

CHILD LAW

Ruth Farrugia

University of Malta, Malta

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Summary

Child law is a relatively new study incorporating all law relating to children. In many countries, until the end of the nineteenth century, children were considered to be placed under the authority of their father and subject to any decision he might make on their behalf. In the US, for example, matters came to a head in the Mary Ellen case of 1874, where a child who was being abused by her parents had to be protected under laws protecting animals because there was no counterpart for children at the time.

In some parts of the world, this is still the case and children remain subject to the authority of their parents. But even in these countries, such authority is subject to state intervention where the child requires protection and care. Most nations have developed the notion of parental responsibility rather than authority, particularly after the ratification of the United Nations Convention on the Rights of the Child.

In a number of countries, child law is incorporated into family law or is included in legislation relating to civil law in general. With a growing awareness that children are individuals with special needs and specific rights, the trend is accelerating towards the introduction of laws considering these factors. The international community has come together to attempt regulation of rules to protect children from prostitution and pornography, to set standards for children in the field of education, to prohibit child

labor and to enact legislation discouraging the use of children as soldiers. A whole body of international law is growing with child rights as its focus and it is something of a quirk in the system to admit that international law may well be succeeding where local law lags behind.

The United Nations has done much to raise the profile of children and through the Convention on the Rights of the Child set basic minimum standards for the rights of the child.

1. The United Nations Convention on the Rights of the Child

The entire world, except Somalia and the US, has ratified the United Nations Convention on the Rights of the Child. No other international instrument has had so much popular support over such a relatively short period. The Convention on the Rights of the Child is the product of many years of drafting and deliberation with children's rights groups and lobbies working to finalize the document in 1989.

In order to oversee the application of the content of the Convention, the Committee on the Rights of the Child meets regularly to examine reports submitted by member states and to focus on issues that are of particular interest in the field of children's rights. The Committee is made up of members who represent a geographical diversity, but who sit in their own capacity as experts. Their comments and suggestions are taken with great seriousness by the delegations who appear in Geneva to defend their country's report and who return home to attempt the implementation of the recommendations made in the best interests of their country's children.

2. Definition of Child

The Convention on the Rights of the Child defines a child as any person under the age of 18 years of age. It does not make any reference to whether a child has any rights prior to being born. This issue is a cause for concern in many countries where life is deemed to start at conception. Certainly, many religions advocate that life begins at conception and that termination of such life through voluntary means is tantamount to murder. The pro-life and women's rights movements in many countries came to blows over the interpretation of these rights, with the former holding that the child has a right to life even when it is accommodated in its mother's womb and the latter declaring that a woman should have all rights over her body, including the termination of any life within it.

In many countries, the right to have an abortion is deemed automatic and is based on the woman's right to choice. However, a good number of other countries, generally on religious grounds, still outlaw abortion in all forms. This means that the morning after pill is also considered a form of abortion as is the use of various types of contraception. From the child rights viewpoint, it may be well to argue in favor of the right to life, but it is equally important to argue in relation to the quality of life the child will have on birth. Women who are raped usually desire a termination of pregnancy but where this is against the law, the child born may face an uncertain future. Similarly, numerous

children born to parents who have no means of support may face a dubious quality of life.

In some countries, determination of the sex of the child or recognition of disability in the developing fetus may also result in termination of pregnancy. Where there are limits on the number of children that a family may have and where girl children are shunned, abortion has been used as a remedy. Similarly, where amniocentesis shows congenital abnormality, parents may choose to terminate the pregnancy. Again, ethical considerations are high on the agenda of the legislator in admitting the inclusion of any such laws and where they are available, children are rarely in a position to voice their opinion.

Conversely, the child may also be protected prior to birth when an order is issued against the mother regarding some activity she may be involved in which may affect the life of the child, such as in the case of women who are substance abusers and who risk giving birth to children who are also substance dependent. (A case in Ohio, US held that the unborn child was capable of existing independently and was therefore due the same rights attributable to a viable fetus as a person for the purposes of homicide and wrongful death ruling that she had the right to sue for damages that occurred to her while still in her mother's womb.)

3. Bioethical Issues

Other debates focus on the use of embryonic tissue for research and whether the child who could have been born should be accorded rights. Some states feel that the use of embryos should be outlawed, but there was a case, which involved a group suit by persons with an interest in research findings concerning a cure for their medical condition dependent on use of such tissue. The moral dilemma is clearly an issue that judges must take into account when deciding legal controversies of this kind.

Similarly, child rights may be called into question when children are conceived in order to contribute to the survival of a sibling and where they may also be required to undergo painful procedures in order to achieve this goal. Such queries are further posed when children are not of an age to make a free and informed decision relating to medical help and the decision is made on their behalf by their parents. Child rights necessitate impartial representation for children caught up in similar situations, but most states are reluctant to intervene in family circumstances.

The right to be born may also bear further scrutiny in the context of assisted procreation. Parents may require fertility treatment in order to conceive, and this may often result in the production of several fertilized ova. Although some ova may be successfully implanted, there are usually a number of surplus ova that are disposed of or used for research, again raising numerous ethical issues.

Where the child is born as a result of artificial insemination, the child may not ever be in a position to know of his or her biological roots. The right of a child to know who his or her parents are is an essential element of all child legislation, although there may be a difference in opinions relating to the right time this information should be made known.

In the case of insemination by an anonymous donor, the child may never discover his or her parentage. Countries must therefore take steps to assure that the chances of such a child marrying a sibling is extremely remote. To date, in Europe, for example, such issues receive dissimilar treatment and this may be detrimental to the rights of the child.

A child may also be born to one woman at the request of another, as in the case of surrogacy. A woman may provide an ovum fertilized by a man other than her husband to be implanted in the womb of a surrogate mother with the result that the child will end up with two mothers and two fathers. Debate continues as to whom has parental responsibility in such cases. Most states agree that the woman giving birth is legally recognized as the mother but some states, such as the US, have taken the unprecedented step of registering both women on the child's birth certificate. Surrogacy agreements are considered acceptable in some countries and illegal in many others. What is certain is that all legislation pertaining to this subject should bear in mind the best interests of the child and attempt to provide coherently for all parties involved.

Assisted procreation may also be at the request of a mother who has no partner; who has been widowed; is in a same sex relationship, or has gone past child-bearing age. Without entering the moral implications of each of these circumstances, the effect on the child must be given serious consideration. Although the widowed mother may request insemination with her dead husband's sperm in order to keep his memory alive and with the best of intention, the child to be is not in a position to be heard regarding the advisability of such posthumous birth. Similar debates center on other eventualities as viewed from the child's point of view.

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Biographical Sketch

Dr. Ruth Farrugia: Advocate and Lecturer in Civil Law, University of Malta.

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