

刑法倫常條款的相對性

—以對兒童保護爲中心*

趙 萃 文**

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** 國立空中大學兼任講師、輔仁大學法律研究所博士候選人。

摘要

虐童案件迭連不斷，誰無子女？養大個孩子多麼辛苦，這幾年在人口問題上，少子化已成國安危機，兒虐現象還層出不窮。為此，朝野立委紛紛支持修正《刑法》加重虐童行為罪刑。惟刑法的任務在於法益保護，然法益定義隨時代、客觀環境而演進，其內容非固定不變；二十一世紀的今日，有關刑事立法中倫理成分的比例該如何拿捏？兒童權利公約及其施行法相繼施行，公民社會早已將保護兒童順利成長茁壯、擁有良好身心發展視為人權普世價值，法律制度自不能忽視此一時代脈動。然而，徒法不足以自行，現行刑法架構下已有綿密之保護，修法是否能有所助益？本文將探討現行刑事規制對兒童之保護架構、具體案例之法律適用，並從福利國角度，淺析目前之刑事及相關規制還能提供幼童那些更多的保護。凡此，相關議題不僅關涉立法，更需透過政策、教育、訓練及社會保護來改善，以達成憲法法治國之誠命。

The Mercy and Law's Relativity in Criminal Code:

Center on Child Protection

Chao, Tsuey-Wen

Abstract

Child abuse cases continue to occur. How hard it is to raise a child. In the past few years, on the issue of population, the birth of the child has become a national security crisis, and the phenomenon of child abuse has emerged endlessly. To this end, the legislators have supported the revision of The Criminal Law to increase the crime of child abuse. However, the task of criminal law lies in the protection of legal interests. Yet, the definition of legal interests evolves from time to time. Its content is not fixed. Today, the Convention on the Rights of the Child and its enforcement laws have been implemented one after another. Civil society has already protected children smoothly.

Growing up and having good physical and mental development is regarded as the universal value of human rights. However, the law is not enough to protect itself. Under the current criminal law structure, there is already a dense protection. Can the law be helpful? This article will explore the current criminal regulation of children's protection structure, the legal application of specific cases, and discuss how to provide more protection for young children. In this case, the relevant issues are not only related to legislation, but also need to be improved through policies, education, training and social protection to achieve the rule of The Constitution.