

Redefining Children's Welfare

Research carried out by Jonathon Herring, Professor of Law at the University of Oxford's Faculty of Law and Charles Foster, Senior Research Associate at the Oxford Uehiro Centre for Practical Ethics and at the Ethox and HeLEX centres at the University of Oxford has profound impact.



In the domain of family law one important factor lawyers are required to take into account is children's welfare. The conventional view is that the courts should make determinations based on best interests, concentrating *only* on the best interests of any children involved in a case.

Professor Herring and Dr Foster's research has argued that it is misleading to focus on one person's welfare without reference to the welfare of others. They claim that both 'best interests' and 'welfare' should be seen as concepts recognising the importance of relational interests, the performance of obligations and the cultivation of virtues relating to others, such as altruism. Professor Herring says that welfare should be considered in the context of a network of relations.

The research was influential in a key case in family law, and shaped the final ruling made by the judge. In the case *Re G* (children)

[2012] in the Court of Appeal the definitions Professor Herring and Dr Foster have developed in their research were used to broaden the legal definition of children's welfare. The case involved the upbringing of 5 children and their education following the breakdown of their parent's marriage. The children's families had, for many generations, been part of the Ultra-Orthodox Hassidic or Chareidi Jewish Community. The father wanted them to be educated at an Ultra-Orthodox Jewish school whilst the mother wanted them to attend a modern orthodox school from which they would be able to pursue higher education. During the course of this case Lord Justice Munby upheld the previous County Court Decision to allow the children to attend the schools of the mother's choosing. Lord Justice Munby quoted from Herring and Foster's work acknowledging their point about relationships as a key contributing factor for welfare. This shows a clear modification of the traditional concept of welfare which focused on only the best interests of the child.

This ruling provided the basis for a widening in the judicial definition of 'children's welfare'. As a result, courts must now take into account the whole network of relationships when they consider what would be in the best interests of the welfare of the children.