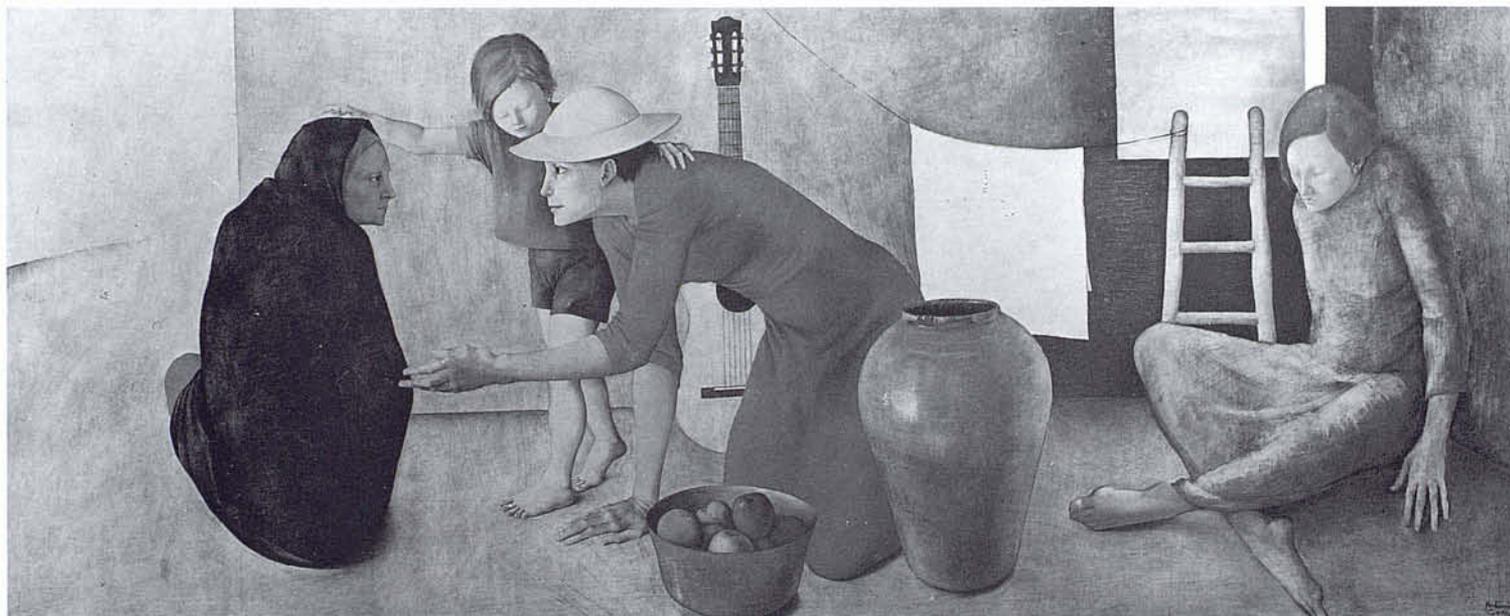




MOTHER AND SON, 1985. MONTSERRAT GUDIOL.

THE RIGHTS OF THE CHILD



PAINTING BY MONTSERRAT GUDIOL.

CATALONIA COULD NOT ORGANISE OR EVEN CONSIDER THE PROTECTION OF CHILDREN UNTIL, WITH THE STATUTE OF AUTONOMY OF 1979, SHE RECOVERED HER LEGISLATIVE POWER AND HER JURISDICTION IN THIS FIELD. A DATE TO REMEMBER IS 1988, WHEN THE DEPARTMENT OF SOCIAL WELFARE WAS SET UP AND, WITHIN IT, THE DIRECTORATE GENERAL FOR ATTENTION TO CHILDREN.

JORDI COTS | MONER SECRETARY OF THE JUSTÍCIA I PAU COMMISSION FOR CHILDREN

It has not been easy to draw up the rights of the child, because it has not been easy to accept that they might have any or that they might make full use of them. It has been said that these rights are recognized but not exercised by them, and this ambiguity has not been entirely resolved with the United Nations Convention of 20 November 1989 on the Rights of the Child. The first conceptualization of the rights of children goes back to 1923. The Ge-

neva Declaration was drawn up by the Briton Eglantyne Jebb, who three years earlier had founded the International Union for Children's Aid and now felt the need for a programme that would lend meaning to her work. This admirably sober document was still not really a list of rights so much as a catalogue of needs humanity must satisfy for the good of the child's material and spiritual development. It was a first step. The League of Nations adopted

this text in 1924, and some constitutions, such as the Spanish Constitution of 1931, made reference to it. After the end of World War II the United Nations wanted to draft their own charter of children's rights. They started work on it in 1946. At the same time, work had started on the preparation of the Universal Declaration of Human Rights. This was approved two years later, however, while it was not until 1959 that the children's charter was

adopted. Thirteen years had passed. This time lag shows up the difficulties I mentioned at the start.

It was recognized that the child was subject to rights, although, as was said in the debates, “*by the very nature of things* [my italics, to show just how troublesome the issue was; no-one was able to provide a proper reason] it is impossible for children to exercise their rights directly and they can only do so through others: adults, the family, or the private and public associations and groups that care for them on their own account.” It was even questioned that one could speak of the rights of children in a juridical sense. But the Universal Declaration approved on 20 November 1959 used the word “right” and in an imperative tone. As a Declaration, it remained a document of intent, with no more than a moral power. But it was now possible to speak of “children’s human rights”, an expression which only became widespread later on.

It is not until we come to the Convention of 1989 that we can speak of rights in the strict sense of the word. The Convention, begun in the International Year of the Child, was not completed until ten years later. It not only made the Declaration a binding document for the signatory states, but also added to it considerably. The most important point was the inclusion of civil and political rights. Above all, by granting the child this sort of right (and when I say “child” I mean the child and the adolescent—in fact, the individual up to the age of eighteen), it became, at least on paper, the possessor of rights.

In the thirty years that led from the Universal Declaration of the Rights of the Child to the Convention, the concept of childhood and its protection had changed. Protection was now conceived of as a right, and minority was no longer another word for a period linked to the idea of legal incapacity. Even so, the problems arising from the Convention were in the hands of each country’s legislation.

This introduction is essential to an account of the situation in Catalonia in this field.

Before anything else, I would point out that Catalonia could not organise or even consider the protection of children until, with the Statute of Autonomy of 1979, she recovered her legislative power and her jurisdiction in this field.



DRAWING BY MONTSERRAT GUDIOL.

The text of the Geneva Convention appears in a propaganda leaflet issued by the Generalitat’s Department of Health and Social Assistance in January 1937, at the height of the Civil War, but I have been unable to find any other precedent. The Universal Declaration of 1959 was accepted immediately in 1981, when powers concerning public institutions for the protection and care of minors were passed to the Generalitat. In December 1980 the Department of Justice had appointed two commissions, one to draw up a Recommendation of principles on children’s rights in Catalonia and the other to establish guidelines for the protection of minors in Catalonia. The first prepared a document which formed the basis for the

Catalan Parliament’s Resolution 37/I, of 10 December 1981, which took the 1959 Declaration as its starting point, adapting it to the situation here. The project drawn up by the other commission led to the Protection of Minors Law of 13 June 1985. As its guiding principles, section II of this law, now partly repealed, quoted the contents of Resolution 37/I. The influence, then, is clear enough.

Our legislation is young. It has been able to incorporate directly the progress made at a European and even universal level. The Protection of Minors Law, mentioned above, is one example of this. The law covered the application of measures, but it established treatment in an open environment and family placement. Provisions adopted between 1986 and 1987, which we need not go in to in an article like this, define and establish attention to the child at risk.

A date to remember is 1988, when the Department of Social Welfare was set up and, within it, the Directorate General for Attention to Children. Initially, attention to young offenders and to neglected children—or, as many professionals still call them, the reforming faculty and the protective faculty—had been left to a single department, the Department of Justice. Now, attention to children in need broke away from the Department of Justice (which deals with young offenders through the Directorate General of Juvenile Justice) and was entrusted to the Directorate General for Attention to Children. The law concerning adoption and protective measures for children in need and the law concerning care and caring institutions, both approved at the end of 1991 and still to be fully implemented, complete the legal framework concerning children in need.

Although this contribution is based on a juridical viewpoint, legislation is certainly not everything, but just an instrument.

There are serious problems in this field in Catalonia. There are too many children in fringe groups who do not reach a minimally satisfactory level of education, and this is something that must be resolved by a global approach involving the family; early detection fails to reach all children; hospital attention and psychiatric treatment needs to be revised; regulations on consumer goods and publicity are not kept to; more leis-



MOTHER AND SON, 1977. MONTSERRAT GUDIOL.

ure institutions are needed; there are not the means to arrange proper assistance to children in need or with problems; there is a need for training for professionals such as judges who have to deal with children. A separate issue is the attention that should be given to the family, which is responsible for the child's well-being and upbringing. In another order of things, children (I have already said what is understood by "child") are not listened to when it comes to things that affect them. Their opinion is taken into account, because the law says it must in certain questions such as adoption, but we can hardly speak of participation. The public administrations have only

limited resources. What resources they do have are applied in the most flagrant cases. In fact, both the legislation and the action taken by the public administrations are centred on the child at risk. And this brings with it the risk of not having the necessary referent to provide us with a comprehensive policy on children. During the discussion of Resolution 194/III, on the rights of the child, it was proposed that a permanent, legislative parliamentary commission be created to promote and monitor child policies. This commission has not been set up, and it would have been a useful tool in potentiating the application of a valuable juridical regulation. Up-to-date studies are needed on the

real situation of children in Catalonia. This outline would be incomplete without a reference to the large number of non-governmental organisations that support or complete the action of the public administrations. Many of these organisations have joined forces to form a federation of associations, the "Coordinadora Catalana al Servei de l'Infant". They cover various needs: hobbies, publications and entertainment for children, handicapped children, preschool education, catechism, fostering, the study and defense of children's rights, attention to children with difficulties, etc. All of them are testimony to the firm tradition of an organised civil society. ●