

Do Parents Know Best?

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Abstract

While Article 5 of the UN Convention on the Rights of the Child requires states to respect parents' responsibilities to provide 'appropriate' direction and guidance to their children, Article 18 also proclaims that 'the best interests of the child will be [the parents'] basic concern'. But how can this be done if, as is widely accepted, the 'best interests' standard is too indeterminate safely to allow courts to substitute their assessment of children's interests for those of a child's parents? This reason for privatising such decisions has been reinforced by concerns over the extent of public expenditure on court involvement in and legal aid for such issues, with the possible result of withdrawal of the law from this process. This article argues that there are inherent risks in leaving the arrangements for children of separating parents entirely in the hands of the parents, and considers various ways in which such risks might be reduced.

Keywords

UNCRC Articles 6 and 18 – child arrangements – divorce and separation – best interests of the child – privatisation – de-legalisation

1 Introduction

While there is legitimate discussion about what direction and guidance which parents and some others are responsible to provide their children is 'appropriate' and 'consistent with [their] evolving capacities' in accordance with Article 5 of the UNCRC, Article 18 seems to establish an overall obligation that states shall 'use their best efforts' to ensure that, in doing that, 'the best interests of the child will be [the parents'] basic concern'. This obligation is inevitably somewhat imprecise. Tobin and Seow (2019) suggest it should be

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