

Essay by Michael Malvenda, Winner

US political figure Hubert Humphrey once characterised children as individuals in the dawn of life.¹ He believed the treatment of society's vulnerable, including those at such an early age, was the moral test of any government. In Scotland today, one fourth of children are not sharing in life's blissful dawning. Instead, these children remain in perpetual darkness – subject only to the harsh realities poverty creates. Scotland is failing its moral test.

Poverty is prominent in Scotland. Tragically, it is ever more prominent amongst Scottish children who must grapple with the corrosive effects poverty propagates. This essay will explore how children's rights are impeded by poverty, the biggest overarching issue in Scotland. It will detail how rights like health, nutrition, education, and proper development are tainted by the pathology of poverty and its everlasting damage. The second half of the essay will engage with the law and how this field can be utilised smartly to alleviate suffering and restore rights inherent to children everywhere. There is no one panacea to the big issues raised in this essay. Hopefully though, an understanding of law's diverse approaches can form a collective account of how best Scots law can protect and serve children who are in desperate need.

In Scotland, children are endowed with a variety of rights. These rights stem from the United Nations Convention on the Right of the Child (UNCRC) which the United Kingdom ratified back in 1991.² Scotland's implementation of these rights across the country has been at the forefront of its decision-making ever since devolution. However, according to recent data, 230,000 Scottish children currently live in impoverished conditions.³ These conditions affect a whole host of children's rights, none more so than their development and survival.

¹ Hubert Humphrey in Joan Alker, 'Children in the Dawn and Shadows of Life Should be a Top Priority in Budget Talks' (2011) Georgetown University Health Policy Institute

² Save the Children, 'UN Convention on the Rights of the Child (UNCRC): An International Agreement for Child Rights' < <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child> > accessed 30 September, 2018

³ Scottish Government (2018) < <https://www.gov.scot/Publications/2018/03/3017/downloads> > accessed 30 September, 2018

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Children cannot grow up properly in environments lacking certain resources and necessities. Their rights to a healthy lifestyle, including meals, and education are consequently deteriorated if they cannot have access to quality food or academic materials.⁴ Rather than empowering children, the lack of basic needs impairs children from fulfilling their full potential – a goal fundamental to the UNCRC and Scottish values. It is for these reasons why child poverty is an immense issue at the heart of children's rights in Scotland demanding resolution.

Addressing poverty is not simple, nor is there one remedy. A variety of policies are required to extinguish the hardship poverty imposes, as well as to reduce poverty itself. As far as this essay is concerned, the law plays an instrumental role in giving shape to those policies whatever they might be. But the law is not only salient at a legislative level; the law can be explored and strengthened internally to allay difficulties which might exacerbate poverty and inequalities.

First and most obviously, is the legislative angle. Law can be utilised to enact numerous policies in Holyrood, especially since welfare powers are devolved. Examples of policies the law can authorise include higher minimum wage, universal basic income, or the elimination of zero hour contracts – any of which can contribute to mitigating families' descent into poverty. A recent legislative success is the Child Poverty (Scotland) Act 2017 with ambitious targets for 2030.⁵ At its most basic, law can promulgate initiatives that enforce a more equal playing field for struggling individuals. Many of these tools, whether they be legislative or executory powers, assist and elevate parents which in turn assist and elevate their children.

⁴ Child Poverty Action Group in Scotland, 'Child Poverty in Scotland' (2018) < <http://www.cpag.org.uk/scotland/child-poverty-facts-and-figures> > accessed 30 September, 2018

⁵ Scottish Government, 'Every Child, Every Chance – The Tackling Child Poverty Delivery Plan 2018-22' (2018) ≤ <https://www.gov.scot/Publications/2018/03/4093> > accessed 30 September, 2018

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Beyond using law simply for welfare reforms, rights such as those within the UNCRC could be enshrined into legislation. This mechanism would fortify certain rights within Scots law and enable them to be upheld in various actions. Problematically, enshrining positive rights – as they are known – can make adherence to them difficult. It creates immediate obligations upon the government to guarantee such rights. Even more troubling is how these rights would be upheld in court where judicial rulings would begin to infringe on decision-making responsibilities formerly exclusive to Holyrood and other authorities.

Nevertheless, the best way the law could be used to combat poverty would be with an introspective approach. An introspective approach means examining and correcting how the law itself inhibits policy solutions and their aims. This can commence with something as simple as Scotland's legal aid system. A recent report reviewing the legal aid system advocated for a more effective framework than is already in place.⁶ Revamping legal aid in Scotland to be more accommodating and attuned to those who need it most would improve people's willingness to resolve their dilemmas and how they did so.⁷ These modifications are emblematic of a strong rule of law, whereby all individuals are equipped with legal facilities regardless of their class.⁸ Unaddressed legal problems pertaining to family, employment, or property matters can subvert poverty alleviation efforts and entrench people further into preventable crises.⁹ It is imperative peoples' legal fears are assuaged and the law is able to step in to serve all people equally, especially the most vulnerable. Doing so would ease families' concerns and allow more attention and resources to be spent on their wellbeing – most crucially their children's.

⁶ Law Society of Scotland, 'Legal Aid Must Work for Those Who Need It' (2018)

⁷ Ibid

⁸ George Soros and Fazle Hasan Abed, 'Rule of Law can Rid the World of Poverty' (2012) Financial Times

⁹ Paul Prettitore, 'Poor People and the Law' (2016) Brookings Institute

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Any lawyer knows the law is a panoply of innovative solutions. Solutions, whether they be colossal or miniscule, can be utilised appropriately to attend to the issue of poverty, even if merely to diminish its damage. Going forward, it will take more than just lawyers to eradicate poverty. But for young children today who are yet to experience the best childhood has to offer, the law can bring some solace. Law is a fungible field with a depth of tools at its disposal. What remains is how those who wield these tools best can deliver fruitful outcomes to the individuals waiting to see their day.

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