CHILD SAVING

> '' . . . [I]magine that you are charged with building the edifice of human destiny, the ultimate aim of which is to bring people happiness, to give them peace and contentment at last, but that in order to achieve this it is essential and unavoidable to torture just one little speck of creation, that same little child beating her chest with her little fists, and imagine that this edifice has to be erected on her unexpiated tears. Would you agree to be the architect under those conditions?''
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> *Brothers Karamazov*. Trans. Ignat Avsey (OUP 1994) Part 2, Book 4 Ch.4.

The Human Rights Act came into full effect in the United Kingdom on 2nd October. The rights contained in the European Convention on Human Rights are, by this Act, dynamic ingredients of the British legal system.

How and how much, those rights will influence British legal tradition is up to British judges to decide. With the same kind of faith in the Common Law as the drafters of our Australian Constitution had, who chose not to include a 'bill of rights' at all, the UK Parliament left the implementation of the new rights regime to the Courts. How are they going to handle the 'new' rights in the European Convention change old laws and settled principles of legal interpretation? Not, in the case of children, terribly well, yet.

Just before the Act came into effect, an English Court had decided that the conjoined twins born to a Maltese couple should be surgically separated, though this would kill Mary, the 'weaker' twin and the parents refused consent. Both babies have an 'absolute' right to life under the Convention but the certainty of death for both without surgery was determinative. The Official solicitor, representing the doomed twin, was given permission to appeal to the House of Lords. He did not take it. That week, both he and Jodie's lawyer had

signed a letter to the Times in support of the Court of Appeal's reasoning. How would a man on death row feel, if his prosecutor and defence lawyer publicly announced his conviction and sentence were right? The parents said they, too, could not maintain the legal fight.

On 2nd November a 'right to life' activist asked the Court to remove the Official Solicitor and appoint him as Mary's guardian instead so he could run that appeal. One judge said, 'No.' He appealed. Two of the three judges of the Court who had made the original decision heard and refused his application. Under old Common law rules, a 'guardian' can only be removed for impropriety or incompetence: this, they thought, was neither. He was not allowed to appeal further, because in their opinion there was no reasonable prospect of winning.

So Mary will have died under a hero's scalpel on 6th November 2000. The sword of justice was not raised in her defence, and her 'absolute' rights to life and a fair process were, after all, conditional.

Two others who bear a terrible responsibility for the death of a child have made more effective use of the new human rights regime, by going to the European court.

Eight years ago, Jon Venables and Robert Thompson abducted, tortured and murdered two-year old James Bulger. They were ten years old then. After a circus of a trial, they were sentenced to at least eight years' detention. This was later reviewed; once by the Chief Justice, who substituted a ten-year term and then, in response to public baying for blood, the Home Secretary fixed 15 years. The boys have had real luck with their legal support.

The boys went to the European Court of Human Rights in Strasbourg. Late in 1999, the Court said that to a politician fixing a sentence is not the independent and impartial tribunal required by Article 6 of the Convention. So Lord Woolf, England's top judge reviewed the case again, and he has said that eight years is enough to qualify them for parole. Why? Because they, too,

may lead productive lives, if they are released from their secure youth facility and not sent to a young offenders' jail.

These young killers have made 'striking progress'. They are each 'genuinely extremely remorseful'. The risk of their re-offending is low. They were convicted very young indeed (and, by inference, have spent almost as long deprived of their liberty as their lives before). Finally, Lord Woolf said, it would not be in the public interest to send these teenagers to a young offenders' institution, whose 'corrosive influence' would undo all the good work: a case of mercy. According to the mobs, not 'justice'.

England does not deal well with its underclass children. It hasn't learned much. The Home Secretary wants blanket curfews for all under-16s, according to postcode (i.e. lawless 'estates'). Juvenile detention centres turn out recidivists and are so run-down that, recently, the head of the biggest resigned in protest at its 'dickensian' conditions. Criminal justice procedures are still not designed for children - Thompson and Venables' conviction followed a show trial (which they could not understand) designed to establish their moral culpability, not explanations or mitigation, with tabloids whipping up the lynch mobs outside. In most European countries, they would not have been legally culpable at all: since then the UK has abolished the 'doli incapax' rule, which required a prosecutor to prove that children aged between 10 and 14 understood right and wrong. Adult courts continue to try children charged with serious crimes.

How can adult systems like these save any child?