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**SHOULD MINORS HAVE
EQUAL RIGHTS TO THOSE
OF THEIR PARENTS?**

Joan Pinkney

PhD

Introduction

Local and international laws, charters, sociology, psychology, Scripture, philosophy, and anthropology mandate rights for children. Children are viewed as vulnerable, defenseless, and incapable of providing for and protecting themselves. As a result, legal, moral, and other special systems are put in place to protect them from neglect, abuse, and exploitation. On the other hand, parents are generally viewed as individuals who are legally responsible for children and possess greater rights within the parent-child relationship. As custodians, parents have a wide range of control over their children, as well as the right to make all the decisions concerning their physical and social welfare, including their cultural experiences, economic well-being and continuing development. This paper seeks to examine

the rights of children and the rights of their parents. It also aims to support the argument that the rights of children should be equal to that of their parents.

Defining Rights, Child, and Parent

The Stanford Encyclopedia of Philosophy described rights as entitlements, and categorized rights as moral privileges that are grounded in reason. In addition, rights are important normative rules which express what is allowed or owed to people. These are usually based on some legal system, social convention or an ethical theory. Rights are very important in several disciplines including law and ethics (Wenar, 2015). William R. Thomas posited that a right is basically an individual privilege. It pertains to everyone and not just some members of a particular group. Thomas added, that fundamental rights do not conflict; they include “the basic right to life, liberty and property” (Thomas, 2013). The Children Guardianship and Custody Act, Jamaica 2004 (2017), defined a child or a minor as “a person under the age of eighteen years but does not include a person who is, or has been married,” as is stated in other literature that deals with the rights of parents and children. It is recognized that some jurisdictions, for example the United states of America, utilize the term “underage” to refer to individuals who are below the legal age for voting, drinking, or sexual consent. Interestingly, the age of sexual consent in Jamaica is 16, the “drinking age” is 16, while the driving and voting age is 18 respectively. The Child Care and Protection Act Jamaica (2004) designated the age of criminal responsibility as 12, while the Legal Dictionary made the distinction between persons under the age of 14, and minors under the age of 18 years (Criminal law, n.d.).

The Children Guardianship and Custody Act Jamaica 2004, (2017), defined the “parent” of a child as “any person at law, liable to maintain such child or entitled to its custody,” which in most cases are the biological parents. Legal guardians, step parents, adoptive parents, and even grand-parents are recognizable by law as having these rights over children in their custody and care” (The Children Guardianship and Custody Act, 2004). In addition, definitions.net defined parent as, “a father or mother; one who begets or one who gives birth to or nurtures and raises a child; a relative who plays the role of guardian; one of the two persons from whom one is immediately biologically descended; a person who acts as a parent in rearing a

child; a step-parent or adoptive parent” (Parent, n.d.).

Rights of the Child

So, what rights do children and parents have? Can those rights be equated? The internationally accepted rights for children are entrenched in the United Nations Convention on the Rights of the Child (UNCRC, 2015), and has been ratified by all countries worldwide, except one up until 2015. That one country is the United States of America (Mehta, 2015). The UNCRC has been described as providing the most complete statement of children’s rights and is the most widely ratified international human rights treaty in human history. Its 54 articles cover all aspects of a child’s life and specify the civil, political, economic, social, and cultural rights to which children everywhere are entitled (UNCRC, 2015).

The Child Care and Protection Act Jamaica 2004 (2017), Jamaica, that aligns with the UNCRC has encapsulated the rights of the child in three groups:

- 1. Protection Rights: Rights that protect children from all types of violence, abuse, neglect, and exploitation;**
- 2. Provision Rights: Rights that guarantee the basic things that children need for survival, growth, and development; and**
- 3. Participation Rights: Rights that ensure children’s views are considered when adults are making decisions that affect them, and that opportunities are provided for them to share their views**

(The Child Care and Protection Act Jamaica 2004 (2017)).

The rights of children are inalienable (UNCRC, 2015). These are rights which are bestowed on all children even if the parents are unable or unwilling to apportion those rights to their children. Rights are accorded to children because they are human beings. The United Nations International Children’s Emergency Fund (UNICEF) asserts that “children are neither the property of their parents nor are they helpless objects of charity. Children are human beings who are the subject of their own rights.”

The Rights of Parents

Jamaica’s Child Care and Protection Act Jamaica 2004, (2017) acknowledged that “a family is the preferred environment for the care

and upbringing of children and the responsibility for the protection of children rests primarily with the parents.” The rights of parents merge into their responsibilities and obligations to the children under their care, in a set of activities that spontaneously result in trust, affection and intimacy that cannot be re-distributed. Children raised by their biological parents in a stable, intact home, usually have distinct advantages when compared to children raised by adoptive parents, step-parents, divorced parents, cohabiting parents, or other parental arrangements. To augment this, the Children’s Rights in Wales.org, (1990), lists the most important parental roles as:

- i. Providing a home for the child;**
- ii. Protecting and maintaining the child;**
- iii. Disciplining the child;**
- iv. Choosing and providing for the child’s education;**
- v. Agreeing to the child’s medical treatment;**
- vi. Naming the child and agreeing to any change in name; and**
- vii. Looking after the child’s property (Children’s Rights in Wales.org., 1990).**

The rights of parents to implement control and care over their children have been inviolable in the USA. The liberty guarantee of the due process clause of the Fourteenth Amendment that is held by the Supreme Court includes “the right of the individual to establish a home and bring up children.” The Courts have traditionally reflected Western civilization in terms of a parent who is an adult and a minor child who is with an adult parent. Under the US constitution, the State can conclude that parents and those with primary responsibility for children’s wellbeing are entitled to and usually receive the support of laws designed to assist them to discharge that responsibility (Calvin, et al. 2009, p. 33).

Brennan & Noggle (1997) reported John Locke’s claim that parental rights rest on the principle of parental power which gives parents the privilege to govern and make rational decisions for the good of their children. In support of Locke’s statement, Brennan & Noggle (1997) referred to parental rights as stewardship rights. These rights include the responsibility to protect and secure someone considered worthwhile of being cared for and preserved. Additionally,

Article 488 of the USA Civil Code, paragraph 1, specifies the duties that parents should uphold in raising their children and the conditions which should foster the development of spiritual, moral and social harmony (Munteanu, 2014, p.703).

Arguments Supporting Parents' Rights as Superior

Writte & Browning (2012) supported the rights of the parent over those of the child. They contended that rights in the parent-child relationship should be reserved for adults exclusively until the child becomes an adult. This argument claimed that the UNCRC did not adequately consider the stages of development of the child that is characterized by specific needs and interests; and that without parents those needs and interests would not be administered as the child does not have the capacity to order them. Writte & Browning (2012) reinforced the belief that sanctioning equal children's rights jeopardizes the rights that parents have to nurture their children in keeping with the parents' beliefs system and children's obligation to conform. Provisions such as the child's right to privacy, the right to express views freely, and the right to freedom of association are positioned to restrict parents' efforts to shape the value system, conscience, religion, relations, and the necessary life skills which are fundamental to a child becoming a fully functioning adult (pp, 993 & 996).

Moschella (2014) opined that the rights of parents are embedded in the special obligations, duties and responsibilities by virtue of being parents of the child. These special obligations, responsibilities and duties correspond with the needs of the child, and parents should be free to guide and direct the upbringing of their children on their commitment to do so. Parental authority and the right to exercise that authority would be compromised if the rights granted to the child are equal to or supersede those of their parents. Put another way, equating parents' right with their children would contravene the principle of authority and leadership which parents seek to uphold. (Moschella, 2014).

Brennan & Noggle, (1997) advanced 'the commonsense thesis' which refers to the immature state of the child in various areas of development and which in turn ratifies the need for parental guidance and nurturing. Those immature states depicted limited cognitive powers, and inexperience to make informed decisions and

judgements. Brennan & Noggle, (1997) also contended that it was only reasonable or commonsense, that parents be endowed with the authority and the rights to give that guidance and nurturing during the child's vulnerable years (pp. 3). Nature's contribution has also been a part of the discussion that is in favor of superior parental rights. To demonstrate this, Condie (2003) declared that bonding and imprinting, are important activities that nature establishes between human parents and child. Parent and infant are impelled into strong emotional connections so that the infant will seek proximity to the parent in order to be fed and protected (pp. 89-91). According to Condie (2003) parental rights are fundamental in accomplishing the responsibilities for food and protection, and should not be changed by un-natural societal policies.

Arguments Supporting Minor's Rights as Equal

Wattenberg et al, (2001) conducted a study in Minnesota, United States of America (USA) with 103 children who were in state care, and presented arguments from the study, that supported the equal rights of the child. The study also explored the circumstances relating to the parents who neglected and abused their children, which was the rationale for the termination of their parental rights. Additionally, the study revealed that more than 80% of the mothers and more than 60% of the fathers had multiple problems including mental disorders such as, personality disorders, depression, bipolar, and schizophrenia, were engaged in high-risk behaviors such as substance abuse, had criminal records and were abused during childhood. The evidence of severe damage to the children of these parents, most being 3 years and younger, underscored the argument that adequate provisions under societal laws must be enforced to protect the rights of the child (pp. 408-421). The study concluded that if parental rights are left unchecked; some children would be at the mercy of abusive and mentally depraved parents. If the rights of the child were unequal and inadequate in those circumstances, the chances of the children being rescued would be totally impossible. In addition, the Minnesota study supported several other studies which were conducted in the USA, and which produced similar results and conclusions.

Brian Howe, (2001) expounded that the United Nations Convention on the Rights of the Child, posited that it is children who have 'basic rights,' not their parents. Basic or fundamental rights are

claims that are valid and should be considered highly important in public policy, laws and the institutions of a state. The rights awarded to parents are conditional and not fundamental. Parents' rights are inherently allied with their obligations to their children and they are obliged to act in the best interest of the children in all circumstances (Howe, 2001, pp. 61-62).

The "Equal Consideration Thesis" is another argument that supports the equal rights of the child. This thesis recognized that children's rights' entitlement should hold similar moral respect as adults.' This argument is not claiming that parents and their children should have the same rights and duties, rather it is submitting that as appropriate rights and duties are conferred on children, they must be treated with the same measure of respect and value as parents and should not be relegated to an inferior moral status (Brennan & Noggle, 1997, pp 3-4).

A study on Parenting and Family Structure in Jamaica and the wider Caribbean Islands, noted that general child-rearing methods in Jamaica have been highly repressive, severe, and abusive and that parents' disciplinary measures were developmentally inappropriate (Smith & Mosby, 2003, pp. 370-381). The study further stated that physical punishment was culturally sanctioned, and generally viewed as the norm, having the support of parents, relatives, teachers, and some religious leaders. The practice of inflicting corporal punishment, found credence in Proverbs 13:24, (New King James Version) "He that spareth his rod hateth his son: but he that loveth him chasteneth him betimes." To discredit this as a rationale for physical and other abuse to children, David in Psalm 127:3, (King James Version) affirmed that 'Children are a heritage from the Lord...' God having invested a great legacy in children, expects that this legacy should be safe guarded and valued (Bible Hub, 2017). Awarding value to children should be through credible means such as equal rights accorded to children by parents as they direct their development. Where abuse and denial of equal rights exist, these mitigate against God's divine plan for His children (Writte & Browning, (2012).

Since children have unique needs, are human beings and valued citizens, as adults, they

should have a significant input towards the positive growth and development of society, currently and in the future, and should not be deprived of a similar spectrum of rights as adults or parents. Children deserve to be heard so that when they become adults, they will willingly invest similar level of regard for the children of their generation. While the rights of children and parents may differ in some respects, children's rights should proportionately and adequately contest the rights of parents in anticipation of conditions where the opportunity for exploitation, manipulation and other kinds of abuse exist (Ndofirepi, & Cross, 2015, p. 236).

Conclusion

The Convention of the Rights of the Child (CRC) defined children as human beings deserving dignity and respect, having rights to survival through the provision of adequate health care and other basic needs for food, clothing, shelter, education, and security. The UNCRC expects countries that have ratified the Convention to ensure that systems and mechanisms are implemented and maintained to fulfill the obligations to children. The discussion on the rights of children usually includes parental rights as it may be difficult to discuss one without the other. The fact that both sets of individuals are humans with moral values, they should be viewed as having equal respect despite the differences of their developmental stages, responsibilities, duties and the rights conferred on them by law (Mama, 2010). To say that children do not have the same basic human rights as adults or parents is to deny their status as viable human beings.

Calvin et al., (2009) articulated that the US Courts have acknowledged that children are vulnerable and as such are often exposed to abuse, violence, and neglect particularly by parents who have also suffered similarly at the hands of their caregivers. The Courts considered the role of the state as central to ensuring that children develop in an environment that is safe, and free from harm, that engenders positive psychological, physical, intellectual, emotional, and spiritual development. Children are important to the future of any nation and the state has reserved the right to regulate, limit, or revoke parental rights in circumstances in which children are at risk. To facilitate this role, the rights of the child must supersede or at best be equal to the rights of the parents. A democratic society must seek to preserve the health and well-rounded growth of its

children by guiding them toward becoming mature and responsible citizens, who can contribute fruitfully to that society. To secure this, the society must regulate against impeding restraints and dangers regardless of the source (Calvin et al, 2009, p. 34). If the rights of the child are less than commensurate with that of their parents, the society may fail at rescuing what matters most.

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