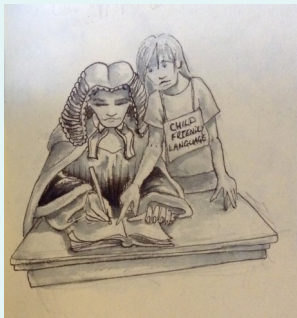


4) Putting the child at the centre of the narrative

Putting the child at the centre of the judgment narrative is important for emphasising their distinct stories and experiences within the judicial decision-making process. The judge can present facts to contextualise the child's life more accurately, to acknowledge the impact of their decision on the child, and to help others implicated in the case to better understand the judge's reasoning. Even small details, such as giving the child a name, helps to present the child as a real and equal legal subject.



5) Communicating the judgment in a child-friendly way

A children's rights judgment is one that can be understood by the child who is subject to the proceedings, using language, a structure and a narrative that is easily accessible. By speaking to children, a children's rights judgment has a broader communicative value; it explicitly tells children and adults that the law recognises and treats them as rights-holders who are worthy of respect. A number of the judgments in the project provided short child friendly summaries at the end of the judgment; others provided a child friendly alternative to the main judgment. There was some indication from the project that the very process of crafting a child friendly judgment impacts upon the judge's reasoning.

'Child friendly judgments are simply good judgments'

Want to know more?

The project findings are published in: **Stalford, H., Hollingsworth, K., and Gilmore, S (eds) *Rewriting Children's Rights Judgments: From Academic Vision to New Practice* (2017, Oxford: Hart Publishing)**

Further work will be undertaken in 2017-19 to adapt the project findings to judicial training materials and to examine how a children's rights-based approach to judging can be achieved in specific legal contexts, including immigration and asylum, criminal justice and family justice.

If you would like further details, please contact Seamus Byrne at: cappagh1@liverpool.ac.uk



Children's
Rights
Judgments

*Increasing children's visibility
in law and better protecting
their rights*

Children's Rights Judgments is a collaborative project involving 56 children's rights academics and legal practitioners from across the world. Contributors rewrote 28 existing judgments from various courts and jurisdictions (including the international courts). The revised judgments and accompanying commentaries aim to demonstrate how children's rights principles, methods and research can be brought to bear more meaningfully and explicitly on the judicial process. The project also provided some insight into the practical, legal, cultural and ideological challenges facing the judiciary when dealing with cases involving children and considered how they might be overcome.



Adopting a Children's Rights-Based Approach to Judging

Five Features of a Children's Rights Judgment

During the project, five factors were identified which characterise a children's rights-based approach to judgments.

1) *Applying Children's Rights Principles*

Judges can explicitly adopt a children's rights approach by drawing on children's rights principles and provisions to greater effect, including those enshrined in the UN Convention on the Rights of the Child (CRC) and its accompanying guidance.

Even where the CRC is not incorporated into domestic law, judges can innovate to make greater use of its provisions. For example, in England and Wales (the jurisdiction featured most in our project), the CRC can inform judicial interpretations of ambiguous legislation, common law principles (including principles of judicial review), domestically enforceable ECHR provisions and EU rights.

Re C v XYZ County Council [2007] EWCA Civ 1206

This case questioned whether there should be an investigation into the child's father's suitability to care for the child before proceeding with her adoption outside the child's family. In a marked departure from the 'glaringly mother-centred' original, the revised version places greater focus on the child's identity rights with reference to Articles 7 and 8 of the CRC original.

2) *Using scholarship to inform key concepts and theories*

Although academic scholarship cannot form part of the *ratio* of a judgment, it can offer fresh insights into the unique and diffuse realities of children's lives. The Children's Rights Judgment project demonstrates clearly how both theoretical and empirical research can inform aspects of judicial decision-making. Theoretical work helps to justify the special treatment of children as rights-holders within the law. It provides deeper, critical insights into the 'best interests principle' and the nature, scope and value of recognizing children's autonomy.

Empirical research is also important for challenging entrenched presumptions about childhood and for achieving a better understanding of children's behaviour, choices and capacities for decision-making.

Re T (A minor) (Wardship: Medical treatment) [1997] 1 WLR 242, CA.

This decision originally upheld the parents' request to withhold a life-saving liver transplant from their two-year-old boy, contrary to the advice of the child's medical team.

In his re-written judgment, 'Lord Freeman' refers to a study published in the British Medical Journal by P. Alderson and C. Goodey examining the capacities of very premature babies in furtherance of his articulation that "judges must not lose sight that even very young children are capable of expressing their feelings". His judgment is also informed by the teachings of wartime hero and children's rights advocate, Janusz Korczak, to reinforce the point that children are not the property of their parents.

3) *Maximising children's participation*

Maximising children's participation in legal processes is central to a children's rights approach to judicial decision-making. Ensuring the child's voice is heard and given due weight helps to mitigate the many ways in which their views and experiences are silenced or distorted throughout legal proceedings. It is also one of the most important means of assessing what is in children's best interests.

Whilst judges are now much more open to hearing from children, the extent to which their views actually inform decision-making is less clear. Judges retain considerable discretion to ensure the child's wishes form part of the decision-making process and the exercise of this discretion in line with Article 12 CRC is an essential pre-requisite to a children's rights judgment.

The project highlights how meaningful (as opposed to tokenistic) participation can lead to better-informed decision-making, greater levels of compliance, a better understanding of the child's position on the part of other parties to the process, and a reduced likelihood of repeat proceedings.

P-S (Children) [2013] EWCA Civ 223

This case concerned a 15-year-old boy in foster care who wished to return to live with his mother who previously left the country without making care arrangements for her children. The boy was prevented from expressing his wishes and feelings to the judge on the basis that it would do more harm than good.

The rewritten decision reinforces the child's right to be heard as central to his right to a fair trial and is heavily critical of the protective mode of the welfare paradigm, in which adults' views alone determine the best interests of children.