

A MAGNA CARTA FOR CHILDREN?

The UN Convention on the Rights of the Child is the most widely ratified human rights treaty, yet children still face poverty, violence, war, disease and disaster. Are the rights we currently afford to children enough? Combining historical analysis with international human rights law, Michael Freeman considers early legal and philosophical theories on children's rights before exploring the impact and limitations of the Convention itself. He also suggests the ways we may rethink children's rights in the future, as well as identifying key areas for reform. This book will appeal to an interdisciplinary audience who are interested in children's rights, childhood studies, the history of childhood, international human rights and comparative family law. It is a *crucial* restatement of the importance of law, policy and rights in improving children's lives.

MICHAEL FREEMAN is Professor Emeritus of English Law at University College London. He is the Founding Editor of the *International Journal of Children's Rights*; Former Editor of the *International Journal of Law in Context*; General Editor of the *International Library of Medicine, Ethics and Law* and of the *International Library of Family, Society and Law*; and former Editor of the *Annual Survey of Family Law* and of *Current Legal Problems*. He has published in the areas of Family Law, Child Law and Policy, Children's Rights, Medicine, Ethics and the Law and Medical Law, Jurisprudence and Legal Theory, and other areas of law and social policy.

A MAGNA CARTA FOR CHILDREN?

Rethinking Children's Rights

MICHAEL FREEMAN



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To the memory of Janusz Korczak, *z' l*
(*May he be remembered for a blessing*)

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THE HAMLYN TRUST

The Hamlyn Trust owes its existence to the will of Miss Emma Warburton Hamlyn of Torquay, who died in 1941 at the age of eighty. She came of an old and well-known Devon family. Her father, William Bussell Hamlyn, practised in Torquay as a solicitor and JP for many years, and it seems likely that Miss Hamlyn founded the trust in his memory. Emma Hamlyn was a woman of strong character, intelligent and cultured, well-versed in literature, music and art, and a lover of her country. She travelled extensively in Europe and Egypt, and apparently took considerable interest in the law and ethnology of the countries and cultures that she visited. An account of Miss Hamlyn by Professor Chantal Stebbings of the University of Exeter may be found, under the title ‘The Hamlyn Legacy’, in volume 42 of the published lectures.

Miss Hamlyn bequeathed the residue of her estate on trust in terms which it seems were her own. The wording was thought to be vague, and the will was taken to the Chancery Division of the High Court, which in November 1948 approved a Scheme for the administration of the trust. Paragraph 3 of the Scheme, which follows Miss Hamlyn’s own wording, is as follows:

The object of the charity is the furtherance by lectures or otherwise among the Common People of the United Kingdom of Great Britain and Northern Ireland of the

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knowledge of the Comparative Jurisprudence and Ethnology of the Chief European countries including the United Kingdom, and the circumstances of the growth of such jurisprudence to the Intent that the Common People of the United Kingdom may realise the privileges which in law and custom they enjoy in comparison with other European Peoples and realising and appreciating such privileges may recognise the responsibilities and obligations attaching to them.

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From the outset it was decided that the objects of the Trust could be best achieved by means of an annual course of public lectures of outstanding interest and quality by eminent lecturers, and by their subsequent publication and distribution to a wider audience. The first of the Lectures were delivered by the Rt Hon. Lord Justice Denning (as he then was) in 1949. Since then there has been an unbroken series of annual

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Lectures published until 2005 by Sweet & Maxwell and from 2006 by Cambridge University Press. A complete list of the Lectures may be found on pp. xii–xvi. In 2005, the Trustees decided to supplement the Lectures with an annual Hamlyn Seminar, normally held at the Institute of Advanced Legal Studies in the University of London, to mark the publication of the Lectures in printed book form. The Trustees have also, from time to time, provided financial support for a variety of projects which, in various ways, have disseminated knowledge or have promoted to a wider public understanding of the law.

This, the sixty-seventh series of lectures, was delivered by Professor Michael Freeman at the University of Leeds, the University of Nottingham, and University College London. The Board of Trustees would like to record its appreciation to Michael Freeman and also to the three institutions which generously hosted these Lectures.

AVROM SHERR

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P R E F A C E

This book contains an expanded version of the Hamlyn Lectures delivered by me in November 2015 at the University of Leeds, where my academic career began in 1966, the University of Nottingham, where it might have begun had they not rejected me, and UCL, where I have been since 1969. In fact, the lectures were a cut-down version of the book. I first attended a Hamlyn Lecture in the early 1960s: it was one of Barbara Wootton's on crime, the first Hamlyns given by a woman. It is extraordinary to be reminded that it was 1990 before a woman gave another series of Hamlyns! But we only had to wait five years more for Brenda Hale to be the third. Her lectures, the 47th of the series, were the first to explore family issues and therefore the first to have any focus on children. My lectures twenty years later were the first to concentrate entirely on children, in particular on children's rights. This is not a subject with which Miss Hamlyn would have had any acquaintance, but one which, interestingly enough, the first Hamlyn lecturer, Lord Denning, was an early advocate, perhaps *malgré lui* (see his judgment in *Hewer v. Bryant* (1969)). What, I wonder, would he make of my lectures? Or the Convention? I did once describe him in an appraisal I wrote of his family law jurisprudence as a 'bastion of reaction'! To his credit he responded in a handwritten letter, which I treasure. And he did advocate that corporal punishment should be abolished in schools, before 'Europe', as he put it 'makes us do it'.

PREFACE

I am grateful to the Hamlyn Trust for giving me the opportunity to give the Hamlyn Lectures 2015. Particular thanks are due to Professor Avrom Sherr, who accompanied me to all three lectures and who negotiated reimbursement of expenditure for the secretarial assistance. I was delighted that eminent judges were prepared to take time to chair the lectures: I am most grateful to Sir James Holman, Lord Justice MacFarlane and Lord Woolf, who each chaired a lecture.

The text does not purport to be a comprehensive treatment of children's rights. It is selective in its choice of subjects and in states covered. It is sad that standard books on human rights pay so little attention to children's rights. Were human rights to fall with the European project, at least they would not necessarily take children's rights with them. It is important that children's rights should survive and prosper. We have to see the Convention of 1989 as a beginning, no more. We can build on it, and we must. You can judge a society by the way it treats its weakest members. We could do a lot better. The tone would disappoint Miss Hamlyn, who was rather complacent about the virtues of English law. It is important that she gets a rude awakening. If just a few common people of England are made aware of the state of childhood in England today, this book will have succeeded.

This text was written in 2016 but, unfortunately, publication has been delayed due to my serious illness.

Michael Freeman

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In thanking those who have assisted it is difficult to know how far back to go. My initial debt may be to my parents who first stimulated my thinking about children's rights. Since then, a large number of thinkers have encouraged the development of this project: countless conferences, many conversations, and academic literature have nourished my thinking about children's rights. A special debt is owed to Philip Veerman, who introduced me to the work of Korczak many years ago, and to Elizabeth Szwed, who involved me in her 'Justice For Children' pressure group and nourished my interest in Korczak. Amongst others who have assisted me, I must mention Priscilla Alderson, Laura Lundy, Aoife Nolan, my former PhD student Noam Peleg, Carrie Menkel-Meadow, Coby de Graaf, Bernadette Saunders, Alice Margaria, John Eekelaar, John Tobin, Lucinda Ferguson, Ann Quennerstedt, Anne McGillivray, Karl Hanson, Jane Williams, the late Malfrid Flekkøy; and many good friends in the children's rights community – Julia Sloth-Nielsen, Helen Stalford, Tara Collins, Gertrud Lenzer, Mark Henaghan, Jane Stoll, Alice Hearst, Olga Khazova, Velina Todorova, Kathryn Hollingsworth, Rhona Schuz, Ya'ir Ronen. I am also grateful to colleagues who answered my questions and to Deborah Burns who assisted the production of this book and to Esther Gershing without whose help the bibliography would not exist.