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**CHALLENGES AND OPPORTUNITIES FACED BY EUROPEAN WELFARE
STATES: THE CHANGING CONTEXT FOR CHILD WELFARE**

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The Child and Family Policy Divide

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Abstract

There is a difficult and unresolved tension within social policy and practice in responding to the needs of children on the one hand and parents on the other; it pervades family law, government planning structures for children and parents, and almost every service associated with family life, including health, education, criminal justice, financial support and child protection. This is a tension that is imbued with a variety of ideological influences including conservatism, welfarism, social liberalism, religious perspectives and theories of children's and human rights. It is a tension that also heavily mirrors social relations, for example the growing emancipation of children, the democratisation of family relations and an evolving liberal attitude endorsing a search for fulfilment in adult relationships.

This study examines the child and family policy divide, - the nature of the interests involved, its causes and consequences, and formulates possible resolutions to the policy, administrative and legal difficulties emerging in this area. It assesses the relationship between child and family policy, considering trends associated with the pivotal Children Act 1989, and assessing its consequences in the context of recent thinking and developments. One of the most significant of these is the Human Rights Act 1998 (HRA), which has major implications for family support and children's and adults' rights. Central and local government and other child welfare agencies now have to work in this new and not widely understood environment, ensuring that policies and individual actions by public authorities comply with its requirements. The study looks at the child and family policy divide in the context of this and other significant national and international developments.

This is a highly charged and emotive area and one where judgments about mutual and separate interests are often difficult to make from the planning of services through to individual family interventions and contact arrangement decisions. Yet despite the emerging concerns over these tensions, they have not been researched, or solutions sought, across the interface between social policy and families. This study is intended to begin the process of addressing this deficit. It is intended to enhance understanding of the divide between children's and families' interests in social policy, and by so doing to assist national and local government to take informed decisions in relation to the management of these interests.

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**The Child and Family Policy Divide:
Tensions, Convergence and Rights**

Clem Henricson and Andrew Bainham

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Family law reports

European Union (EU) and Council of Europe intergovernmental documentation that has implications for children's, parenting and family policy in England and Wales:

- directives
- international conventions

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UK Government documentation that has implications for children's, parenting and family policy in England and Wales, including:

- **legislation**
- **strategy documents**
- **documents associated with the establishment of government initiatives related to child and family welfare;**
- **ministerial speeches**


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International Commitments

- **The European Convention on Human Rights and Fundamental Freedoms**
- **The United Nations Convention on the Rights of the Child**
- **The European Union**


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The UK Dimension

- **Poverty and the Lifecycle**
- **Family Support and Child Protection**
- **Self Determination and Protection: the Child and the State**
 - *Choosing Residence and Contact;*
 - *Rights and Education;*
 - *Criminal Responsibility*
- **Are Government Structures Sound?**


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Summary


1. This report considers the tension in social policy in responding to the needs of children on the one hand and parents on the other. It does so in the context of international obligations and human and children's rights.

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2. It advocates an approach that recognises divergent and complementary interests within families, and proposes ways of reconciling those interests with a view to maximising the well being of all family members.

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1. Poverty and the Lifecycle

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- **National Action Plan on Social Inclusion 2003-5**
- **Targeted groups at significant risk of social exclusion include, as well as children:**
 - large families
 - ethnic minorities
 - disabled
 - older people

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- **and key risks:**
 - living in a jobless household
 - living with persistent low income; living in a deprived community
 - intergenerational poverty




Prioritising Child Poverty

- **“our historic aim that ours is the first generation to end child poverty forever, and it will take a generation. It is a 20 year mission but I believe it can be done”. (Blair, 1999)**




- **“Child poverty is a scar on Britain’s soul. It is simply unacceptable that millions of children should start their lives in families where no-one works or where they are caught in the poverty trap, in poor housing, under-nourished and condemned to substandard education and healthcare. That is why Tony Blair has said we will not rest until we have banished child poverty from the face of Britain.” (Brown, 1999)**



Universal Declaration of Human Rights

[1] “Everyone has the *right to a standard of living* adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care”


[2] Motherhood and *childhood* are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.




UN Convention on the Rights of the Child

27 [1] “States Parties recognize the right of every child to a *standard of living* adequate for the child's physical, mental, spiritual, moral and social development.

[2] “The parent(s) or others responsible for the child have the *primary responsibility* to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.



[3] “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to *assist parents* and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.




Poverty and the Lifecycle - Summary

- 1. There are EU and Council of Europe stipulations that place expectations on member states to address social exclusion across the lifecycle.**
- 2. The CRC makes recommendations for the redress of child poverty. In doing so, it identifies children’s financial support needs with those of their families. It does not specify the proportion of gdp that should be allocated to redress child poverty in the context of different national economic circumstances. It might assist national governments if it did so.**




3. The UK government has taken steps to redress social exclusion across the life cycle (see national Plan on Social Inclusion, 2003-5). The focus of the government's social inclusion strategy has, nevertheless, been on child poverty, which it has succeeded in reducing in relative as well as absolute terms.

4. This agenda has been pursued from a welfare rather than a rights perspective. There has been closer identification with EU commitments.




5. In the interests of transparency, a policy discussion/review is needed to develop principles and balanced policies relating to relative government investment in financial support for different age groups across the lifecycle.



2. Promoting Children’s Interests or Interfering with Parents’ Rights?


Education ; Contact



“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions.”


ECHR, Protocol 1, Article 2: Education

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“... the state has a role as *parens patriae* to protect the interests of children and a further distinct interest in ensuring that any current generation of children become society’s future functioning adults. The state must thus ensure that children are educated to a certain minimum extent so that they can act as citizens.” (Archard, 2003)

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The Children (Scotland) Act 1995 provides that parents have a responsibility and corresponding right:

- **to safeguard and promote the child’s health, development and welfare until the child reaches 16;**
- **to provide direction until the child reaches 16 and to provide guidance until the child reaches 18.**




Rights and Education – Summary


- 1. Both the ECHR and the EU Constitution provide that children should be entitled to education, but also that parents should have a role in determining the religious and philosophical direction of that education.**
- 2. Discourse on the role of the state and education suggests that the state has a legitimate locus in providing education that promotes children's 'open futures' and social welfare.**



3. Religious education in schools has diversified to provide information about the six world religions. There are, however, outstanding concerns over the failure to include other religions, secular morality and critical appraisal in the syllabus. Government investment in religious schools is not conducive to children's 'open futures'.




4. There is insufficient consultation with children over education decisions (UN Committee on the Rights of the Child, 2002), for example in relation to school choice, continued attendance or withdrawal from sex and religious education and in relation to discipline.




“The Human Rights Act 1998 also requires the courts to interpret the law, (including the Children Act 1989), in a way that is consistent with the European Convention on Human Rights. Article 8 of the Convention requires respect for private and family life. This includes respect for the rights of both parents who enjoy life with their children to have contact with those children, provided this is consistent with the welfare of the children, and also the rights of children to have beneficial relationships with their parents. The proposals in this consultation document reflect the Government’s commitment to its Convention responsibilities to families.”

Department for Constitutional Affairs, 2004




“The law, as set out in the Children Act 1989, makes clear that the welfare of the child is the paramount consideration in any court decision concerning a child’s upbringing. The Government believes that this principle should be sustained without qualification, in order that there continues to be the clearest possible focus on the needs of children.”

Department for Constitutional Affairs, 2004




Residence and Contact – Summary

- 1. The ECHR and the CRC bolster children’s right to be heard when parent separate. In the UK there are measures being taken, for example by CAFCASS, to ensure that the child’s voice is heard.**
- 2. The overriding principle in dealing with separation in the UK is the child’s welfare. The ECHR underwrites parents’ right to respect for family life, which has implications for contact. Although referred to in the Green Paper – *Parental Separation: Children’s Needs and Parents Responsibilities*, it is not cited as a core principle.**



3. A more balanced approach to international obligations would be to support parents in reaching agreements that maximise contact with both parties, subject to the primary consideration of the welfare of the child and the need to provide the child with a stable home environment.'



Conclusion – Summary

1. A family policy is needed to provide a forum for recognising and reconciling children and adults' interests. Children's rights and family support would fall within its remit. With a primary function of balancing interests, such a policy would benefit in terms of direction and transparency from a set of principles to guide its decisions, and a rights approach, implementing the provisions of the HRA and CRC, would provide these.



2. Rights provide a framework and point of reference for handling interests. They flush individual and collective entitlements out into the open. They create expectations of a balance of interests that cannot disappear so readily as it might under a discretionary welfare model of government investment.