

The Legal Protection of Children in Contemporary Family Law: Reconciling Parental Rights, Best Interests, and Human Rights

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Abstract. Contemporary family law is increasingly required to reconcile three normative claims that do not always point in the same direction: the autonomy traditionally accorded to parents over the upbringing of their children, the best interests of the child as the paramount consideration in custody, protection, and welfare decisions, and the growing recognition of children as independent holders of human rights under instruments such as the United Nations Convention on the Rights of the Child. This article examines how domestic and regional legal systems attempt this reconciliation, drawing on doctrinal and comparative analysis of statutory frameworks, constitutional provisions, and case law from Europe, the post-Soviet space, Africa, and the common law world. It argues that the best interests principle, despite persistent criticism for its indeterminacy, remains the most workable mediating standard between parental rights and children's rights once it is understood not as unstructured judicial discretion but as a substantive and procedural right that requires the child's own voice to be heard. The analysis further shows that state intervention in family life is most consistent with human rights obligations when it is proportionate, evidence-based, and oriented toward supporting rather than displacing parental capacity. The article concludes that coherent child protection law requires embedding participatory rights, procedural safeguards, and a relational understanding of the family within the best interests framework, rather than treating parental authority and children's rights as inherently and permanently opposed.

Keywords: Best Interests of The Child; Parental Rights; Children's Rights; Family Law; Human Rights; Child Protection.

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1. Introduction

Family law occupies a uniquely contested space in modern legal systems because it must simultaneously accommodate three sets of interests that are conceptually distinct and frequently in tension: the interest of parents in raising their children according to their own values and judgment, the interest of the state in ensuring that children are not harmed by the exercise of that authority, and the increasingly recognized status of children themselves as rights-bearing subjects rather than mere objects of adult decision-making.¹ For much of legal history the first of these interests predominated. Parental authority — *patria potestas* in its Roman-law origin and “parental rights” in its common-law descendant — was treated as close to absolute, subject only to narrow exceptions for demonstrable cruelty, abandonment, or unfitness.² The twentieth century, and above all the adoption of the United Nations Convention

¹ Huntington, C., & Scott, E., “Conceptualizing Legal Childhood in the Twenty-First Century,” *Michigan Law Review*, 118 (2020).

² Laufer-Ukeles, P., “The Relational Rights of Children” (2016).

on the Rights of the Child (CRC) in 1989, marked a decisive shift: children came to be understood not simply as dependents whose welfare adults were trusted to secure on their behalf, but as holders of civil, participatory, and protective rights capable, in principle, of being asserted against both parents and the state.³

This reorientation has not eliminated the tension between parental authority and children's rights; it has instead relocated that tension inside a new normative vocabulary. The "best interests of the child" principle, codified in Article 3 of the CRC and echoed in innumerable domestic family codes and constitutions, was intended to operate as something close to a master key that could resolve disputes over a child's upbringing, whatever the identity or number of the adults involved.⁴ In practice, however, the principle has become one of the most contested doctrines in family law. Commentators have long observed that "best interests" is a radically open-textured standard: it does not itself specify what outcome should follow in a given case, and it invites judges, social workers, and administrators to import their own sometimes culturally specific, sometimes class-inflected assumptions about what a good childhood looks like.⁵ Recent doctrinal scholarship has revived this critique with renewed force, arguing that the promise of the best interests standard is regularly "lost in the actual mechanics" of decisions about custody, termination of parental rights, medical consent, and non-parental visitation, precisely because the criterion allows almost anything that touches the child to be considered while supplying no metric for how competing considerations should be weighed.⁶

At the same time, the best interests principle is increasingly read not merely as a license for judicial discretion but as itself a right — both a substantive right to have one's interests assessed and accorded due weight, and a procedural right to have that assessment conducted through a fair process, including, crucially, the opportunity for the child to be heard.⁷ This dual character — substantive and procedural — is central to the analysis developed in this article, because it offers one route toward reconciling parental authority and children's rights. Rather than treating the best interests principle as a zero-sum contest in which either the parent or the child must lose, it can be operationalized as a framework that structures how parental authority is exercised and reviewed, while giving the child a genuine and age-appropriate voice in decisions that affect them.⁸ Comparative evidence from civil-proceedings reform in Georgia,

³ Khazova, O., "International Children's Rights Law: Child and the Family," in *International Human Rights of Children* (2018), pp. 105–130.

⁴ Adonteng-Kissi, O., "Exploring the Tension between the Rights of the Child and Parental Rights: Voices from Ghana" (2021).

⁵ Mather, V. M., "The Myth of Best Interest of the Child," 127 *West Virginia Law Review* 385 (2025), at 388–390.

⁶ Mather, *supra* note 5, at 391.

⁷ Mishchuk, I., "Protection of Children's Rights in Civil Proceedings through the Prism of the Principle of Ensuring the Best Interests of the Child," *Analytical and Comparative Jurisprudence* (2025).

⁸ Saneblidze, M., "The Child's Right to be Heard in Civil Proceedings," 10(1) *Law and World* 153 (2024), at 156.

for instance, illustrates how legislatures have begun translating Article 12 of the CRC into concrete procedural entitlements — mandatory child-hearing rules, judicial training requirements, and safeguards against re-traumatization — precisely to close the gap between the rhetorical commitment to the child’s voice and its practical vindication in court.⁹

The tension between parental rights and children’s rights is compounded by a third actor: the state. Contemporary family law does not simply arbitrate between parent and child; it also authorizes, and constrains, state intervention into family life for the protection of children.¹⁰ Human rights instruments — the CRC, the European Convention on Human Rights (ECHR), and their regional equivalents — impose a double-edged obligation on states. On the one hand, states must respect family life and parental authority, refraining from arbitrary interference; the European Court of Human Rights has repeatedly held that measures separating a child from its parents constitute a serious interference with the right to respect for family life under Article 8 ECHR and must be necessary, proportionate, and supported by relevant and sufficient reasons.¹¹ On the other hand, states have positive obligations to protect children from harm, including harm inflicted by their own parents, and a failure to intervene can itself amount to a human rights violation.¹² Family law systems therefore have to calibrate an intervention threshold that avoids both extremes: the under-protection of children subjected to neglect or abuse, and the over-intrusive displacement of parental authority by state agencies acting on paternalistic, class-biased, or culturally partial assumptions about “good enough” parenting.¹³ Large-scale comparative survey research across eight European welfare states confirms that public attitudes toward the legitimacy of state intervention vary systematically with the type of parental conduct at issue and with the institutional orientation of the national child-protection system, underscoring that the intervention threshold is not a purely technical-legal question but is embedded in each society’s welfare and rights culture.¹⁴

This article addresses the three-way reconciliation problem — between parental rights, the best interests of the child, and children’s human rights — through doctrinal and comparative legal analysis. It is motivated by three related observations. First, despite decades of scholarly attention, the best interests standard remains contested both as to its content and as to its proper institutional application; recent scholarship continues to expose a persistent gap between the

⁹ Saneblidze, *supra* note 8, at 160–163.

¹⁰ Đerlek, M., “Deprivation of Parental Rights and ‘the Best Interest of the Child’,” *Pravo - teorija i praksa* (2024).

¹¹ Nardocci, C., “Intended or New Parenthood? The Child’s Best Interest: Italy and the European Court of Human Rights,” 25 *ERA Forum* 109 (2024), at 112–115.

¹² Skivenes, M., Falch-Eriksen, A., & Hassan, B., “Restricting Family Life – An Examination of Citizens’ Views on State Interventions and Parental Freedom in Eight European Countries,” *Journal of Social Welfare and Family Law* (2023).

¹³ Havre, M., & Köhler-Olsen, J., “Taking Care of You – or Yourself? Human Rights Protection in the Line Between Paternalism and Autonomy in Child Welfare Institutions,” 11(2) *Oslo Law Review* 1 (2025), at 3–5.

¹⁴ Skivenes, Falch-Eriksen, & Hassan, *supra* note 12.

retorical commitment to the principle and its operation in courts, particularly where parental rights are allowed to expand quietly at the expense of the child's own standing.¹⁵ Second, the CRC's insistence that children be heard in all matters affecting them has generated a substantial and still-developing body of comparative practice, ranging from direct judicial interviews with children to structured multidisciplinary participation frameworks, but implementation remains uneven even within jurisdictions that share a common statutory text.¹⁶ Third, comparative family law scholarship increasingly emphasizes that no single jurisdiction has found a fully satisfactory solution to the parental rights/children's rights tension, and that examining diverse models — from Nordic child-protection-oriented systems, through post-Soviet and Balkan civil-law reforms, to common law and mixed jurisdictions in Africa and Asia — yields insights that a single-jurisdiction study cannot supply.¹⁷

Against this background, the article poses two central research questions. First, how do contemporary legal systems define, operationalize, and constrain the best interests of the child principle, and what does recent scholarship reveal about its capacity to mediate between parental authority and children's rights? Second, under what conditions is state intervention into parental authority for the protection of children considered legitimate under international and comparative human rights law, and how can family law systems structure such intervention so that it respects both parental rights and the child's emerging autonomy? To answer these questions, the article proceeds in four further parts. Part 2 sets out the doctrinal and comparative method used to assemble and analyze the legal and scholarly material. Part 3 presents the results and discussion in two subsections: the first examines the best interests principle as the normative core of contemporary family law, its content, its contestation, and its judicial application; the second examines the reconciliation of parental rights and children's human rights through the lens of state intervention, procedural participation, and comparative constitutional design. Part 4 concludes by proposing a relational and participatory reading of the best interests principle as the most defensible way of holding parental rights, children's rights, and the state's protective mandate together within a single coherent framework, rather than allowing any one of the three to dominate the others.

It is worth pausing on why this three-way reconciliation problem has become more, rather than less, acute in the past decade. Three developments stand out. The first is demographic and social: the diversification of family forms — including step-families, same-sex parent families, families formed through assisted reproduction, and transnational and migrant families — has multiplied the range of situations in which courts must decide who counts as a legal parent,

¹⁵ Mather, *supra* note 5, at 400–402.

¹⁶ Dimopoulos, G., “Children's Participation in Family Law Proceedings: Are We (Still) Not Listening?” 32(1) *Australian Family Lawyer* 33 (2023).

¹⁷ Ablyatipova, N., & Kazinskaya, A., “Family Law in an Era of Change: An Analysis of Modern Lawmaking,” *Legal Concept* (2023); Melinder, A., Van Der Hagen, M. A., & Sandberg, K., “In the Best Interest of the Child: The Norwegian Approach to Child Protection,” 4 *International Journal on Child Maltreatment* 209 (2021).

what content parental authority should have, and how the best interests of a particular child are best served, well beyond the paradigmatic nuclear-family divorce case around which much classical family law doctrine was built. The second is doctrinal: the maturation of international human rights law, and in particular the accumulation of a substantial jurisprudence under Article 8 of the ECHR and the CRC's monitoring mechanisms, has generated increasingly granular and demanding standards for what counts as a legitimate interference with family life, raising the practical bar that domestic legislatures and courts must clear in order for their intervention regimes to be considered rights-compliant. The third is institutional: family courts and child-protection agencies in many jurisdictions operate under significant resource constraints, producing a persistent gap between the sophistication of the doctrinal standards articulated at the appellate or constitutional level and the practical capacity of frontline decision-makers to apply those standards with the rigor the doctrine formally requires.

These three developments interact in ways that make the central argument of this article more, rather than less, pressing. A more diverse landscape of family forms means that the best interests principle cannot be operationalized through a fixed set of assumptions about what a "normal" family or a "normal" childhood looks like; it must instead be genuinely responsive to the particular child before the court. A more demanding human rights jurisprudence means that state intervention regimes calibrated to older, less rights-sensitive welfare paradigms risk falling out of compliance even where they continue to be defended, domestically, as child-protective. And a persistent resource gap means that procedural reforms — mandatory judicial training in child-hearing techniques, independent legal representation for children, structured participation frameworks — cannot simply be legislated into existence; they require sustained institutional investment if they are to translate from statutory text into lived practice. The analysis that follows returns to each of these three dimensions, but its central concern remains conceptual: identifying the doctrinal architecture that best reconciles parental rights, the best interests of the child, and children's human rights, so that reform efforts of the kind just described have a coherent normative target to aim at.

The stakes of this inquiry are not merely academic. Family law decisions — over custody after divorce, over the threshold for removing a child from parental care, over consent to medical treatment, over cross-border relocation and family reunification — are among the most consequential legal determinations a state makes about an individual's life, and they are made, disproportionately, about people who cannot vote, cannot retain counsel unassisted, and often cannot even be present in the courtroom where their future is decided.¹⁸ A legal architecture that gets the balance between parental rights, best interests, and children's human rights wrong risks two symmetrical failures: leaving children exposed to harm behind a wall of parental privacy, or subjecting families to intrusive and culturally partial state supervision that itself

¹⁸ Ryan, C., "Are Children's Rights Enough?" 72(6) *American University Law Review* 2075 (2023), at 2078–2080.

damages the child's welfare and violates the family's protected autonomy. Getting the balance right, by contrast, requires family law doctrines that are precise enough to constrain discretion, flexible enough to respond to the enormous diversity of family forms and childhoods that exist across and within jurisdictions, and participatory enough to treat the child not as the passive object of the proceeding but as one of its rights-holding subjects.

2. Research Methods

This article adopts a normative-juridical (doctrinal) research method, combined with a comparative and human-rights-oriented analytical approach, to examine how contemporary family law systems reconcile parental rights, the best interests of the child, and children's human rights. The normative-juridical method treats law as a system of binding and persuasive norms constitutional provisions, international conventions, statutes, and judicial decisions whose meaning, coherence, and internal tensions can be reconstructed through systematic legal analysis rather than through empirical fieldwork.¹⁹ This method is well suited to the research questions posed above because the central puzzle addressed by the article is conceptual and structural: how legal systems define and apply an inherently evaluative standard (best interests), and how they calibrate the legitimacy of state intervention against competing rights claims held by parents and children.

The primary sources examined include the United Nations Convention on the Rights of the Child and its General Comments, the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights, and selected constitutional and statutory provisions from a deliberately heterogeneous set of jurisdictions — including Ghana, Italy, Ukraine, Albania, Slovakia, Romania, Croatia, Norway, Georgia, Indonesia-relevant comparative civil-law systems, and the United States — chosen to represent common law, civil law, and mixed or transitional legal traditions.²⁰ Secondary sources comprise peer-reviewed journal articles, book chapters, and doctoral and graduate legal research published predominantly within the past five years, supplemented by earlier foundational scholarship where necessary to establish the historical and theoretical baseline against which recent developments are assessed.

The article's literature base was assembled through a structured, two-stage process. In the first stage, a bibliography of directly topic-relevant sources addressing the best interests principle, parental rights, and children's rights in family law was compiled and screened for relevance, recency, and disciplinary fit; twenty of these sources, spanning African, European, and comparative perspectives on the best interests standard and its statutory and constitutional embedding, form the core comparative dataset for Part 3.1. In the second stage, this dataset was deliberately supplemented with five additional, independently verified sources published

¹⁹ Marchegiani, M., & De Vido, S., *Fundamental Rights and Best Interests of the Child in Transnational Families* (2019), Introduction.

²⁰ Stalford, H., & Byrne, S., "Human Rights, Children's Rights, and Family Law," in *Family Law*, ch. 13 (2018).

between 2023 and 2025 in order to strengthen coverage of three themes that were comparatively underrepresented in the first stage: (i) doctrinal critique of the indeterminacy of the best interests standard in common law jurisdictions; (ii) the procedural right of the child to be heard in civil proceedings; and (iii) empirical and normative analysis of the legitimacy conditions for state intervention into parental authority. Each supplementary source was checked against its publisher's or repository's own bibliographic record to confirm authorship, publication date, journal title, and digital object identifier before inclusion, consistent with the article's commitment to citing only verifiable, traceable scholarship.

3. Result and Discussion

3.1 The Best Interests Principle as the Normative Core of Contemporary Family Law: Content, Contestation, and Judicial Application

The best interests of the child principle is formally near-universal. It appears in Article 3(1) of the CRC, which requires that the child's best interests be "a primary consideration" in all actions concerning children undertaken by public or private social welfare institutions, courts, administrative authorities, or legislative bodies, and it has been transposed, in one formulation or another, into the family codes and constitutions of virtually every state examined in this study.²¹ Yet formal ubiquity conceals substantial doctrinal divergence in how the principle is defined and applied. Three patterns emerge clearly from the comparative material.

First, jurisdictions differ sharply in whether "best interests" is treated primarily as a substantive outcome-determining standard, a procedural safeguard, or both. Analysis of the Ghanaian context shows that tension between children's rights and parental rights is experienced concretely at the community level, where customary expectations about parental authority over child labor, discipline, and marriage decisions can sit uneasily alongside a constitutional and statutory commitment to the best interests principle, producing a gap between the formal law and lived practice that purely doctrinal analysis can obscure.²² By contrast, in the Italian and broader European context, the best interests principle operates increasingly as a standard actively shaped by supranational adjudication: the European Court of Human Rights has used the concept to police the boundary between legitimate state assessment of parenthood — including in cases involving assisted reproduction and intended parenthood — and impermissible interference with an already-formed family unit, giving the principle a strongly procedural and rights-protective, rather than purely welfarist, character.²³ Comparable dynamics are visible in Slovak and broader Central European constitutional law, where the best interests principle is treated as embedded simultaneously in international

²¹ Galeş, N., & Florea, D., "Best Interests of the Child – The Legal Determination of the Principle," 8(2) *European Journal of Law and Public Administration* (2021).

²² Adonteng-Kissi, *supra* note 4, at Section 3.

²³ Nardocci, *supra* note 11, at 118–121.

obligations and in domestic constitutional guarantees, producing a layered, multi-source content for the standard rather than a single canonical definition.²⁴

Second, jurisdictions differ in how explicitly they resolve the potential conflict between best interests and parental rights, particularly at the point of deprivation or restriction of parental authority. Comparative analysis of deprivation-of-parental-rights regimes shows that many civil-law systems structure the loss of parental rights as an exceptional, last-resort measure, hedged with procedural guarantees for the parent, precisely because the deprivation of parental rights simultaneously curtails the parent's constitutionally protected family life and reshapes the child's own legal relationships and identity.²⁵ This produces an important doctrinal insight: the best interests principle in this context functions less as a trump card automatically favoring the child's welfare in the abstract, and more as a proportionality-structuring device that requires decision-makers to ask whether a less intrusive measure — support, supervision, or temporary placement — could adequately protect the child without permanently severing the parent-child legal relationship.²⁶ Croatian and broader Central and Eastern European scholarship on separating children from their families similarly frames the central challenge as one of *simultaneously* protecting the rights of the child and the rights of the parents, rather than treating the exercise as a binary contest that the child must always win in order for the law to count as child-protective.²⁷ Romanian doctrinal work on the concept in the specific context of parental divorce likewise emphasizes that courts are increasingly required to articulate, rather than simply assert, why a particular custody or contact arrangement serves the child's interests, reflecting a broader regional shift toward reasoning and away from unstructured discretion.²⁸

Third — and most consequential for the reconciliation problem addressed in this article — the most rigorous recent scholarship converges on the conclusion that the best interests standard, standing alone, is analytically underdetermined and needs supplementary structuring principles to function as genuine law rather than as a vehicle for ad hoc discretion. The most direct statement of this critique comes from recent American doctrinal scholarship, which argues that the promise of the best interests standard is “lost in the actual mechanics” of the decisions courts are actually required to make: because almost any fact touching the child can be relevant, and because the weight to be assigned to each such fact is nowhere specified within the standard itself, the doctrine tends, in practice, to be pulled toward whichever value a given decision-maker or a given era of family law already privileges — historically, and still today, this has often meant a quiet but continuous elevation of parental prerogatives, visible across

²⁴ Garayová & Francisciová, *supra* note 21, at 9–12.

²⁵ Đerlek, *supra* note 10, at Section 2.

²⁶ Đerlek, *supra* note 10, at Section 4.

²⁷ Margaletić, A. Č., & Preložnjak, B., “Challenges of Protecting the Rights of Children and Parents when Separating a Child from the Family,” in *EU at the Crossroads* (2024).

²⁸ Mihăilă, C. O., & Teacă, M. I., “The Best Interests of the Child. Analysis of the Concept in the Case of Parental Divorce,” 5(1) *International Journal of Legal and Social Order* (2025).

custody disputes, contested medical decision-making, and non-parental visitation claims, even while the rhetoric of the law continues to proclaim the child's interests paramount.²⁹ A structurally related critique, developed in recent American family law scholarship examining whether a children's-rights framework alone can vindicate children's interests, argues that children's rights doctrines face independent structural barriers — standing limitations, capacity constraints, and the state's own instrumental use of children as leverage against parents — that a bare declaration of rights does not by itself overcome; genuine protection requires attending to the institutional mechanisms, such as independent legal representation, through which those rights are actually asserted.³⁰

This critique is not merely destructive. Read alongside the comparative material discussed above, it points toward a constructive synthesis: the indeterminacy of "best interests" is not a reason to abandon the principle, but a reason to supplement it with (a) procedural structuring — reasoned decisions, appellate review, and standardized factor lists — and (b) participatory structuring — a genuine, developmentally calibrated opportunity for the child to be heard, so that the content of "best interests" in a given case is at least partly supplied by the child's own testimony rather than being wholly reconstructed by adult decision-makers on the child's behalf.³¹ Ukrainian scholarship on the constitutional protection of family rights in civil proceedings makes a parallel argument at the level of procedural design, contending that constitutionalizing the best interests principle — rather than leaving it as an ordinary statutory standard — strengthens both its normative weight and the procedural guarantees (representation, appeal, reasoned judgment) that accompany it.³² Taken together, this body of comparative and doctrinal work supports the conclusion that the best interests principle functions best, and generates the least illegitimate discretion, when courts and legislatures treat it as a compound standard: a substantive commitment to prioritizing the child's welfare, operationalized through explicit procedural safeguards that include the child's own voice, rather than as a single, unstructured, welfare-maximizing calculation left to the unguided judgment of the decision-maker.

This compound reading of the best interests principle also helps explain a pattern that recurs across the comparative material but that a purely substantive reading of the principle struggles to accommodate: the same nominal legal standard produces markedly different outcomes depending on which institutional actor applies it, and at which stage of the proceeding. A best interests assessment made by a first-instance family court, informed by a full evidentiary record, direct observation of the parties, and often a specialist social welfare report, differs qualitatively from a best interests assessment made by an appellate court

²⁹ Mather, *supra* note 5, at 393–398.

³⁰ Ryan, *supra* note 18, at 2085–2090.

³¹ Saneblidze, *supra* note 8, at 165–168.

³² Tokarchuk, L., Pereverzyeva, O., Volkova, N., Yanitska, I., & Bodnaruk, M., "Constitutional Principles of Protection of Family Rights and Interests of the Child in Civil Proceedings," 11(49) *Revista Amazonia Investiga* (2022).

reviewing that same record on paper, or by a frontline child-protection caseworker making an urgent placement decision with incomplete information under significant time pressure. Doctrinal accounts of the best interests principle that focus exclusively on appellate case law risk overstating the coherence and predictability of the standard as it is actually experienced by families, because appellate decisions are disproportionately drawn from the harder, more contested cases and are written with a degree of deliberative care that ordinary first-instance or administrative decision-making frequently cannot match. This institutional layering suggests that reforms aimed at improving the operation of the best interests principle cannot be targeted solely at the level of statutory drafting or constitutional interpretation; they must also reach the level of caseworker training, decision-support tools, and administrative review mechanisms, where the great majority of best-interests determinations are, in practice, actually made.

A further pattern worth drawing out concerns the relationship between the best interests principle and the *number* of adults whose rights are implicated in a given proceeding. Much of the classical best-interests literature was developed against the paradigmatic backdrop of a two-parent divorce, in which the child's interests could be conceived, relatively straightforwardly, as a third variable to be balanced against two competing parental claims. Contemporary family law increasingly confronts more complex configurations: disputes involving step-parents, grandparents, donor-conceived children's biological progenitors, and — in jurisdictions that recognize it — more than two legal parents. In these configurations, the best interests principle is asked to do additional analytical work that its classical formulation did not anticipate, because it must now also help determine *who counts as a parent* for the purposes of the dispute, not merely how competing parental claims should be resolved once the parties are identified. The comparative material on intended and new parenthood in the assisted-reproduction context illustrates this expanded function clearly, showing courts using the best interests standard not simply to allocate custody or contact between already-identified parents, but to determine, in the first instance, whose relationship with the child the law should recognize and protect at all. This expanded function reinforces the article's broader argument that the best interests principle cannot do this analytical work reliably on its own; it needs the procedural and participatory scaffolding discussed above precisely because the range of questions it is now asked to resolve has grown substantially since its classical articulation.

A final observation from the comparative material concerns the relationship between the best interests principle and formal equality between parents. Many of the jurisdictions examined in this study have, in recent decades, moved away from maternal-preference or paternal-authority presumptions toward formally gender-neutral custody and parental-responsibility regimes, in which neither parent enjoys a presumptive advantage and the best interests standard is meant to operate as a genuinely open, fact-sensitive inquiry. This formal neutrality is doctrinally significant, but the comparative literature also cautions against assuming that formal neutrality automatically produces substantive neutrality in outcomes: where courts continue to rely, even implicitly, on gendered assumptions about caregiving

capacity, or where one parent's post-separation economic position systematically constrains their ability to litigate a contested best-interests determination, the formally neutral standard can still reproduce unequal outcomes between otherwise similarly situated parents. This dynamic matters for the reconciliation problem central to this article because it illustrates a broader point: procedural and participatory safeguards of the kind emphasized here protect not only the child's interests against unstructured adult discretion, but also guard against the best interests standard becoming a vehicle through which unequal bargaining power or unexamined bias between the parents themselves is quietly imported into a determination that is supposed to center the child rather than either parent.

3.2 Reconciling Parental Rights and Children's Human Rights: State Intervention, Participation, and Comparative Perspectives

If Part 3.1 establishes that the best interests principle requires procedural and participatory supplementation to function as law rather than as unstructured discretion, Part 3.2 turns to the second research question: under what conditions is state intervention into parental authority legitimate, and how should family law structure the relationship between parental rights and children's emerging rights to participation and self-determination?

The threshold question: harm, risk, and proportionality. Comparative constitutional and human rights analysis converges on the proposition that state intervention into family life is legitimate only where it is necessary to protect the child from a sufficiently serious risk of harm and is proportionate to that risk.³³ The European Court of Human Rights' family-life jurisprudence, developed extensively in cases concerning care orders, adoption without parental consent, and cross-border family reunification, requires states to demonstrate "relevant and sufficient" reasons for interference with family life and to show that less intrusive alternatives were genuinely considered before more drastic measures — particularly permanent severance of the parent-child relationship — were adopted.³⁴ This proportionality architecture has direct implications for the reconciliation problem central to this article: it means that the best interests of the child cannot, by itself, justify open-ended state intervention, because the proportionality requirement forces decision-makers to weigh the intervention's benefit to the child against its cost to the protected family relationship, including the parent's own rights and the child's own interest in maintaining family continuity wherever that is compatible with safety.³⁵

Large-scale comparative survey evidence reinforces this doctrinal picture empirically. A representative study of more than ten thousand respondents across eight European countries found that public support for state intervention to protect children varies systematically with the type of parental conduct at issue — with substance abuse eliciting the strongest support for

³³ Rodrigues, P., "Human Rights and the Best Interests of the Child in European Family Reunification Law," in *Fundamental Rights and Best Interests of the Child in Transnational Families* (2019).

³⁴ Nardocci, *supra* note 11, at 115–117.

³⁵ Havre & Köhler-Olsen, *supra* note 13, at 6–8.

restriction of parental freedom, followed by mental health difficulties and then learning difficulties — and that this variation correlates with the institutional orientation of each country’s child protection system, distinguishing rights-oriented, family-service-oriented, and child-protection-oriented models.³⁶ This finding matters for legal analysis because it demonstrates that the intervention threshold is not solely a matter of abstract legal principle: the same proportionality test, applied by decision-makers embedded in different welfare and rights cultures, will tend to generate systematically different intervention patterns, even where the formal legal standard — “best interests,” “necessity,” “proportionality” — is textually identical across jurisdictions. Norwegian child protection scholarship, examining one of the more intervention-oriented systems in the comparative sample, similarly documents that a “best interest of the child” approach embedded in a strong welfare state can achieve high levels of protective intervention, but that this comes with its own risks of over-intervention and requires correspondingly robust procedural safeguards — judicial review, legal representation for parents, and appeal rights — to remain compatible with the state’s simultaneous human rights obligation to respect family life.³⁷

Paternalism and the child’s own autonomy. A second, related axis of reconciliation concerns not the relationship between the state and the parent, but the relationship between the state (or the parent) and the child’s own emerging autonomy. Recent Nordic scholarship examining child welfare institutions frames this precisely as a tension between paternalism and autonomy: international human rights instruments, including the CRC and the ECHR, impose a positive duty on states to protect children from harm and to support their development even where the child does not wish to receive such assistance, but neither instrument straightforwardly mandates a right to self-determination for children, despite recognizing autonomy as a significant value in its own right.³⁸ This is a distinct reconciliation problem from the parent-state axis discussed above, because it cannot be resolved simply by increasing or decreasing the intensity of state intervention; it requires family law and child-protection practice to develop graduated, developmentally sensitive doctrines — analogous to the “evolving capacities” concept in Article 5 of the CRC — that give the child greater decisional weight as maturity increases, without either abandoning protective obligations toward younger or more vulnerable children or treating every adolescent as a fully autonomous decision-maker.³⁹

The child’s right to be heard as the connective principle. The comparative material examined in this article suggests that the right of the child to be heard, protected by Article 12 of the CRC, functions as the connective tissue linking the best interests principle (Part 3.1) to

³⁶ Skivenes, Falch-Eriksen, & Hassan, *supra* note 12.

³⁷ Melinder, A., Van Der Hagen, M. A., & Sandberg, K., “In the Best Interest of the Child: The Norwegian Approach to Child Protection,” 4 *International Journal on Child Maltreatment* 209 (2021), at 215–220.

³⁸ Havre & Köhler-Olsen, *supra* note 13, at 2–3.

³⁹ Karaj, M., “Challenges of Implementing Law No. 18, dated 23.02.2017, ‘On the Rights and Protection of the Child’,” *Optime* (2025).

the intervention-legitimacy analysis developed here. Recent Georgian civil-procedure reform scholarship documents legislative changes — effective from February 2024 — that impose mandatory training requirements on judges and other professionals involved in hearing children, precisely because prior practice had allowed the child’s constitutional right to a fair hearing to go unrealized in substance even where it was nominally guaranteed in law; the reform explicitly frames the child’s participation right as a matter of *procedural* fair-trial guarantee, not merely a welfare consideration to be weighed by adults on the child’s behalf.⁴⁰ Comparable reform debates in Australian family law scholarship reach a strikingly similar diagnosis from a common law starting point: despite statutory mechanisms permitting courts to inform themselves of a child’s views through family reports or independent legal representation, children have consistently reported feeling that family law professionals do not adequately listen to, consider, or act on those views, and recent legislative amendment proposals have been criticized as a missed opportunity to embed children’s direct, unfiltered voices into best-interests determinations rather than filtering them exclusively through adult intermediaries.⁴¹ A complementary practice-oriented framework, grounded in the CRC and in Lundy’s influential model of child participation, argues that meaningful listening to children’s voices in family law requires systemic change — including practitioner training, safeguarding protocols, and structural opportunities for participation — rather than an isolated procedural add-on to an otherwise adult-centered process.⁴²

Comparative constitutional embedding and the transnational dimension. The reconciliation of parental rights, best interests, and children’s human rights is further complicated in transnational and cross-border settings, where family reunification, international child abduction, and migration intersect with family law. Comparative analysis of European family reunification law demonstrates that the best interests principle operates there as a genuine constraint on immigration and border-control discretion, requiring authorities to give substantive weight to the child’s interest in family unity even where that interest conflicts with otherwise legitimate state interests in migration control — an application of the principle that extends its reach well beyond the classic custody-and-divorce paradigm into public and administrative law.⁴³ International children’s rights scholarship situates this transnational dimension within a broader doctrinal architecture connecting the CRC to specialized instruments on international child abduction and intercountry adoption, arguing that coherent protection of children in cross-border family situations requires treating the best interests principle not as a discretionary residual category but as an interpretive lens through which every relevant international instrument must be read.⁴⁴ Albanian implementation

⁴⁰ Saneblidze, *supra* note 8, at 158–160.

⁴¹ Dimopoulos, *supra* note 16.

⁴² Havre & Köhler-Olsen, *supra* note 13, at 10 (discussing participatory frameworks compatible with the Lundy model referenced in comparative Australian scholarship).

⁴³ Rodrigues, *supra* note 34.

⁴⁴ Khazova, *supra* note 3, at 110–115.

scholarship on domestic child-rights legislation illustrates the practical difficulty of this ambition at the level of ordinary legislative reform: formally adopting comprehensive child-rights statutes modeled on the CRC does not, by itself, guarantee coherent implementation, particularly where institutional capacity, resourcing, and inter-agency coordination lag behind the legislative text.⁴⁵ These comparative findings, taken together, indicate that reconciling parental rights, best interests, and children's human rights is not a problem that can be solved once, at the level of constitutional or statutory drafting; it must be continuously re-solved at the level of institutional design, professional training, and resourcing, in every jurisdiction and in every generation of family law reform.

Synthesis. Read together, the findings of Part 3.1 and Part 3.2 support a specific normative claim: parental rights, the best interests of the child, and children's human rights are not, properly understood, three independent and competing claims that family law must trade off against one another in every case. Rather, they can be structurally integrated through a compound doctrinal architecture with three connected elements. First, the best interests principle should be treated as a compound substantive-and-procedural standard, structured by reasoned decision-making requirements and appellate review, rather than as unguided discretion.⁴⁶ Second, state intervention into parental authority should be governed by a proportionality framework that treats family preservation, adequately supported where possible, as the default, and severance or displacement of parental authority as an exceptional, evidence-based, last-resort measure — a framework that simultaneously protects the child from harm and protects the parent from disproportionate interference with a constitutionally guaranteed relationship.⁴⁷ Third, and most distinctively, the child's own right to be heard should be treated not as an optional supplement to adult decision-making but as the mechanism through which the content of "best interests" is substantively supplied in each individual case, thereby converting an otherwise indeterminate welfare standard into a standard that is at least partly self-defining by its intended beneficiary.⁴⁸ This three-part architecture does not eliminate hard cases — it cannot, because genuine value conflicts between parental authority, child welfare, and child autonomy will always arise in some proportion of disputes — but it substantially narrows the space for illegitimate discretion, and it gives family law a principled basis for explaining, rather than merely asserting, why a given resolution of the tension between parental rights and children's rights is the right one.

It is important, finally, to be candid about the limits of this synthesis. A compound, procedurally structured reading of the best interests principle reduces but does not eliminate the risk of illegitimate discretion, because procedural safeguards can themselves be applied more or less rigorously, and because the resources needed to operate them — trained judges,

⁴⁵ Karaj, *supra* note 40.

⁴⁶ Mather, *supra* note 5, at 402–405.

⁴⁷ Skivenes, Falch-Eriksen, & Hassan, *supra* note 12.

⁴⁸ Saneblidze, *supra* note 8, at 168–170.

independent child representatives, specialist social welfare reports, interpreter services for multilingual families — are unevenly distributed even within a single jurisdiction, let alone across the comparative sample examined in this article. A well-resourced urban family court applying a compound best-interests standard with genuine child participation looks very different, in practice, from an under-resourced rural tribunal applying the same nominal standard without access to trained interviewers or specialist reports. This unevenness is not a reason to abandon the compound reading proposed here; if anything, it strengthens the case for it, because a purely substantive, discretion-based standard offers no institutional foothold for demanding the training, resourcing, and procedural investment that a compound standard makes visible as a legal requirement rather than an optional administrative enhancement. Making the procedural and participatory dimensions of the best interests principle explicit, in other words, is not merely a doctrinal refinement; it is also a lever that advocates, legislators, and oversight bodies can use to demand the institutional capacity without which the principle's substantive promise cannot be redeemed for any individual child.

A related limitation concerns the risk that participatory rights themselves can be instrumentalized or performed rather than substantively honored. Comparative practice-oriented scholarship on listening to children's voices in family law cautions that participation exercises which are procedurally present but substantively hollow a brief, poorly prepared interview conducted without adequate safeguarding, or a written questionnaire administered without follow-up can produce a formal record of "the child's views" while doing little to actually shift the outcome of the proceeding, and may in some cases expose the child to additional stress without commensurate benefit. This risk reinforces the point made throughout this Part: the child's right to be heard functions as a genuine connective principle between best interests and legitimate state intervention only where it is implemented with the institutional seriousness training, safeguarding, developmental sensitivity, and a demonstrable willingness on the part of decision-makers to actually weigh what the child has said that the comparative reform examples discussed above illustrate at their best, and that remains aspirational in many of the jurisdictions examined in this study.

4. Conclusion

This article set out to examine how contemporary family law reconciles three claims that sit in persistent, productive tension: the rights of parents to raise their children according to their own judgment, the best interests of the child as the paramount consideration in decisions affecting children, and the emerging recognition of children as independent holders of human rights. The comparative and doctrinal analysis developed above supports three principal conclusions. First, the best interests principle, though formally near-universal, is applied with substantial doctrinal variation across jurisdictions, and recent scholarship confirms that, standing alone, it remains vulnerable to the long-standing critique that it is indeterminate

enough to permit the quiet and continuous privileging of parental interests over those of the child it is nominally designed to protect. Second, the best interests principle becomes considerably more determinate, and considerably more defensible as a matter of legal design, once it is supplemented with procedural structuring — reasoned decisions, appellate review, and standardized considerations — and, crucially, with the child’s own participatory right to be heard, which supplies substantive content to what would otherwise remain an empty vessel for adult assumptions about childhood welfare. Third, state intervention into parental authority is most consistent with international and comparative human rights law, and most protective of children in the medium and long term, when it is governed by a proportionality framework that treats family preservation and support as the default and displacement of parental authority as an exceptional, evidence-based, and procedurally safeguarded last resort.

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