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# Children's Rights and the “Power” of Power Over

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## Abstract

In this paper, I address the dearth of attention afforded to power theory in children's rights discourse and growing concerns regarding the scale of children's rights infringements across the globe. I break new ground in the children's rights domain by uncoupling power from the “4P framework” and reframing the concept as an analytical tool for practitioners and researchers to utilise in their work with children. I suggest that “power over” according to Steven Lukes's theory (1974) can highlight the overt and covert reasons underpinning a children's rights infringement and enhance the recognition and implementation of children's rights in practice. To demonstrate these functions, I apply Lukes's thesis to the Adoption and Children (Coronavirus) (Amendment) Regulations and present a model for those wishing to implement a “power over” approach to children's rights in practice and/or in their research.

## Keywords

power theory – power over – decision-making – non-decision-making – ideologies – CRC – Steven Lukes – Coronavirus Regulations – children in care

## 1 Introduction

Academic commentary on children's rights discourse often highlights a lack of robust engagement with key theoretical frameworks (Dixon and Nussbaum, 2012; Quennerstedt, 2013; Reynaert *et al.*, 2009; Quennerstedt and Moody, 2020). This observation is particularly evident regarding the vast literature

conceptualising power,<sup>1</sup> as there remains a paucity of in-depth theoretical research addressing power and children's rights. The many theories of power provide the opportunity for a substantial body of research to be developed over time supporting children's rights in various contexts and jurisdictions. This would emulate ongoing work to strengthen children's rights scholarship conceptually (Peleg and Hanson, 2020; Gillet-Swan *et al.*, 2023; Brando, Lawson and Stalford, 2022) and imitate the application of more established theories to the study of children's rights, such as the capabilities approach (Watkins, 2022; Thompson, 2021; Peleg, 2013) and those relating to autonomy (Daly, 2018; Hollingsworth, 2013; Freeman, 2013), vulnerability (Herring, 2023; Tobin, 2015; Bou-Habib and Olsaretti, 2015); intersectionality (Adami, 2024; Hanson and Peleg, 2020; De Beco, 2020) and critical realism (Alderson, 2016; Alderson, 2020; Houston, 2001).

In this paper, I contribute to the limited literature on power and children's rights by providing an in-depth analysis of Steven Lukes's theory (1974) against the backdrop of the United Nations Convention on the Rights of the Child (CRC). I suggest that Lukes's comprehensive, yet accessible, thesis should be operationalised to study the connection between "power over" and the acknowledgement, implementation and enjoyment of children's rights. I do so in view of recent data provided by child focused organisations describing a sharp increase in children's rights infringements globally (Kids Rights Index, 2024; UNICEF, 2023, 2024; Save the Children, 2023).<sup>2</sup> For example, UNICEF estimates that one in five children are living in or fleeing conflict zones, 160 million children are engaged in child labour, and 1.2 billion are being raised in severe poverty (UNICEF, 2023; UNICEF 2024). Save the Children also verified 31,721 grave violations against children in 2023. This marks a 15- and 33 per cent increase from data collected by the organisation in 2022 and 2021 respectively.

To address the pressing "polycrisis" facing children's rights (Kids Rights Index, 2024: 3, 4, 5, 44), I repurpose Lukes's theory as an analytical tool for practitioners and researchers to apply in their line of work with children. I argue that it can clarify the overt and covert reasons underpinning a children's rights infringement, and illustrate whether power dynamics might influence the likelihood of future breaches. To demonstrate these analytical functions, I primarily focus on a series of children's rights infringements related to the Adoption and Children (Coronavirus) (Amendment) Regulations. However, I argue that a "power over" approach informed by Lukes's theory (1974) should be

1 Notably, in this paper I focus on social, non-violent, forms of power.

2 For example, Kids Rights Index claims that between 2023 and 2024 there was a 21 per cent surge in children's rights infringements globally.

applied to a broader range of decisions and non-decisions involving children in the future and their rights under common law and other human rights conventions. I also set out an accessible model for those wishing to adopt a “power over” approach in practice and/or in their research, and explain that it should assist them in evaluating the effects of power relations on children’s rights.

The structure of this paper is as follows. First, I explain how power is often conceptualised as “power to”, “power with” and “power over” and suggest that Lukes’s theory (1974) provides valuable insights into the interconnected nature of these concepts. I provide a detailed explanation of Lukes’s understanding of “power over” and note that it consists of three “dimensions” – “decision-making power”, “non-decision-making power” and “ideological power”. Second, I analyse existing scholarship on power theory and children’s rights within the contexts of education and empirical research with children, before explaining why “power over” should be uncoupled from the “4P” framework in children’s rights and relied on as an analytical tool by practitioners and researchers. Third, I draw upon the Coronavirus Regulations in England as a case study to explore the connection between “power over” according to Lukes’s account and children’s rights under the CRC. This section of the paper addresses Lukes’s three dimensions of power and actions taken by the then Department and Minister for Education. In this discussion, I also note that the possession and exercise of “power over” can occasionally have a positive effect on children’s rights – particularly their right to protection and prevention. Fourth, I reflect on conclusions drawn from my Coronavirus Regulations case study and provide a nine-part model/toolkit for those wishing to investigate the impact of “power over” on children’s rights in their research and/or line of work with children.

## 2 Defining Power

A vast literature exists exploring the different aspects of power including its sources, structures, dynamics and effects on individuals and social groups (Dowding, 2011). This body of work is dynamic and interdisciplinary, drawing insights from sociology, law, political science, philosophy, cultural studies and other fields to analyse the complex and multifaceted nature of power in society. Definitions of power included in this literature are manifold and highly diverse (Avelino, 2021). They range from power as actor-specific resources used in the pursuit of self-interests (Fuchs, 2001), to power as the ability of a social system to mobilise resources to realise collective goals (Parsons, 1967,

2002). A common approach to navigating the many definitions of power is to conceptualise them as "power to", "power with" and "power over" (Pansardi and Bindi, 2021). I describe what is meant by these distinct, yet interconnected, concepts, and the key differences between them, below.

### 2.1 *"Power to", "Power with" and "Power Over"*

The concepts of "power to", "power with" and "power over" provide distinct perspectives on how power is possessed, exercised and understood within social and political contexts (Hawks, 1991). "Power to" refers to a person's, or group of peoples', ability to act, make decisions and exercise autonomy (Pansardi, 2011). It can be distinguished from "power with", which focuses on collective action where people work together to achieve shared goals (Berger, 2005), and also "power over". "Power over" can be defined as a means of a person(s) exerting influence and dominance over others – often (but not always) through coercion, manipulation and force (Russell, 2003). A useful way of understanding the differences between "power to", "power with" and "power over" is to focus on their role in the process of change, as Flor Avelino illustrates: 'A and B can contribute to or resist change ("power to"), and/or A can coerce or hamper B to change ("power over"), and/or A and B can cooperate for or against change ("power with")' (2021: 429–430).<sup>3</sup>

Although "power to", "power with", and "power over" are distinguishable theoretically, the possession and/or exercise of one concept can impact another/the others. For example, when a person has the "power to" act, they may increase their "power with" others, building collaborative strength and mutual support. This collective "power with" can then shift into "power over" in decision-making contexts, allowing the group to influence outcomes in their favour. The mutually influential nature of "power to", "power with" and "power over" is captured by Steven Lukes (1974) in his foundational thesis on power. Lukes's account predominantly centres around "power over" (Bradshaw, 1976), but also, from my perspective, highlights the effects of the concept on "power to" and "power with".

3 Avelino also suggests that these concepts can be the objects of change, in the sense that change and innovation initiatives can explicitly strive to empower people through capacity building ("power to") or collaboration ("power with") and/or challenge certain forms of oppression and domination ("power over") (2021: 430).

## 2.2 *Lukes's Theory of "Power Over"*

Lukes's theory illustrates the ways in which power can be possessed and/or exercised over a person socially (1974). It suggests that the possession of "power over" is zero-sum (1974: 12–13) and that its exercise impacts the interests of the powerless: 'A exercises power over B when A affects B in a manner contrary to B's interests' (1974: 27). His theory is wide ranging and, as I go on to demonstrate, provides a cogent framework for analysing overt and covert forms of power over children and their rights.

Lukes's theory consists of three "dimensions" of power. The first, known as "decision-making power", involves overt forms of "power over". It suggests that "power over" is possessed and/or exercised when a person, group of people, or an institution, successfully influences the outcome of a decision to align with their/its own interests, despite opposition (1974: 12–14). Lukes emphasises that the first dimension is mostly exercised in formal – often political – settings, where "power over" can be observed, documented and measured (1974: 11–15). An everyday example of this is a school council meeting where members (consisting of students, governors, teachers and a head teacher acting as chairperson) debate a policy affecting the school, and those with the majority vote implement the outcome of the decision. Here, "power over" is visible and measurable according to whose interests prevail in open disputes (Lukes, 1974: 13). It has a hampering effect on some school council members' "power with" (collectively) and "power to" (individually) implement their preferred policy because they lost out on the vote.

More covert forms of "power over" are addressed by Lukes in the second and third dimensions of his theory. The second dimension, often referred to as "non-decision-making power", extends beyond decision-making to consider a person(s), or an institution's, "power over" an agenda and their "power to" prevent certain issues from being discussed (Lukes, 1974: 16–20). Returning to the example of the school council, non-decision-making power would be possessed and exercised by a head teacher reducing the debate and vote to only address a school policy upholding their own interests. The head teacher's "power over" school council members would impact their "power with" other members to work towards the achievement of a shared goal not covered in the debate and/or vote. It would also affect a member's individual "power to" exercise their autonomy and make a decision whilst debating or voting for/against a certain school policy. Lukes's third dimension of power, ideological power, sheds light on the underlying forces shaping the head teacher's non-decision and the council members' decisions. The dimension goes beyond overt decision-making processes, focusing on how "power over" subtly influences a person's thoughts, values and perceptions of other people and the world

(Lukes, 1974: 24). This may be through social, cultural, religious and political norms, education and the media. Lukes postulates that the covert influence of ideological power can shape how a person understands authority, their own interests ("power to") and the interests of others ("power with") (1994: 23), meaning that it can be difficult to challenge the status quo. Ideological power, according to Lukes, can therefore explain why a school council member might vote a certain way, unquestioningly accept the head teacher's authority, or be swayed by the opinions of the students they are representing.

Lukes's theory of "power over" has been widely cited and applied in various contexts, including health systems (Reynolds, 2019), international relations (MacDonald, 2011) and gender (Davis *et al.*, 1991) to examine the multitudinous ways "power over" operates in society. This is likely because his account is accessible, applicable to a wide range of scenarios involving children, and, considered to be more thorough compared to other accounts of 'power over' (e.g. Dahl, 1957; Polsby, 1963; and Wolfinger, 1973). In the children's rights domain, however, there has been a lack of robust, theoretical, engagement with Lukes's theory to date.

### 3 Existing Research on Power and Children's Rights

References to "power" are frequently made in research addressing child participation and a child's right to be heard (Article 12, CRC) without thorough conceptual justification regarding theories of power (e.g. Shier, 2001; Federle, 1994). One example of this is Gill Brook's framework for children consenting to medical treatment (2000), which makes five references to power (2000: 31, 33 and 25) without any theoretical analysis of the term "power" or how it might impact children's rights under the CRC. This is also the case regarding Garrison Lansdown's research on children's democratic decision-making (2001). She states that: 'of equal importance is the recognition that adults have to be prepared to concede power to share decisions with the children' (2001:28), but does not expand upon this reference to power in theoretical terms. More in-depth, conceptual analyses of power have been published in the contexts of children's participation rights, education and empirical research with children. I outline these bodies of work below and, in doing so, highlight a gap in the literature regarding detailed analyses of Lukes's theory and engagement with overt forms of power and children's prevention, provision and protection rights under the CRC.

### 3.1 *Theoretical Analysis of Power within Research focused on Education and Empirical Work with Children*

In the existing literature, two research projects draw on power theory to explore children's involvement in empirical research conducted in schools. The first is Carol Robinson and Carol Taylor's project examining school-based student voice projects (2012).<sup>4</sup> Robinson and Taylor rely upon Anthony Giddens (1979) and Michel Foucault's (1979, 1980) theories of power to demonstrate the exercise of covert forms of power in classroom settings:

As Foucault (1979, 1980) argues these normalization processes are a routine mode of governmentality and, as our example shows, they work to condition students' identities, behaviours and expectations in a context of unequal teacher-student power relations.

2012: 40

Giddens's and Foucault's position on power can be distinguished from Lukes's theory insofar as they view power as dynamic and emphasise the role of power shaping social interactions, structures, and identities. Giddens considers the interplay of agency and structure (1976, 1979 and 1984) and Foucault focuses on how power operates through norms and discourses (1969, 1975, 1976, 1978). This means that there is less focus on overt forms of power in Robinson and Taylor's research. They also do not refer to the terms "power over", "power to" or "power with" when applying Giddens and Foucault's theories of power in their work, but parts of their analysis illustrate the workings of the concepts and the theoretical connection between them (2012: 38–43). For example, Robinson and Taylor state that:

[Power] has worked its way into students' imaginations, not only constraining how the student researchers act in the presence of teachers [power over and power with], but also conditioning the verbal and questionnaire responses of other students [power to].

2013: 42

Another example of research that considers and applies power theory in a rigorous way, but does not engage with the aforementioned terminology or more overt forms of power, is Michael Gallagher's project on youth participation in educational research (2008; 2008). Gallagher adopts a

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<sup>4</sup> See also Taylor and Robinson, 2009 and Robinson and Taylor, 2007.



Foucauldian perspective on power,<sup>5</sup> and proposes that the theory should be utilised as a tool for exploring the myriad forms of youth participation in educational research:

In examining how power operates, Foucault found metaphors of conflict and warfare useful, particularly the notions of strategies and tactics. I think that these notions are helpful for the analysis of participatory processes because they can be applied universally, to any instance of children's participation, but in a way that draws out the specificity of that particular instance. We might ask, of a participatory process, is it operating as part of a strategy that divides or incorporates, legitimises or de-legitimises decisions, homogenises views or increases their diversity? ... Is power being exercised through tactics of coaxing, persuasion, refusal, persistence or evasion?

2008: 398

Although Gallagher's research on power has been successfully developed by other scholars researching youth participation in educational settings (e.g. Hanna, 2022; Heah, 2024), an area of his research requiring further thought and exploration is children's rights. Certainly, there is no reference to or inclusion of rights enshrined to children in human rights treaties or under domestic law in his, or indeed Robinson and Taylor's (2012), power analysis. This is likely because the issue of children's rights fell outside the remit of Gallagher, Robinson and Taylor's research objectives, and/or is linked to the complexity of Foucault's understanding of power in relation to rights.<sup>6</sup> A more thorough exploration of children's rights and power theory can, however, be located within the Children in Charge Series (2003).

### 3.2 *Theoretical Analysis of Power within Research focused on Children's Participation Rights*

The Children in Charge Series (2003) provides the most in-depth research addressing children's rights under the CRC and theories of power to date. The focal point of work featured in the series is child participation and mostly "power to" (John, 2003; Alderson, 2003; Griffith, 2003). Mary John's contribution to the series, for example, considers children's participation rights under the

5 Gallagher directly refers to Foucault's work on discipline and governmentality in his research.

6 A Foucauldian viewpoint offers no one theory of power, but rather a series of theories addressing power as a social phenomenon. This means that his work can be difficult to grasp conceptually and apply in practice, particularly in the context of children's rights.

CRC concerning children's experiences of power (2003, 45–75). While John does not explicitly refer to the term “power to”, her understanding can be categorised as such because she associates the concept with autonomy and personhood (2003: 268). John provides a range of case studies in her work to demonstrate why children's realities should prevail in everyday life (2003: 268). In a case study focused on street children she touches on the theme of control, which is often linked to “power over”:

These street children were perceived as being outside adult control. In their lives they had agency, autonomy and recognition amid their peers. In fact, they had something children rarely have, namely power.

2003: 45–46

The theme of adult control is also discussed in Priscilla Alderson's publication in the same series, which explores young children's rights and, again, “power to” (2003). Alderson highlights the unpopularity of the term “power” in discussions concerning children's rights and argues that adults often prefer to speak of their care, authority and “the need for firm control over children” (2003: 110). She also suggests that the reluctance to engage with power in children's rights discourse is linked to adult anxiety about giving up their own “power over”<sup>7</sup> children:

Like slices of cake when the more power one person has, the less everyone else has. When adults believe they must set all the rules which the children must obey, the adults worry that if they let children have a little power they will want more and more, a process it is better not to start. This is especially so, if it is believed that children should not have any power, with fearful visions of powerless but responsible adults, and irresponsible but powerful children.

2003: 110

Although this description mirrors Lukes's “zero-sum” understanding of the possession of “power over” (see section 2.2 of this paper), there is a lack of engagement in John and Alderson's research with the concept beyond what I have outlined above and a small discussion regarding Lukes's theory (1974). Alderson provides a three-page account (2003: 110; 2008: 186–189), while John dedicates one page of her book to unpacking Lukes's thesis in relation

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<sup>7</sup> This is my own emphasis. Akin to John, Alderson does not rely on the terms “power over”, “power to” or “power with” in her research on power (2003, 2008).

to children's participation rights (2003: 49). The dearth of attention paid to conceptualising "power over" regarding children's rights in their research is likely linked to the fact that theory was not central to the participation-based aims of The Children in Charge Series (Alderson, 2017: 1).

#### 4 Reinventing the Literature on Power Theory and Children's Rights

In the subsequent parts of this paper, I address the gap in the literature by picking back up where John (2003) and Alderson (2003) left the discussion on "power over" and children's rights 22 years ago. I do so with an original focus on the children's provision, protection, and prevention rights under the CRC (in addition to their participation rights),<sup>8</sup> and examine both covert and overt forms of power according to Lukes's theory (1974). My analysis replicates the level of conceptual detail provided by Robinson and Taylor (2012) and Gallagher (2008; 2008; 2011; 2016; 2019) in their work, which has thus far been lacking in the literature focused on children's rights. Notably, I have chosen to move away from John and Alderson's coupling of "power over" to the "4Ps", and decided to repurpose the concept as an analytical tool for addressing children's rights infringements and supporting the realisation, implementation and enjoyment of the CRC in practice. I explain my reasons for both these choices in the following discussion.

##### 4.1 *Uncoupling "Power Over" from the 4P Framework*

Children's rights, as outlined in the CRC, are frequently examined through four key foci: provision, prevention, protection, and participation. These "Ps" are intended to ensure that all rights under the Convention are acknowledged and acted upon in relation to a particular issue involving children (Dillen, 2006: 238; Fortin, 2003). The first "P" – provision – refers to the distribution, sharing and possession of resources, skills and services for children. This includes access to education, healthcare, nutrition, clean water and adequate nutrition. Protection is the second "P" and highlights that children have the right to be protected from all forms of abuse, neglect, violence, exploitation and discrimination. This "P" calls for measures to avert and respond to any violation of the CRC, including child labour, child trafficking, child marriage and child abuse. The third "P" is participation and involves a child's right to express

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8 As explained above, Alderson and John focus chiefly on participation rights in the Children in Charge Series (2003, 2003, 2008).

themselves, do things and be heard in accordance with their age and maturity. Prevention is the fourth, and final, “P”. It emphasises that efforts should be made to prevent violations of children’s rights, such as raising awareness about the CRC, promoting positive parenting practices and implementing laws and policies that protect children. Power is not considered one of the original “Ps” and thus not included in the traditional “4P framework”. This may be because the term is not explicitly referred to in the wording of the CRC and that it rarely features in the domestic law of its signatories. Preferred terminology employed by State Parties includes: authority (Family Law Act 1975), welfare (Children Act 1989), interests (Guardianship of Minors Act 1961) and needs (Family Law Reform Act 1969).

The addition of power as the fifth “P” in the framework was first proposed by Alderson (2003) and John (2003) in the research I outlined in part 3.2 of this paper. Their understanding of power within the “Ps” is tied to their focus on child participation and “power to”: ‘the 5th P is not about satisfying needs for protection or provision, but rather about realising aspirations – aspirations which can only be, unlike ‘needs’, self-defined’ (John, 2003: 46). It also supports the normative argument at the centre of their work – that power should be shared more equally between adults and children (John, 2003: 48–50; Alderson, 2003: 110–111). John and Alderson frame all five “Ps” in the same way, which suggests that there is a *right to* provision, protection, participation, prevention and power. This differs from the 4P framework’s original purpose – to categorise children’s rights according to the CRC (Montgomery, 2009) and to provide a pedagogical aid for individuals and National Government Organisations working with children in practice (Covell and Howe, 2010). I thus question John and Alderson’s inclusion of power within the “Ps”, insofar as it unnecessarily adds conceptual weight to the framework and makes the Convention less accessible to those unfamiliar with its preamble and 54 provisions. Their framing of power as a “right” is also at odds with the form of power at the centre of Lukes’s theory – “power over” – and, as noted above, is more consistent with “power to”. This means that there is a lack of appreciation for Lukes’s multifaceted approach to “power over” regarding children’s rights in their research. It is also important to emphasise that since the publication of John and Alderson’s research on power (2003; 2003; 2008), the “4Ps” have become less widely engaged with in children’s rights scholarship and infrequently applied in practice with children and young people (Fairhall and Woods, 2021; Vissing, 2023). This is mainly due to high profile criticism the framework has received regarding its vague terminology, lack of theoretical underpinning and failure to address the relationship between the “Ps” (e.g. Quennerstedt, 2010: 630). In my doctoral research, I built on these viewpoints

by arguing that the "4Ps" are of limited use when evaluating, and learning from, children's rights infringements (Hirst, 2023: 3–4). I now also postulate that the function of the 4P framework is somewhat basic, as it simply highlights the need to implement different categories of rights under the CRC regarding a particular issue without an explanation as to *why* an infringement occurred. In light of this, I suggest that "power over" should be uncoupled from the "4Ps" and relied upon in the same way as those researching the rights of other minority groups – as an analytical tool.<sup>9</sup>

#### 4.2 "Power Over" as an Analytical Tool

The importance of considering "power over" in the adoption of a rights-based approach is addressed in research conducted across many different disciplines, including sociology, politics, and international development. Rather than framing power as a right, this research views power as an analytical tool.<sup>10</sup> It suggests that recognising the presence and effects of "power over" can promote rights in practice and emphasises the need to unpack the dynamics of power when applying a rights-based approach (Hughes *et al.*, 2005; Andreassen and Crawford, 2013). This has been achieved by drawing on in-depth theories concerning "power over" (e.g. Weber, 1949 and 1947; Dahl, 1968; Bachrach and Baratz, 1962) in a range of contexts<sup>11</sup> involving the rights of adult minority groups – a subgroup of the population with unique social, religious, ethnic, racial, and/or other characteristics that differ from those of a majority group. For example, women, trans patients and some citizens living in third world countries who are reliant on international aid (Pateman, 1988; Sheldon, 1997; Smart, 1989, 2002; Pearce, 2018; Andreassen and Crawford, 2013).

An excellent example of this type of research is Alexandra Hughes *et al.*'s work on international development and poverty (2005). This research partly draws on Luke's theory of "power over" (1974) to analyse international development agency relationships with governments in aid recipient countries (2005: 64). Hughes *et al.* suggest that an understanding of how power and rights are connected is essential to transforming a rights-based approach in international development from a 'top down bureaucratic exercise' to 'catalyst for change' (2005: 63). They also state that 'power is both an obstacle to

9 The use of the term "minority group" in this paper refers to a subgroup of the population with unique social, religious, ethnic, racial and/or other characteristics that differ from those of a majority group.

10 To this end, power over has ties with Gallagher's understanding of power (discussed earlier on p. 143) as a tool for ensuring children's participation in educational research.

11 Such as abortion, gender affirmative healthcare, pornography and rape trials.

rights-based approaches to development and a tool that can be used to support struggles for claiming and realising rights' (62–63).

While this perspective is yet to be realised, explored or appreciated in the context of children's rights, I have chosen to adopt the same position as Hughes *et al.* (2005) in my subsequent analysis.<sup>12</sup> To be transparent, I argue (1) that "power over" can occasionally act as an obstacle to the acknowledgement, fulfilment and enjoyment of children's rights set out in the CRC. I demonstrate this in the below case study concerning amendments made to the Adoption and Children (Coronavirus) (Amendment) Regulations 2020 ("the Coronavirus Regulations"). In doing so, I reveal how "power over", as an analytical tool and according to Lukes's theory, can (i) provide clarification on the reasons underpinning a breach of the CRC and (ii) assist those wishing more robustly to implement children's rights in practice to reduce the likelihood of an infringement occurring. I explain that this may include individuals, groups, organisations and State Parties to the Convention. I also touch upon (2) the positive impact "power over" sometimes has on the recognition, promotion and enjoyment of children's rights according to the CRC. This notably differs from Lukes's basic definition of "power over", which states that: 'A exercises power over B when A affects B in a manner contrary to B's interests' (1974: 27).<sup>13</sup> For example, I suggest that an organisation intervening in a case on behalf of a child, or children more generally, can use their decision-making power to help ensure that the rights of the young under common law and relevant human rights treaties/conventions, such as the CRC, are acknowledged and respected in legal proceedings.<sup>14</sup> I postulate, however, that the occasional positive function of "power over" is dependent upon the possession and exercise of Lukes's third dimension – "ideological power".<sup>15</sup> Another point I address (3)

<sup>12</sup> And also, to some extent, Andreassen and Crawford, 2013.

<sup>13</sup> However, see his later work on "power over" outlined in *Power: A Radical View* (London, UK: Bloomsbury Publishing, 2004).

<sup>14</sup> For instance, see pages 150–160 of this paper detailing Article 39's intervention in R (*Article 39 v. Secretary for Education*) (2020 EWCA Civ 1577).

<sup>15</sup> Another example of this is a parent consenting to the administration of a vaccine on behalf of their child, which could have a positive effect on the child's enjoyment of Articles 6 (development) and 24 (health and health services) UNCRC. The possession and exercise of the parent's decision-making in this context would be dependent upon their ideological beliefs regarding vaccines. Ideological power is at work in my selection of this example and interpretation of parental consent to childhood vaccines as positive regarding children's rights. Another researcher may have chosen to focus on a parent opting not to vaccinate (non-decision-making power and the power of veto) their child. This is because there are a range of ideological beliefs concerning the administration of vaccines to children. For a more in-depth discussion on the subject of ideologies and vaccines, see David Benbow's research (2022, forthcoming).

in the case study discussion, is that Lukes's theory of "power over" (1974) can identify, respond to and, to some extent, challenge the powerlessness – or lack of "power to" and "power with" – children often experience in the context of their own rights (O'Neill, 1992; Lundy, 2017; Freeman, 1992, 2007, 2017).<sup>16</sup>

The approach to power and children's rights I adopt in the subsequent parts of the paper is particularly timely and significant given the increase in children's rights infringements across the globe (Freeman, 2020: 1–9). In the introduction to this paper, I highlighted recent data from UNICEF (2023) and Save the Children (2023, 2022) describing an alarming disregard for the CRC's aims and provisions. The scale and significance of recent children's rights infringements indicates that an additional mechanism to support the realisation, implementation and enjoyment of the Convention is urgently required. It also suggests that the CRC is not currently delivering on the vision presented in Katherine Federle's research (1994) and the work of other leading scholars (e.g. Freeman, 2020, 2007, 1983; Alderson, 2008) that children's rights:

Redress hierarchies and inequalities by recognizing and correcting imbalances of power ... rights have values because they have an empowering effect which reduces victimization and marginalization. A right, in its fundamental sense, is power held by the powerless.

1994: 345

As a good starting point to achieve these aims and address children's rights infringements, I now critically assess how "power over" should be understood against the backdrop of the CRC and a contemporary case study involving children. I undertake this task in the next section of this paper, by drawing on Lukes's theory of power (1974) and the recent, yet high profile, example of the Coronavirus Regulations. The Regulations provide a compelling case study involving a range of actors with conflicting interests and a population vulnerable to effects of overt and covert "power over".

## 5 Children's Rights and "Power Over" according to Lukes's Theory

In part 2.2 of this paper, I outlined Lukes's definition of power. To recap, his theory can be summarised as: 'A exercises power over B when A affects B in a manner contrary to B's interests' (1974: 27). Lukes's builds on this by proposing that "power over" involves three "dimensions": decision-making power,

<sup>16</sup> This is tied to Lukes's zero sum definition of "power over", as explained on p. 140.



non-decision-making power and ideological power. I will now examine each of these dimensions in detail and reflect upon the connections between them, children's rights under the CRC and, also, the concepts of "power with" and "power to". As noted above, I suggest that each of Lukes's dimensions should be used as an analytical tool when implementing children's rights in practice and evaluating breaches of the Convention. From the outset, it should be noted that the case study I draw on relates to a jurisdiction where the CRC is not binding in domestic law (e.g. England).<sup>17</sup> I have, however, selected a state that is a signatory to the Convention and where it is highly persuasive in legal and political terms (Gilmore, 2017). In the introduction to this article, I emphasised that my theoretical approach to power and children's rights is relevant to other laws and human rights treaties/conventions applicable to children. I focus on the CRC in this case study, but future research could focus on, for example, the European Convention on Human Rights, the American Convention on Human Rights, and/or the African Charter on the Rights and Welfare of the Child. The first of Lukes's dimensions that I turn my attention to in the following discussion is "decision-making power", and also, linked to this, "veto power".

## 5.1 *The First Dimension of Power: Decision-making Power and the Power of Veto*

### 5.1.1 Decision-making Power

Earlier on (pp. 140–141) I explained that Lukes's first dimension involves the power to make, implement and veto decisions (1974: 11–16). I noted that decision-making power is considered the easiest of Lukes's three dimensions to grasp because its presence, workings and effects are overt and occur often; hence why it is sometimes referred to as 'the open face of power' (Digeser, 1992). I also pointed out that Luke's asserts that those wielding "power over" can be determined by looking at whose preferences, or interests, succeed in the outcome of a decision:

Cases involving key political decisions in which the preferences of the hypothetical ruling elite run counter to those of any other likely group that might be suggested ... in such cases, the preferences of the elite regularly prevail.

LUKES, 1974: 13

<sup>17</sup> I also briefly discuss the jurisdiction of Ireland, where the CRC is also not incorporated into domestic law.



In the context of children's rights, John equates this to 'adults setting all the rules that children must follow' (2003: 49), but offers no illustration of decision-making power in action. She also fails to delineate whether these decisions must only be "political", as Lukes indicates in the above statement (1974: 13). I suggest that Lukes's first dimension should be applied to a whole host of decisions involving children and impacting their provision, protection, prevention and participation rights under the CRC, so that his theory of 'power over' can have maximum impact when evaluating rights infringements and supporting rights in practice. These decisions should include everyday decisions about children, such as the decision to provide a child a meal, and those that are more high profile and concern the State.<sup>18</sup> They should also involve individual children and groups of children, and children as a national and/or global population.

Although an adult, or a group of adults, would not always represent the "ruling elite" in every situation,<sup>19</sup> Lukes uses the word 'regularly' when describing the elite's preferences<sup>20</sup> prevailing over those of any 'other likely group' (1974: 13). I argue that my chosen case study of the Coronavirus Regulations is representative of what has become increasingly apparent and common in decisions taken on matters related to children – that the preferences of adults prevail over children's rights. This notably links with what I (see p. 137) and others describe as a severe increase in the prevalence of children's rights infringements globally. The case study involves a series of decisions made by the Department of Education, the High Court and the Court of Appeal in England.<sup>21</sup> While these decisions are high profile and involve the State, they serve as an illustration of why, in all key decisions involving a child/children, "power over" should serve as an analytical tool in the adoption of a children's rights approach and when addressing an infringement of the CRC.

In early 2020, the Department for Education began to plan for the effects of the Covid-19 Pandemic regarding the ability of local authorities to provide care for children living in England.<sup>22</sup> During this process the Department reviewed applicable regulations and proceeded to make a number of wide-ranging

18 For example, the judiciary, the police, central and local governments and educational facilities.

19 This is because a child, or multiple children, can exercise decision-making power over other people.

20 The term "preferences" is interpreted by Lukes to mean interests (1974: 14). He argues that decision-making power involves 'direct conflict of subjective interests' (Lukes, 1974: 12).

21 *R (Article 39 v. Secretary for Education)* (2020 EWCA Civ 1577).

22 For a detailed discussion on the Department's actions during this period, please see Ofsted's Report into children's social care in England during the pandemic: <https://www.gov.uk/government/publications/childrens-social-care-2022-recovering-from-the-covid-19-pandemic/childrens-social-care-2022-recovering-from-the-covid-19-pandemic>.

policy amendments (or decisions) for children in state care.<sup>23</sup> These included: reducing the need for social workers to visit children in care in line within strict timescales; extending the period for which children could be placed with emergency foster carers; relaxing the requirement to set timescales for reviewing care plans for children; and removing the requirement for decisions to place children in care outside the local area to be approved by a nominated officer (Gregory, 2021).

The impact of the Department of Education's decisions – or the effects of its “power over” children – alarmed many child advocacy groups supporting children's rights. One of these groups, Article 39,<sup>24</sup> emphasised a connection between the decisions and children's rights under the CRC in its written evidence to Parliament (UK Parliament, 2020). Article 39's evidence states that changes made to regulations by the Department significantly weakened legal protections for children in care and key children's rights provisions set out in the CRC, including Article 3:

These regulations substantially weaken legal protections for children in care and were introduced without clear rationale; without proper consultation; and without parliamentary scrutiny. No extra protections were afforded to children through these regulations and the focus has been not on the best interests of children but on the system. The changes introduced echo previous, unsuccessful, attempts by the government to diminish legal protections for children.

UK Parliament, 2020: 21

The changes enforced by the Department as a result of the Coronavirus Regulations were thought to expose children to a greater risk of grooming and exploitation (Articles 18, 19, 25 and 34 CRC), particularly in the case of older children living in semi-independent accommodation (UK Parliament, 2020: 22). At this stage the preferences of the Department of Education ran counter to, and prevailed “over”, the rights of children in care. The Department's preference for a speedy and convenient solution to care services for children in England during the pandemic meant that there was a distinct lack of regard

23 Otherwise known as Adoption and Children (Coronavirus) (Amendment) Regulations 2020 or Statutory Instrument 445, which was laid before Parliament on 23 April 2020 and came into force the next day.

24 This charity supports children's rights in institutional settings, such as children's homes. It takes its name from Article 39 of the UN Convention on the Rights of the Child (CRC), which entitles children who have suffered rights violations to recover in environments where their health, self-respect and dignity are nurtured.

for the impact of the Department's decision-making "power over" children's rights under the CRC.

There was also a lack of conflict (Lukes, 1974: 36) between the preferences of the Department and children affected by the changes. This aligns with what Robert Dahl – a notable proponent of decision-making power – describes: 'A rough test of a person's overt or covert influence is the frequency with which he successfully initiates a policy where no opposition appears' (1957: 66) and that these children, or any party representing their rights (e.g. the Children's Commissioner for England), were not consulted prior to the enactment of the Coronavirus Regulations. The Department's failure to consult had an observable, or overt, impact (Lukes, 1974: 12) on the outcome of the decision to amend the Coronavirus Regulations and looked after children's "power to" and "power with". This failure was picked up by Article 39 when the group challenged the Department of Education's "power over" children in care during the pandemic via judicial review and, later, the Court of Appeal's power of veto.

#### 5.1.2 Veto Power

Earlier on I explained that Lukes's first dimension of power includes the ability to veto a decision (1974: 18, 22). Lukes refers to the work of Dahl (1961) when describing this form of decision-making power:

Determine for each decision which participants had initiated alternatives that were finally adopted, had vetoed alternatives initiated by others, or had proposed alternatives that were turned down. These actions were then tabulated as individual "successes" or "defeats". The participants with the greatest proportion of successes out of the total number of successes were then considered to be the most influential.

DAHL, 1961: 336

While looked after children in England (as individuals and a group) did not possess the "power to" veto the Department of Education's decisions regarding their care, or propose any alternative, the Coronavirus Regulations were later scrutinised via judicial review in *R (Article 39 v. Secretary for Education)* (2020 EWCA Civ 1577) (2022 EWHC 589 Admin). In this case, Article 39 challenged the process – or the behaviour<sup>25</sup> (Lukes, 1974: 11) – of the Department of Education leading up to Coronavirus Regulations. Article 39 argued that the Department

<sup>25</sup> Lukes's first dimension embodies a pluralist view of power, meaning that power is considered to be a behavioural attribute (Dahl, 1957; Polsby, 1963; Wolfinger, 1973).

had carried out its consultation prior to amending the Coronavirus Regulations in a one-sided manner (i.e. lack of “power with”) and that their powers under the Children Acts 1989 and 2004 had not been used for their proper purpose; that is, promoting the welfare of vulnerable children.<sup>26</sup> At first instance both of Article 39’s submissions were rejected on the basis that the extreme urgency and scale of the issues facing the Department of Education, due to the pandemic, were not an error of law in terms of consulting the Children’s Commissioner for England. On appeal, however, it was held that the Commissioner should have been consulted by both the Department and Minister for Education, as well as other bodies representing the rights of children in care (again, i.e. “power with”). At paragraph 86 of the High Court’s judgment, Lord Justice Baker, in agreement with Lord Justice Henderson and Lord Justice Underhill, state that:

It was manifestly in the interests of the vulnerable children who would be most affected by the [Department for Education’s] proposed amendments that those agencies and organisations representing the rights and interests of children in care should be consulted.

The series of decisions leading up to and the final outcome of *R (Article 39 v. Secretary for Education)* demonstrate the importance of determining who is the most “influential” (Dahl, 1961; Lukes, 1974) in matters related to children’s rights. When adopting a “power over” approach to children’s rights in practice, or assessing a children’s rights infringement, it is necessary to contemplate whether the most influential party – or those who possess and exert “power over” children – will account for children’s rights in their decision-making. If the most influential is/are unwilling to recognise and implement the CRC (e.g. as the Department and Minister for Education in England did when amending the Coronavirus Regulations),<sup>27</sup> then it is likely that their “power over” will act as a barrier to children’s full enjoyment of their rights under the Convention. As noted earlier, there is often a correlation between those who possess “power

26 To this end, it is arguable that children as individuals and as a minority group may possess veto power by proxy. That is, when an organisation or charity, such as Article 39, is willing to challenge the process or outcome of a decision affecting children on their behalf and in light of their rights.

27 Paragraph 13 of the Court of Appeal’s judgment in *R (Article 39 v. Secretary for Education)* suggests that this was the case regarding the Department and Minister for Education. It states that while an impact assessment undertaken by the Department and Minister identified Articles 2, 3, 6 and 12 of the CRC as relevant to the Regulations, the broad conclusion was that proposed changes to existing policies would not lead to an infringement of these rights (2020: 13).

over" and their preferences 'prevailing' (Lukes, 1974: 13) over the rights of the young and that this is occurring more often in recent years (p. 137).

A "power over" approach informed by Lukes's theory (1974) should also recognise that the second dimension includes vetoing the outcome or process of a decision and that this can be used in a positive manner by parties, such as Article 39, to uphold children's rights. This has become increasingly common in a range of formal and informal circumstances involving children.<sup>28</sup> It is, however, important to emphasise that in certain (mostly informal circumstances) the power of veto can go unchecked/is unchallengeable and that this can obstruct children's rights as per the CRC. An everyday example of this, linked to the Children's Commissioner for England (2020) and Independent Review of Children's Social Care (2022) reports, would be a child in care struggling with social isolation and emotional challenges. Their foster carer suggests that enrolling the child in a recreational activity, such as a drama club or sports programme, would greatly benefit their emotional well-being, social skills and sense of belonging. The foster carer applies for funding from the local authority to cover the activity fees, explaining its importance for the child's development. A senior manager in the local authority denies the funding request, citing budget constraints or deeming the activity non-essential. The decision is not reviewed or appealed, as there is no formal mechanism or independent oversight to question the veto. The outcome of this decision, and a child's lack of veto power/"power to" or "power with" with their foster carer, would hinder their right to develop, play and access to education in the broadest sense as per Articles 3, 28 and 31 of the CRC.

I now turn to consider instances where "power over" impacts a children's rights according to the CRC where no decision-making process has taken place. Lukes's refers to this, more covert form/dimension of power, as 'non-decision-making power'.

## 5.2 *The Second Dimension of Power: Non-decision-making Power*

In part 2.2 of this paper, I outlined Lukes's description of "non-decision-making power" and explained that his second dimension focuses on the covert ways "power over" operates, rather than the ability to influence the outcome

28 For example, in *R (on the application of the Children's Rights Alliance for England) v. Secretary of State for Justice* [2015] EWCA Civ 556, the Children's Rights Alliance for England (CRAE) challenged the government's decision related to the treatment of children in custody by focusing on staff's use of force in Secure Training Centres (STCs). CRAE argued that the policy allowing restraint techniques breached the rights of children under domestic and international law, including the UN Convention on the Rights of the Child (CRC).

of decisions (i.e. decision-making power). Lukes's second dimension offers an elitist perspective on power (Bachrach and Baratz, 1962), insofar as it asserts that power is possessed and exercised when issues are arranged specifically so that some are not discussed (Lukes, 1974: 16). He suggests that the dimension's covert nature makes it a very forceful form of "power over": 'by keeping issues of potential conflict off the agenda, observable conflict is completely avoided, but clearly 'power over' is still exercised' (1974: 17). Importantly, the obscurity of non-decision-making power means that it can be more challenging to identify and incorporate into a "power over" approach to children's rights than decision-making power, but is no less important in relation to children's rights under the CRC or its impact on "power with" and "power to" in conceptual terms.

The "arranging" of certain issues for discussion (Lukes, 1974: 16) and 'keeping issues of potential conflict off the agenda' (Lukes, 1974: 17) is a deeply embedded and common practice in interactions with children (John, 2003: 52–56). Indeed, a regular feature of parenting, teaching, caring for children and governing over them is to discern where particular lines must be drawn for the young; and children may do this themselves with other children and adults. This is often understood to, and can have, a positive effect on children's rights under the CRC – particularly protection and prevention rights (e.g. Articles 3, 19 and 34). However, in certain instances it can culminate in children's rights being breached. The previous example of the Coronavirus Regulations demonstrates a power holder (the Department and Minister for Education) setting the agenda on care for children during the pandemic in England. It reveals them preventing conflict on the subject of children's rights, by opting not to consult the Children's Commissioner,<sup>29</sup> and suggesting that Articles 2, 3, 6 and 12 of the CRC were irrelevant to amendments made to the Coronavirus Regulations in their children's rights impact assessment. A 'misleading choice' (Lukes, 1974: 122, 149) was offered to Local Authorities providing and maintaining care services by the Department and Minister under the guise of the Coronavirus Regulations, insofar as there were other – children's rights informed – amendments to the Regulations that could have been implemented in practice but were not.<sup>30</sup> This was touched on by Lieven J. when *R (Article 39 v. Secretary for Education)* reached the High Court. His judgment raises concerns about the flexibility of timescales for visits to looked-after children:

29 Or any other relevant children's rights charities and organisations.

30 Alderson touches on this briefly in her work on young children's rights and power by discussing children being offered a misleading choice about toys. She states that young children may be told, 'there is only enough money to buy some small toys, not the slide you wanted but not to be told that school staff have decided how to spend the extra money' (2003: 110).

Again, the importance of regular visits within a fixed time scale cannot be overstated. This is true both for visits to foster care placements, which may serve to alert the local authority to risks posed by foster carers, but also visits to the very large number of children in unregulated settings where there are no Ofsted inspection[s] and thus are heavily reliant on social worker visits.<sup>31</sup>

para 36

To this end, a power holder's non-decision can be understood as a 'choice among alternative modes of action' (Lukes, 1974: 18) and has synergies with Peter Bachrach and Morton Baratz's description of non-decision-making power: 'Power may be, and often is, exercised by confining the scope of decision-making to relatively "safe" issues' (1962: 6). I suggest that those wishing to adopt a "power over" approach to children's rights in practice, or when analysing an infringement of the CRC in their research, should contemplate whether a power holder's decision to keep certain issues 'off the agenda' (Lukes, 1974: 17) for a child/children is informed by reasons relating to children's rights, particularly their right to provision, protection and prevention (e.g. Articles 3, 5, 6, and 18 CRC). A power holder may decide, for instance, that a particular issue or decision is too "adult" for a child, that it may result in them experiencing harm, or that there are not enough resources to go around.

Another important consideration when applying a "power over" approach to children's rights informed by Lukes's second dimension, is to question whether the act of a power holder choosing a certain mode(s) of action (Lukes, 1974: 18) in the belief that it is "safe", is linked to their own interests. This is particularly important when the issue represents 'a manifest challenge to the values or interests of the decision-maker' (Bachrach and Baratz, 1962: 44). A timely, yet controversial, example of this that is somewhat related to the Coronavirus Regulations case study would be a situation where an adopted parent refuses to allow their once looked-after child participate in sexual education classes on the basis that the curriculum did not align with their religious beliefs. If the family were based in Ireland, the adopted parent would possess the 'power to' remove their child from these classes (Daly and Heah, 2023, Heah, 2024). This would be demonstrative of the power of veto in action and a power holder 'keeping certain issues off the agenda' (Lukes, 1974:17) that challenge their own personal (i.e. religious) and political interests.<sup>32</sup> Lukes's third, and final,

31 Also see paragraph 30 of Lieven J.'s judgment, which raises concerns about the placement of looked-after children with unknown/unconnected persons.

32 For a more detailed discussion on this issue, see the Council of Europe, Commissioner for Human Rights's Comment on sex education for children (2020).



dimension of power illustrates why a power holder may choose to act – either consciously or unconsciously – in this way. He suggests that their actions can be linked to a form of “power over” known as “ideological power” (1974: 21–26).

### 5.3 *The Third Dimension of Power: Ideological Power*

The third, and final, dimension of power proposed by Lukes is ideological power. As noted earlier (pp. 140–141), it is the most subtle, yet complex of Lukes’s three dimensions. Lukes argues that decision-making and non-decision-making power are too individualistic in their accounts of power (1974: 24) and that it is necessary also to consider how power is operated through more covert, ideological, means. Lukes postulates that ideological power involves the shaping of beliefs, desires and perceptions in a way that the dominated accept their role in the existing order without question:

A may exercise power over B by getting him to do what he does not want to do, but he also exercises power over him by influencing, shaping or determining his very wants.

LUKES, 1974: 23<sup>33</sup>

This acceptance can mean that “power over” is difficult to identify, contemplate and address in relation to children’s rights under the CRC. As Lukes’s notes: ‘it is ... the supreme and most insidious exercise of power’ (1974: 23). Ideological power is, however, a very common form of “power over” children and its exercise can sometimes act as a hindrance to the relation, implementation and enjoyment of their rights. An example of this is social expectations of children as a minority group. Ideological power informs a power holder’s perception of what these children should think (“power to”), how they should behave and interact with others (“power with”), what they are entitled to receive, and how they should be treated (“power over”). It is also demonstrable in terms of certain groups of children, such as those who are under the care of a local authority or foster parents. Returning to the Coronavirus Regulations case study, I suggest that when exercising the decision-making and non-decision-making he possessed over looked after children, the (then) Minister for Education was influenced by his right-leaning political beliefs and long-standing loyalty to the

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33 Notably, John refers to ideological power as ‘brainwashing ... which leads to the mute acceptance of adult realities at the expense of children’ (2003: 49).



Conservative party government (i.e. "power with").<sup>34</sup> I also propose that he was affected by his own perception of non-discrimination (Article 2) and children's best interests (Article 3) and development (Article 6).<sup>35</sup>

Open-ended rights, such as Articles 2, 3 and 6 of the CRC, allow ideological power to flourish in this way because they are loosely defined under the Convention – or as Lukes's states '[they are] an irreducibly evaluative notion' (Lukes, 1974: 34), and reliant on a power holder's ideological beliefs to be realised and enforced. Take Article 3, for instance. This right plays a primary role in all decisions involving a child/children and is supposed to ensure that their best interests are acknowledged, acted upon and fulfilled. There is, however, widespread disagreement about what amounts to an interest (Ferguson, 2013), how these should be weighed against one another (Eekelaar, 1992), and whether children's best interests should trump an individual child's (Freeman, 1997). This is likely linked to the range of ideologies underpinning children's rights scholarship,<sup>36</sup> which are informed by a variety of norms, cultures and beliefs.<sup>37</sup> Those wishing to implement a "power over" approach in practice, or when analysing a children's rights infringement, should be conscious of whether an open-ended provision of the CRC, including the best interests of the child, is being applied in a particular context to support or promote the ideologies of a power holder. This, as I demonstrated earlier regarding the Minister for Education and Articles 2, 3 and 6 of the CRC, may be difficult to identify, evidence and rectify when applying Lukes's theory of "power over" as an analytical tool to children's rights.

Ideological power is also at work in providing legitimacy to a decision, or non-decision, made under the banner of best interests – or, indeed, the CRC more generally.<sup>38</sup> Lukes states that the third dimension is often present without its presence being recognised, questioned or challenged: 'they see or imagine

34 This government, the primary governing party in the United Kingdom between 2010–2024, is widely criticised for its failure fully to prioritise children's rights under the UNCRC, domestic law and other human rights treaties. For a more detailed discussion on this, please see The Equality and Human Rights Commission's recent report: [https://www.equalityhumanrights.com/sites/default/files/childrens\\_rights\\_in\\_great\\_britain\\_o.pdf](https://www.equalityhumanrights.com/sites/default/files/childrens_rights_in_great_britain_o.pdf).

35 As noted in the Department's children's rights impact assessment, which was completed prior to the Regulations and scrutinised by the High Court and Court of Appeal in *R (Article 39 v. Secretary for Education)* (2020 EWCA Civ 1577) (2022 EWHC 589 Admin).

36 For example, liberalism (e.g. Farson, 1974; Holt, 1974), paternalism (e.g. Feinberg, 1980, 1971) and liberal-paternalism (e.g. Freeman, 1983).

37 For example, social, historic and cultural norms and political and religious beliefs.

38 It is notable that an increasing number of children's rights scholars suggest that the CRC is underpinned by certain ideological beliefs, such as heteronormativity, secularism and colonialism. Elizabeth Faulkner and Conrad Nyamutata, 2020 and Frederique Joosten's, 2024, work serve as excellent examples of this.

no alternative to the existing order' and accept it as 'natural or unchangeable, or because they value it as divinely ordained and beneficial' (1974: 23). Indeed, it is covertly at work here in this paper, shaping my beliefs on how the CRC should be interpreted in light of the Coronavirus Regulations and informing my perception of the process the Department and Minister for Education should have taken in the lead up to the amendments.

Having outlined Lukes's three dimensions of "power over" in accordance with children's rights under the CRC in detail conceptually, I now turn to contemplate how the above conclusions should be applied by those wishing to implement a "power over" approach in their line of work with children, and/or when analysing a children's rights infringement. I set out an easy to follow/apply model below, which should help identify and challenge instances where "power over" acts as a barrier to the implementation of children's rights outlined in the CRC. The model should be considered and applied in a wide range of contexts and host of decisions concerning children and their rights – not just the issue of Coronavirus Regulations. For instance, I am currently working on a research project exploring how the model might apply to my postdoctoral research focusing on trans children's access to puberty blockers and cross-sex hormones in England.

## **6 Proposed Model for Incorporating Lukes's Three Dimensions of "Power Over" as part of a Children's Rights Approach and Concluding Thoughts**

The below model aims to respond to and mitigate the impact of "power over" on the recognition and implementation of children's rights according to the CRC. However, it can also be applied to children's rights under domestic law and other human rights treaties. The model is designed to make the complex aspects of Lukes's theory easier to grasp and apply in practice and/or when analysing a rights infringement for researchers, State Parties to the CRC, and other professionals working with people under the age of 18. The model is capable of evolving over time – particularly if theories of "power over" relied on to a greater extent in the children's rights domain in the future, and this theoretical groundwork is taken forward. If the model were to be applied to a whole host of decisions concerning children in various jurisdictions, then the CRC, unaffected by the presence, exercise and effects of "power over", will have maximum impact in terms of its reach and impact on children. My nine suggestions for incorporating "power over" in a toolkit designed critically to appraise the practical implementation of children's rights are as follows:

*Decision-making Power*

1. Who holds the most influence over the making and outcome of the decision?
2. Is the most influential, or powerful, party to the decision willing to acknowledge and implement children's rights? Might the power holder's own interests inform their decision-making?
3. Is it possible that the process or outcome of the decision can be vetoed better to support children's rights? Are there checks on that veto, can it be challenged?

*Non-decision-making Power*

4. Who is setting the agenda about the particular children's rights issue that you are addressing?
5. Are certain issues being left off the agenda for children? Has the scope of the issues been limited by a power holder? Does this issue align with the power holder's own interests?
6. Is this choice misleading? Are other options available to a child that better support their rights?

*Ideological Power*

7. Has a child's wants and needs been shaped or determined by a power holder? What is the impact on a child's "power to"?
8. Are specific children's rights being used to advance the ideologies of a power holder?
9. Can any ideologies relevant to the power holder be identified in relation to the children's rights issue you are examining?

When applying this model as part of a "power over" approach to children's rights, it would be helpful and logical to begin with the first dimension of power, before moving onto the second and third dimensions. This is because, as I explained in part 5.1.1 of the paper, decision-making power is the most obvious of the three dimensions to identify, consider and act upon. The less visible forms of power (non-decision-making and ideological power) may require a deeper exploration of "power over", compared with decision-making power. I found this to be the case in terms of ideological power and the Department and Minister for Education's decisions regarding children in care (pp. 158–159) for instance. This dimension proved more difficult to pin down and evidence than decision-making and non-decision-making power in my chosen case study. However, it encouraged me, and I hope that my proposed model will inspire others to contemplate whether more covert forms of "power over" will act, or have acted, as a barrier to a child's enjoyment of their rights under the CRC.

In this paper, I have argued for the inclusion of Lukes's theory of "power over" (1974) within a children's rights approach. This proposal responds to an alarming increase in the prevalence of children's rights infringements globally (Kids Rights Index, 2024; UNICEF, 2023, 2024; Save the Children, 2023) and the ongoing criticism that children's rights scholarship lacks theoretical justification (Dixon and Nussbaum, 2012; Quennerstedt, 2013; Reynaert *et al.*, 2009; Quennerstedt and Moody, 2020). Although there is significant engagement with power theory in the literature focused on the rights of adults, a lack of attention has been paid to applying theories of power to the rights of the young in a detailed and robust manner. I explained that John (2003) and Alderson's (2003, 2008) work on the subject mainly focuses on children's participation rights and "power to", and that a more rigorous analysis of how Lukes's theory of "power over" should apply to children's provision, protection, prevention *and* participation rights was required. Lukes's theory is comprehensive, insofar as it accounts for both overt and covert forms of power, and illustrates the relationship between "power over", "power with" and "power to". His thesis is also accessible and applicable to a wide range of scenarios and jurisdictions involving children who, as a minority group, are often powerless and vulnerable to the effects of decision-making, non-decision-making and ideological power. I took a new approach to applying Lukes's theory to children's rights under the CRC in the paper, by uncoupling "power over" from the "4P framework" and reframing the concept as an analytical tool. I suggested that this was necessary because the 4 "Ps" are intended to act as a pedagogical aid in human rights education and are frequently criticised for their lack of theoretical underpinning (e.g. Quennerstedt, 2010: 630).<sup>39</sup> "Power over" as an analytical tool for children's rights has two purposes: clarifying reasons for rights infringements and aiding in the robust implementation of children's rights. It enhances the effectiveness of the CRC – and, if applicable, children's rights under the common law and other human rights treaties/conventions – by situating the rights of the young within a conceptual framework that can provide a clearer understanding of why their rights were infringed and how such infringements can be prevented. This shifts the focus from merely categorising rights to examining the underlying power structures hindering their realisation. My "power over" approach not only helps diagnosing the root causes of rights violations, but can also empower practitioners and researchers to develop more targeted and effective interventions. This can be easily achieved in practice or children's rights research, by implementing my

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39 As noted on p. 146, the "Ps" are also used less often in practice and in children's rights research.

proposed model or closely reading and replicating my chosen case study of the Coronavirus Regulation in England.

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