

Abandoning Children to Their Autonomy: Children's Needs and the Rights of Parents in the UN Convention on the Rights of the Child

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Perhaps I should begin by telling you the story of how I became interested in children's rights—and how that interest brought me here today. In 1973, I was a young law professor at Brigham Young University's law school. The law school dean then was Rex Lee, who later became the Solicitor General of the United States, responsible for presenting the federal government's cases before the U.S. Supreme Court.

As Rex and I discussed a paper he was writing, we talked about recent constitutional developments. We both cheered that the powerful idea of individual rights had energized the civil rights movement, which was helping the U.S. overcome its embarrassing history of racial discrimination. We also applauded how those same ideas had begun to help the country eradicate discrimination against women.

At one point I said to Rex, "The liberation and equality movements are gaining such a head of steam—do you think the very idea of individual rights could ever develop so much momentum that it could overpower the legal principles that should be balanced against it?" His brow furrowed. "What do you mean? Give me an example."

I had never taught Family Law before that time, but one idea just occurred to me. "What about children?" I said. "The law 'discriminates' against children on the basis of age—they can't vote, drive a car, or sign a binding contract. But is that discrimination bad for children, or is it good for them?" Then I wondered aloud if a children's rights movement might follow the civil rights and women's movements. Spurred by that question, I did some research and found that a sometimes reckless children's rights

movement was indeed under way—illustrated then by a court decision in the State of Washington that, in effect, let a teenager essentially divorce her parents.¹

That research prompted me to write a law review article entitled, “Children’s Liberation and the New Egalitarianism: Some Reservations about ‘Abandoning Children to their Rights.’” Many of my questions about how the U.S. Supreme Court would react to the concept of children’s liberation were then answered in 1977, in a case about abortion rights for minors. In a statement that would reflect the general attitude of the American judiciary from that time on, Justice Lewis F. Powell wrote in that case, “the peculiar vulnerability of children, their inability to make critical decisions in an informed, mature manner, and the importance of the parental role in childrearing” together require “the conclusion that the constitutional rights of children cannot be equated with those of adults.”² I’ve always remembered that statement, because it cited my article about the case from Washington in a supporting footnote.

Years later, in the early 1990s, a law professor from Tokyo, Japan named Akira Morita contacted me to ask what I thought about the new UN Convention on the Rights of the Child—the CRC. This was the first I had heard about the CRC. He wanted to know if I agreed with him that the CRC reflected an unwise children’s liberation philosophy that was not consistent with U.S. law. I was surprised to discover that Professor Morita was right. I also contacted Mary Ann Glendon of the Harvard Law School, a leading professor of Family Law who had had more experience with the UN than I had, to discuss the CRC.

When I wondered how the UN could have adopted the CRC, Professor Glendon provided this answer: “There is an increasing tendency for advocates of causes that have

failed to win acceptance through ordinary democratic processes to resort to the international arena, far removed (they hope) from scrutiny and accountability. [Such advocates] can be expected to keep on trying to insert their [least responsible] ideas into UN documents for unveiling at home as ‘international norms.’”³

Shortly afterward, the Harvard International Law Journal published my analysis of the CRC.⁴ Now we’re in Geneva, 25 years after the UN adopted the CRC, and I am here to summarize a few thoughts about it. Along the way, I will note some developments during those 25 years and conclude with a few thoughts about the future.

I found much to praise when I first reviewed the CRC. It re-affirmed many needed and time-honored UN themes as it forcefully urged the protection and nurturing of children everywhere. It also addressed such specific and important issues as drug abuse, child neglect, the need for a healthy environment, children in armed conflict, and the special needs of disabled children. I cheered to see the UN apply its potent influence to support this youngest demographic group, especially since family law—at least in the U.S. where I knew family law best—had too often given priority to the rights of adults in ways that neglected the interests of children.

The Autonomous Child—an Untested Concept

However, one of my primary concerns with the CRC was its commitment to a broad but untested new legal concept—the autonomous child. So far as I know, no country had ever based its laws about children on that fundamental premise—so the UN really has been involved in a worldwide pilot test. According to one official UN document, the CRC would promote a “new concept of separate rights for children with

the Government accepting [the] responsibility of protecting the child from the power of parents.”⁵ Thus the CRC’s proponents said it consciously took a “quantum leap” beyond the UN’s 1959 Declaration on the Rights of the Child, promoting “an ‘autonomous’ view” of children’s rights that is “*more based on choice than needs*” of children, making a new assumption that “children should have rights ‘identical to adults.’”⁶

The leading proponents of this new vision for the world’s children were children’s liberation advocates from the U.S., whose sweeping arguments for child autonomy have never been fully accepted by the American legal mainstream. Nonetheless, some CRC advocates created the incorrect impression that the CRC was consistent with U.S. law.⁷

Beginning in the 1960’s, the U.S. Supreme Court did start using the terminology of individual constitutional rights in some cases involving children. However, nearly all of these cases involved what I would call “protection rights” rather than “choice rights” for children. This distinction will help clarify why I believe the drafters of the CRC went beyond U.S. law and beyond what is best for children when they emphasized children’s choices rather than children’s needs. Giving children choices that they are not prepared to make can actually undermine the fulfillment of their needs.

Rights of Protection vs. Rights of Choice

“Protection rights” for children do not depend on any minimum level of age or capacity, a principle recognized by other UN declarations.⁸ These rights include such safeguards as rights to property, rights to physical care and security, protection from abuse, and rights to procedural due process. For example, U.S. courts have given increased procedural protection to children in such places as juvenile courts, schools,

and similar institutions. In these settings, procedural due process is designed not to increase children's personal choices, but to protect them against the abuse of unchecked discretion by adults other than their parents.

"Choice rights," on the other hand, grant individuals the authority to make their own legally binding decisions, such as voting, marrying, making contracts, exercising religious preferences, or choosing whether and how to be educated. The widely recognized legal concept of minority status has long denied children the right to make their own choices on these important matters. Minority status does not discriminate *against* children; on the contrary, it "protects" children and society from the long-term consequences of a child's immature choices. Minority status also protects children from exploitation by those who would take advantage of their unique vulnerability. To confer prematurely the full range of choice rights on children would, ironically, remove the protection they need to foster their normal development.

Children Do Not have Adult Choice Rights under U.S. Law

Vigorous arguments for children's legal autonomy have appeared for years in U.S. court cases and other literature; however, the U.S. Supreme Court's experience since the late 1960's shows that it has *not* in fact accepted the broad notion of adult-level legal autonomy for children. The statement I quoted earlier from U.S. Supreme Court Justice Lewis Powell did capture the collective judgment of the U.S. judiciary. Another statement by Supreme Court Justice Potter Stewart applies Justice Powell's same perspective to the idea of "choice" rights: "A child is not possessed of that full capacity for individual *choice* that is the presupposition of First Amendment guarantees."⁹ Thus, with the exception of abortion choices by mature minors in certain circumstances, the

modern U.S. children's right cases seek to give children rights of protection, not rights of choice.

A New Standard for State Intervention?

I was also concerned with a few more specific issues in the CRC. For example, Article 9 provides that children may be separated from their parents when “such separation is necessary for the best interests of the child.” Article 3 adds that “in all actions concerning children...the best interests of the child shall be a primary consideration.” Does this language, which the CRC committee currently promotes without mentioning parents,¹⁰ mean that any parental care that falls short of what a state agent considers a child's “best interest” may be flawed enough to trigger state intervention into the child-parent relationship? And given the CRC's emphasis on listening to children's own views,¹¹ could a child trigger state intervention merely by requesting a state review of the “reasonableness” of parental conduct, compared to the child's views of her best interests? Under the CRC's new optional protocol adopted in 2013, this interpretation might become possible if children are allowed to submit complaints directly to a CRC-authorized body before exhausting the legal remedies of their own country. And even those domestic remedies should retain a significant threshold for state intervention—for the reasons that follow.

Parental Rights come from Nature, not from the State

Among the fundamental axioms of U.S. family law, and the laws of many countries, is the principle that the parent-child relationship pre-dates the state just as other natural individual rights pre-date the state in the classic political theory of human

rights. Natural parents are not mere trustees of the state who receive their authority for childrearing through delegations of state power—as would be true of foster parents. Rather, as the U.S. Supreme Court said in a 1925 case that authorized parents to place their children in private schools, “the child is not the mere creature of the state.”¹² Moreover, partly to prevent governments from assuming totalitarian powers, the structure of democratic societies presupposes a system of formal family units in which parents are both authorized and duty-bound to teach and guide their children. We are not one big mass of isolated individuals who all stand in the same relationship to the state. For the protection of both children and democracy, parents stand as crucial intermediaries between children and the state.

At the same time, under U.S. law, state agents should of course intervene in the child-parent relationship when the circumstances reach certain well-known thresholds—such as determining child custody in a divorce case or in adoptive placements; in cases of actual parental unfitness, neglect, or abuse; or child misbehavior serious enough to require state intervention. For example, UNICEF reported just last week that “most violence” against children, which is still a huge global problem, takes place in children’s homes “rather than [in] war zones.”¹³ This report points out that although some parents are perpetrators of violence, parents “*usually* play a key role in supporting and protecting their children [from violence].”¹⁴ Also multiple studies on violence indicate that children living in stable, two-parent homes generally experience less abuse than those living in single-parent, repartnered, or cohabitating homes.¹⁵

Without question, state agencies should intervene in cases of serious domestic abuse. This threshold simply requires a showing of actual harm or actual need. Short of

that traditional level, however, the constant threat of intervention into a multitude of daily decisions could undermine parental willingness to assume the heavy responsibilities required to meet their children's needs—thus, ironically, damaging children more than helping them.

Freedom of Expression and Religious Freedom

I was also concerned about the civil rights provisions of the CRC. For example, the CRC's proponents claimed that the free expression rights in Article 13 were consistent with U.S. law. But in the late 1980's, the U.S. Supreme Court significantly limited an earlier school ruling by upholding the right of public schools to control not only the curriculum, but the extracurriculum—including the content of student newspapers and assemblies. In this and in other ways, the Court has reinforced the institutional authority of schools, so that the schools can effectively teach children not just that they have the right to express themselves, but the skills to express themselves, and to have something worth saying.¹⁶ The Court has also upheld laws that ban the sale of pornographic material to children under age sixteen,¹⁷ and it has upheld the concept of curfew ordinances, rejecting claims to freedom of association by underage children.¹⁸

Another of my concerns was the description of religious liberty in Article 14. The CRC respects parents' right to "provide direction" regarding religion, but only "to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child." This language could imply that parents have only the rights the CRC gives them, without recognizing the natural and independent parental right I mentioned earlier in discussing state intervention standards. Such an interpretation of Article 14 would also contradict the right of parents, as enshrined in other fundamental

UN human rights treaties, “to ensure the religious and moral education of their children in conformity with their own convictions.”¹⁹ In my country, the U.S. Supreme Court has long upheld the right of parents to direct the religious upbringing of their children, including the right to home schooling. The Court has directly overruled the claim of child autonomy advocates that the views of older children should influence if not control where they attend school.²⁰

Child Privacy: The “Right to be Let Alone”?

I was also concerned with the way Article 16 established child privacy rights, which the CRC committee has interpreted both broadly and vigorously with UN member states when discussing such issues as sex education and providing contraception without parental consent. For example, the committee has observed: “States parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, ... regardless of their marital status and whether their parents or guardians consent.”²¹

One CRC proponent believes the Convention thus gives children the same adult right of privacy that allows adults to make their own decisions about procreation, abortion, and other adult conduct.²² This proponent says he believes Article 16 gives children “the right to be let alone,” a famous phrase from a 1934 Supreme Court case that reflects the contemporary flavor of autonomous personhood. A major risk with these vague references to sexual privacy is that the CRC’s language could be construed to support a child’s right to sexual freedom—an interpretation that is not supported by UN human rights treaties or other UN declarations and that would go well beyond U.S. law.

Moreover, most U.S. pediatricians have long agreed that “adolescent sexual activity is . . . unhealthy for children—emotionally, psychologically, spiritually, and physically.”²³

The idea that autonomous privacy for children means “the right to be let alone” reminds me of a little boy about five years old whom I once saw standing all by himself on a street corner in a Pacific Island country, with no one else in sight. He was a beautiful child, but his big brown eyes looked bewildered and forlorn as he searched in every direction, his body language signaling the fears of a motherless child. He was wearing a faded red t-shirt that carried these words in big, bright letters: “Leave Me Alone.” I doubt that even the CRC’s most ardent proponents would want a photo of that boy and his t-shirt to be the poster child for their vision of child autonomy.

Sex Education, Contraceptives, and the Role of Parents

With these issues in mind, I offer just a few additional illustrations of how the CRC has been interpreted in ways that confirm my original concerns. First, consider the well-established right of parents mentioned earlier to direct the education and rearing of their children, especially regarding religion and sexuality. I realize that the governments of many European countries simply reject the concept of home schooling as an alternative to public education. I know of examples from Ireland, Scotland, and Sweden in which parents were denied requests for home schooling. I’m not sure how much the CRC has influenced those policies, but typically, U.S. lawyers interpret the CRC as discouraging private schooling and as not allowing home schooling.²⁴

I am specifically concerned that the CRC Committee routinely requests states parties to provide children (in public schools and otherwise) with abortion access, sex

education, and contraception, without allowing parents to opt out for their children, whether on religious grounds or otherwise.²⁵ The committee's recommendations are surprising because the CRC makes no mention of these sensitive issues. In contrast, in a recent Norway case, the European Court of Human Rights required that atheist parents be allowed to opt their children out of compulsory religious education in public schools, in deference to the parents' religious and philosophical convictions. Although these are different entities, both are based in Europe, and their perceptions about the religious rights of parents are inconsistent and troubling.

The CRC originally purported to be consistent with prior key UN declarations and with U.S. law regarding this most basic of parental rights. Article 26(3) of the UN Declaration of Human Rights states that "parents have a prior right to choose the kind of education that shall be given to their children." I take the word "prior" in this sentence to reflect the point made earlier, that in classic human rights theory, individual rights—including parental rights—existed prior to the state rather than being granted by the state. Also, visible UN statements adopted in Cairo and Beijing about twenty years ago state that parents should be involved in programs related to children's sexual experience.²⁶ Moreover, under U.S. law, parents may provide homeschooling in all fifty states, subject of course to state regulation that ensures educational quality. Finally, all U.S. states require sex education, but 35 of the 50 states allow parents to opt their children out of it.²⁷ A similar dichotomy exists between the approach of the CRC committee and the approach of U.S. law to the issue of corporal punishment, both at home and in public schools.²⁸

Parents as Children's Primary Caretakers

After reviewing a collection of the CRC committee's observations and comments, my overall impression is that the committee is interpreting the CRC in ways that mostly seem to shift decision making about what is best for children (a) away from a child's own country and (b) away from a child's own parents, in favor of policy priorities adopted by the CRC committee. So, as an American parent, I hear the CRC and its committee mostly telling me that my children should follow the committee's policy preferences rather than the reasonably differing preferences of my own courts and legislators, and certainly rather than my own judgment—because one of the CRC's stated aims is to protect my children from my authority and power. Rather than offering demonstrable benefits for children, this shift essentially replaces one form of state paternalism for another. By its tone as well as many of its provisions and interpretations, the CRC committee also removes important incentives for parents to care about their children. This new form of paternalism may hurt children more than it helps them.

Years of discussion about children's rights have shown that the most important issue is *who gets to decide* what a given child may or may not do. Because of children's inherent dependency, even though we all want them to become more independent as they grow and mature, someone other than the children themselves generally needs to decide what is best for them—subject, of course, to reasonable regulation. Should those *primary* decision makers be their parents, agents of their country, or the agents of an international organization? Which of these three options is best for children and for the future stability of the democratic societies that today's children will become? Here are

some reasons why parents have long been—and should remain—the highest priority option.

In 1972, Henry Foster and Doris Freed, two influential professors of American family law, proposed a “Bill of Rights for Children.” This proposal stated, among other things, that “A child has a moral right and should have a legal right . . . to receive parental love and affection, discipline and guidance, and to grow to maturity in a home environment which enables him to develop into a mature and responsible adult.”²⁹ Centuries earlier, political philosopher John Locke had believed that parents owe an obligation to “Nature” to “nourish and educate” their children until their “understanding be fit to take the government of [their] will”³⁰ as mature and rational citizens. The preamble to the CRC states that children “should grow up in a family environment, in an atmosphere of happiness, love and understanding.”

The child-parent relationship is the source of the most basic of children’s rights and parental duties, even though it has remained more a moral than a legal issue because the law has a hard time enforcing affirmative duties. However, the conditions that optimize the child-parent relationship are clearly encouraged by cultural patterns and legal expectations that maintain a sense of permanency and stable expectations.

Marriage and the Child’s Need for a Stable Parental Relationship

Empirical studies have clearly established “the need of every child for unbroken continuity of affectionate and affirmative relationships with an adult,” whenever possible, with both parents. “*Continuity of relationships, surroundings, and environmental influences are essential for a child’s normal development.*”³¹ The child’s need for these forms of stability is so great that disruptions of the child-parent

relationship by the state, even when there appears to be inadequate parental care, frequently do more harm than good.³² As University of Virginia sociologist Dr. Brad Wilcox showed in his comprehensive presentation earlier today, data from study after study document how central the parent-child relationship is in all factors that affect child well-being. And children raised by single or cohabiting parents are far more likely to have serious developmental problems than children raised by both biological parents in a married relationship.³³

Even the CRC itself contains language clearly stating that children have a right not only to some relationship with their parents, but the right to know those parents and to be cared for by them whenever possible. Article 7-1 states, “The child shall . . . have . . . the right . . . to know and be cared for by his or her parents.”

So I want to ask what should be an obvious question—so obvious, in fact, that it deserves a broad and visible hearing, before the UN and in other ways, if we are really serious about children’s most fundamental rights. The research evidence is clear that living in a stable family and having a continuing relationship with both parents is—for all kinds of reasons—the optimal environment for rearing a child.³⁴ Given this clear evidence, why doesn’t the UN—along with all else it offers the world’s children—give higher priority to helping its member states increase the likelihood that each child’s biological parents will (a) marry and (b) stay together—rather than ignoring or undermining the most crucial factor in a child’s environment: a stable relationship of long-term continuity with both parents? I recognize, of course, that there will always be exceptions to this ideal pattern, necessitated by divorce, adoption, death, or other circumstances.

Not long ago an article in *Time* magazine stated, “There is no other single force causing as much measurable hardship and human misery in this country as the collapse of marriage. It hurts children, it reduces mothers’ financial security, and it has landed with particular devastation on those who can bear it least: the nation’s underclass. . . The poor [have uncoupled] parenthood from marriage, and the financially secure [blast] apart their [own] unions if [they] aren’t having fun anymore.”³⁵ Another panel of family scholars concluded, “The most important causal factor of declining child well-being is the remarkable collapse of marriage, leading to growing family instability and decreasing parental investment in children.”³⁶

Yet here in Europe, 80 percent of the population now approve of unmarried cohabitation. In Scandinavia, 82 percent of firstborn children are born outside marriage.³⁷ When we lived in Germany for four years recently, we sensed among Europeans that in many ways, it seems, marriage is no more. Marriage has gone away. As a French writer put it, marriage has “lost its magic for young people,” who increasingly feel that “love is essentially a private matter which leaves no room” for the larger society to say anything about their marriage or, of course, about their children.³⁸

I realize that I have raised an issue that may seem far removed from the typical children’s rights discourse in Geneva. But that is precisely why I have raised this question here in Geneva. Few issues could matter more to child well-being than whether a child’s parents are committed for the long term to each other and to the child. If that doesn’t sound like a significant children’s rights issue, is it possible that some contemporary adults are willing, perhaps unwittingly, to advocate children’s rights as

something of a pretense for a broader political agenda that is more interested in emancipating adults than it is in protecting and seriously nurturing children?

Children's Rights—In Whose Interest?

To illustrate, a few years ago a team of prominent American social scientists reported their major study on the problems of teenage pregnancy. After describing the details of an increasing rate of teen pregnancy, these scholars offered their remarkably candid view about the options for reducing teen pregnancies: “For ourselves, we prefer to cope with the consequences of early sex as an aspect of an emancipated society, rather than pay the social costs its elimination would exact.”³⁹

This comment makes me wonder whose interests are being served by some adult claims of autonomy for children. Many—perhaps most—adults are indeed motivated by what they perceive is best for children. But I’m concerned that too many adults, whether consciously or not, could also be motivated by self-interests, some of them ideological (like the dream of a duty-free “emancipated society”) and some that mostly serve adult convenience. Adults face a beguiling conflict of interest when they think about autonomy for children. When they disengage from the arduous task of rearing and teaching children in the purported name of increasing those children’s freedom, their subliminal purpose may be to increase their own freedom by liberating themselves from the burdens of providing meaningful education, discipline, and child care.

Abandoning Children to Their Autonomy

A final thought. Many older adolescents are quite capable of making good lifestyle choices; far too many parents are dysfunctional; far too many children are

ignored and abused; and no investment of human or political resources has greater long-range significance than investments in children. But after years of struggling with these issues in the U.S., a culture that is very friendly to the idea of personal autonomy, most U.S. courts and legislatures are not convinced that—short of actual neglect or some similarly serious cause—state agencies, or international agencies, or children themselves, are better equipped than parents to assume the unavoidably necessary parental role.

Many adults today reflect an emerging but misguided tendency to defer increasingly to children's preferences. But many legal systems still limit children's autonomy in the short run in order to maximize their development of healthy autonomy in the long run. When responsibly embraced by parents and others involved in child care and education, this approach encourages development of the personal competence needed to produce an ongoing democratic society comprised of adults who are capable of autonomous and responsible action. To short-circuit this process by legally granting—rather than actually teaching—autonomous capacity to children ignores the realities of education and child development to the point of abandoning children to a mere illusion of real autonomy.

¹ See Hafen, "Children's Liberation and the New Egalitarianism: Some Reservations about Abandoning Youth to their 'Rights,'" 1976 BYU L. Rev. 605 (cited by the U.S. Supreme Court in *Bellotti v. Baird*, 443 U.S. 622 (1979)).

² *Bellotti v. Baird*, 443 U.S. 622, 634 (1979).

³ Mary Ann Glendon, "What Happened at Beijing," *First Things*, January, 1996, at 35.

⁴ Bruce C. Hafen and Jonathan O. Hafen, "Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child," 37 Harv. Int'l L.J. 449 (1996) [hereinafter "Hafen and Hafen"].

⁵ UNITED NATIONS 1994/1995 PUBLICATIONS CATALOGUE at 64.

⁶ Robert E. Shepherd, *Civil Rights of the Child*, in CHILDREN'S RIGHTS IN AMERICA, at 135 (quoting Lee Teitelbaum, *Forward: The Meanings of Rights of Children*, 10 N.M. L. Rev. 235, 238 (1980)); see also Hafen and

Hafen at 491; Michael Jupp, *Confronting the Challenge of Realizing Human Rights Now: Rights of Children: The United Nations Convention on the Rights of the Child: An Opportunity for Advocates*, 34 How. L.J. 15, 21 (1991).

⁷ See Hafen and Hafen, *supra* note 1, fn. 94.

⁸ See, e.g., United Nations International Conference on Population and Development (1994), II, Principle 11 (“The child has the right to be cared for, guided and supported by parents, families and society and to be protected by appropriate legislative, administrative, social and educational measures from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sale, trafficking, sexual abuse, and trafficking in its organs.”). See also The United Nations Convention on the Rights of the Child, Preamble (1990) (“the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth*”) (emphasis added).

⁹ *Ginsberg v. New York*, 390 U.S. 629, 649-50 (1968).

¹⁰ See, e.g., The United Nations Committee on the Rights of the Child, Concluding observations on the fourth periodic report of Yemen, CRC/C/YEM/CO/4 (31 January 2014), Par. 32 (“The Committee draws the Party’s attention to its General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration ... and ensure that this right is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programs and projects that are relevant and have an impact on children. In this regard, the State Party is encouraged to develop procedures and criteria to provide guidance to all relevant persons in authority or determining the best interests of the child in every area and for giving them due weight as a primary consideration. Such procedures and criteria should be disseminated to the public, including traditional and religious leaders, public and private social welfare institutions, courts of law, administrative authorities and legislative bodies.”)

¹¹ *Ibid.* Par. 35 (“[T]he committee expresses concern at the lack of adequate financial and technical support to hold the Children’s Parliament sessions” and that the “opportunity to have their voices heard in decision-making processes are lacking at the policy-making level and in the family, in schools and in the community.”); The United Nations Committee on the Rights of the Child, Concluding observations on the consolidated third and fourth periodic reports of India, CRC/C/IND/CO/3-4 (13 June 2014), Par. 2 (“The Committee further recommends that the State party: (a) Take measures to ensure the effective implementation of legislation recognizing the right of the child to be heard in relevant legal proceedings” and “(b) conduct research to identify the issues that are most important to children, to hear their views on those issues, to find out how well their voices are heard in family decision affecting their lives and the channels through which they currently and potentially can have the most influence on national and local decision-making....”)

¹² *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925).

¹³ Somini Sengupta, “U.N. Report finds Abuse of Children is Widespread,” *International New York Times*, Sept. 5, 2014, p. 6.

¹⁴ *Hidden in Plain Sight: A statistical analysis of violence against children*, UNICEF (September 2014), p. 21 (emphasis added).

¹⁵ For example, a new study finds that in Africa, Latin America, the Caribbean, and Asia, children in divorced, dissolved, remarried, or repartnered homes are at least 20 percent more likely to die in their first five years of life, compared to children in stable, two-parent homes. *World Family Map 2014: Mapping Family Change and Child Well-Being Outcomes*, Child Trends, pp. 60-63. These data suggest that stable, two-parent homes (typically with married parents) are more likely to be a safe and healthy place for the rearing of children. They also provide support for article 7 of the CRC, which states “the child shall have the right, as far as possible, to know and be cared for by his or her parents.”

¹⁶ See sources cited in Hafen and Hafen, pp. 468-69.

¹⁷ See *ibid.* note 106.

¹⁸ See *ibid.* note 110.

¹⁹ UN International Covenant on Economic, Social and Cultural Rights (1976), Art. 13-3; UN International Covenant on Civil and Political Rights (1976), Art. 18-4.

²⁰ *Yoder v. Wisconsin*, 406 U.S. 205 (1972).

²¹ The United Nations Committee on the Rights of the Child, General Comment No. 4, CRC/GC/2003/4 (1 July 2003), Par. 28. See also *ibid.* Par. 33 (States parties should also “enact laws or regulations to ensure that confidential advice concerning treatment is provided to adolescents,” and “Such laws or regulations should ... provide training for health personnel on the rights of adolescents to privacy and confidentiality.”)

²² See sources cited in Hafen and Hafen, note 124.

²³ Henry J. Redd et al., *Contraception and Adolescents: A Dissent*, 21 Child & Family 105, 106 (No. 2, 1990).

²⁴ Law professor David Smolin states that "Article 29 (of the United Nations Convention on the Rights of the Child) limits the right of parents and others to educate children in private school by requiring that all such schools support both the charter and principles of the United Nations and a list of specific values and ideals. By contrast, Supreme Court case law has provided that a combination of parental rights and religious liberties provide a broader right of parents and private schools to control the values and curriculum of private education free from State interference." While the quote deals with private schools it can also be assumed to extend to private home educational choices because the educational venue must support the U.N.'s values and ideals. "Home Schooling," Wikipedia.

²⁵ See, e.g., The United Nations Committee on the Rights of the Child, Consideration of reports submitted by State parties under article 44 of the Convention, CRC/C/MNG/CO/3-4 (4 March 2010), Par. 54 ("The Committee recommends that the State party: ... (b) Promote and ensure access to reproductive health services for all adolescents, including sex and reproductive health education in schools as well as youth sensitive and confidential counselling and health care services....").

²⁶ See Fourth World Conference on Women, Par. 79(f), 107(e) and 267 (Beijing 1995); International Conference on Population and Development, Par. 6.15 (Cairo 1994).

²⁷ National Conference of State Legislatures website, July 2014 summary.

²⁸ The CRC committee routinely recommends that State parties ban all forms of corporal punishment. See, e.g., The United Nations Committee on the Rights of the Child, Concluding observations on the combined fourth and fifth periodic reports of the Russian Federation, CRC/C/RU.S./CO/4-5 (25 February 2014), Par. 33 ("The Committee draws the attention of the State party to its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment and urges the State party to prohibit by law the use of *all* forms of corporal punishment in *all* settings, *in particular in the home* and in alternative care institutions, and provide for enforcement mechanisms under its legislation, including appropriate sanctions in cases of violations") (emphasis added). By contrast, corporal punishment is still lawful, within certain limits, in U.S. homes and schools.

²⁹ 6 Fam. L. Q. 343, 347 (1972).

³⁰ J. Locke, The Second Treatise of Government, Sections 56, 59 (1690).

³¹ Sources cited in Hafen, "The Constitutional Status of Marriage, Kinship, and Sexual Privacy," 81 Mich. L. Rev. 463, 474. Emphasis added.

³² Source cited in *ibid.* at note 41.

³³ The children of divorced or unwed parents have about three times as many serious behavioral, emotional, and developmental problems as children in two-parent families. See sources and data cited in Bruce C. Hafen, *Covenant Hearts: Why Marriage Matters and How to Make it Last*, (2005), pp. 227-29.

³⁴ In 2001, for example, the *New York Times* reported a "powerful consensus" among social scientists that "from a child's point of view . . . the most supportive household is one with two biological parents in a low-conflict marriage." Hardin, "2-Parent Families Rise After Change in Welfare Laws," *N.Y. Times*, 12 August 2001.

³⁵ Caitlin Flanagan, "Why Marriage Matters," *Time*, 13 July 2009, p. 45.

³⁶ *Marriage in America: A Report to the Nation*, Institute for American Values (1995), p. 8.

³⁷ Noelle Knox, "Nordic Family Ties Don't Mean Tying the Knot," *U.S.A Today*, 16 December 2004, p. 15; available at: www.usatoday.com/news/world. At the same time, unmarried couples in Scandinavia have somewhat more stable relationships than unmarried U.S. couples, whose cohabiting relationships are shorter than in any other country. Sociologist Andrew Cherlin has found that even a child born to married parents in the U.S. is statistically more likely to see his parents break up than is the child of an unmarried couple in Sweden. Andrew Cherlin, *The Marriage Go Round* (Random House, 2009); this statement is from Cherlin's "about the book" summary on RandomHouse.com.

³⁸ *Report of the Mission of Inquiry on the Family and the Rights of Children*, a study commission appointed by the National Assembly of France, January 25, 2006, p. 32 (English translation of commission report).

³⁹ Melvin Zelnick et al., *Sex and Pregnancy in Adolescence* 182 (1981).