Chapter 2  UDHR Recognition of the Child before Birth: The Historical Context

Inclusive meaning—the child before as well as after birth

In support of the recognition of the unborn child in the Universal Declaration, it may be argued that the general term ‘the child’ was understood to include the child before as well as after birth, that such an understanding was in accordance with common usage at the time. Both the historical and the contemporary meaning of general terms like “the child” and “childhood” as used in the Universal Declaration did include the child before birth: this was the “ordinary” meaning in the sense of it being a well-established understanding, a tradition, that the child before birth, at birth, and after birth, was owed a duty of care because of the inherent vulnerability concomitant with his level of immaturity.

Historically, there had been a long common law tradition of protecting the child before birth from abortion. Historically also, the medical profession formally took the Hippocratic Oath, and continued through the 1940s to take this oath at graduation and profession. The Hippocratic Oath recognized that mother and unborn child as patients were owed a duty of care that precluded deliberate harm to either patient:

...and to the law of medicine the regimen I adopt shall be for the benefit of my patients according to my judgment, and not for their hurt or for any wrong I will deny deadly drug to any though it be asked of me. Nor will I counsel such, and especially I will not aid a woman to procure abortion...

This same condemnation of abortion was reaffirmed in June 1947 when the Council of the British Medical Association submitted a statement to the World Medical Association:

Although there have been many changes in Medicine, the spirit of the Hippocratic Oath cannot change and can be reaffirmed by the profession. It enjoins: ...The motive of service

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1 "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Article 31(1) General rule of interpretation of the Vienna Convention on the Law of Treaties (1969).
for the good of patients. The duty of curing, the greatest crime being co-operation in the
destruction of life by murder, suicide and abortion.²

Textbooks on human embryology at the time recognized that the human embryo
is a distinct new human being to be treated by doctors with respect: the end of the
process of fertilization “marks the initiation of the life of a new individual”.³

In the 1940s, 1950s, and 1960s, popular books, magazines and other literature on
special care for “motherhood and childhood” regularly included special advice for
the care of the child before birth, often referred to as “your baby”. Advice columns
regularly made recommendations on how best to meet the needs of “your child”
through the nine months of gestation. A preliminary survey of popular literature
such as *Ladies Home Journal* and *Woman’s Day* across these decades furnishes no
hint of any common belief that the child *in utero* was not considered to be a member
of the human family, and indeed provides much evidence to the contrary. In 1946, Dr.
Benjamin Spock published *The Common Sense Book of Baby and Child Care*. Over
the next few decades the book was translated into 39 languages; 24 million copies
were sold between 1946 and 1972. A typical excerpt from Spock’s advice to parents,
from the 1968 revised edition of *Baby and Child Care*:

> A great majority of those who admit that their first reaction to pregnancy was predomi-
> nantly one of dismay (and there are plenty of good people who feel this way) are reas-
> sured to find that their acceptance of the pregnancy and their fondness for the baby
> reaches a comfortable level before he is born.

Eleanor Roosevelt, who wrote regular columns and did many broadcasts on family,
women and children, and became Chairwoman of the drafting committee of the Uni-
versal Declaration, also endorsed this view: “The women bear the children, and love
them before they even come into the world ...”⁴

We now proceed to show that the inclusive meaning of the term ‘child’ was de-
finitively established by the historical context of contemporary human rights docu-
ments.

**Geneva Declaration of the Rights of the Child (1924)**

The century before the Universal Declaration saw immense advances in pre-natal
as well as post-natal care for the child. By 1948 there was a well-delineated tradition of
understanding that the child before as well as after birth had special needs. The first

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² Statement by the Council of the British Medical Association to the World Medical
Association, June 1947, re-issued by The Medical Education Trust. and reproduced at:
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⁴ Quoted in Glendon, Mary Ann, *A World Made New: A History of the U.N. Charter of