

## Alpha ursae minoris – The North Star and the child’s best interests among competing interests

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*Alpha ursae minoris*, the brightest star in the *Ursa Minor* or Little Bear constellation, is better known by the name of the “North Star”. It is 2 100 light years away from Earth. Like all stars, far from being immutable or static, it has a life of its own, its own temperature variations and a specific mass. If it were to die, we on Earth would take more than two millennia to notice. It can be seen only from the Northern Hemisphere. It appears very small in the glowing sky of a summer’s night, even though it is brighter than billions of others. Did you know that the axis of the Earth oscillates, and that as a result, through the centuries and millennia, the North Star has not always been the same?

Gazing at it, as at any star, inspires thoughts and dreams and opens the mind to the mysteries of the existence of the Earth and mankind in the cosmos. It is often difficult to see because of cloud cover or intense stray light sources nearby. It is totally invisible in sunlight. The fame of *Alpha ursae minoris* comes primarily from its ability to guide travellers, especially sailors. It permitted the discoveries which we attribute to the explorers, but in fact they could not work without this speck of light, so small and so essential.

The principle of respect for the child’s best interests is to the law what the North Star is to the night sky. It is difficult to grasp, attracting many criticisms from those who only believe what they can touch, smell and hold in their hands and from those who think it necessary to know everything about the volume, density and composition of the child’s interests for this principle to guide them. However, it can fulfil its function in countless situations, from countless different positions, in response to countless different questions on which direction to take.

The child’s best interests are part of what the theorists call notions with variable content. The closer you come to the very foundations of legal systems, the more you encounter these notions whose meanings are always indefinite: equality, proportionality, equity, public order, good morals, or quite simply “justice”. The principle of the child’s best interests has no foreordained substance. It is undefinable until one is faced with a specific situation. That is its function: making us first of all remain silent, cut stray light sources and look at who the child is. I am wary of grids of indicators and pseudo-mathematical formulae which will spit out the formula of the child’s best interests. You could just as well replace judges with computers.

The North Star indicates a direction and allows for measurement, which is also possible with instruments as simple as a compass or a sextant. The concept of a child’s best interests fills the same role. It is not a philosophical viewpoint to be debated, but a legal concept, hence a vehicle for action. That is how General Comment No. 14 of the Committee on the Rights of the Child would have us understand it. The comment does not speak of content but of balancing interests, of fundamental interpretative principles and of procedural rules. This text is not in itself a star, but indicates a direction, the conditions for correct observation of the constellations, and the exact direction in which the decision maker should point the telescope, according to place and time. General Comment No. 14 is the astronomer’s guide.

The child’s best interests should be a “primary consideration”. There are almost as many divergent interests as there are stars in the sky, but the child holds a central place; his or her brightness is a more important indication than all others. Sometimes nothing else is seen, as if the night had nothing in it but the North Star. This is obviously an illusion. The observer thus imagines that the child’s best interests are opposed, in principle, to the interests of others, especially his or her parents. That is the risk arising from individualism, which would have us believe that a child can conceive himself, in every sense of the word. On the contrary, the child’s best interests are part of a constellation forming part of a system belonging to a universe. This concept contributes to the delineation of harmonious shapes, as lovely as a small bear nestling against the Great Bear constellation. It has relations with the other stars who do not oppose it. The United Nations Convention on the Rights of the Child (UNCRC), moreover, enshrines not only individual rights of the child, it considers the child in relation to others, especially in his or her family.

However, it is true that often, other closer, yet far less powerful, lights normally prevent the child’s interests from being taken as a primary consideration. The interfering glare of adult selfishness, financial interests, immigration police and purported imperatives of security or social defence often make *Alpha ursae minoris* totally invisible. Then children are separated from their families, torn between their parents, ill-treated by institutions, confined behind barbed wire or put in prison. Even the European Court of Human Rights sometimes lets itself be blinded by stray lights, especially where it seems to conform to a kind of principle of reality by accepting that migrant children and their families should receive lesser protection than the families of nationals. The Strasbourg Court does not hesitate to interpret the European Convention on Human Rights in conjunction with the UNCRC, but one sometimes has the impression that it gives up viewing the firmament, that it turns its eye from the telescope to look at the ground. One never sees the stars while looking down.

The child's best interests are an interpretative principle. To interpret means endeavouring to understand what is said. Yes indeed, the principle of a child's best interests speaks, converses with statute and judge, because the child speaks, whatever his or her age, however *in-fans* ("unable to speak") or deemed incapable of self-expression. Even stars are listened to. Huge antennas have been built to hear what they say, especially when the wavelength which they emit is imperceptible to the eye but may yet be perceptible to the ear. Listening to a child and heeding his or her interests cannot be done off the cuff; it involves a learning process, resources, knowledge and a lot of ambient silence. Knowing how to interpret the stars and planets is one of the world's oldest wisdoms, but informed interpreters are rare. Everyone considers him or herself capable of it, however it is not enough to stroll absentmindedly.

The child's best interests indicate a procedure to follow, the obligation for any decision maker to take bearings, to determine exactly the decreasing or increasing angle between the North Star and the horizon. What captain would venture to steer his boat without regularly checking that it follows the chosen course? Letting oneself be guided by a star other than that of the child's best interests would be most imprudent also. All other stars, those of all other interests, revolve around this North Star, and following them would make us go round in circles indefinitely, while waiting to be shipwrecked.

To tell the truth, I find that the expression of Article 3 of the Convention on the Rights of the Child is not the most apt. The term "interests" has a self-interested, egocentric, perhaps even slightly capitalistic connotation. I would have preferred "the respect due to the child". Perhaps the vocabulary is dependent on that time when the concept came into being, more remote than is thought, but when all is said and done very recent, above all compared to the life of a star. It is also the vocabulary of burgeoning hard core liberalism in which the overriding interest is financial.

It is not the UNCRC that invented the concept, or the 1960s. Its trace is already found in the preparatory papers for Napoleon's Civil Code. One would need to research the question for other legal traditions. In the northern part of the planet, when society as a whole recognised the specificity of childhood, the law followed suit, a few years behind as always. With the exception of the inspirational Rousseau, a pioneer in the matter, this period is probably placed in the second half of the 19th century and the early decades of the 20th century. Consider the literature of the time: Charles Dickens' *Oliver Twist* in 1837, Lewis Carroll's *Alice's Adventures in Wonderland* in 1865, the Countess of Ségur's *Un bon petit diable* in 1865, Carlo Collodi's *The Adventures of Pinocchio* in 1883, Frank Wedekind and *Spring Awakening* in 1891, Rudyard Kipling and *The Jungle Book* in 1894.

I confess I have a very special interest in the story of Mowgli, which is a remarkable exploration of a child's relationship with his father, mother and family, accompanied by a portrayal of the predators threatening him, through a striking meditation on observance of the law as a condition of community living and through a reminder of the place of Law in children's upbringing. Once society as a whole acknowledges children's singularity, their fundamental rights can be proclaimed. This is what happened for the first time in 1924 in the first Declaration of the Rights of the Child, thanks in particular to Eglantyne Jebb. What happened afterwards is well known: the

influence of Janusz Korczak, the 1959 UN Declaration of the Rights of the Child and the UNCRC, the most-ratified treaty on fundamental rights, nevertheless constantly violated by the rich and powerful just as all their legal undertakings in favour of a more humane world.

There is no cause to deny that the North Star of the child's best interests is a more effective and better understood, if not better respected, guide in the Northern Hemisphere than in the rest of the world. That does not mean the southern countries violate the rights of the child more than the others because they are lacking in civilisation, more uncouth or incapable of respect for the weak. It is nevertheless important to realise that human rights in general, and the rights of the child in particular, were generated by a culture and a history that is not shared by many families in the world. The countenance of the child which emerges from the UNCRC is that of a European or North American child, not an African, Chinese or Arab child. The intention is not to lapse into general relativism. The rights of the child must be respected, protected and realised all over the world. They are exportable with no cultural imperialism intended. The convention must retain its universal purpose. However, one should be particularly alert to the difficulties of reception stemming from the peculiarities of place and time which surrounded the birth of these rights. It is a form of necessary respect for all who, often justifiably, take a different view of children than "Westerners".

I know very well that there are GPS tracking devices, far more widely used today than stars to get one's bearings. Therein lies the danger: the technology of adults claiming to supplant for good a very distant speck of light. The child's best interests nevertheless have advantages over GPS. It can never break down. It is there even when no longer powered. It will always be an essential benchmark when all alternative methods for determining what is right have proved inadequate. Good old North Star. It seems very small, like a child lost in a huge crowd, but how enormous it must be if one comes close enough!