

## Current UN Issues Regarding Children, Parents, and Religious Freedom

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Heiner Bielefeldt, the UN's Special Rapporteur on freedom of religion or belief, recently gave his report for 2015 to the United Nations. He focused specifically on the religious liberty interests of both children and parents. Because of my previously published work on the UN Convention on the Rights of the Child (the "CRC"),<sup>1</sup> I was recently invited to offer comments on this report to Mr. Bielefeldt and others at a UN-related meeting in New York City. My remarks today build upon those comments. I will deal with three issues: (1) child dependency vs. child autonomy, (2) rights of protection vs. rights of choice, and (3) objective vs. subjective measures of a child's capacity.

### Child Dependency vs. Child Autonomy

First, let us consider child dependency vs. child autonomy. A "dependent" child *depends* on parents or others to meet the child's basic needs, because the child isn't capable of meeting those needs all by himself or herself. Usually, the younger a child is, the more dependent that child is on parental support. The term "autonomous" means *independent*, or free from being controlled by other people. An "autonomous" child is free from parental control, because the child is presumed to be capable of meeting his or her own needs.

We begin with a word of context about the original CRC, which the UN adopted in 1989 and which has now been ratified by every UN member state—except the United States. I was initially glad to see the UN apply its potent influence to support this youngest demographic group, especially since family law had too often given priority to adult rights in ways that neglected children's interests. However, I was concerned when I discovered that the CRC introduced a radical new legal concept—the autonomous child. With this bold step, the UN essentially launched a worldwide pilot test, since no country had ever based its laws about children on premises of child autonomy. Yet according to one official UN document, the CRC offered the world a "new concept of separate rights for children with the Government accepting [the] responsibility of protecting the child from the power of parents."<sup>2</sup> Thus the CRC's original advocates said it consciously took a "quantum leap" beyond the UN's 1959 Declaration on the Rights of the Child, promoting a view of children's rights that is "*more based on [the] choice[s] than [the] needs*" of children, making a new assumption that "children should have rights 'identical to adults.'"<sup>3</sup> In other words, don't view children as dependent on parents or other adults; rather, treat them as adults who are free to make their own autonomous choices.

The leading proponents of this new vision for the world's children included children's liberation advocates from the US, whose sweeping arguments for child autonomy have never been fully accepted by mainstream legal thought in America. Some CRC advocates have created the impression that the CRC is consistent with US law;<sup>4</sup> however, in several significant ways, that is not true.

Beginning in the 1960's, the US Supreme Court did use constitutional rights language 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 helps to clarify why I

believe the drafters of the CRC went beyond US 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 most essential needs—which, in effect, abandons them to their rights. By their very nature as developing persons, children are dependent on parents and other adults to help them meet their needs.

I applaud Mr. Bielefeldt for recognizing children's inherent dependency, at least in the context of religious freedom. His report states that when parents "socialize their children in a religious manner"<sup>5</sup> the parents are exercising what the International Covenant on Civil and Political Rights (ICCPR) calls parents' right "to ensure the religious and moral education of their children" according to the parents' "own convictions."<sup>6</sup> When parents do this, they are also responding to every child's need and right to develop the mature capacity required to make responsible adult choices.<sup>7</sup> This is true, Mr. Bielefeldt states, because "a child's *survival, socialization, development and general well-being totally depend* on regular support which is usually provided by" the child's parents.<sup>8</sup> The report implies that the state should encourage parents to fulfill such duties,<sup>9</sup> subject, of course, to (1) parents' own religious preferences, (2) the need to protect children from actual harm, and (3) once they have developed actual mature capacity, letting young people make their own religious choices.

Some child-autonomy advocates have claimed that, in order to preserve a child's right to religious freedom, the state should require parents to provide only a "religiously 'neutral' upbringing"<sup>10</sup>—that is, parents should not teach their own religion to their children; rather, they should let children of any age make their own religious choices. The Bielefeldt report rejects this argument, because he sees moral and religious socialization by parents as the best way to help children develop the capacity to make well-informed choices when they are adults. This parental instruction fulfills both a need and a right for children—they must be taught the skills of personal growth. Indeed, Mr. Bielefeldt observes that "the rights of children can *never* flourish without an enabling [family] environment."<sup>11</sup>

Consider this analogy: suppose a mother decides she should not "impose" her mother tongue on her new baby, but should let the child choose his/her own language. So she doesn't talk to the baby; she only tells him or her, "Let me know if you have any questions." Will this child learn to talk? I don't think so.

In addition, parental guidance for the child's ethical and spiritual development also makes a crucial contribution to society's own stability and continuity. Thus, preserving this effect of religious freedom for parents and children actually strengthens the entire social order.

In his classic study of American democracy, the French writer Alexis de Tocqueville saw that the best way (perhaps the only way) to bring civic virtue to an otherwise self-centered and chaotic democracy was through teaching each generation to cultivate what Tocqueville called "mores"—those "habits of the heart" that lead people to obey the unenforceable. Then citizens obey laws not merely because they *have* to obey, but because they *want* to. He saw families, churches, and other local voluntary associations as the main sources for transmitting the values that create such social norms. Among these influences, Tocqueville said, religion plays the primary role. In his words, "The great severity of mores [meaning manners or customs] which one notices in the U.S. has its primary origin in [religious] beliefs."<sup>12</sup> Religion, he said, should therefore be considered as "the first of [democracy's key] political institutions."<sup>13</sup> Thus Mr.

Bielefeldt's language about each child's development clearly applies to society as a whole--our *collective* "*survival, socialization, development and general well-being totally depend*" on children receiving the moral and religious socialization that is best provided by parents.

I want to emphasize the need for parents to understand and fulfill their duty to ensure the religious and moral education of their children because this teaching process is seriously at risk today in the democratic societies. For example, skyrocketing rates of unmarried couples living together, births outside marriage, divorce, and other rejections of family stability have created overwhelming dysfunction among many children, parents, and the larger society. Some writers simply call this trend "the collapse of marriage." Commenting on this cultural chaos, especially among the less educated, *New York Times* columnist David Brooks recently wrote that, "We now have multiple generations of people caught in recurring feedback loops of economic stress and family breakdown, often leading to something approaching *an anarchy of the intimate life*."<sup>14</sup>

Brooks believes that the vital missing link for these millions of families is not money or social policy; rather, *the problem is the absence of "norms,"* – the "habits and virtues" that determine a society's health. He sounds just like Tocqueville, doesn't he? For example, he writes, "In many parts of America there are no minimally agreed upon standards for what it means to be a father. There are no basic codes and rules woven into daily life." And these norms "weren't destroyed because of people with bad values. They were destroyed by a plague of *nonjudgmentalism*, which refused to assert that one way of behaving was better than another."<sup>15</sup> In other words, religious neutrality.

American scholar Mary Eberstadt has found that family decline precedes and is a principal cause of declines in religious faith.<sup>16</sup> Men who father children in a formal, committed marriage, for example, are much more likely than other men to care about spiritual values and personal responsibility. Drawing on data from both Europe and the U.S., Eberstadt writes that "Religious practice declines dramatically alongside rising rates" of divorce, unmarried cohabitation, unwed births, and fertility decline. When family structures become disrupted, "many families can no longer function as a transmission belt for religious belief," yet families are the best place to transmit society's most essential norms. In addition, people who don't live within a family structure [are] insulated from the natural course of birth, death, and other momentous family events that are part of why people turn to religion in the first place."<sup>17</sup> In other words, religion is not just a *crutch*; rather, it is the *crux* of individual, family, and social stability.

### **Protection Rights vs. Choice Rights**

Second, Mr. Bielefeldt stresses the need to "recognize the status of the child as a rights holder."<sup>18</sup> Children clearly have legal rights, but there is a difference between rights of *protection* and rights of *choice*—and most discussions about children's rights don't make that difference clear. For example, the Bielefeldt Report wisely stresses the need to protect children from religion-based discrimination in schools, health care, and working environments. It also makes clear the state's duty to protect children from "imminent harm" or "harmful practices." When children face such serious risks, the state may need to step in --overriding, when necessary, the religious liberty claims of parents. These harmful practices include female genital mutilation, forced marriages, honor crimes, and other forms of child abuse and neglect, acts that "can never be justified as legitimate manifestations" of religious freedom.<sup>19</sup>

“Protection rights” of this kind for children do not depend on the child’s being a certain age or having achieved any minimum level of capacity.<sup>20</sup> 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, for several decades now, US courts have used the language of constitutional rights to ensure that children receive increased procedural protection in such places as juvenile courts and schools. In these settings, procedural due process is designed not to increase children’s personal choices, but to protect them against the abuse of unchecked adult discretion.

“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 (sometimes called age of majority) 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 being exploited by those who might take advantage of their unique vulnerability. To confer prematurely the full range of choice rights on children would, ironically, remove the protection and the guidance they need in order to develop the mature capacity required to make informed, meaningful choices.

For several decades now, lawyers who advocate the expansion of children’s choice rights have tried to make their case before US courts and in legal journals. However, the justices on the US Supreme Court have *not* in fact accepted the general idea of giving adult legal rights or legal autonomy to children. In a 1977 case about abortion rights for minors, Justice Lewis Powell wrote an important summary that still reflects the general attitude of most American judges: “[T]he 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.”<sup>21</sup>

Similarly, Justice Potter Stewart stated in another case, “A child is not possessed of that full capacity for individual *choice* that is the presupposition of First Amendment guarantees.”<sup>22</sup> Thus, with a few rare exceptions, the modern US children’s rights cases have given children rights of protection, not rights of choice.

Let us apply the protection/choice distinction to this current question—should governments, through public schools or other agencies, be allowed to provide sex education and contraceptives to underage children without parental consent? And, as part of sex education or otherwise, may state-approved agencies instruct children that they have a right of choice, without parental consent, to engage in sexual activities?

The answer to these questions must begin with existing UN declarations and national laws. The Universal Declaration of Human Rights states that “*parents* have a prior right to choose the kind of education that shall be given to their children.”<sup>23</sup> The term “prior right” in this sentence comes from classic human rights theory, which holds that natural individual rights—including parental rights—existed before the state was created. That is, the prior right exists in Nature itself rather than being granted by the state. Further, several binding UN treaties recognize that parents have the right “to ensure the religious and moral education of their children” according to the parents “own convictions.”<sup>24</sup> And the way children are educated about

sexual intimacy is among the core values of many parents' convictions about health, religion, and morality. Thus UN documents adopted in Cairo (1994) and Beijing (1995) state that parents should be involved in programs related to children's sexual experience.<sup>25</sup> Moreover, while all US states require sex education in public schools, 35 of the 50 states allow parents to be informed of and to exempt their children from that instruction<sup>26</sup>

The CRC's original advocates stated that the CRC would be consistent with prior UN declarations and with US law—and the CRC itself does not address the topics of sex education and contraception. However, as Mr. Bielefeldt's report notes, the UN Committee responsible to monitor implementation of the CRC took the official position in 2003 that states should, regardless of parental consent, provide adolescents with “access to sexual and reproductive information, including . . . contraception, the dangers of early pregnancy”<sup>27</sup> and the prevention of sexually transmitted diseases.<sup>28</sup> This language speaks primarily about *protecting* adolescents from harm, not about granting them *choice* rights. However, some child autonomy advocates claim that a child's need for this kind of protection also justifies the creation of sexual choice rights related to the child's privacy. For example, some of these advocates interpret the CRC's articles<sup>29</sup> on privacy as giving children unsupervised access to any and all information about sex, including explicit pornography—even though the U.S. Supreme Court has strongly denounced the destructive nature of child pornography and has upheld state laws restricting the sale of pornographic material to minors under age 16.<sup>30</sup>

Some activists go a step further and apply broad “adult privacy” rights to children, which they believe give children the choice right to have sex and to bear children outside of marriage.

These interpretations are not justified, because they make almost no allowance for children's status as underage minors or for the role of parents and other adults who are legally responsible to supervise children's choices. A few years ago, for example, the U.S. Supreme Court heard a case in which child autonomy advocates claimed that children in public schools had a right to privacy that prohibited the schools from conducting random drug tests on student athletes. The Court ruled in favor of the schools, saying that because of their limited maturity, minor children simply do not have the same privacy rights as adults have.<sup>31</sup>

Nevertheless, the CRC Committee has stated that, “to promote adolescent *health and development*, States parties are also encouraged to strictly respect the right to privacy and confidentiality [of adolescents], including confidential advice and counseling on all health matters. . . .”<sup>32</sup> According to another UN committee, “The right to health contains both freedoms and entitlements. *The freedoms include the right to control one's health and body, including sexual and reproductive freedom.*”<sup>33</sup>

These UN committees appear to justify children's sexual choice rights as being necessary to safeguard and implement their protection rights. For example, as part of its campaign to protect children from sexually transmitted diseases and to treat them when needed, the CRC Committee urges member states to (a) “develop effective prevention programmes . . . to address cultural and other taboos surrounding adolescent sexuality”; and (b) “take measures to remove all barriers hindering the access of adolescents to information [and to] preventive measures such as condoms, and care.”<sup>34</sup> If implemented, this approach will not only encourage adolescents to experiment sexually—it can also imply that children have choice rights to have sex, especially when the role of parents is significantly diminished.

Some approaches to sex education clearly go even further beyond protection by sending children the message that adolescent sex is harmless—or even healthy. In reality, most U.S. pediatricians have long agreed that “adolescent sexual activity is unhealthy for children—emotionally, psychologically, spiritually, and physically.”<sup>35</sup>

Nonetheless, some misguided advocates of child autonomy who regularly influence UN officials and national governments have moved far beyond protection rights, beyond U.S. law, and beyond any reasonable interpretation of the CRC by teaching children that they, without their parents’ consent, have a *choice right* to engage in sexual activity.

For example, the International Planned Parenthood Federation (IPPF), funded by multiple UN agencies and UN members, states in its on-line pamphlets for youth that, “Sexual rights are human rights that relate to sexuality. All young people are entitled to them, but [often] they are denied.”<sup>36</sup> IPPF continues, “Sexual rights are recognized around the world as human rights.” “Young people . . . have the right to sexual pleasure.” And “this [pamphlet] aims to give information on how young people . . . can increase their sexual pleasure.” “It’s your body. You choose what you do, when you do it, how and with whom.”<sup>37</sup>

Any claim by a UN-approved agency that adolescent, underage children have a choice right to sexual pleasure or procreation has no legitimate basis in international law. Moreover, that claim clearly violates the well-established parental rights and the religious freedom of parents who are trying to teach their children that sexual relations should be confined to marriage. That kind of parental teaching is essential to protect the spiritual, moral, and social welfare of both individuals and societies. Therefore, the interests of parents, children, and society in religious and moral socialization--interests embedded in international treaties that Mr. Bielefeldt applauded-- compel the conclusion that parents in any country should be able to exempt their children from compulsory sex education that teaches children that they have the legal right to choose to be sexually active. And in any UN-related negotiations related to education about sexual or reproductive health, this prior right of parents must be recognized.

Nevertheless, the CRC committee’s 2003 recommendation on sex education does *not* allow parents to exempt their children from such education—even though that recommendation contradicts prior UN declarations as well as most US state laws. The recommendation clearly undermines the right of parents to direct the moral and religious instruction of their children.

### **Objective vs. Subjective Determinations of a Child’s Capacity**

Third, I am concerned about the CRC’s statement that parents and guardians may give direction to children only “in a manner consistent with the evolving capacities of the child.”<sup>38</sup> As an ultimate goal, we all hope that wise parental guidance and sound education will indeed teach children how to develop adult capacities. Personal maturity and autonomy are developmental skills that must be taught, primarily by parents, through years of disciplined, demanding effort. The CRC Committee believes, however, that children should be treated as adults, and calls for “*a shift away from traditional beliefs that regard early childhood mainly as a period for the socialization of the immature human being towards mature adult status.*”<sup>39</sup> However, we cannot magically turn immature adolescents into competent adults by assuming that physical bodies capable of producing babies are mature people who possess fully developed adult capacities. Indeed, premature grants of freedom actually prevent a child’s mature

development. The risk of too much freedom too soon is especially dangerous in dealing with adolescent sexuality, because as one expert said, “Peer orientation, foolhardy attitudes toward risk, and the powerful combination of social immaturity and physical mobility make middle adolescence into a mine field.”<sup>40</sup>

To protect children, to protect society, and to support the role of parental guidance, the world’s legal systems have for centuries used *age limits* as an objective standard for determining when children are capable of making legally binding choices—such as the right to vote, to consent to medical treatment, drive a car, marry, drink alcohol, or sign a lawful contract. This objective standard is based on extensive experience in many cultures, yet the CRC Committee now wants UN member states to “shift away from [such] traditional beliefs.”<sup>41</sup> In a sudden change of worldwide standards that is revolutionary and impractical, as well as unenforceable, the CRC rejects the use of established, clear, and neutral age limits, offering instead the vague theory of granting adult rights according to each child’s “evolving capacity.” This subjective standard requires some authorized person to make an individual determination of each child’s mature capacity. Who should make such decisions? What does “capacity” mean? When and why should other decisionmakers take the place of parents? What standards should they use, and what psychological tests or other processes should they follow?

Because the CRC and its UN monitoring committee have given us no answers to such questions, and because age limits are still in effect in the laws of virtually all countries, I can only conclude that the use of the “evolving capacity” idea is but one more way in which the CRC has embarked on an international experiment that has never been tested enough to be taken seriously, let alone to be considered legally binding on UN member states.

There have been a few isolated attempts in the United States to use subjective findings of maturity, but experience shows that the process really does not work in practice. One state law, for example, allowed pregnant young women who were under age 18 to make their own abortion decision without parental consent if a judge found an individual young woman sufficiently mature. Some years ago, a field study of 1,300 minor young women of various ages who applied for such abortions in that state found that all 1,300 received abortions, because judges were simply unwilling to substitute their judgment for the pregnant minor’s own preference.<sup>42</sup>

The evolving capacity standard also undermines parental guidance, because whoever the decision maker is can subjectively shift to some presumably more qualified person, like a teacher or a judge, the parent-like task of supervising a child’s choices—in the name of determining the child’s maturity. Unless parents are demonstrably unfit or they otherwise threaten the child with harm, established U.S. law would prohibit shifting the parental role to others.

However, in spite of these legal and practical realities, the International Planned Parenthood Federation (IPPF) seems determined to apply the evolving capacity standard as a tool to enable the sexual liberation of the world’s children. For example, the IPPF’s on-line “guide to sexual rights” for “young people” states that, “the sexual rights and protection of young people under the age of 18 differ from those of adults;” however, says the IPPF, the CRC’s “evolving capacity” standard “requires looking at the individual capacity of each” child “rather than focusing on someone’s age.” And what does that mean? The IPPF guide also declares, “All people under 18 years should enjoy the *full range* of . . . sexual rights.” “All young people are *entitled* to sexual . . . pleasure, whether or not they want to have children.”<sup>43</sup>

I repeat: Any claim that adolescent, underage children have a choice right to sexual pleasure has no legitimate basis in international law. I also note that in the U.S. an adult who has sexual contact with an under-age minor is guilty of violating very serious laws against child sexual abuse. Even if the minor child consented to the contact, even if she said “my capacity has evolved and I want this contact,” her consent is invalid because, based on her age, the law considers her incapable of giving legal consent. I know a young man, for example, who is serving a 10 year prison sentence and will be a registered sex offender for the rest of his life—because at the age of 22, he was sexually involved with a 17-year old adolescent who turned 18 a few months after their sexual encounter.

Help me understand a world where, on the one hand we send that young man to prison for child sexual abuse and at the same time, some UN-authorized agency is teaching classrooms full of underage youth (without their parents’ consent) that they have a right to sexual pleasure because those teachers assume that their capacity has sufficiently evolved. And they do so despite Article 19 of the CRC, which asks states parties to protect children from sexual abuse.<sup>44</sup> Help me understand a world where a nurse isn’t allowed to immunize a 14 year old without parental consent, but her sex education teacher requires no parent’s consent to encourage her to find partners to help her express her supposed international right to sexual pleasure.

No wonder there have been recent parental protests in countries as diverse as Canada, Kenya, and Croatia where government-authorized agencies have tried to implement explicit sex education programs exposing young children to “information” that is clearly designed to sexualize them rather than to protect them.<sup>45</sup>

In summary, the CRC’s emphasis on child autonomy, choice rights, and subjective determinations of maturity will *undermine* a child’s more fundamental right to receive guidance and moral socialization from his/her parents. That actually hinders the best known way to prepare children to become adults capable of making meaningful, autonomous choices. It also blocks the parent-to-child value transmission process on which a free and stable society depends. If the UN is serious about protecting children’s most essential human rights, it must find ways to encourage parents to marry, to remain married, and to teach their children the values, skills, and patterns they need in order to become free, responsible adults. We must respect and strengthen parental rights and encourage parents to become more involved, not less, in their children’s lives. The stronger the child-parent relationship is, and the stronger the marriage between the child’s parents, the better off the child is.

For many years, the world’s legal systems have limited children’s legal autonomy in the short run in order to maximize the development of their actual autonomy in the long run. When responsibly embraced by parents and others involved in child care and education, this approach helps children develop the personal competence and maturity they simply must have to be capable, responsible adults. 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.

As representatives of sovereign UN States, I urge you to be very careful about entering into any international agreements regarding children’s rights, or sexual and reproductive services, or privacy rights for adolescents or any other children. Similarly, avoid any provisions that subject parental rights to such hopelessly ambiguous standards as the “evolving capacity of



the child.” For the sake of all our children I encourage you to push back against any policies that seek to take parents out of their relationships with their children. It is time to recognize, respect, and emphasize the prior right of parents to direct the upbringing of their children. And in the upcoming negotiations in 2016, you have the power to make that happen.

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<sup>1</sup> See generally Bruce C. Hafen and Jonathan O. Hafen, *Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child*, 37 HARV. L.J. 449 (1996) [hereinafter “Hafen and Hafen”].

<sup>2</sup> UNITED NATIONS 1994/1995 PUBLICATIONS CATALOGUE at 64.

<sup>3</sup> 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, *supra* note 1, at 491; Michael Jupp, *Symposium: Confronting the Challenge of Realizing Human Rights Now: I. Rights of Children: The United Nations Convention on the Rights of the Child: An Opportunity for Advocates*, 34 HOW. L.J. 15, 21 (1991).

<sup>4</sup> See Hafen and Hafen, *supra* note 1, fn. 94.

<sup>5</sup> *Report of the Special Rapporteur on freedom of religion or belief*, A/HRC/28/66/Add.2, section 37 (30 January 2015)[hereinafter “Bielefeldt Report”].

<sup>6</sup> International Covenant on Civil and Political Rights, Art. 18.4 (adopted by the General Assembly of the United Nations on 19 December 1966, entered into force 23 March 1976) [hereinafter “ICCPR”].

<sup>7</sup> The CRC Preamble, quoted in the Bielefeldt Report, states that children “should grow up in a family environment,” which provides “the natural environment for the growth and well-being of . . . children.” Bielefeldt Report, section 20. CRC Article 18 states that “both parents have common responsibility for the . . . development of the child.”

<sup>8</sup> Bielefeldt Report, section 40 (emphasis added).

<sup>9</sup> “Some parents may take a deliberate decision not to socialize their children in a religious manner. Of course, such a decision must be respected as falling within their parental rights, however, that cannot serve as the general model to be promoted, let alone enforce, by the State.” *Ibid.*, at section 37.

<sup>10</sup> *Ibid.*, at sections 35-38.

<sup>11</sup> *Ibid.* at section 23 (emphasis added).

<sup>12</sup> Alexis de Tocqueville, *Democracy in America* (Mayer ed. 1966), p. 291.

<sup>13</sup> *Ibid.* at 292-93.

<sup>14</sup> David Brooks, *The Cost of Relativism*, The New York Times (March 10, 2015) (emphasis added); available at [http://www.nytimes.com/2015/03/10/opinion/david-brooks-the-cost-of-relativism.html?\\_r=0](http://www.nytimes.com/2015/03/10/opinion/david-brooks-the-cost-of-relativism.html?_r=0).

<sup>15</sup> *Ibid.*

<sup>16</sup> Mary Eberstadt, *How the West Really Lost God: A New Theory of Secularization* (April 2013).

<sup>17</sup> *Ibid.*

<sup>18</sup> Bielefeldt Report, section 79(a).

<sup>19</sup> *Ibid.* at sections 67, 70.

<sup>20</sup> See, e.g., United Nations International Conference on Population and Development (1994), Chapter 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”) (adopted by the General Assembly of the United Nations in November 1989, entered into force 2 September 1990) [hereinafter “CRC”].

<sup>21</sup> *Bellotti v. Baird*, 443 U.S. 622, 634 (1979).

<sup>22</sup> *Ginsberg v. New York*, 390 U.S. 629, 649-50 (1968)(Potter Stewart, concurring)(emphasis added).

<sup>23</sup> Universal Declaration of Human Rights, Art. 26.3 (10 December 1948).

<sup>24</sup> ICCPR, *Supra* note 6, Art. 18.4; International Covenant on Economic, Social and Cultural Rights (adopted by the General Assembly of the United Nations on 19 December 1966, entered into force 23 March 1976).

<sup>25</sup> See Fourth World Conference on Women, para. 79(f), 107(e) and 267 (Beijing 1995); International Conference on Population and Development, para. 6.15 (Cairo 1994).

<sup>26</sup> National Conference of State Legislatures website, nclsl.org, July 2014 summary.

<sup>27</sup> Bielefeldt Report, section 59 (quoting The United Nations Committee on the Rights of the Child, General Comment No. 4, CRC/GC/2003/4 (1 July 2003), para. 28). See also *ibid.* para. 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.”)

<sup>28</sup> *Ibid.* section 50.

<sup>29</sup> CRC Art. 13, 14, and 15.

<sup>30</sup> See cases cited in Hafen and Hafen, *supra* note 1, at 469.

<sup>31</sup> *Vernonia Sch. Dist. 471 v. Acton*, 515 U.S. 646 (1995). See Hafen and Hafen, *supra* note 1, at 472-73, for a discussion of this case and of other Supreme Court cases that have granted minors a right of access to contraceptives and a right to have an abortion in certain circumstances. The judicial opinions in these cases make clear that “the rationale for abortion-related privacy has no serious application to a minor’s other choice rights and is a genuine exception to the courts’ recognition of parental authority in virtually all other environments.” *Ibid.* at 473.

<sup>32</sup> Committee on the Rights of the Child, Comment No. 4 on *Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, CRC/GC/2003/4 (19 May – 6 June, 2003), para. 6(e).

<sup>33</sup> Committee on the Economic, Social and Cultural Rights, General Comment No. 14 on *The Right to the Highest Attainable Standard of Health* (11 August 2000), para. 8. See also *The Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, Report of the United Nations High Commissioner for Human Rights on the right of the child to the enjoyment of the highest attainable standard of health, A/HRC/22/31, (4 December 2012), para. 16 (“The right of the child to health comprises a constituent set of freedoms and entitlements. The freedoms, of increasing importance according to growing capacity and maturity, include the right to control one’s health and body.”)(emphasis added).

<sup>34</sup> Committee on the Rights of the Child, Comment No. 4 on *Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, CRC/GC/2003/4 (19 May – 6 June, 2003), para. 23.

<sup>35</sup> Henry J. Redd et al., *Contraception and Adolescents: A Dissent*, 21 *Child & Family* 105, 106 (No. 2, 1990). Another well recognized therapist who has had extensive experience in treating victims of both child sexual abuse and pornography addictions has described “the significance of how oxytocin and vasopressin work in a sexually active adolescent. When a woman is sexual [her brain] produces large amounts of these neuro chemicals. This creates attachment to the object of her affection. When this is done in the environment outside of wedlock, or [long-term] commitment, the participants become attached to the behavior itself not to the person they are having sexual relations with, thus creating a monosexual attachment which leads to sexual addictive tendencies. This [causes] the brain to believe sex is more like eating or exercise, and takes it out of its rightful . . . place as a relational activity solely appropriate in a . . . committed relationship.” The same holds true for men. In addition, “with men [this phenomenon also] produces fear-based sexual behavior. For example, [when men] believe they cannot trust their partner . . . to meet their sexual needs, they take charge of their perceived sexual needs in fear that they will not or cannot be met by their partner. Relationship oriented sexual focus diminishes this fear,” thereby strengthening the bonds of the relationship. Thomas R. Harrison email to Bruce Hafen (January 11, 2016).

<sup>36</sup> “Young People’s Rights,” pamphlet, International Planned Parenthood Federation website, IPPF.org.

<sup>37</sup> “Healthy, Happy, and Hot” pamphlet 2012, International Planned Parenthood Federation website, IPPF.org.

<sup>38</sup> CRC Art. 5 and 14.

<sup>39</sup> Committee on the Rights of the Child, General Comment No. 7 on *Implementing Child Rights in Early Childhood*, CRC/C/GC/7/Rev. 1 (20 September 2006), para. 5.

<sup>40</sup> Frank Zimring, *The Changing Legal World of Adolescence* (1982), p. 92.

<sup>41</sup> *Supra*, note 39.

<sup>42</sup> See Hafen and Hafen, *supra* note 1, p. 465 and sources cited there.

<sup>43</sup> From “Exclaim!” Young People’s Guide to Sexual Rights: An IPPF Declaration (on-line version) that is based on the IPPF’s 2007 “Sexual Rights: An IPPF Declaration” (emphasis added); available at <http://www.ippf.org/resource/Exclaim-Young-Peoples-Guide-Sexual-Rights-IPPF-declaration>.

<sup>44</sup> “States parties shall take all appropriate . . . measures to protect the child from all forms of . . . abuse . . . or negligent treatment . . . including sexual abuse.” CRC Art. 19.

<sup>45</sup> STOP THE WAR ON OUR CHILDREN: EXPOSING THE COMPREHENSIVE SEXUALITY EDUCATION AGENDA, documentary produced by Family Watch International (January 2016).