corporal punishment in Koranic schools as well as in the home, the Network of Imams recently carried out a study to assess whether corporal punishment is allowed in Islam. Their conclusion was that violence against children has no place in the Koran. And this has led to the first fatwa (religious edict) barring physical and verbal violence against children, both in the educational system and in the home.

We cannot continue to allow adults to continue to in effect preach violence against children, nor to administer extreme violence in religion-based penal systems for young offenders.

Laws authorising corporal punishment of children have a long history in Europe. Under Roman law until 365 AD, fathers had the right to kill their children and when they lost that right, it was replaced by a right to use physical discipline. The English law allowing “reasonable chastisement” developed from this, as did similar defences of “lawful correction” in French, Spanish and Portuguese law.

While it seems likely that corporal punishment in one form or another has always existed in human societies, as it does in some animal societies, there is attractive anthropological research suggesting that in original hunter-gatherer societies – rare now – and in societies where child-rearing was widely shared, there was little or no use of pain in child-rearing. What is certain is that my country, the UK, had a

substantial influence in its colonial period, institutionalising corporal punishment in developing school and penal systems and so-called “care” institutions for children and promoting it through much missionary teaching. The legal defence of “reasonable chastisement” has found its way into at least 70 legal systems worldwide (the French, Spanish, Portuguese and others played their part too, with their concept of “lawful correction”).

There is quite a lot of documentation on the extent and severity of corporal punishment in the early school system in England. I recently came across one story of what could be seen as natural justice at work, in 1301: Hugh Cunningham’s *The Invention of Childhood* records that in December that year, the body of John Newshom, an Oxford schoolmaster, was found in the River Cherwell, near the present Magdalene Bridge over the River Thames. He had fallen out of a willow tree while cutting rods with which to beat his pupils, and drowned.⁴

The first recorded campaign by children to try to persuade our English Parliament to ban school corporal punishment was in 1669, when a “lively boy” presented a petition “on behalf of the children of this nation”, to protest against “that intolerable grievance our youth lie under, in the accustomed severities of the school discipline of this nation”.⁵

Another three centuries passed before the UK finally prohibited all corporal punishment in all its schools, state and private, following a series of judgments of the European Court of Human Rights. And in 2009, my government is still enabling parents and some other carers to justify common assault as “reasonable” when the target is a child; Scotland even introduced the unattractive legal concept of “justifiable assault” on children a few years ago. The UK Government argues that a majority of parents do not want “smacking” banned (most countries have these soft words like “smacking”, “spanking” to make adults feel more comfortable when they hit – assault – their children). But governments cannot excuse themselves from human rights obligations on the basis of public, or parental opinion. Anyway, this is the equivalent to asking men whether they think domestic violence against women should be banned. The UK Government also argues that the “smacking” which can still be legally justified as “reasonable punishment” is not violence. This is classic adult double-talk, insulting and disrespectful to children, and their testimony emphasises just how much smacking hurts, and not just physically, it hurts “inside”. *It hurts you inside* was the title of a very upsetting report⁶ of research with 5 to 7-year-old children in the UK a few years ago, on their experience and views on smacking.

Our government says it does not want to “criminalise” loving parents. But of course respecting children’s equal rights requires that assaults on them are criminalised to the same degree as assaults on adults. That does not mean that in any normal

4. Hugh Cunningham, *The Invention of Childhood*, BBC Books, 2006.

5. C. B. Freeman, “The children’s petition of 1669 and its sequel”, *British Journal of Educational Studies*, vol. 14 (May 1966), p. 216.

6. *It hurts you inside, young children talk about smacking*, National children’s Bureau and Save the Children UK, London, 1998.

circumstances parents are going to be prosecuted and dragged off to court for minor assaults, any more than adults are for minor assaults on other adults.

The purpose of banning all corporal punishment in the family is not to prosecute more parents because it would not be in the best interests of children, nor in the public interest, to do so. But the purpose must be to send the only just and safe message into the so-called “privacy” of the family – that it is no more legal or acceptable to hit a child than to hit anyone else.

Without that clarity, attempts to educate parents on from corporal punishment are fatally undermined. Some argue that we should first educate parents, and then change the law. But would they argue that before prohibiting all violence against women, we should wait for full employment and universal anger-management courses for men? Echoing Korczak, we must insist that children have the right to full respect for their physical integrity and human dignity today, not tomorrow or next year.

The UK is not of course alone in obstructing the inevitable path to respecting children's right to full protection, but it is sad to see a country which has been in the forefront of establishing human rights standards producing such silly excuses.

Globally, there are still some quite extreme and shocking examples of legal frameworks justifying even extreme violence against children. Just two examples: in Tuvalu in the southern Pacific, one of the world's smallest nations, an island court can order a parent or guardian of a male child or young person to cane their child in lieu of any other sentence (up to six strokes for a child under 14 years, 10 strokes for a young person aged 14-16). If a parent fails to carry out the order, they are committing an offence.

On a larger scale, Singapore – considering itself as a modern democracy and in 2010 hosting the first Youth Olympics – was the only state to openly defend what it termed the “judicious” use of corporal punishment of children when the General Assembly was debating the report of the UN Secretary-General's Study on Violence against Children in 2006. And in Singapore (and also Malaysia and a number of other countries), the criminal code states: “Nothing, which is done in good faith for the benefit of a person under 12 years of age ... by or by consent ... of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person.” And in these countries, the law makers felt it was necessary to go on and state: “Provided that this exception shall not extend to (a) the intentional causing of death, or to the attempting to cause death; (b) the doing of anything which the person doing it knows to be likely to cause death ...”. In other words, as long as you think you are benefiting the child, it is not a criminal offence to beat them right up to the point of killing them.

There is still a long way to go to achieve universal legal respect for children's human dignity and physical integrity. But there is now real and exciting progress across the world. The major context for progress over the last 20 years has been the almost universal acceptance – by 193 states – of the Convention on the Rights of the Child (CRC). The particular task of the Convention is to confirm that

children are holders of human rights alongside adults, including the right to equal protection of their human dignity and physical integrity.

The Committee on the Rights of the Child has paid particular attention to violence against children since it started to examine reports from states in 1993. It systematically recommends prohibition of corporal punishment of children in all settings, including the home and family.

In 2006, the Committee issued its first General Comment on violence – on the right of the child to protection from corporal punishment.⁷ The Convention is the first international human rights instrument expressly to require the protection of children from “all forms” of physical or mental violence, in Article 19. As the Committee writes in its General Comment: “There is no ambiguity: ‘all forms of physical or mental violence’ does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.”

In its General Comment, the Committee provides a broad definition of corporal, or physical, punishment: “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light ...”. And the Committee emphasises that while corporal punishment is invariably degrading, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention – punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.

The Committee highlights that rejecting violent and humiliating punishment does not mean rejecting discipline – which, as Korczak emphasises, is about leading children to good behaviour. Hitting children is an obvious lesson in bad behaviour. And prohibiting violent punishment does not limit the protective use of reasonable force: with babies and young children, parents use protective physical actions the whole time – but these are quite distinct from deliberately hitting and hurting children to punish them.

In addition to the Committee on the Rights of the Child, the other relevant UN human rights treaty bodies – the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee against Torture and the Committee to Eliminate Discrimination against Women – have all condemned corporal punishment and recommended prohibition. In the new Human Rights Council process of Universal Periodic Review of states’ overall human rights records, recommendations to ban all corporal punishment are frequent.

Also, regional human rights mechanisms are increasing pressure on governments, including the European Court of Human Rights, the Inter-American Commission and most recently the African Committee of Experts on the Rights and Welfare of the Child. There have also been judgments from high-level domestic courts – constitutional courts and supreme courts in many states in all regions, some

7. Committee on the Rights of the Child, General Comment No. 8, 2006, “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”.

condemning corporal punishment in penal systems and schools, including in Fiji, South Africa, Namibia and Zimbabwe, some relating to corporal punishment in the home as well, including in Costa Rica, Italy and Nepal.⁸

An additional, recent context for progress has been the human-rights-based UN Secretary-General's Study on Violence against Children. The study, proposed by the Committee on the Rights of the Child, was the first comprehensive global review of violence against children. It was also the first UN exercise of this kind to seek to involve children and to learn directly from children's experiences and views; for example, children played a very visible and vocal role in the nine regional consultations held as part of the study process. This had a profound impact, because children focused not only on the severe forms of violence, against which there is already a global consensus, but also on the daily, routine violence so many of them suffer in their homes and in many states also in schools, other institutions and penal systems. Their presence and their testimony made it very hard for the adults, politicians and others, to remain in denial.

By June 2009, 24 states had completely prohibited all corporal punishment in all settings – Moldova was the most recent. At least another 26 across all regions have publicly committed themselves to do so. In Africa, the interim constitution and legislation in Southern Sudan includes complete prohibition and the Kenyan and Zambian governments are committed to full reform. In East Asia and the Pacific, there is a bill introduced in the Philippines and a clear governmental commitment in Vietnam. New Zealand became the first English-speaking state to achieve full prohibition in 2007.

In Latin America, Uruguay, Venezuela and Costa Rica have achieved complete prohibition of corporal punishment and recently the Inter-American Court of Human Rights confirmed the obligation of all Organisation of American States member states to prohibit, quoting the Convention on the Rights of the Child and the Committee on the Rights of the Child's 2006 General Comment No. 8 on the right of the child to protection from corporal punishment.

The Council of Europe has become the first intergovernmental organisation to campaign for universal prohibition of all corporal punishment of children across its 47 member states – just as it achieved universal abolition of the death penalty. It is almost half-way to achieving its goal. A formal campaign was launched in Zagreb in 2008 and materials including a TV spot have achieved massive circulation across the continent.

The progress is indeed exciting. But now that the scale of this daily, routine violence against children is visible, now that the human rights consensus against it is established, there must be no further delay. We cannot go on being tolerant of adult excuses. Of course it is understandable that individual parents have been influenced by long-held traditional attitudes to children and punishment, passed from generation to generation. But understanding it does not make it right.

8. See www.endcorporalpunishment.org for details of human rights recommendations and relevant judgments of high-level courts.

It is particularly upsetting, in the context of the human rights consensus, when governments and parliaments miss opportunities for achieving this iconic reform for children. For example, in Switzerland last year, a parliamentary initiative which would have explicitly prohibited all corporal punishment in the family was defeated. It seems inexplicable that parliamentarians should still feel able, in the new millennium, in the face of this now visible daily adult assault on children, to in effect vote for violence against children.

It is not, of course, a convenient or easy issue for governments to see through parliaments. Public opinion, voter opinion, lags behind. In countries which have achieved a complete ban, the legislation has been passed well ahead of public opinion, with governments correctly fulfilling their human rights obligations and also listening to majority professional advice on the dangers of corporal punishment.

So – finally, what is needed to speed universal acceptance of children’s equal right to protection, to achieve universal prohibition and elimination?

First – more visibility of the reality of the daily assault on children. Once visible, it is unacceptable. For example, almost 40 states still authorise their courts to sentence children to whipping or flogging. More than 90 still authorise caning or belting of children in schools (in several states recently, students have used mobile phone cameras to make visible the reality of teacher violence within otherwise “private” classrooms). It is only through interview research, in conditions of confidentiality and trust, with children (and with parents to capture the experience of babies and very young children) that the true level of violence against them can be revealed. Statistics of reporting of violence, investigations and prosecution of perpetrators may be useful, but tell us nothing whatsoever about the real level of violence.

There is a great deal of research, of varying quality, much of it from the US and the UK, into the harmful effects of corporal punishment – identifying it as a significant factor in the development of violent attitudes and actions in childhood and adult life, its links with low self-esteem, depression, delinquency and all the things we do not want for our children. But I am not sure how valuable this research is, because it misses the point and is in a sense disrespectful to children. Women would find it insulting these days if we looked for evidence of the ill-effects of male violence to justify prohibiting it: there is an immediate human rights imperative to prohibit and eliminate all such violence.

The growing inter-faith movement supporting prohibition and elimination needs to strengthen itself to actively combat all religion-based justifications of violent or humiliating punishment of children.

Where states refuse to recognise their human rights obligations to reform the law, legal advocacy is needed, seeking to enforce children’s right to protection, asserting the Convention on the Rights of the Child as the legal instrument which it is, and using either national courts or, where there is no effective national remedy, international or regional human rights mechanisms.

We have to point to the absurdity of states pretending that they have effective child protection systems while their law simultaneously authorises direct violence against children. Ending all legalised violence is the only safe foundation for child protection.

The world is moving inevitably towards respecting children's equal right to protection. But from a children's perspective, it is taking an awfully long time. As Korczak wrote in *How to Love a Child*:

A hundred children – a hundred individuals who are people – not people-to-be, not people of tomorrow, but people now – right now – today.

It is not complicated, and every adult owes it to children to work urgently – individually and collectively – to end legalised violence and assert and practise full respect for the child's human dignity.



Children and prisons: what can we do better?

Maud de Boer-Buquicchio

I accepted with a feeling of honour and humility the invitation to give a Korczak lecture on children and their relation with prisons in Europe. With a feeling of honour, because the life and work of Janusz Korczak, a man who has done so much “for and with” children, call for deep respect. With humility, because I cannot compare my, our, innovative work with that of a man who, through the ultimate sacrifice, that of his life, proved that his words for and with children were true.

In this presentation I should like to discuss how the best interests of the child – or to put it in Korczak’s terms, the child’s right to respect – can be upheld in a prison environment. In reflecting on this lecture I was inspired by a true story, which I believe is symptomatic of the issues we need to address. Obviously, I will not mention real names, nor a specific prison, but I believe this story could serve as inspiration for our action in relation to children who enter into contact with a prison environment, in one way or another.

I don’t know what your vision of a prison – any prison – is. For my part, a prison is not a place where we detain people rejected by society for the purpose of retribution or retaliation. For me it should be a place where people who have broken the law are assisted in a process of re-socialisation and of prevention of reoffending. If this is true for adults, it is even more so for children. If children are our future, they are first and foremost entitled to have a future.

During a visit I met Benjamin, a minor, an adolescent, who was imprisoned at the age of 14 after a series of convictions for petty criminal offences. Because of his turbulent behaviour, he was transferred as a disciplinary measure from one place of detention to another, back and forth. When Benjamin arrived at the detention facility, he was clearly stigmatised, by prison staff and fellow detainees alike, as being a “hot potato”. He was detained in a cell with another young offender; the difference between them was that his cellmate was in contact with his family, which was not the case for Benjamin. He was wearing a bandage around his arm and I was told that he had tried to slit his wrists the day before. I asked him whether he received visits. His answer was “no” and he looked down. It was clear that he felt desperately alone and abandoned, even by his family. I left him after some encouraging words: I talked about the need to get training, to continue his education and to prepare for an active role in society. But I was uneasy and uncomfortable, faced with a young man who was deeply depressed. A few months later, I read in the media about the death of a young man in the same prison establishment. I enquired: it was Benjamin.

Maud de Boer-Buquicchio is Deputy Secretary General of the Council of Europe. The lecture was given during the 29th Conference of the Council of Europe Ministers of Justice “Breaking the silence – United against domestic violence” organised jointly by the Council of Europe and the Norwegian Government in Tromsø on 18 June 2009.

● Juvenile offenders

Young men like Benjamin are called in legal terms “juvenile offenders”.

Despite the obligation to ensure that detention of children is used only as a measure of last resort and for the shortest appropriate period of time laid down in Article 37 of the UN Convention on the Rights of the Child, the UN Study on Violence against Children estimates that over 1 million children are deprived of their liberty around the world. Most of these children are charged with minor or petty crimes (truancy, vagrancy or homelessness), and are first-time offenders. Many children in detention have not been convicted, but are awaiting trial. Children in detention are frequently subjected to violence by staff, including as a form of control or punishment, often for minor disciplinary offences. In at least 77 countries around the world corporal and other violent punishments are accepted as lawful disciplinary measures in penal institutions.

The protracted duration of detention on remand should be a serious cause for concern. To quote a little boy cited in the UN Study, “Sometimes one day in prison felt like a year. But after 10 days you get used to it and you don’t cry as much”.

The European Court of Human Rights has repeatedly found breaches of the Convention in cases concerning the detention of children.

In the case of *D. G. v Ireland* of 16 May 2002 the detention of the applicant, for over a month, in a prison without having been charged or convicted was found to be in violation of Article 5(1) of the European Convention on Human Rights (ECHR).

In the case of *Selçuk v Turkey* of 10 January 2006, the duration of the detention on remand for almost four months of a 16-year-old child in Turkey was found to have exceeded the “reasonable time” requirement, in breach of Article 5(3) of the ECHR.

More recently, the detention of a minor was the subject of another judgment (*Güveç v Turkey*, judgment of 20 January 2009). Only 15 years old when he was arrested, the applicant had spent the next five years of his life together with adult prisoners. For the first six-and-a-half months of that period he had had no access to legal advice; nor had he had adequate legal representation until some five months after he had first been detained. Those circumstances, coupled with the fact that for a period of 18 months he had been tried for an offence carrying the death penalty, could not but create a situation of total uncertainty for him.

The Court considered that those aspects of the applicant’s detention had undoubtedly caused his psychological problems which, in turn, had tragically led to his repeated attempts to take his own life. What was more, the national authorities had not only been directly responsible for the applicant’s problems, but had also manifestly failed to provide adequate medical care for him.

Consequently, given the applicant’s age, the length of his detention in prison together with adults, the failure of the authorities to provide adequate medical care

for his psychological problems, and finally, the failure to take steps to prevent his repeated suicide attempts, the Court was in no doubt that the applicant had been subjected to inhuman and degrading treatment, in breach of Article 3.

To sum up, the Court's position, reiterated in these and other cases, is that pre-trial detention of minors should be used only as a measure of last resort; it should be as short as possible and, where detention is inevitable, minors should be kept apart from adults.

Standards were also adopted by the Committee of Ministers of the Council of Europe. The European Rules for juvenile offenders subject to sanctions or measures⁹ extensively deals with this question.

One should never forget that a child's perception of the world is different from that of an adult and that a child's personality is a book which is still being written. Therefore concerns regarding how best to teach a young offender to develop educational, emotional and social skills which save him or her from a path of crime should be of primary concern, rather than punishment and retribution. I wonder whether Benjamin had this opportunity.

Deprivation of liberty is very destructive for a child of any age and should be a rare exception provided only for older juveniles who are persistent and serious offenders and who cannot be dealt with by other measures. Even so, they should be detained separately from adults in institutions which are specifically designed for them and should be taken care of only by staff specifically selected, recruited and trained to work with them. Interventions should be exclusively of an educational nature and treatment should come before everything else. Benjamin was detained in a prison for adults.

Staff should have personal and professional qualities which enable them to be a positive role model for the juveniles for whom they are responsible. They should remain the same throughout the whole period in order to entertain stable and secure relations with the juvenile, thereby enabling self-confidence to be built and reaching long-lasting positive change in a juvenile's life. I wonder whether Benjamin received such care.

Unfortunately, nowadays, despite the agreed standards of the Council of Europe, many children in Europe are still imprisoned.

It is my strong conviction that children have no place in prison. Children do not have the necessary maturity to face the harshness of detention and to grasp the sense of it. Their adolescence and fragility prevent them from understanding why they are in prison and what they are supposed to learn from it.

When they break the law, they should be helped, not punished; we should show them forgiveness, not revenge; we should educate them, not park them; we should

9. Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures, 5 November 2008.

help them to think about what they have done, to avoid it happening again; we should not stigmatise, but take time to explain what they have done wrong; links with the child's family should not be severed, and we should help both the child and his or her family to grow up. In short, we should provide a life project for and with them.

I strongly believe, like Janusz Korczak, that children must be able to know and learn about their rights and obligations, they must be corrected when they err, but in an atmosphere of understanding and forgiveness, based on the individual child's right to respect.

Such respect will lead to self-respect and that is what many of these children totally lack. I would have liked Benjamin to have read this extract from a well-known poem, which reads: "You are a child of the universe no less than the trees and the stars, you have a right to be here."

● **Children whose parents are in prison**

We also need to consider the impact of a prison-like environment on young, innocent children whose parents are detained.

It is a fact that most women in prison are mothers and usually in sole charge of their children. Inevitably, the prison sentence which the mother serves affects the children and other members of the family disproportionately, especially where the mother is the sole care-giver.

The first question which arises is whether women should give birth to a child in prison at all and, if so, for how long should the mother and her child be allowed to stay together?

The Council of Europe's European Prison Rules offer useful guidelines in this respect.¹⁰ They provide that women shall be allowed to give birth outside prison, but where a child is born in prison the authorities shall provide all necessary support and facilities. Infants may stay in prison with a parent only when it is in the best interests of the infants concerned, and they shall not be treated as prisoners.

Where such infants are allowed to stay in prison with a parent, special provisions shall be made for a nursery, staffed by qualified persons, where the infants shall be placed when the parent is involved in activities during which the infant cannot be present. Special accommodation shall be set aside to protect the welfare of such infants.

The second question which arises is what arrangements need to be made for children to visit their parents in prison to maintain family ties?

10. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, 11 January 2006.

If a father is incarcerated, the child in many cases visits him together with his or her mother or another family member, or writes letters, and some, albeit limited, contact is preserved. Very often, though, if a mother is incarcerated, the reality is that her husband or partner abandons her, she receives virtually no visits and her child is taken away. This is very destructive for a child's life, as it is for the mother.

Like the Parliamentary Assembly in its resolution on women in prison,¹¹ I believe that mothers need to be able to maintain their role as parents; this must include full parental control and full access to information about the welfare of their children.

I would like to refer here to Article 17 of the European Social Charter of 1961, which regulates the right of mothers and children to social and economic protection, and a number of conclusions of the European Committee on Social Rights concerning the length of pre-trial detention, prison conditions, and the detention of adults and children in the same place.

The impact of parental imprisonment on children can stretch far beyond the time of imprisonment and the immediate post-imprisonment period. Research has repeatedly highlighted the fact that many young prisoners have parents who have committed a criminal offence: a UK study¹² following boys for a period of 40 years found that those who were affected by parental imprisonment as children were more likely than other boys to display anti-social behaviour in later life. The imprisonment of a parent was found to be an accurate predictor of future criminal behaviour in the children, regardless of the length of sentence imposed.

The case of Benjamin was no different – Benjamin too visited his parents in prison before becoming an offender himself.

It is my view that prisons are not designed for pregnant women or women with infant children.

We must always remember that children of prisoners are innocent in the true sense of the word, and they need and are entitled to our care and our attention, as well as that of their mother.

Responses to offending behaviours should integrate children's rights and include training for prison staff who are in contact with children of prisoners, an approach to sentencing that takes account of their impact on children, the promotion of community alternatives for mothers, the strengthening of the legal entitlement to visits, and measures to encourage contact between parents in prison and children.

On the issue of contact, we still have member states which do not allow children to hug their parent in prison!

11. Resolution 1663 (2009) on women in prison, 28 April 2009.

12. Joseph Murray and David P. Farrington, "Parental imprisonment: effects on boys' antisocial behaviour and delinquency through the life-course", *Journal of Child Psychology and Psychiatry*, Vol. 46, No. 12 (2005), pp. 6-7.

● Child-friendly justice

Whether children are juvenile offenders or enter into contact with the prison system “through” their contacts with their parents, it is essential that justice systems are child-friendly, starting of course with access to justice.

Access to justice is a fundamental right that every human being should enjoy. However, in practice, access to justice for vulnerable groups is often impeded. This is particularly true in the case of children. Either because justice does not provide for their information, representation and participation in justice at all, or because it does not allow for it in an appropriate manner, designed to meet the specific needs of children. Yet, an inappropriate access to justice is an access denied.

Children still face a number of specific disadvantages in their contact with the justice system, be it as victims, witnesses or perpetrators of crime. Although better understanding of children has led to improvements in laws and courts, prevention, treatment and services, there is a clear need to develop justice systems in our member states which better reflect children's needs, but above all their rights. The issue of the age of criminal responsibility of children is still an open and difficult question for member states, with figures which vary considerably from one country to another.

In my view, the starting point for any reflection on child-friendly justice is certainly the Bulger case. The story of this case is indeed extremely sad. On 12 February 1993, when they were 10 years old, T. and V. had played truant from school and abducted a 2-year-old boy, James Bulger, from a shopping precinct, taken him on a journey of over two miles and then battered him to death and left him on a railway line to be run over. The proceedings which followed against the two offenders gave rise to a judgment of the European Court of Human Rights which was publicly much debated.

In respect of the right to a fair trial enshrined in Article 6 of the ECHR, the Court clearly stated that “in respect of a young child charged with a grave offence attracting high levels of media and public interest, it would be necessary to conduct the hearing in such a way as to reduce as far as possible his or her feelings of intimidation and inhibition”. The Court also noted that:

although the applicant's legal representatives were seated ... “within whispering distance”, it is highly unlikely that the applicant would have felt sufficiently uninhibited, in the tense courtroom and under public scrutiny, to have consulted with them during the trial or, indeed, that, given his immaturity and his disturbed emotional state, he would have been capable outside the courtroom of co-operating with his lawyers and giving them information for the purposes of his defence.

The Court found accordingly a violation of Article 6.¹³

13. Cases of *V. v United Kingdom* and *T. v United Kingdom* of 16 December 1999.

At the 28th Conference of the European Ministers of Justice, which took place in Lanzarote in October 2007, ministers adopted a resolution on child-friendly justice which stated that there was “a need to provide and facilitate children’s access to effective remedies, to mediation and to court proceedings, in order for their rights to be fully respected and promoted”.¹⁴

First and foremost, it is essential to examine the role children have before, during and after judicial proceedings including in the context of a mediation process.

Moreover, any guidelines should ensure that the judicial proceedings themselves do not contribute either to the re-victimisation of children who were victims or witnesses of crime, or to the stigmatisation and labelling of children who have committed criminal offences.

The European Guidelines on child-friendly justice, which our ministers asked us to draft, are ranked as a core pillar of the Council of Europe’s strategy “Building a Europe for and with children” for 2009-2011.

If we have truly child-friendly justice systems, we may be able to prevent children like Benjamin from taking their own lives.

I would like justice to be administered for children, and not only on them. I have witnessed too often in my career adults talking about children’s rights, but really meaning their own rights over children. This is the wrong approach. Children have their own rights; these are the rights of children, not of adults over them.

I would like to conclude by quoting Janusz Korczak: “Know yourself before you attempt to get to know children. Become aware of what you yourself are capable of before you attempt to outline the rights and responsibilities of children. First and foremost you must realise that you, too, are a child, whom you must first get to know.”

Again, it all boils down to a matter of respect for children’s rights and to their right to respect.

I urge all of you to recognise the fact that children, as vulnerable human beings, deserve more, not less, protection. Any contact of children with prisons, or with the justice system as a whole, must therefore be undertaken with this fundamental principle in mind.

Our children’s future is in our hands and without them there is no future.

14. 28th Conference of the European Ministers of Justice, Resolution No. 2 on child-friendly justice, 26 October 2007, MJU-28 (2007) Resolution 2E.



Children in out-of-home care: more prevention, fewer institutions

Marina Gordeeva

The whole question of care for orphans is directly linked to the life and work of Janusz Korczak. He lost his father in his teens and to a large extent that emotional upheaval determined his way in life as he became the sole breadwinner for his mother and sister. He knew very well what it meant to grow up without a father. It may indeed have been because of his difficult personal experience that he became a director of *Dom Sierot*, the orphanage where he tried to create a family atmosphere of safety, trust and psychological comfort.

Janusz Korczak worked as the Director of *Dom Sierot* for 30 years. The orphanage housed children who had experienced severe hardship. Most of them had lost their parents; they begged and stole. However, Korczak treated them all with understanding and respect. He never sermonised or preached, but enabled children to develop in accordance with the universal concepts of good, honour and justice. Working with orphans led him to develop his fundamental principles for relationships with children and his system of child raising.

The child's right to live and grow up in a family environment is set forth in a major international instrument, the Convention on the Rights of the Child adopted by the UN General Assembly in 1989. The Convention was ratified by the USSR Supreme Soviet and came into force for that country in September 1990.

The Convention laid down new principles for relations between children and adults making children's best interests a primary consideration. It is based on the belief that children should be taken seriously, that their dignity should be respected and their views in all matters affecting them should be given due consideration. In many ways, the provisions of the Convention have much in common with Korczak's educational principles set out in his books *The Child's Right to Respect*, *How to Love a Child* and others.

One of the basic principles of the Convention is the recognition of the child's right to live in a family environment and the family's responsibility for the upbringing of children. The preamble emphasises that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding".

Article 7 states that the child "shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents".

Marina Gordeeva is Chief of the Board of the Russian Children in Need Fund. The lecture was given in the framework of a conference jointly organised by UNICEF and the Moscow State University on "The implementation of the UN Convention on the Rights of the Child in the Russian Federation: modern challenges and innovative approaches", in Moscow on 24 April 2009.

Article 9 provides that the state shall ensure that “a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child”.

Where, for a given reason, such separation has taken place, the state shall respect the right of the child “to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests”.

The Convention provisions on the family’s essential role in the development of a child have become axiomatic. Russian legislation on the child’s family and legal status is in compliance with such provisions.

The Constitution of the Russian Federation proclaims that “The basic rights and freedoms of man and the citizen shall be inalienable and shall belong to everyone from birth” and guarantees that “Motherhood, childhood and the family shall be protected by the State”. The family’s value and role in the development and upbringing of children are confirmed in Articles 7 and 8.1.

Based on the priority significance of a family for a child, the Family Code of the Russian Federation not only determines the legal basis for family/parental relations but also provides for possible forms of family-based care if a child is deprived of his or her biological family.

Unfortunately, the problem of children being placed in orphanages cannot be resolved in full. There are orphans in every country throughout the world. The main questions are why this is so, how many there are and how children in such situations can be helped.

Children placed in orphanages are a topical issue in Russia. At present, more than 150 000 children there live in residential institutions for orphans and children without parental care. The majority (about 80%) are social orphans: children whose parents have been deprived of their parental rights because of a failure to discharge their parental duties. Many children are placed in infant homes immediately after birth, after a mother has relinquished a new-born child, because the child is sick, because of financial difficulties or out of a mere unwillingness to care for the child.

For a long time residential care was considered the best and most natural form of state care for orphans in Russia. In the mid 1930s it was decided that every parentless child or child abandoned by his or her parents, irrespective of his or her will and consent, should be placed in a special residential institution. In the context of the 1930s such practices did not appear so undesirable. In residential institutions, large numbers of homeless children were provided with proper care and given general education and vocational training. The living conditions in these institutions were mostly spartan, and measures to improve child care focused on improving material support for children’s homes and boarding schools. Other forms of care for orphans and children without parental care were not discussed.

In the context of changed economic and social conditions, however, increasingly, the institutional care system has shown itself to be ineffective. Those leaving institutional care are much less prepared for choosing an occupation or coping with the challenges of an independent adult life than their peers. Practice shows that only one in 10 of those who leave institutional care finds a respectable place in society. Moreover, the overall humanisation of social processes also calls for a review of approaches to child care.

In recent years, the President and Government of the Russian Federation have repeatedly addressed the problem of the high number of children deprived of family-based care. In 2006, the then President, Vladimir Putin, in his Message to the Federal Assembly of the Russian Federation, asked the government and the regions to develop a means of reducing the total number of social orphans and considerably reduce the number of children in institutional care. The problem of child placement in orphanages thus became a top priority.

Currently, the focus is on the following basic approaches to reducing the number of children placed in orphanages:

- preservation of the biological family for a child, prevention of child abandonment and relinquishment;
- introduction of new social approaches primarily aimed at family crisis prevention;
- placement of children without parental care in substitute care (foster or guardianship care) and professional case-management to provide assistance and prevent conflicts.

The placement of children in orphanages for social reasons has its roots in the family. The modern family is in crisis: traditional family ties between generations are disrupted, the number of divorces is growing, the level of material support for families with children is decreasing, many parents lead asocial lives and abdicate their parental duties.

Korczak urged us to remember that not all children – indeed far from it – live in a world of fun and happy dreams, that there are “many children who face the harsh and unvarnished truth of the world from their early years”. Therefore, if such placement in orphanages for social reasons is to be prevented, the relevant work should begin in the family, and we should use our best efforts to preserve the family environment for the child and maintain favourable conditions for family care.

Practice shows that timely interventions in cases of emerging social vulnerability have positive implications for changing the family situation and make it possible to reduce the number of children deprived of parental care. Consequently, the focus is now on preventive work with families, to help avoid family crises and provide support for families in overcoming anticipated problems.

This work will be undertaken by family and child social service providers. At present, there are over 3000 such service providers: social support centres for

families and children, social rehabilitation centres for minors, social shelters, rehabilitation centres for children with disabilities and others. In 2008, about 12 000 000 people, half of them minors, were provided with family and child social support services.

Many children have orphan status because their parents are deprived of parental rights. Responsible parenthood is one of the key goals of work carried out with families.

“Parental rights cannot be exercised contrary to the interests of the child. The child's best interests shall be the primary concern of his or her parents. In exercising their parental rights, parents shall not harm their children's physical and mental health, or moral development. In bringing up their children, parents must not employ methods entailing negligent, cruel and degrading treatment, abuse or exploitation”. This is how Article 65 of the Family Code of the Russian Federation defines the exercise of parental rights; violation of these provisions leads to the withdrawal of parental rights.

What is understood as “contrary to the interests of the child”? First of all, parents' inability or unwillingness to satisfy the natural needs of their children, a failure to raise them in compliance with moral and legal norms, neglect or negative influences arising from their asocial way of life.

Parental rights may be withdrawn only by a court decision. This measure is widely applied. In 2007, more than 70 000 children were removed from their parents in this way. There are more and more such decisions each year, but does this have positive results? Is the application of this measure always advisable, and can anything be done to reduce the number of children without parental care?

A life-threatening situation does not emerge overnight. Often, things reach a crisis point over a period of time. In order to reduce the number of cases where parental rights have been withdrawn and so avoid an increase in the number of social orphans, it is essential that preventive action be taken at an early stage.

Social services for families should involve parents in comprehensive support programmes to prevent the situation from reaching a crisis point and maintain family relations. In 2007, there were 274 800 families at risk with 489 500 children who were registered with the social protection agencies.

The withdrawal of parental rights should be used only as a last resort, where there is direct evidence of persistent unwillingness to exercise parental rights and duties and where intensive preventive work with the “dysfunctional” families or poor parent has had no effect.

What are the implications of such a decision for parents and children? Pursuant to Article 71 of the Family Code of the Russian Federation, parents lose all their rights deriving from their relationship to the child. Some “poor parents” consider the removal of responsibility for bringing up their child as a blessing. For a child, however, losing one's parents is the source of particular stress, as it demands a capacity for independence.

Accordingly, the withdrawal of parental rights should be an exceptional measure of punishment for negligent parents who systematically and deliberately fail to discharge their parental duties.

Nevertheless, if this measure is applied, the best solution is to find a new family for the child. Today, placing orphans with a family is a preferred alternative to institutional care. More than two thirds of orphans and children without parental care live with new families. This approach is now being increasingly adopted. Forms of family placement, such as guardianship and foster care, and – at regional level – long-term, permanent foster care (“patronage”) are developing alongside adoption, and various factors are taken into account in order to select the best form of placement for the child.

One of the priorities in protecting a child’s right to live and grow up in a family is the reduction of the number of children in residential institutions and of the number of such institutions. Creating the conditions for child care outside residential institutions is called deinstitutionalisation. This is a process requiring carefully considered and systematic steps and should be backed up by increased opportunities for family placement, support services for substitute families, preventive work with socially vulnerable families and other forms of social support for families with children. Deinstitutionalisation processes should be implemented step by step, with the priority being given to ensuring that the necessary conditions are in place. The child’s best interests should be the primary consideration. The main aim should not be closure of residential institutions but rather the successful family placement of children.

Today, the state is aware of what is required to bring about a reduction in the number of orphans and children in institutional care. Nonetheless, the total number of orphans and children without parental care remains unchanged at about 700 000.

One of the primary weaknesses is the lack of inter-agency action and co-ordination, and shortcomings in managerial decision making. Russia, like other European countries, is a federated state with the regions having considerable delegated authority regarding work with families and the family placement of children. Comprehensive measures covering all components of the system are best ensured at regional level. Regions are better placed to acquire and build on innovative experience.

The Russian Children in Need Fund was set up in March 2008 to look for new ways to manage the process and encourage the necessary changes at regional level, including changes regarding the family placement of orphans.

This has been the first step taken by the public authorities. The Fund’s activities are financed out of the federal budget, the budgets of the constituent entities of the Russian Federation and charity donations.

Its priorities are the prevention of family crises and child abandonment, the restoration of a child-friendly family environment and the family placement of orphans and children without parental care.

Further action needs to be taken in other areas, such as reducing the number of cases where mothers hand over their new-born babies in maternity wards, the early prevention of child abandonment and the rehabilitation of families at social risk, reduction in the number of cases of withdrawal of parental rights and the development of responsible parenthood, the training of potential foster parents and professional support for substitute families.

In addition, an emphasis is placed on support for families who have children with disabilities to ensure the best possible development of such children in a family environment, and the social rehabilitation of children who have committed a crime.

Naturally, it is difficult to address all the social development issues relating to the support and protection of children in need, especially those situations which are specific to a particular region. Regions should establish similar funds that could address more specific issues which are, nevertheless, vital for the local population and families with children. For example, there is a need to provide support for leisure activities for adolescents in order to divert them away from anti-social behaviour and encourage their personal development; this would help solve the problem of neglect. Experience has shown that often such measures require minimal financial resources to produce a significant result.

The Children in Need Fund began its work at a difficult time, given the context of the current crisis. Its goal and objectives are aimed at supporting families and children and as such make it an effective anti-crisis instrument. In our opinion, the present situation makes the activities of the fund ever more meaningful.

In conclusion, I would like once again to quote Janusz Korczak:

Children account for a large percentage of mankind, population, nation, people, fellow citizens – they are our faithful friends. Are, were and will be.

We, adults, have a moral and legal responsibility for children and, such being the case, we should do our best so that these small citizens can feel themselves fully fledged individuals in the world of adults. This is my understanding of Korczak's well-known maxim: "There are no children, just human beings." In building our world, however, we should always remember that it is not the wishes of adults but the best interests of children that should be the primary consideration. If we are to make fewer mistakes on this path, we should learn to listen to and hear children, and to understand and respect them as did Janusz Korczak.



Children have the right to be heard and adults should listen to their views

Thomas Hammarberg

Henryk Goldszmit, who used the pen name Janusz Korczak, is the father of the very idea that children also have rights – human rights. His thinking had a profound impact on the drafting of the UN Convention on the Rights of the Child. Some of us who took part in the 10-year-long work to formulate this treaty were inspired by his vision of the child as an individual subject – not merely an object belonging to adults.

It had been said about Korczak – when anti-Semitism had forced his dismissal as “Radio Doctor” some years before the Second World War – that he had a rare ability to talk to children as if they were adults and with adults as if they were children. He understood both and, therefore, acted as an interpreter between the two – and gave priority to the young generation.

His message was primarily about respect for children, respect for their inherent value as human beings but also for their capacity and competence. This trust also characterised the daily life in this home for children and, during his last years, in the orphanage inside the Warsaw Ghetto.

In the midst of the horrible brutality outside, those who lived in the orphanage developed a small democracy. All children had a say in the running of the home, they all had responsibilities and duties and monitored their own work and progress. Staff and children were all members of an assembly for important decisions. They had agreed upon a constitution with rules of behaviour and a court was established to deal with offenders (in most cases the “sentence” was to apologise). There was a billboard for messages and a newspaper for news and discussion.

This experiment of child democracy depended much on the spirit of Korczak and the other adult staff. It all came to a terrible end on 6 August 1942 when German Nazi soldiers marched them all, including the 192 children, to the *Umschlagsplatz* to be put on the train to the gas chamber in Treblinka.

Korczak’s example and writings have not been forgotten. His books are still reprinted in many different languages and still influence many. For example, I recently came across a new English edition of *King Matt the First*. This book, written in 1923, about the boy king’s attempted child revolution has been read by many children and adults, even outside Poland.

The book about Matt came at the same time as the League of Nations was preparing a declaration on the rights of the child. The final text of this statement was not to Korczak’s liking. He found it patronising and lacking in understanding of the real

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situation of children. He argued for a clear distinction between charity based on feelings of pity, and the acceptance of children as rights holders.

One could see a thread from Matt's decision to create a child parliament in his kingdom to the democratic relations in the Ghetto orphanage. Though Matt failed – mainly because of adult treason – his intentions and instincts were sound. However, rights and democracy for children requires attitude changes among adults. This, I believe, is one of Korczak's main messages.

Even today, many of his ideas are seen as either unrealistic or something for the future. However, there is a new trend, an increasing awareness, of the individual rights of children, based on the understanding that each child is unique and has an inherent value as a human being.

● **The Convention on the Rights of the Child**

This awareness is articulated in the 1989 UN Convention on the Rights of the Child, which is the first international treaty to recognise the civil and political rights of children. It entitles children to be heard and their views to be taken seriously. Article 12.1 legitimises children's participation in decision making:

States Parties shall 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, the views of the child being given due weight in accordance with the age and maturity of the child.

The reference to the capability of the child to form opinions should be read in context. Indeed, all human beings have views and can express them from birth. Even infants and toddlers are “experts” on their own feelings, likes and dislikes, and can make these known. The problem is whether parents, teachers, nurses and other adults are capable of listening, understanding and transmitting these views.

Article 12 is probably the least implemented aspect of the whole Convention. It seems not to be fully understood that this Article puts an obligation on governments to ensure that children's views are sought and considered on all matters that affect their lives.

The child's ability to form and express an opinion is also dependent on the fulfilment of several other rights in the Convention, such as the right to education and the right to participate freely in cultural life. Also highly relevant are the freedoms of expression, thought, conscience, religion and association as well as the right to privacy.

The UN Committee on the Rights of the Child – the body which monitors the implementation of the Convention – has designated Article 12 as one of the “general principles” of the Convention, which means that it should guide the interpretation of the other articles and be of relevance to all aspects of the implementation of the Convention.

Of particular importance is the child's right to protection from all forms of abuse and violence. Korczak of course opposed corporal punishment. Children need safe

environments where they can feel free to speak without the risk of being shamed or punished for their views.

● Families

One such environment should be the family. Decision making patterns in a family do not just have an immediate impact in terms of the decisions taken but also affect children's understanding of how to listen to others and how to solve conflicts of interest.

In the past, children, especially small children and girls in most cultures, have had a very limited say on any matter within the family. Adults made important decisions on matters of vital and direct concern to children, relating for example to education and future employment, without making these decisions transparent.

Children may nowadays have more opportunities to make their own decisions, but they may also be left without adult guidance and support. Increasingly, family members are separated throughout the day, living "parallel" lives at worksites, day-care centres and schools.

In other circumstances, children will spend most of their day in adult-organised activities, leaving less time than before for self-regulated play or activities where they are free to make their own decisions.

Surveys in several countries indicate that most first-time voters cast their ballots as their parents do, suggesting that children's political views are formed at home or that political positions are understood as a family matter. Children may be introduced to national or local politics by listening to adult conversations at home – but it is unlikely that they will be encouraged to take an active part in these. Where both parents are working, a multitude of sources, not the least the media, may increasingly influence children's views.

● Schools

The Committee on the Rights of the Child has formulated a General Comment on "The Aims of Education" in which it states that "the participation of children in school life, the creation of school communities and student councils, peer education and peer counselling, and the involvement of children in school disciplinary proceedings should be promoted as part of the process of learning and experiencing the realization of rights".

In order to develop informed and independent views, children need to have access to extensive information from multiple sources, as well as to be trained in reasoning skills and critical analysis. Participatory and interactive learning methods are thus the key not only to better educational results but also to dialogue, the sharing of views and critical thinking. To learn to solve problems and address conflicts of interest, children have to practise listening, weighing of arguments and balancing of competing interests.

"School democracy" in the form of student councils or student–teacher conferences do exist in a number of countries, but the scope of such involvement

is traditionally limited to extracurricular activities, recreation and maintenance of school premises. Few schools encourage students to express their views – let alone influence curriculums, lesson planning or disciplinary policies. Agreed and transparent mechanisms to handle students' complaints seldom exist.

Schools, in particular public schools, have traditionally been the primary instrument of the state for formal political socialisation. Highly patriotic messages and uncritical respect for the nation and its ruling institutions have tended to be common features of “civic education” and similar courses, especially in authoritarian regimes. In an increasingly complex and interdependent world, democratic nations require citizens with a broad knowledge base, critical attitudes and good reasoning skills. Schools that are more “participatory”, that rely to a greater extent on interactive learning methods, are more likely than the traditional educational models to contribute to these types of “modern” citizens.

● **Media**

In the spirit of Korczak, the Convention emphasises that children have a right to adequate information appropriate to their age. Just like other citizens, they have the right to be informed about their situations, options and the consequences of their actions. Media play an essential role in this respect.

Mass media could do more in this field. A minimum is that they avoid stereotyping children and adolescents in ways that promote prejudices about their views and behaviours, whether for commercial or other reasons.

Programmes to improve children's access to relevant information should be designed and adjusted for different age groups. In spite of their obligations in this area, few governments have taken public media services for children seriously. Few, if any, have made an effort to involve children in the planning or production of media programmes.

The media also have a key role in making children's views known to the public at large. Trained journalists are needed who are sensitive to the daily lives and special needs of children, including children at serious risk of exploitation and abuse. Having children take part in opinion polls and news commentaries is another way the media can make the voices of children heard.

The media have in some cases tried to involve children, for example, through a special page in newspapers or through occasional special television or radio programmes. Children's magazines have also played a role. The more children themselves have been able to influence such media, the more successful these experiments have tended to be. Child journalists have been effective as reporters and interviewers, helping to make children's views known.

Modern communications technologies, in particular the Internet, offer opportunities for children to share their views on an unprecedented scale and to organise common platforms for influencing politics and public affairs outside the established channels.

These developments, however, have also brought an increased risk of widening even further the gaps between included and excluded children. Nonetheless, partly due to the relatively low cost of some computer-based communications, especially if developed on a community or school-related basis, the Internet deserves careful attention as an instrument for enhancing children's participation and their rights to have a voice in modern society.

● Non-governmental organisations

Some of the more active movements of young people, especially students, have developed in opposition to established institutions and political parties. Many youth groups campaign for reforms within a single field, such as environment, peace or anti-racism, instead of taking part in traditional party politics. It is not unusual that young people take to the streets to express their views, sometimes in unconventional, provocative or at times even violent ways.

Genuine children's organisations with a mission to defend children's interests and rights are emerging in all regions. They are organised in varying ways, as pressure groups or independent consultative associations. Children's clubs in Nepal represent an interesting model. These clubs for 8- to 16-year-olds seek to develop organisational skills and provide training in joint decision making. Children take part in community forest or sanitation projects and, more broadly, learn to defend their right to express themselves and to be protected from abuse.

In the United Kingdom, children have established their own organisation for promoting their rights, called Article 12 (after the article of the Convention). Members learn to speak out on issues that concern them at home, at school and in the local community. Interestingly enough, several examples of such organisations can be found among working children in developing countries. The time has come for a comparative analysis of the impact of these initiatives.

Children's organisations of this kind have a potentially important role to play in collecting and voicing the views of children, especially those of poor or disadvantaged children. Most such groups do, however, need some support from adults since they may not have the authority or capacities, including financial, to organise meetings or demonstrations, maintain a bank account, publish or otherwise access the media. Adults also provide continuity and sustainability.

Many organisations set up by adults for other purposes – such as scouting, sports, leisure or religious activities – could also provide training in democratic practices and a forum for children to express their views. The scout movement, for example, has been strongly engaged in promoting children's rights. Although some organisations are guided by sound moral values and democratic codes, others (notably some fundamentalist religious sects) are highly authoritarian and appear to manipulate children in the most appalling manner.

Apart from organisations established by or together with children, there are of course many set up – at least partly – to serve children's interests. Social welfare organisations belong to this category, as do some trade unions and professional groups such as teachers' unions and associations of paediatricians. These

organisations do have a role to play in promoting children's participation in society and would be more effective if they were more receptive to children's views than they have traditionally been.

● **Political bodies**

During a "Day of General Discussion" in September 2006, the Committee on the Rights of the Child entered more decisively into the complicated area of children and political decision making. It recognised in its report that progress in this field implied long-term changes in political, social, institutional and cultural structures.

The Committee did not recommend a particular model for child participation in political decision making, but welcomed the step taken in numerous countries by the creation of child parliaments at national, regional and local levels. It stressed that such initiatives offered valuable insight into the democratic process and established links between children and decision makers.

However, it also pointed at the need for governments to establish clear guidelines on how the views presented by children in such forums should be taken into account by the formal political process and for a serious feedback on the proposals.

The Committee urged governments to move from an "events-based approach" of child participation to a systematic inclusion. Mechanisms to facilitate such participation should be institutionalised. For instance, government structures with key responsibility for the implementation of the rights of the child should establish direct contact with child and youth-led organisations. Generally, the work of non-governmental organisations to promote child participation ought to be supported.

Other proposals were that public officials dealing with child matters be provided with special training. Children's ombudsmen or commissioners should be resourced to involve children in their monitoring work.

In sum, the committee made clear that the state has a positive obligation to provide or facilitate meaningful forums where children could express their views, and to create consultative structures through which these views might be recorded and considered. This requirement is especially relevant for public authorities and services with a direct impact on children. It was left to governments to work out actual ways to apply the right of participation in national and local contexts. Alas, the discussion has to continue.

Children are not directly represented in official decision-making bodies. They are not allowed to vote and in many countries they are not allowed to become members of political parties or even join associations with political orientations until the age of majority (a limited few countries have set the age for voting right at 16 instead of the more common 18 years). Often they cannot organise meetings and have limited rights of assembly. Political parties often lack capacity or interest to consider children's views and enhance their influence in political affairs.

The pressure for genuine child participation in politics has not been strong. When children have been invited to take part in political manifestations they have all too

frequently been manipulated, their participation clearly designed in a token way. The assumption has been that parents and guardians represent their children in the political arena and in society in general.

However, this “representation” is not always or even generally adequate. For one thing, there may be conflicting interests between parents and children and among individual children in a family. Furthermore, family disintegration is a growing trend throughout several parts of the world; and partly as a consequence of this, parents are less familiar than in the past with the daily lives of their children. These developments increase the exclusion of a large portion of the population from any political influence.

In line with the emerging understanding of the rights of the child, political institutions ought to seek ways of consulting the views of children themselves. How can their voices be heard within the formal institutions of democracy?

● **Parliaments**

Parliament has a monitoring role and may require children’s views to be considered when bills and other proposals are being prepared. It could also ensure that when proposals are referred to relevant organisations for comments, children’s organisations are included. Individual parliamentarians could, of course, channel suggestions from children or children’s groups through resolutions or during parliamentary debate. To do so, they need to be willing to solicit ideas from young people.

Parliamentary cross-party lobby groups on children’s rights are active in some countries. They interact with voluntary children’s rights groups but have not as yet been able to develop proper mechanisms for consulting children. In some countries like Norway and South Africa, initiatives have been taken to introduce a discussion on the child dimension of the national budget.

This is clearly uncharted territory, not least in younger democracies whose parliaments are still evolving and frequently paralysed by a “majority-takes-all” complex. Long-standing democracies may have to take the lead in developing examples of meaningful mechanisms for consulting young people. Needless to say, every country has a very different political scenario and there can be no general blueprint.

● **Central governments**

Since central governments play a crucial role in the preparation of laws and policies and, later, in setting the rules and regulations for implementing these measures, including the mobilisation and distribution of resources, it is essential to create mechanisms that effectively take into account children’s voices. Their views should be reflected in data collection and relevant research. Analyses should be undertaken on the possible impact of major policy and budget proposals on children’s lives and could usefully include discussions with children themselves.

In many countries, inter-ministerial co-ordinating and monitoring bodies have been set up to consider children’s issues. Many of them have reporting to the

Committee on the Rights of the Child as a major task. Such bodies might be expected to play a greater role in encouraging national – but also provincial and local – authorities to consult with children and might also monitor these efforts. In most cases, these bodies need to be given more political clout and be active participants in the budget planning processes.

Although accountable in varying degrees to the parliament and the electorate, ministries and executive bodies are often more sensitive to influential pressure groups and the mass media than to the broader public. This is obvious in relation to children's issues. A popular way for children to enter into dialogue with representatives of the government is to take part in public hearings. Such events may trigger further action, but do not obviate the need for systematic consultative processes at the local level and should not be confused with these.

● **Local assemblies and executives**

Most decisions with a direct and tangible impact on children's lives are taken at local level. Examples include the planning and governing of local neighbourhoods, schools, sports and cultural facilities, water and sanitation and health services. In the last decade, moreover, there has been a strong trend in most countries towards decentralisation of central government responsibilities to district and community levels.

This trend, though raising many difficult issues, including the problem of equity, has opened up new opportunities for children to take part in and influence decision making in the public sector. Options are varied and may include dialoguing directly with children or indirectly through their representatives; obtaining the opinions of various children's groups or listening to individual voices; collecting children's views systematically or doing so on an ad hoc basis.

Several countries have undertaken experiments to enhance children's participation in local government affairs. In Sweden, the Children's Ombudsman has encouraged and closely monitored local government efforts to involve children. Many local governments in Sweden have shown interest in increasing children's participation and established youth councils or similar mechanisms, although still on a pilot basis.

Projects promoting children's participation in local politics are still unusual and ad hoc in character. Most of them are driven by NGOs or dependent on individual politicians. It will probably take considerable time before sufficient political will is generated and experience gained to take such pilot efforts to scale.

● **Conclusions**

Obviously, there is no clear vision of the content and implications of children's right to be heard and to participate in decision making. Therefore, as a very first step, goals and standards for the realisation of this right need to be spelled out in more concrete and substantive terms.

Implementing this right requires long and short-term objectives and strategies to address social attitudes and behaviours, and to develop viable models for children and adolescents to participate in political and societal decision making. Mechanisms need to be developed within political bodies that ensure systematic consultation with children and serious consideration of their views.

The objective should be to create a culture of greater receptivity to and respect for children's views. Unfortunately many adults seem to consider this prospect a threat. The issue of children's influence is seen as a "zero-sum game" – that is, a situation in which one side wins only if the other side loses. In other words, if children get more power, adults believe they will lose some of theirs and be less able to control the family, or uphold discipline in the classroom.

In some countries, adults have aggressively opposed children's participation in the name of parents' rights or religious principles. To change such entrenched patriarchal attitudes towards children may take some time.

How can this issue be raised in a meaningful way? How can it be shown that there is no contradiction between giving children the possibility of influencing their lives and society, on the one hand, and safeguarding the role of adults to care for, guide and protect children, on the other? How can it be made obvious that this is not a win-lose game, but that all sides stand to gain if adults learn to support children in the exercise of their rights?

Here are some suggested first steps:

1. Children's primary arena is the home. Raising awareness among parents and caretakers about a child's right to be heard, and helping them cope with their parenting roles in this respect, must be a priority.
2. The other key arena is the school and kindergarten. Interactive learning, relevant curriculums and democratic attitudes and procedures are essential contributions. Such measures should focus on strengthening children's ability to express themselves, to handle democratic processes and to understand society and its problems better. A huge task ahead is capacity building among teachers and school staff on how to listen to children, enhance dialogue and promote conflict resolution in a democratic manner.
3. Children's organisations advocating for the realisation of children's rights could be promoted, and other NGOs working with or for children, such as sports clubs or charity groups, could be encouraged to listen to children and respect their views.
4. Political parties should be encouraged to develop their capacity to consider children's views and enhance children's influence in political affairs.
5. Television, radio and the press should have "child-friendly" news presentations and make sure that children's views are presented on matters of special concern to them. Budgetary support could be considered for media productions by children and for Internet access and the construction of web pages on themes children themselves choose to highlight.

6. Steps should be taken to make the justice system child-friendly. The court procedures must be adjusted to meet the needs of children, be they perpetrators, victims or witnesses. Children should have an influence on administrative or judicial decisions relating to themselves, for instance on custody care and adoption.

7. Governments should define issues which have great impact on children's lives and on which they therefore ought to have a say, for instance family policies, the planning of community facilities, school policies, children's health care and recreation services. They should identify meaningful ways to take children's views into account and ensure that they are representative and relevant. Channels of expression should be explored which are adequate for different age groups, including young children – such as dialogues with pre-schoolers, school councils, opinion polls, representatives and other models. Special measures should be taken to enhance the voice of groups of children with disabilities or other disadvantaged groups and explore how to overcome possible constraints.

These steps would be in line with the vision of Janusz Korczak. Enabling children to express themselves and have their views heard and respected in the home, in the school and in the community from an early age will enhance their sense of belonging – and readiness to take responsibility.

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Janusz Korczak, whose original name was Henryk Goldszmit, is seen as the father of the idea that children also have rights – human rights. His thinking had a profound impact on the drafting of the United Nations Convention on the Rights of the Child and continues to influence the child-friendly programmes of the Council of Europe.

Korczak’s message was about respect for children, respect for their inherent value as human beings, but also for their capacity and competence. Though continuously practicing as a medical doctor and directing orphanages, he was also a writer. His essay “The Child’s Right to Respect”, in which he analyses the role of adults and the place of children in society, is published in this volume.

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“Janusz Korczak is an inspiration for all those dedicated to children’s rights. He devoted his life to the promotion of the rights of the child to participation and to protection from violence. His vision remains a foundation for our work, today and in the future.”
Marta Santos Pais, Special Representative of the UN Secretary-General on Violence Against Children



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