

# Children Need Parents



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A few years ago, I developed an argument in response to a movement by several members of the House of Lords and local authorities to restrict the rights of parents, or in their own words “rebalance” those powers with the rights of children. I have been asked to publish my rationale for my argument more fully.

The Lords’ argument appeared to be that children’s rights and the rights of parents were somehow in tension, perhaps even in opposition to each other and that to enhance the rights of children, parental rights needed to be restricted in some way.

My argument, as I then stated it was that,

*“Children have the right to parents and parents can only be parents if they have the right to act as parents enabling them to carry out their parental duties. So parental rights are really children’s rights. One cannot, or should not, be offset against the other.”*

International treaties and agreements, such as the United Nations Convention on the rights of the child, also make it clear that parents are persons who do not simply have responsibilities and duties, but also the rights necessary to carry out those responsibilities and that the state must ‘respect’ those responsibilities, duties and rights<sup>1</sup>. It would, after all be nonsense for parents not to have those rights necessary to perform their responsibilities or for the state to disrespect or infringe on those rights. Such acts are explicitly contrary to the UNCRC, to which the UK is a signatory and is obliged to ensure these rights are implemented by legislation<sup>2</sup>. Further to this international treaty states that

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<sup>1</sup> UNCRC Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

<sup>2</sup> UNCRC Article 7 pt 2

States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

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*States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.*<sup>3</sup>

Furthermore, the preamble to the United Nations Convention on the rights of the child states:

*...Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community, Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,*

The UNCRC is therefore founded entirely upon the idea that the family is the natural, fundamental environment in which children should live.

The European Convention on Human Rights does not specifically mention parents and children other than in one place, protocol 1 article 2 which determines that parents have a responsibility to ensure their children are educated while also having the right to determine the nature of that education<sup>4</sup>. Although, the ECHR also says that everyone has a right to a private family life, which applies of course to both parents and children.<sup>5</sup>

## What is a parent

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<sup>3</sup> UNCRC Article 14 pt 2

States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

<sup>4</sup> ECHR Protocol 1, Article 2 (second sentence)

The State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

<sup>5</sup> ECHR Article 8 Pts 1 & 2

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

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A parent is anyone who exercises parental authority over a child. In most circumstances that would be the child's biological parents. In some cultures, it may also include some members of their extended family and in other circumstances it could include people who have been appointed as parents where the child's biological parents are unable or unwilling to carry out the function of parent. Children have:

*'as far as possible, the right to know and be cared for by his or her parents'*<sup>6</sup>

## Safeguards

The writers of the UNCRC however, were not idealists to the extent that they believed that *all* parents in *all* circumstances would be able and willing to carry out the functions of parent and so the convention states that<sup>7</sup>

*States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately, and a decision must be made as to the child's place of residence.*

Yet even in these circumstances, the same article recognises the right of the child to have a voice in the proceedings and goes to some length to ensure that the child will maintain contact with estranged parents unless it is demonstrably not in the child's best interests.<sup>8</sup>

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<sup>6</sup> UNCRC Article 7 pt 1

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

<sup>7</sup> UNCRC Article 9 pt 1

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

<sup>8</sup> UNCRC Article 9 pts 2-4

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

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The above article is strengthened and reiterated in article 19 where it identifies measures to be taken to protect vulnerable children<sup>9</sup> where parents are unable to provide for their child's welfare, by providing for other individuals to act as parents in their stead. Even here, the state is expected to put every effort to find a suitable third party who can fulfil the role of a parent. The state itself takes on this role only as a very last resort.

At no point does the UNCRC suggest that the state should impose itself between the parent and child or substitute itself for the parent by removing, altering, or curtailing parental rights except where it can show to an independent judiciary that the parents have manifestly failed in their duties as parents. The entire document assumes the fundamental nature and importance of the relationship between parent and child as well as the rights responsibilities and duties a parent has to the child. Any general curtailment of parental rights would probably be seen as an infringement of the UNCRC and possibly other international treaties.

Equally parents have a special status relative to their children. A status, protected in law and imbued with special powers necessary to nurture, protect and guide their children towards adulthood according to their resources. Parental rights are fundamental to enable them to fulfil these duties.

Attempts to remove these parental rights can only be seen as an attempt by state actors to weaken parents' abilities to carry out their function as parents and impose state policy in its stead, dangerously usurping and replacing parents. State policy may not be entirely aimed

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3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
  4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned

<sup>9</sup> UNCRC Article 19 pt 2

... protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement

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at the best interests of the child, as it will have other intentions such as economic efficiency. Decisions regarding government policy which will affect children therefore may well not be in the best interests of individual children and it is the responsibility of parents to advocate for their children where such conflicts occur. This important parental responsibility must therefore be accompanied by a right to do so.

A particular area of government policy affecting children is that of education, especially in a nation such as the UK where education is compulsory between the ages of 5 and 18<sup>10</sup>. The important right of parents to determine what that education should look like<sup>11</sup> is crucial to protect children from blanket applications of the law, which may not be appropriate to the needs, welfare or development of individual children contrary to the UNCRC or the ECHR. Attempts to regulate or modify this parental right is, in reality an attack on children's rights in favour of imposing state policy.

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<sup>10</sup> <https://www.gov.uk/know-when-you-can-leave-school> (May 2022)

<sup>11</sup> Section 7 Education Act 1996