

## Chapter 7, Children's Rights at a Dignitarian Horizon of Responsible Parenthood

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# Children's Rights at a Dignitarian Horizon of Responsible Parenthood

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'We have national debates about industrial relations, education, water, nuclear power. But we have no national debates about our most valuable asset, our children and their protection ... We still have no national standards for child protection, no federal children's minister, no national policies or legislation, no national definitions, no federal system of children's commissioners, no independent scrutiny of child protection, and no reliable national data ...' (Chris Goddard & Joe Tucci)<sup>1</sup>

## 1. Introduction

All over the world, children, especially infants and pre-school children, are treated as the property of their parents rather than as legal subjects, entitled to the empowerment of their parents, to healthy development and to preparation for responsible life, including responsible parenthood. A strong libertarian tradition of formal parental autonomy (that is, autonomy as a legal fiat or fiction, as opposed to real or psychological autonomy) does not seem to leave much room for a child rights based evolution towards a more dignitarian construct of reproductive rights and parental responsibilities. In this chapter, this theme is preliminarily explored and attempts are made for its further development. In part one, a helicopter view of the theme is presented. In part two, the concept of responsible parenthood is explored on the basis of a pedagogical model of the principle of the best interests of the child, as well as of an overview of parental responsibilities and related state obligations under the Convention on the Rights of the Child (CRC, 1989).

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<sup>1</sup> CHRIS GODDARD & JOE TUCCI [quoting GODDARD & MUDALI, 2006], Foreword in: MAX LIDDELL *et al.*, *The State of Child Protection: Australian Child Welfare and Child Protection Developments 2005*, Caulfield East, National Research Centre for the Prevention of Child Abuse, Monash University, September 2006 (available at <[www.nrcpca.monash.org/assets/files/childprotection.pdf](http://www.nrcpca.monash.org/assets/files/childprotection.pdf)>).

## PART ONE: A HELICOPTER VIEW

In human rights law, a libertarian and a dignitarian stand or tradition may be discerned.<sup>2</sup> Whereas the former emphasizes individual freedoms, especially against state intervention, and formal individual autonomy (negative liberty, individualism), the latter tries to clarify the aspect of duties and responsibilities in relation to rights, and to integrate freedom, equal opportunities and solidarity (justice, or even love<sup>3</sup>) into its concept of human dignity (positive liberty, development of personality and world citizenship). Not so much ‘respect’ as a claim against others but the combination of self-respect and respect for others, as a core value or virtue, underlies this concept.<sup>4</sup> However, self-respect and – the ensuing – respect for others are not simply a matter of virtue, but also of mental health and psycho-education. Especially children’s rights are closely connected with mental health and psycho-education, both of parents, who are supposed to give their children affection-based guidance and direction,<sup>5</sup> and of children themselves, who are supposed to be – guided in a manner consistent with their evolving capacities – actors in their own healthy physical, emotional, social, moral, intellectual, spiritual and cultural development.<sup>6</sup> Children’s rights, therefore, have to

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<sup>2</sup> See MARY ANN GLENDON (*Rights from Wrongs*), in: HENRY J. STEINER & PHILIP ALSTON (eds.), *International Human Rights in Context; Law, Politics, Morals*, Oxford University Press, Oxford, 2000, 153. GLENDON opposes ‘the older, more individualistic and “libertarian” rights tradition of the Anglo-American nations’ to ‘dignitarian traditions [which] accord an equally high priority to freedom, but it is a freedom grounded in dignity and linked with solidarity.’

<sup>3</sup> As the NGO *Ius Primi Viri* (*see* <[www.dirittumaniipv.org](http://www.dirittumaniipv.org)>) puts it: ‘Every human being on our planet, wherever he/she is born, has the possibility to develop awareness and conscience of his/her own dignity, of the value of freedom, of the sense of justice, and of the search for pleasure, that must be transformed into love for him/herself and for every existing form of life.’ (E/CN.4/2005/NGO/151, 4 March 2005, *see* <[www.ohchr.org](http://www.ohchr.org)>, Search: “dignity, freedom, justice, love” (or simply: love).

<sup>4</sup> See chapters 5 and 6 of this book. For an in-depth analysis, *see* AXEL HONNETH, *The Struggle for Recognition; The Moral Grammar of Social Conflicts*, Polity Press, Cambridge, 1995.

<sup>5</sup> See sixth preambular paragraph (‘love’) in conjunction with Article 5 (direction and guidance), and Article 18, para 1 (best interests) of the Convention on the Rights of the Child (CRC; UNGA 20 November 1989). Both affection and guidance and direction are part and parcel of the best interests of the child. The CRC does not mention the word ‘affection,’ but it does refer to a child-rearing ‘atmosphere of happiness, love and understanding.’ By stating, in its preamble, ‘that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,’ the CRC is the only UN human rights treaty that contains the word ‘love.’

<sup>6</sup> Healthy (holistic, harmonious) child development may be seen as the object and purpose of the CRC. Holistic, a term used by the Committee on the Rights of the Child, refers to both physical – first of all early brain – development and mental development. The latter includes emotional development (first of all a secure attachment development in infants and young children), intellectual (or cognitive) development, and social, moral, spiritual and cultural development (*see* Articles 27, para 1; 29, para 1 sub a; 23, para 3; and 32, para 1 CRC). The interaction between – rather than the sum or combination of – all these aspects determines holistic development. The conditions that have to be met in order to achieve holistic development are precisely those which constitute the principle of the best interests of the child (on which *see* Part Two, below). Child participation, to be sure, both inside and outside the family, is an inherent dimension of both. It should certainly not be seen as the opposite of the best interests concept. Holistic development without child participation is unthinkable. To state that the commitments of Article 3 CRC, that is, the best interests principle, are

endeavour to achieve two things at the same time: ‘responsibilization,’ that is specifying parental duties and responsibilities, as well as related duties and responsibilities of professionals, others adults, and of the state; and ‘empowerment,’ that is empowering children, adolescents and young adults as parents-to-be, empowering parents, and empowering professionals (such as teachers, social workers, etc.) and others within the community. Empowerment implies ending discrimination and exclusion, especially through the promotion of income distribution (ending material poverty), of general and psycho-education (ending mental and emotional poverty), and of physical and mental health (ending material and emotional poverty). Responsibilization and empowerment are two sides of the same dignitarian coin: specifying duties and responsibilities implies empowering people to fulfill them. Most national legal systems, however, do not specify parental duties and responsibilities, in spite of the many specifications in the Convention on the Rights of the Child (CRC, 1989),<sup>7</sup> nor even consider the empowerment implications thereof. Libertarian attitudes and views still prevail in most democratic states.

Recently, several international and European human rights bodies or actors seem to move away from libertarian individualism by putting forward and elaborating dignitarian aspects of human rights, especially children’s rights. To mention the main actors, and outcomes, in the field: the Committee on the Rights of the Child, and its General Comment 8, 2006<sup>8</sup>; the Parliamentary Assembly of the Council of Europe, and its Recommendation 1666, 2004<sup>9</sup>; the European Committee of Social Rights, and its Conclusions and Decisions regarding Article 17 of the European Social Charter, 2003-present<sup>10</sup>; and the Commissioner for Human Rights of the Council of Europe, and his Issue Paper 1, 2006.<sup>11</sup> The focal point of these quasi- or proto-legislative documents is the right of the child not to be hit and humiliated, but the implementation strategies these documents propose – law reform, awareness raising, school

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‘protectionist and paternalistic,’ as opposed to those of Article 12 CRC, that is, the child participation principle, as ARCHARD does (DAVID ARCHARD, Preface, in: FIONA ANG *et al.*, *Participation Rights of Children*, Intersentia, Antwerpen–Oxford, 2006, v-viii, at viii), caricatures, in my opinion, both Articles.

<sup>7</sup> See JAN C.M. WILLEMS, *Het kindbeeld in het Verdrag inzake de Rechten van het Kind*, *Justitiële verkenningen* 2005, no. 5, 94-112, at 102-104. I will come back to this in the second part of this chapter.

<sup>8</sup> General Comment No. 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Articles 19; 28, para 2; and 37, *inter alia*), see <www.ohchr.org>, Human Rights Bodies, Committee on the Rights of the Child, General Comments.

<sup>9</sup> Recommendation 1666 (2004): Europe-wide ban on corporal punishment of children, see <www.coe.int>, Institutions/Parliamentary Assembly, Documents/Adopted texts.

<sup>10</sup> See <www.coe.int>, Activities/Human rights: European Social Charter, European Committee of Social Rights, conclusions, decisions.

<sup>11</sup> Issue Paper 2006/1: Children and corporal punishment: ‘The right not to be hit, also a children’s right,’ see <www.coe.int>, Institutions/Commissioner for Human Rights, Documents/Documents index, Issue Papers.

human rights education, parenting education and parenting support, as well as child participation – have everything to do with mental health and psycho-education. This opens up new horizons for human rights and new hopes for our future: more children who will grow up as – and grow up to become – self-respecting and respectful citizens. These documents, therefore, shed light on future democratic societies, based on four, rather than only one or two, dignitarian building blocks. These four building blocks are:

- Ethnic-cultural and socio-economic integration and ‘cosmopolitanism’ – that is, a sense of public responsibility as a citizen not only of one’s society but of the world –, as opposed to prejudice, xenophobia and racism.
- Equal treatment of and equal opportunities for men and women, as opposed to patriarchy and sexism.
- The best interests, including the full participation, of the child, as opposed to parentarchy and transism.

*Parentarchy* refers to *de jure* or formal parental autonomy abstracted from and unconnected with real or psychological autonomy, thus relegating children to a *de facto* status of parental property, that is, of total dependence on their parents’ mental health and socio-emotional resources.

*Transism*, or transgenerational discrimination, refers to a state’s not adequately addressing socio-economic and, especially, socio-emotional differences between parents (*e.g.*, in relation to parenting knowledge, parental awareness, reparation of own childhood trauma, mental health, emotional stability and maturity, sensitivity, social network, social integration, and so on and so forth), thus contributing to widespread transgenerational transmission of poor mental health or other forms of emotional poverty, of poor parenting and of social (socio-emotional and/or socio-economic) exclusion.<sup>12</sup>

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<sup>12</sup> For state responsibility and accountability in relation to transism, see JAN C.M. WILLEMS, *Wie zal de Opvoeders Opvoeden? Kindermishandeling en het Recht van het Kind op Persoonswording [Who will Educate the Educators? Child Abuse and the Right of the Child to Become a Person]* (with a summary in English), Ph.D. Maastricht University 1998, T.M.C. Asser Press, The Hague, 1999, 629-991.

• School curricula which fully implement Article 29, para 1 of the Convention on the Rights of the Child,<sup>13</sup> as opposed to school curricula in which psycho-education (personal, social and health education), education on cosmopolitanism and democratic citizenship<sup>14</sup> (citizenship education), and education on child rights based – or positive<sup>15</sup> – parenting (parenthood education) are absent.

These four building blocks may at the same time be seen as the dignitarian cornerstones of international human rights law. Four UN human rights treaties, with specific state obligations to deal with discrimination, exclusion and related material, mental and emotional poverty, are the legal reinforcement of these cornerstones: the International Convention on the Elimination of all forms of Racial Discrimination (ICERD, 1965), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW, 1979), and the Convention on the Rights of the Child (CRC, 1989).<sup>16</sup> ICESCR's Articles 10 (family, mothers, children: protection and assistance), 11 (adequate family standard of living), 12 (physical and mental health, healthy development of the child), and 13 (education directed to the full development of the human personality, participation in a free and tolerant society, and world peace) may be seen as (again, four) early dignitarian landmarks. In the forty years after its adoption, however, libertarian individualism, over-emphasizing – and rather abstractly and individualistically interpreting – civil and political rights, would prevail. But change may be on its way.

To be sure, individualism is here to stay, but a more dignitarian individualism may be laying ahead of us. That is, if national societies, and states, fullheartedly follow the trend set by the human rights bodies or actors mentioned above. Co-incidentally, if mental health issues and psycho-education (especially on human relations, interpersonal communication, child

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<sup>13</sup> See also General Comment No. 1 (2001): The aims of education (Article 29, para 1); <[www.ohchr.org](http://www.ohchr.org)>, Human Rights Bodies, Committee on the Rights of the Child, General Comments.

<sup>14</sup> On 'democracy and democratic citizenship as the final goals of human rights education,' see LIEVE CATTRUISSE, Participation and human rights education: a Gordian knot?, in: FIONA ANG *et al.*, *Participation Rights of Children*, Intersentia, Antwerpen–Oxford, 2006, 199-229, at 221-224.

<sup>15</sup> 'Positive parenting refers to parental behaviour based on the best interests of the child that is nurturing, empowering, non-violent and provides recognition and guidance which involves setting of boundaries to enable the full development of the child.' See Rec(2006)19 of the Committee of Ministers to member states on policy to support positive parenting, Appendix, para 1 (available at <[www.coe.int](http://www.coe.int)>, Institutions/Committee of Ministers, Documents/Adopted texts, Recommendations of the Committee of Ministers to member states, All Recommendations).

<sup>16</sup> As interpreted by their respective treaty bodies: see <[www.ohchr.org](http://www.ohchr.org)>, International Law and Human Rights Bodies (Treaty Bodies, General Comments), respectively.

development and child rights based parenting) are addressed in a more systematic manner, well before families are founded, far less state intervention in families is to be expected. After a century of intrusive and paternalistic, and rather unsuccessful, child protection, dignitarian individualism may be the best, if not the only, alternative for growing state power.

In The Netherlands, for instance, a law specifying parental authority (Article 1:247 of the Dutch Civil Code) in such a way as to ban corporal punishment and other forms of humiliation of children, has been unanimously adopted by both the Second and the First Chamber of parliament.<sup>17</sup> The law was signed by the Queen on March 8, 2007 (to become effective as of April 25, 2007): exactly twelve years after The Netherlands has become a party to the CRC (on March 8, 1995). The Netherlands seems to be breaking away from its libertarian tradition of formal parental autonomy. But will the outcome be more than symbolic? Will the ban on corporal punishment mark the beginning of more dignitarian human rights policies in relation to parents and children, including the responsabilization and empowerment of all concerned – as expounded by international bodies and actors? Will it, eventually, turn out to have been a major step towards a more dignitarian interpretation of reproductive and parental rights, that is, an interpretation that takes the duties and responsibilities that come with making and raising a child fully into account? Including, once again, the empowerment and responsabilization obligations of states that are the intrinsic and urgent message of children's rights.

Before turning back to these issues, let us first have a closer look at the meaning of the term 'dignitarian' (as opposed to 'libertarian').

## **2. Dignitarian versus libertarian attitudes and views**

As GLENDON observes:<sup>18</sup>

'Within the libertarian tradition, the rights-bearer tends to be imagined as an independent, autonomous, self-determining being. Dignitarian personhood also pays tribute to the uniqueness of

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<sup>17</sup> See <[www.overheid.nl](http://www.overheid.nl)>, Officiële publicaties, Staatsblad, 2007, No. 145.

<sup>18</sup> Statement by DR. MARY ANN GLENDON (1996), see <[www.holyseemission.org](http://www.holyseemission.org)>, Search: Glendon. See also CLAUDE EMERSON WELCH, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, and: *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (review), *Human Rights Quarterly* 2002, 287-290.

each individual, but recognizes that we are constituted in important ways by and through our relations with others.’

And she goes on to say:

‘The danger of confusing freedom with the absence of restraint has been known since ancient times. In its personal dimension, it has been nicely captured in the old saying: “A man has as many masters as he has vices.” In public life, when freedom unravels into license, politics becomes a war of all against all.’

Apart from libertarianism (‘radically autonomous man’), also utilitarianism (‘economic man’) and relativism (‘plastic man’), may be opposed to dignitarianism in GLENDON’s view. In my opinion, radically autonomous – or individualistic – man, economic man and plastic man are close relatives, contrary to dignitarianism’s free-and-responsible man, if I may label him or her that way. Of course, these men have old ancestors. Libertarian man reminds us of HOBBS’s (1588-1679; *Leviathan* 1651) man as a wolf to his fellow man (*homo homini lupus*), originally – as GLENDON sees it: ultimately – engaged in a war of all against all (*bellum omnium contra omnes*). Whereas dignitarian man reminisces GROTIUS’s (1583-1645; *De Jure Belli ac Pacis* 1625) man as a social animal endowed with reason. In other words, an animal with moral, that is, social-and-rational potential. This, in my view both dignified and emancipatory image of man, is reflected in GROTIUS’s definition of natural law (*De Jure Belli ac Pacis* I.1.10:1): a dictate of conscientious reason (*dictatum rectae rationis*) which points out that an act is either moral or immoral because it is in conformity with or contrary to man’s rational and social nature. From this definition, it may be concluded that a person who acts reasonably and socially lives up to his or her human potential and is more in tune with his or her humanity than a person who acts unreasonably and anti-socially. In the Prolegomena of his book (paragraphs 6-17), GROTIUS says that man’s desire for organized life with his fellow men, according to his rational talents – his *appetitus societatis* (‘social appetite’) as GROTIUS calls it –, makes him care for his community (*societatis custodia*). And ultimately, one may hope and expect, for the society of all mankind (*magna humani generis societas*). GROTIUS’s man, therefore, may be seen as someone who feels himself responsible for his community, and sees himself as a responsible member of the human family. GROTIUS’s dignitarian man of 1625, it appears to me, looks very much like the world’s dignitarian man of 1948. The Universal Declaration of Human Rights, adopted by the General Assembly of the UN on December 10, 1948, seems to combine dignitarian and



libertarian traditions in its first preambular paragraph, which speaks of both the ‘inherent dignity’ and the ‘equal and inalienable rights’ of all members of the human family. This is repeated in Article 1: man is born free and equal in dignity and rights. The Article then goes on, however, to state that man is endowed with reason and conscience, and stipulates that man should act towards his fellow man in a spirit of ‘brotherhood’ (solidarity, as we would say today; as I see it, a rational passion somewhere in between justice and love of one’s fellow-man). To which spirited words Article 29, para 1 adds that man has duties to the community in which alone the free and full development of his personality is possible.

After 1948, the pendulum swung far in the libertarian direction – maybe to swing back to the Universal Declaration’s arguably mixed, but in GLENDON’s (and my) view predominantly dignitarian anthropology in the years ahead. However, discussing anthropologies in relation to human rights is not what I intend to do in this chapter.<sup>19</sup> Therefore, I will limit myself now – against the background of GLENDON’s observations – to present some examples of what I conceive as libertarian versus dignitarian attitudes and (legal or juridical) views. As these examples will show, I attach positive connotations to the term dignitarian: prosocial, empathetic, respectful, thoughtful, sensitive, caring; and negative connotations to the term libertarian: individualistic, egocentric, or even antisocial, reckless or myopic. Obviously, this does injustice to their original and more nuanced meaning. But it is hoped that these examples will illustrate the usefulness for human rights discourse of the distinctions made, even if in reality things are not always that black and white. Let me first, then, clarify the terms dignitarian and libertarian as I intend to use them.

*Dignitarian* refers to human dignity in the sense that no one is the property or the instrument of others. It thereby refers to respect for others, but a dignified or authentic respect, that is, respect that comes from within. In other words, respect for others on the basis of self-respect. To this I add that the origins of self-respect (self-esteem, emotional stability) are to be found in secure emotional attachments of infants and young children to their carers.<sup>20</sup> Sustained

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<sup>19</sup> For a more in-depth analysis of the issues concerned, especially as they relate to children’s rights, see JAN C.M. WILLEMS, *Wie zal de Opvoeders Opvoeden?* (see footnote 12), 51-289, 635-670, and *passim*.

<sup>20</sup> See Online *Encyclopedia on Early Childhood Development*, Synthesis on attachment (Centre of Excellence for Early Childhood Development, <[www.excellence-earlychildhood.ca/documents/synthesis-attachment.pdf](http://www.excellence-earlychildhood.ca/documents/synthesis-attachment.pdf)>), from which the following quote is taken. ‘For a normative population, it is reported that about 62% of infants are classified as secure, 15% as insecure-avoidant, 8% as insecure-ambivalent and 15% as disorganized. Secure attachment is considered a protective factor as it has been associated with better developmental outcomes in areas such as self-reliance, self-efficacy, empathy and social competence in toddlerhood, school-age and

messages of inclusion, belonging and participation by adults and society at large to children and adolescents may then further enhance self-respect, resilience and sense of responsibility. For dignitarians, both dignity and liberty include responsibility. In other words, dignitarian man is not just endowed with rights, but with rights, duties and responsibilities.

*Libertarian* refers to rights seen as mere claims, privileges or powers, and liberty seen as freedom from (state or other) intervention rather than freedom from fear (emotional and mental poverty: poor mental health, superstition, ignorance) and freedom from want (material and mental poverty: low income, poor education). In other words, libertarian freedom is linked to abstractions and procedures rather than to context and values.

Let me now present some examples of dignitarian-libertarian distinctions, or dignitarian versus libertarian emphases, in relation to individuals, the state, and lawyers. An individual with a dignitarian attitude would always try to balance rights and duties, he or she would optimize this balance rather than minimize his or her responsibilities as a parent, a family member, a worker, a citizen, a student, and so on. A state with a dignitarian perception of its international commitments would implement its human rights obligations to the maximum extent of its resources rather than minimize, or even evade its responsibilities. Dignitarian lawyers would disagree with libertarian lawyers on issues such as soft law, *e.g.* General Comments by treaty bodies (binding and important, versus non-binding and irrelevant); democracy (based on human rights, versus based on majority rule only)<sup>21</sup>; the principle of equality (substantive, versus formal only); and the freedom of opinion (implying a duty not to unnecessarily chock or offend, versus implying a right to offend for the sake of offending). In relation to the CRC, dignitarian and libertarian lawyers would differ on the (high versus low) impact and significance of, in my – dignitarian – opinion core CRC obligations, such as:

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adolescence. Infants with insecure attachment have been shown to be at risk for later adaptation problems such as conduct disorder, aggression, depression and anti-social behaviour. Children with disorganized attachment are at the highest risk for psychopathology. There is a high percentage of attachment disorganization among children who have been victims of maltreatment. An array of parental behaviours has been linked to infant disorganization. These include affective communication errors (such as contradictory responses to infant signals), parental withdrawal, negative-intrusive responses, role-confused responses, disoriented responses and frightened or frightening behaviours. Negative life events (such as divorce) can compromise attachment security, but differences in attachment security result primarily from the children's interactions with their social environment during the first few years of life. Parenting therefore plays a crucial role. For this reason, preventive interventions in early childhood have enormous potential to alter behavioural and developmental trajectories, especially in high-risk families.'

<sup>21</sup> See JAN C.M. WILLEMS, Staat dient op te treden tegen 'pedopartij'; Pedofilie, democratie, transisme en het belang van het kind, *Ars Aequi* 2007, no. 3, 218-224; earlier online version available at <<http://arno.unimaas.nl/show.cgi?did=9216>>, e1-e9 (27 oktober 2006).

- prioritizing the principle of the best interests of the child: Article 3, para 1, seen as a central, versus a marginal ‘primary consideration’ in domestic policy and foreign relations;
- incorporating the pedagogical aims of education in school curricula: Article 29, para 1, seen as a state’s duty (something a state must do) versus a state’s power (something a state may do);
- improving universal and selective prevention of child abuse and neglect<sup>22</sup>: Articles 18, para 2, and 27, para 3, in conjunction with Articles 19, para 2, and 39, taken together, and seen as a duty to transform the traditional system of child protection into an integrated system of combined medical, social, psychological and protective services for children and families, versus anything but structural reform.<sup>23</sup>

Although in relation to lawyers or legal views, libertarianism should not be confused with legal positivism, both are probably equally predominant in present-day legal discourse. This is one of the reasons why I like to bring dignitarian developments, as I see them, to the forefront. It is my conviction that both libertarianism (individual rights disconnected from interpersonal or social responsibilities) and legal positivism (the study and practice of law whereby rules and court decisions rather than principles and values, including human rights and human dignity, are decisive) are in need of corrections. Of course, it is up to the reader to decide whether my endeavours in this respect deserve a better fate than being put aside as wishful thinking.

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<sup>22</sup> On child abuse and neglect (CAN) in relation to the CRC, see JAN C.M. WILLEMS, *Wie zal de Opvoeders Opvoeden?* (see footnote 12), 457-627, as well as the CAN classification in Appendix 3, 1038-1062. On (combined) universal and selective prevention, or a continuum of care, and the related IFOI system (Inform all parents, Filter out good enough parents, Offer all others parenting support, and Intervene if help does not work), see chapter 4 of this book. Combined universal and selective prevention were, to a certain degree, introduced in the Dutch so-called RAAK regions (see <[www.raak.org](http://www.raak.org)>), on which see chapter 5 of this book.

<sup>23</sup> ‘According to the recently released UN Secretary-General’s Study on Violence Against Children [available at <[www.violencestudy.org](http://www.violencestudy.org)>, jw], much of the violence endured by children aged 0-14 years occurs in the home at the hands of parents, caregivers, and family members. The consequences of this violence hinder children’s health and development and can last well into adulthood, negatively affecting health and increasing the risks of further victimization and becoming a perpetrator of violence. (...) Research shows that child maltreatment can be prevented. The need to increase investment in prevention is urgent and global. Promising strategies include reducing unintended pregnancies; improving access to high-quality pre- and post-natal care; reducing harmful levels of alcohol and illicit drug use during pregnancy and by new parents; providing home visitation services by nurses and social workers to families at risk of maltreatment, and training parents on child development, non-violent discipline and problem-solving skills. (...) “For too long now the response to child maltreatment has been dominated by systems for reacting to cases once maltreatment has already started. The scientific evidence for preventing physical, sexual and psychological abuse from occurring in the first place is already quite strong, and the time is ripe for a paradigm shift from reaction to prevention,” said Dr. Anders Nordström, WHO Acting Director General.’ (World Health Organization says violence against children can and must be prevented, Geneva, 16 October 2006, <[www.who.int/mediacentre/news/releases/2006/pr57/en/print.html](http://www.who.int/mediacentre/news/releases/2006/pr57/en/print.html)>.)

## PART TWO: RESPONSIBLE PARENTHOOD

The use of the words responsibility, responsible or responsibilities in an international instrument is a sure sign if not of dignitarian intent then at least of dignitarian potential. But also reference to the best interests of the child and to state obligations to empower and ‘responsibilize’ caregivers could, indeed should be seen as dignitarian. CEDAW, the 1979 Convention on the Elimination of all forms of Discrimination Against Women, contains several examples of this dignitarian language.

- In its 13<sup>th</sup> preambular paragraph, it is said that ‘the upbringing of children requires a sharing of responsibility between men and women and society as a whole.’
- Article 5 sub *b* speaks of ‘the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.’
- Article 11, para 2 sub *c* urges states ‘to enable parents to combine family obligations with work responsibilities and participation in public life.’
- Article 16, para 1 sub *c* urges states to give men and women the ‘same rights and responsibilities during marriage and at its dissolution.’
- Article 16, para 1 sub *d* urges states to give men and women the ‘same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount.’
- Article 16, para 1 sub *e* urges states to give men and women the ‘same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.’
- Article 16, para 1 sub *f* urges states to give men and women the ‘same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children (...); in all cases the interests of the children shall be paramount.’

Article 16, para 1 sub *e* CEDAW was preceded by, *inter alia*, the following two declarations. The 1974 Bucharest World Population Plan of Action proclaims:<sup>24</sup>

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<sup>24</sup> World Population Plan of Action, adopted by consensus of the 137 countries represented at the United Nations World Population Conference at Bucharest, August 1974 (UN Doc. E/CONF.60/19), para 14.f (retrieved from <www.population-security.org>).

‘All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so; the responsibility of couples and individuals in the exercise of this right takes into account the needs of their living and future children, and their responsibilities towards the community.’

Twenty years later, the 1994 Cairo ICPD (International Conference on Population and Development) Programme of Action repeats and elaborates this theme:

‘Principle 8. (...) All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so.’

To which paragraph 7.3 adds:

‘(...) In the exercise of this right, they should take into account the needs of their living and future children and their responsibilities towards the community. The promotion of the responsible exercise of these rights for all people should be the fundamental basis for government- and community-supported policies and programmes in the area of reproductive health, including family planning. (...)’

On top of this, several paragraphs make explicit mention of responsible parenthood:

‘4.27. Special efforts should be made to emphasize men’s shared responsibility and promote their active involvement in responsible parenthood, sexual and reproductive behaviour, including family planning (...). Male responsibilities in family life must be included in the education of children from the earliest ages. Special emphasis should be placed on the prevention of violence against women and children.’

‘6.4 Countries (...) should take necessary steps to (...) [ensure] (...) educational strategies regarding responsible parenthood and sexual education. (...)’

‘7.6. All countries should strive to make accessible through the primary health-care system, reproductive health to all individuals of appropriate ages as soon as possible and no later than the year 2015. Reproductive health care in the context of primary health care should (...) include: (...) information, education and counselling (...) on (...) responsible parenthood. (...)’

Commenting on reproductive rights before and after CEDAW, BREMS remarks:<sup>25</sup> ‘The CEDAW provisions aside, reproductive human rights have not yet been included in other legally binding documents.’ This may be the case, to be sure, for the libertarian part of reproductive rights (‘to decide freely’). But a different conclusion may be reached for the dignitarian part (‘to decide responsibly’ and to be empowered, through information, education and other means, to exercise one’s rights). As I intend to point out in this section, the 1989 Convention on the Rights of the Child has a great deal to say on the latter. I am afraid BREMS’ remark illustrates how strongly libertarianism holds grip on most lawyers. In my – dignitarian – opinion, responsible parenthood should be seen as an integral part of reproductive rights and health. From the perspective of children’s rights and the CRC, responsible parenthood refers to three things which are closely related. First of all, the concept and principle of the best interests of the child. Secondly, parental duties and responsibilities as they are (all) related to the child’s best interests. And thirdly, state obligations to empower parents to fulfill their duties and responsibilities, including empowerment through responsabilization, that is, specifying and clarifying these duties and responsibilities in the national legal system. Let us first have a look at the concept and principle of the best interests of the child, and then turn to parental responsibilities and state obligations under the CRC.

### **3. The best interests of the child**

According to Article 3, para 1, the best interests of the child are ‘a primary consideration’ for the state, its organs and its public and private social welfare institutions. According to Article 18, para 1 CRC, the best interests of the child are ‘the basic concern’ of both parents. The Committee on the Rights of the Child deems the best interests of the child to be one of the four cornerstone principles of the CRC, the other three being non-discrimination, participation (‘respect for the views of the child’), and life, survival and development (Articles 3, 2, 12, and 6, respectively).<sup>26</sup> Neither the CRC nor, thus far, the Committee present a definition, however,

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<sup>25</sup> EVA BREMS, Protecting the rights of women, in: RICHARD PIERRE CLAUDE and BURNS H. WESTON, *Human Rights in the World Community; Issues and Action*, third edition, University of Pennsylvania Press, Philadelphia, 2006, 120-133, at 128. See also BREMS’ chapter in this book.

<sup>26</sup> See General guidelines regarding the form and content of initial reports to be submitted by States Parties under Article 44, para 1 sub a, of the Convention, CRC/C/5 (1991), General principles, paragraph 13: ‘Relevant information, including the principal legislative, judicial, administrative or other measures in force or foreseen, factors and difficulties encountered and progress achieved in implementing the provisions of the Convention, and implementation priorities and specific goals for the future should be provided in respect of: (a) Non-discrimination (Article 2); (b) Best interests of the child (Article 3); (c) The right to life, survival and development (Article 6); (d) Respect for the views of the child (Article 12).’ See also the revised General

of the best interests principle. In order to clarify the best interests concept, the developmental psychological and pedagogical model of KALVERBOER & ZIJLSTRA (2006) will be used.<sup>27</sup> This model consists of fourteen conditions or elements, seven to be met (mainly) within the family, and seven to be met (mainly) within the community or society at large. For mnemonic reasons, I have translated and rearranged these seven-plus-seven conditions so as to let their first letters form the acronyms SACCADE (in the family) and FRESSEN (in society), respectively. Saccade means (according to dictionary.com): ‘1. the series of small, jerky movements of the eyes when changing focus from one point to another (ophthalmology); 2. the act of checking a horse quickly with a single strong pull of the reins.’ In a metaphorical sense, we might understand the word saccade as referring to (examples of) affection and direction in child rearing: 1. looking at one’s baby and trying to read his or her face; 2. protecting one’s child from danger or stopping one’s child from misbehaving by means of non-punitive physical action. *Fressen* is a German word, well known from the saying: *Zuerst kommt das Fressen und dann die Moral* (food comes first, then morality). Since in human rights law, the relationship between food and morality may be somewhat more complex – or closer, I leave it to the reader to attach a metaphorical sense to the word *Fressen* and its use as an acronym in ‘the best interests of the child.’ The fourteen Saccade-and-*Fressen* conditions, then, are:

- Security (physical security: no physical dangers, toxic influences, domestic violence, corporal punishment, maltreatment, chronic marital conflicts);
- Affection (secure attachment; emotional security);
- Care (breast, bread, bed, bath; health, housing, heating, hygiene; no poverty stress);
- Continuity in child rearing (enabling secure attachment and basic trust, as well as creating perspective; including knowledge of one’s biological origins);
- Attention (parents’ sincere interest in each individual child);
- Direction and guidance consistent with evolving capacities (in Article 5 CRC terminology),<sup>28</sup> including disciplining without violence and humiliation (according to General Comment 8)<sup>29</sup>;

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guidelines for periodic reports (Article 44, para 1 sub b CRC), CRC/C/58/Rev.1 (2005), General principles, paragraph 21. Both available at <www.ohchr.org>, Human Rights Bodies, Committee on the Rights of the Child, Initial/Periodic Reports.

<sup>27</sup> MARGRITE KALVERBOER & ELIANNE ZIJLSTRA, *Het belang van het kind in het Nederlands recht; Voorwaarden voor ontwikkeling vanuit een pedagogisch perspectief*, SWP, Amsterdam, 2006.

<sup>28</sup> The model’s terminology (and sub-conditions) follow directly below.

<sup>29</sup> General Comment No. 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Articles 19; 28, para 2; and 37, *inter alia*), paragraphs 13, 28, 39 (*see*

- Examples (parents set good examples);
- and:
- Friends (peer interaction);
  - Respect (active respect for the child in society, school, community)<sup>30</sup>;
  - Education (school, vocational training; including sports, music etc.)<sup>31</sup>;
  - Security (in society, school, community; no physical and extreme virtual violence);
  - Stability (no abrupt, unexplained change; social perspective);
  - Examples (friends and adults set good examples);
  - Network (a social network of people to whom the child may turn for help).

The Saccade condition ‘direction and guidance consistent with evolving capacities’ is taken literally from Article 5 CRC. The model itself speaks of a supportive and flexible pedagogical structure, for which six sub-conditions have to be met:

- Regularity (daily rhythm and routine of feeding, sleeping and hygiene);
- Realistic demands (stimulating and instructing the child based on realistic demands);
- Rules (or limits, which are explained to the child);
- Room (to experience, experiment, negotiate);
- Responsibilities (participation in family and community responsibilities);
- Supervision.

Of course, direction and guidance should be affection-based. As the sixth preambular paragraph of the CRC puts it: ‘the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.’ This should not be seen as overly romantic. Other than the able-bodied man’s ‘pursuit of happiness’ in the American Declaration of Independence, happiness in the CRC refers to the well-being of the (vulnerable) child. The CRC’s love and understanding are

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<[www.ohchr.org](http://www.ohchr.org)>, Human Rights Bodies, Committee on the Rights of the Child, General Comments). In paragraph 11, the Committee defines corporal (or physical) punishment as ‘any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.’ To which the Committee adds (*ibidem*): ‘In addition, there are (...) non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.’

<sup>30</sup> Meeting – I would add – the primarily participatory and primarily protective pedagogical aims (or general protective purposes) of, respectively, Articles 12 to 17, and Articles 7-11; 14, para 2; 17 sub *e*; 20-23; 25; 26; 28, para 2; 30; and 32-40 CRC. And including school or other disciplining without violence and humiliation (see General Comment 8, quoted above).

<sup>31</sup> Meeting – I would add – the pedagogical aims mentioned in Article 29, para 1 – on which *see* General Comment 1, 2001: The aims of education (<[www.ohchr.org](http://www.ohchr.org)>) – and implied in Article 31 CRC.



evenly child-specific. Affection, seen as the combination of love and understanding, is the beating heart of the child's best interests. No wonder, then, that happiness and love ('love and understanding') appear in no other UN human rights treaty. At the same time, we may conclude – reading Article 5 CRC in the light of the sixth preambular paragraph – that the CRC favours a parenting style which adequately combines affection (responsiveness, warmth) and direction (demandingness, control). Such a style is called authoritative parenting. Authoritarian (or autocratic) parents are also demanding but not very responsive. Permissive parents are responsive but not at all demanding. Parents who are neither demanding nor responsive are neglectful (or unengaged). Article 18, para 1 CRC proclaims the best interests of the child to be both parents' basic concern. It may, therefore, be argued that authoritative parenting is (not just favoured but) required by the CRC.<sup>32</sup> Authoritative parenting, I would add, is positive and sensitive parenting: it is non-violent and non-humiliating, and sensitive to the child's needs not only for attention and affection but also for structure and limits, guidance and direction. As The National Society for the Prevention of Cruelty to Children (NSPCC) in the UK puts it:<sup>33</sup>

'All children need acceptance, love, encouragement, discipline, consistency and positive attention from their parents. Children who are denied these things often grow up thinking they are deficient in some way and that they somehow deserved to be treated badly. Sadly, when they become parents themselves they may emotionally deprive their own children because they don't have a positive model of parenting to draw on.'

The more the Saccade-and-*Fressen* conditions are met, the higher the likelihood that the child will develop a personality which is optimally rational, moral and authentic,<sup>34</sup> and that he or she will develop the seven adult abilities which may be identified – in my translation and adaptation from the Dutch<sup>35</sup> – by use of the acronym IPIPIPI:

- ability to maintain Intimate relationships (adult attachment capacity, self-esteem);
- ability to maintain Personal relationships (friends, colleagues);
- ability to live by Internalized values and norms (mature conscience formation);

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<sup>32</sup> See LEA BORNSTEIN & MARC H. BORNSTEIN, Parenting styles and child social development, in: R.E. TREMBLAY *et al.* (eds.), *Encyclopedia on Early Childhood Development* [online], Centre of Excellence for Early Childhood Development, Montreal, Quebec, 2007, e1-e4; available at <[www.excellence-earlychildhood.ca/documents/BornsteinANGxp.pdf](http://www.excellence-earlychildhood.ca/documents/BornsteinANGxp.pdf)> (online January 10, 2007; accessed January 13, 2007).

<sup>33</sup> See <[www.nspcc.org.uk](http://www.nspcc.org.uk)>, search: Children's emotional needs (26 August 2007).

<sup>34</sup> On optimal (and minimal) personality development (becoming a person) in relation to the CRC, see JAN C.M. WILLEMS, *Wie zal de Opvoeders Opvoeden?* (see footnote 12), 291-455.

<sup>35</sup> KALVERBOER & ZIJLSTRA (footnote 27), 34 (referring to WETERINGS & VAN DEN BERGH, 2005).

- ability to keep Promises (to be responsible for oneself and others);
- ability to control Impulses;
- ability to solve Problems;
- ability to (develop one's capacities in order to) earn an Income.

Of course, one may expect that meeting the best interests of the child conditions will produce healthier personalities and reduce personality disorders.<sup>36</sup> Here, reference may be made to a – last – acronym, one that is well known in the literature on personality and the so-called Big Five personality traits, namely OCEAN.<sup>37</sup> OCEAN refers to the following psychologically well-established traits ('versus' should be read as: on a scale from one extreme to the other):

- Openness to experience (versus closedness to experiences);
- Conscientiousness (versus lack of conscientiousness);
- Extraversion (versus introversion);
- Agreeableness (versus disagreeableness);
- (emotional stability versus) Neuroticism.

All these traits may be associated with a dignitarian ('what can I do to fulfill my responsibilities?') versus a libertarian attitude ('what can I do to evade my responsibilities?'), although conscientiousness is likely to be the most influential trait in this regard. This is speculation on my part, however. Whether personality development on the basis of the fourteen best interests' conditions leads to better personality-Big Five outcomes, falls outside the scope of this chapter. However, going by the Adverse Childhood Experiences Study,<sup>38</sup>

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<sup>36</sup> Dutch readers interested in this topic are recommended to study the enlightening book of DE BOEVER AND VAN DRIEL: WOUTER E. DE BOEVER & TANJA W. VAN DRIEL, *FACT-grafiek, blauwdruk van de menselijke geest*, Syntyche, Dordrecht, 2006 (see <[www.syntyche.nl](http://www.syntyche.nl)>).

<sup>37</sup> See, e.g., <<http://wilderdom.com/personality/traits/PersonalityTraitsBig5.html>>; <[www.personalityresearch.org/bigfive.html](http://www.personalityresearch.org/bigfive.html)>.

<sup>38</sup> See <[www.acestudy.org](http://www.acestudy.org)>, from which the following quotes are taken. Adverse Childhood Experiences (ACEs) are: 'Growing up (prior to age 18) in a household with: recurrent physical abuse; recurrent emotional abuse; sexual abuse; an alcohol or drug abuser; an incarcerated household member; someone who is chronically depressed, suicidal, institutionalized or mentally ill; mother being treated violently; one or no parents; emotional or physical neglect.' – 'ACEs are surprisingly common. They happen even in "the best of families." They have long-term, damaging consequences.' – 'The ACE Study reveals a powerful relationship between our emotional experiences as children and our physical and mental health as adults, as well as the major causes of adult mortality in the United States. It documents the conversion of traumatic emotional experiences in childhood into organic disease later in life. How does this happen, this reverse alchemy, turning the gold of a newborn infant into the lead of a depressed, diseased adult? The Study makes it clear that time does not heal some of the adverse experiences we found so common in the childhoods of a large population of middle-aged, middle class Americans. One does not "just get over" some things, not even fifty years later.'

better physical and mental health are certainly to be expected.<sup>39</sup> Obviously, neuroticism and mental health are closely related.

#### 4. Parental responsibilities and state obligations

Article 3, para 2 CRC establishes a *Trias pedagogica* of children, parents and the state.<sup>40</sup> It reads as follows:

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

As we have seen, the best interests of the child are concerns of both the state (Article 3, para 1) and parents (Article 18, para 1). According to the whole concept of childrens' rights, and especially according to Article 12: child participation as a general principle, the child is also an actor in his or her own best interests, that is, in his or her own healthy holistic (physical-emotional-social-moral-intellectual)<sup>41</sup> development and the pursuit of the other educational/pedagogical aims of the Convention, mentioned in Article 29, para 1. Taken together, these aims may be summarized as holistic development and preparation for democratic citizenship. And the latter may be construed – on the basis, *inter alia*, of Articles

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<sup>39</sup> See the ACE Study's findings on <[www.cdc.gov/nccdphp/ace/findings.htm](http://www.cdc.gov/nccdphp/ace/findings.htm)>: 'Childhood abuse, neglect, and exposure to other traumatic stressors which we term *adverse childhood experiences* (ACEs) are common. Almost two-thirds of our study participants reported at least one ACE, and more than one in five reported three or more ACEs. The short- and long-term outcomes of these childhood exposures include a multitude of health and social problems. The ACE Study uses the ACE Score, which is a count of the total number of ACE respondents reported. The ACE Score is used to assess the total amount of stress during childhood and has demonstrated that as the number of ACEs increase, the risk for the following health problems increases in a strong and graded fashion: alcoholism and alcohol abuse; chronic obstructive pulmonary disease (COPD); depression; fetal death; health-related quality of life; illicit drug use; ischemic heart disease (IHD); liver disease; risk for intimate partner violence; multiple sexual partners; sexually transmitted diseases (STDs); smoking; suicide attempts; unintended pregnancies. In addition, the ACE Study has also demonstrated that the ACE Score has a strong and graded relationship to health-related behaviors and outcomes during childhood and adolescence including early initiation of smoking, sexual activity, and illicit drug use, adolescent pregnancies, and suicide attempts. Finally, as the number of ACEs increases, the number of co-occurring or "co-morbid" conditions increases.' It is important to add to this information that not all ACEs are avoidable, no matter how empowered parents may be. Also, ACEs do not mean you are predestined to develop all kinds of health and social problems later in life. They are serious risk factors. Moreover, traumatization may be overcome, later in life or already during childhood. This underlines the enormous importance of Article 39 CRC, because of its potential to prevent – through child trauma reparation (on which see <[www.childtrauma.org](http://www.childtrauma.org)>) – transgenerational transmission of trauma.

<sup>40</sup> On this *Trias pedagogica* see chapter 4 of this book, and the definition below.

<sup>41</sup> See footnote 6.

18, para 1 (primary responsibility of parents for the development of the child), and 29, para 1 sub *d* (preparation of the child for responsible life) – as including preparation for responsible parenthood. Thus, three actors are involved in child development: the state, parents, and the child him- or herself. All these actors have rights, duties and responsibilities, which, according to their fundamental character, should be constitutionalized, but at any rate should be specified – and clarified – in the national legal system.

Two of the most outstanding state obligations, in my opinion, in the CRC are to be found in Articles 27, para 3, and 18, para 2, which require the state to empower, that is to facilitate, educate, assist and support parents, in socio-economic and socio-emotional ways, respectively. Specifying and clarifying parental duties and responsibilities, as they appear in the CRC, is also a very important state responsibility, however. Such a specification and clarification provide us with an essential yardstick for parenthood education in schools and parenting education for parents and parents-to-be. As such, they are an integral part of preparation for parenthood and empowerment of children, parents and other carers and the community (neighbours, relatives, professionals, volunteers, bystanders, etc.). Therefore, specification and clarification of parental duties and responsibilities should be considered as an implied state obligation. Furthermore, it may be argued that specifying and clarifying parental duties falls within the scope of the ‘appropriate legislative and administrative measures’ called for by Article 3, para 2, to ensure the child’s care and protection with positive regard to parental duties. Responsibilization is the term we use to denote, *inter alia*, the state’s obligation to specify and clarify parental duties and responsibilities in the national legal system. The combination of CRC provisions and state obligations mentioned above enables us to present the following definition of (a children’s rights based) Trias pedagogica.

*Trias pedagogica* means the national or constitutional relationship between the state, parents and children, based on children’s rights and other human rights and, therefore, implying state obligations in relation to the healthy holistic development of children, including the participation of the child and his or her preparation for democratic citizenship and responsible parenthood, and, more specifically, to the responsabilization and empowerment of parents and other caregivers, professional and otherwise.

Even though the CRC may not make it possible to exactly define the concept of responsible parenthood, it does stipulate the core conditions that have to be met by parents and the state.

Apart from CRC Articles 18, para 2, and 27, para 3 (and a few other provisions), however, it does so in a rather implicit way. Most implicit, of course, are the conditions that have to be distilled out of the principle of the best interests of the child, as we have seen above. But also parental duties and responsibilities, and related state obligations to enact these and enable their fulfillment, require careful reading of the Convention.

### ***FIFTY-PLUS-ONE PARENTAL DUTIES***

The following responsabilization Articles, and ('fifty-plus-one') parental duties and responsibilities to be legislated and promulgated by the state on the basis of these Articles, may be discerned in the CRC. This list should not be seen as exhaustive, however. It should also be kept in mind that the degree of specification and the details of clarification in national legislation is subject to national democratic process and discretion.

Article 18, para 1 CRC contains three closely related parental duties:

- 1. *both* parents (whatever their gender and marital status) have *common* responsibilities for the upbringing and development of the child;
- 2. parents have the *primary* responsibility for the upbringing and development of the child;
- 3. the best interests of the child will be their *basic concern*. – The 'best interests' principle consists of 14 conditions, one of which consists of 6 subconditions (model of Margrite Kalverboer & Elianne Zijlstra, 2006). Based on this model, parents have the duty:
  - 3.1 to provide physical security;
  - 3.2 to provide physical care;
  - 3.3 to provide loving care and emotional security;
  - 3.4 to provide a supportive and flexible pedagogical structure ('direction and guidance consistent with evolving capacities'), for which six sub-conditions have to be met: **(1)** regularity ('routines, rituals and rules'); **(2)** realistic demands (stimulating and instructing the child based on realistic demands); **(3)** room (to experience, experiment, negotiate); **(4)** responsibilities (participation in family and community responsibilities); **(5)** rules (boundaries or limits, which are explained to the child); and **(6)** supervision;
  - 3.5 to provide continuity in child-rearing;
  - 3.6 to give personal attention to each individual child;
  - 3.7 to set good examples;

- 3.8 to see to their child’s education (school, vocational training; including sports, music, etc.);
- 3.9 to see to their child’s physical and emotional security in school and community;
- 3.10 to stimulate their child’s interaction with peers;
- 3.11 to stimulate their child’s access to a social support network;
- 3.12 to devote themselves to active respect for (the human dignity, personal integrity and equal developmental opportunities of) children in school, community and society;
- 3.13 to contribute to good adult examples in community and society;
- 3.14 to contribute to stable living conditions in community and society.

Taken together (and in conjunction with the 9th preambular paragraph), these duties imply a fourth duty:

- 4. both parents have to prepare themselves and actively seek information and support from family, community, and the state before their child is born. – Pre- and perinatal (preparation *c.q.* preparation and reparation) responsibilities include:
  - 4.1 a physically and mentally healthy lifestyle (*cf.* 9th preambular paragraph and Article 24);
  - 4.2 a healthy, stable relationship (*cf.* 9th preambular paragraph and Article 18, para 1);
  - 4.3 a stable family income (*cf.* 9th preambular paragraph and Article 27, para 2);
  - 4.4 parenting education (*cf.* 9th preambular paragraph and Articles 18, para 1, and 24);
  - 4.5 mental health counselling (own childhood trauma reparation, psychotherapy; *cf.* 9th preambular paragraph and Articles 18, para 1; 19, para 1; and 24).

Article 5, in conjunction with the 6th preambular paragraph, contains the duty of parents:

- 5. to provide affection-based direction and guidance, consistent with the child’s evolving capacities.

This duty implies the duty:

- 6. to acquire knowledge on child rearing and child development in general, and
- 7. to seek specific information, advice, feedback and counselling on the rearing and development of their child.

It may even imply the duty:

- 8. to seek psychotherapy in case of relational or psychological problems, or unresolved childhood trauma of parents themselves.

Article 27, para 2 (in conjunction with para 1) contains the duty of parents:

–9. to provide a standard of living adequate for the holistic development of their child.

If this is not ‘within their abilities and financial capacities’ (Article 27, para 2), another duty is implied, namely:

–10. to actively seek family, community and state assistance.

It may also imply the (civic) duty:

–11. to mobilize parents’ organizations, trade unions, child rights NGOs, political parties and the media with a view to improving parenting allowances, benefits and credits.

Taken together, Articles 18, para 1 (*both* parents; best interests) and 27, para 2 contain the duty of parents:

–12. to prudently combine work and care, and seek high-quality child-care services.

This duty implies the (civic) duty:

–13. to mobilize parents’ organizations, trade unions, child rights NGOs, political parties and the media if national policies are lacking or inadequate in this regard.

Article 19, para 1, in conjunction with General Comment 8, contains the duty of parents:

–14. not to use any form of violence, including humiliation, in child rearing.

This duty implies the duty:

–15. to acquire knowledge on positive parenting and non-violent child rearing (positive discipline), and

–16. to seek advice, feedback and counselling if this causes any problems or difficulties.

Article 24, para 1, in conjunction with Article 39, contains the duty of parents:

–17. to seek the best available physical and mental health care for their child.

This duty implies the (civic) duty:

–18. to mobilize parents’ organizations, trade unions, child rights NGOs, political parties and the media, or go to court, if health care is lacking or inadequate.

Article 24, para 3 contains the duty of parents:

–19. not to resort to and to abandon any harmful child-rearing practices and traditions.

This duty implies the (civic) duty:

–20. to mobilize parents’ organizations, trade unions, child rights NGOs, political parties and the media if the state is not doing enough to ban such practices and to support parents in child rights based parenting and positive discipline.

Article 28, para 1 contains the duty of parents:

–**21.** to send their child to school and see to their child’s education and vocational training.

This duty implies the (civic) duty:

–**22.** to mobilize parents’ organizations, trade unions, child rights NGOs, political parties and the media, or go to court, if schools are lacking or school education is inadequate.

Article 29, para 1, in conjunction with the 7th preambular paragraph, as well as in conjunction with Articles 18, para 1, and 19, para 1, contains the duty of parents:

–**23.** not to harm and confuse their child, and compromise his or her loyalty, by raising him or her contrary to the CRC’s holistic development and democratic and cosmopolitan citizenship aims of education.

Article 17 contains the two-sided duty of parents:

–**24.** to stimulate the child’s use of media that contribute to his or her holistic development and physical and mental health, including his or her democratic and cosmopolitan citizenship education; and

–**25.** to protect the child from harmful material.

These duties implies the (civic) duty:

–**26.** to mobilize parents’ organizations, trade unions, child rights NGOs, political parties and the media themselves if the state and/or the media are not meeting the standards of Article 17.

Article 30 in conjunction with Article 29 contains the duty of parents who belong to an ethnic, religious or linguistic minority:

–**27.** to promote their child’s and their family’s integration in society on the basis of their own cultural identity.

Article 31, para 1, in conjunction with Articles 18, para 1, and 24, contains the duty of parents:

–**28.** to provide age-appropriate play and recreational and cultural activities for their child.

This duty implies the (civic) duty:

–**29.** to mobilize parents’ organizations, trade unions, child rights NGOs, political parties and the media if national policies or community facilities in this respect are lacking or inadequate.



Article 7, para 1 contains two duties of parents:

- 30. to register their child at birth, and
- 31. to inform the child about his or her biological origins.

Article 8, para 1 contains the duty of parents:

- 32. not to deprive their child of his or her personal identity (the knowledge of his or her origins).

Article 9, para 3 contains the two-sided duty of divorced or separated parents:

- 33. to enable their child to maintain personal relations and direct contact with both parents on a regular basis, and
- 34. to prevent contact if it is contrary to the child's best interests.

Article 2 in conjunction with Article 18, para 1 contains the duty of parents:

- 35. not to discriminate between boy and girl children, and
- 36. not to favour one child above the other.

Article 12, in conjunction with Articles 18, para 1 and Articles 5 and 29, contains the duty of parents:

- 37. to stimulate their child to form his or her own views and to freely express him- or herself, and
- 38. to stimulate their child, and to provide direction and guidance in this respect, to bear his or her own responsibilities in family, school, community and country.

Article 13, in conjunction with Article 18, para 1 and Articles 5, 17 and 36, contains the duty of parents:

- 39. to respect and promote their child's freedom of expression and freedom to seek, receive and impart information and ideas, and to provide direction, guidance and protection in this respect.

Article 14, para 1, in conjunction with Article 18, para 1 and Articles 5, 14, para 2, 17 and 36, contains the duty of parents:

- 40. to respect and promote their child's freedom of thought, conscience and religion, and to provide direction, guidance and protection in this respect.

Article 15, in conjunction with Article 18, para 1 and Articles 5, 17 and 36, contains the duty of parents:

–**41.** to respect and promote their child’s freedom of association and peaceful assembly, and to provide direction, guidance and protection in this respect.

Article 16 in conjunction with Article 18, para 1 contains the duty of parents:

–**42.** to respect their child’s privacy and personal integrity.

Article 20, para 3, in conjunction with Articles 18, para 1, and 24, contains the duty of parents:

–**43.** to seek foster care or adoption if they are unable to raise the child themselves.

Article 23, in conjunction with Articles 18, para 1, and 24, contains the duty of parents:

–**44.** to seek special care and opportunities for their physically, mentally and/or emotionally disabled child.

This duty implies the (civic) duty:

–**45.** to mobilize parents’ organizations, trade unions, child rights NGOs, political parties and the media if national policies or community facilities in this respect are lacking or inadequate.

Article 32, in conjunction with Articles 18, para 1, and 24, contains the duty of parents:

–**46.** to stimulate their child to work for as many hours as – and to prevent their child from working for more hours than – are beneficial for his or her holistic development.

Article 33, in conjunction with Articles 18, para 1, and 24, contains the duty of parents:

–**47.** to prevent their child (in cooperation and coordination with other parents and social partners) from smoking, using illegal drugs and abusing alcohol.

Article 34, in conjunction with Articles 17, 18, para 1, 24 and 29, contains the duty of parents:

–**48.** to see to their child’s sexual education and to prevent their child (in cooperation and coordination with other parents and social partners) from falling victim to sexual exploitation and sexual abuse by peers, predators and pedophiles.

Article 36, in conjunction with Articles 17, 18, para 1, 24 and 29, contains the duty of parents:

–49. to see to their child’s financial, consumer and ‘screen’ or ‘electronic’ (TV, PC, MSN, video games, internet, mobiles, etc.) education and to prevent their child from falling victim to commercial, ‘electronic’ and any other exploitation.

This duty implies the (civic) duty:

–50. to mobilize parents’ organizations, trade unions, child rights NGOs, political parties and the media if national policies are lacking or inadequate in this regard.

Article 42 in conjunction with Articles 18, para 1, and 29 contains the duty of parents:

–51. to educate their child on his or her rights and to see to their child’s child rights education in school (and community).

### ***EMPOWERMENT OBLIGATIONS***

The following empowerment Articles, divided into two sections (A and B, relating to parents and to children as parents-to-be, respectively), may be discerned in the CRC. This list should not be seen as exhaustive either. Also, it should be kept in mind that the state has several obligations which indirectly empower parents, for instance in relation to health care (Article 24), education (Articles 28 and 29), quality of institutions and supervision of professionals (Article 3, para 3), the mass media (Article 17), children’s play, sport and cultural activities (Article 31), disabled children (Article 23), foster care (Article 20), and so forth and so on.

Empowerment Articles (A): the state’s positive obligations to facilitate, educate, assist and support parents.

- Article 18, para 2 contains the obligation of the state to provide parenting assistance (assistance in the performance of child-rearing responsibilities) and support (institutions, facilities and services for the care of children).
- Article 18, para 3, in conjunction with Article 3, para 3, contains the obligation of the state to provide sufficient and high-quality child-care services and facilities.
- Article 24, para 2 sub *d, e, f* contains the obligation of the state to provide pre- and postnatal care; to provide information, education and support for parents, children and all others on child health and nutrition, breastfeeding, hygiene etc.; and to develop preventive health care, guidance for parents and family planning education and services.

- Article 27, para 3 (in conjunction with para 1) contains the obligation of the state to provide material (financial, fiscal and other) assistance and support for parents so that families may have a standard of living adequate for the child's holistic development.
- Article 27, para 3, in conjunction with Article 18, para 1 (both parents) and para 2 (parenting assistance), imply a state obligation to (at least) facilitate paid parental leave.

Empowerment Articles (B): the state's positive obligations to empower children as citizens and parents-to-be.

- Article 29, para 1 contains the obligation of the state to see to it that school education be directed to the holistic development of the child and his or her preparation for democratic citizenship (including responsible parenthood).
- Article 31, para 2 contains the obligation of the state to promote child participation in cultural, recreational and leisure activities.
- Article 39 contains the obligation of the state to promote child trauma reparation (and thus prevent transgenerational transmission of trauma and end cycles of violence, insecure attachment, poor mental health, child abuse and neglect, delinquency,<sup>42</sup> etc.).

In relation to the empowerment list above, it is important to highlight three CRC Articles, namely Article 3, para 3, containing the obligation of the state to empower, that is, to ensure the quantity and quality of, and to supervise institutions and professionals working with parents and/or children; and Articles 4 and 6, para 2, containing the obligation of the state to invest in children's rights and child development to the maximum extent of its resources. On the basis of these three Articles, and the various Articles in the lists above, we may safely conclude that responsible parenthood, whatever its precise meaning as a dignitarian human rights concept, at any rate refers to responsabilized-and-empowered parenthood as required and indicated by the CRC.

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<sup>42</sup> According to TEKIN and CURRIE (ERDAL TEKIN & JANET CURRIE, Does child abuse cause crime?; Abstract, April 2006, available at <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=895178](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=895178)>), child maltreatment 'approximately doubles the probability of engaging in many types of crime. Low SES [socio-economic status, jw] children are both more likely to be mistreated and suffer more damaging effects. Boys are at greater risk than girls, at least in terms of increased propensity to commit crime. Sexual abuse appears to have the largest negative effects (...). Finally, the probability of engaging in crime increases with the experience of multiple forms of maltreatment (...).'

## 5. Conclusion

Even in the wealthiest of states we see large-scale violations of basic needs and rights of children to emotional security, secure attachment and healthy development of personality and identity, caused by a lack of parental awareness in their families.<sup>43</sup> In these families, children are born in conditions of serious emotional, mental or material poverty. Material poverty refers to a lack of adequate income or (income related) time to raise a child. Mental poverty refers to a lack of knowledge of child rearing, or of capacity to acquire such knowledge. Emotional poverty refers to poor mental health, caused by or related to addictions, psychiatric conditions, unresolved adverse childhood experiences or other unresolved trauma, severe stress and so on. These forms of poverty illustrate that extreme inequalities still exist, even in wealthy democracies. Especially in relation to adults with child-rearing responsibilities, these inequalities are unacceptable – and no longer excusable. Addressing these forms of poverty and inequality, well before children are born, should be on the top of the agenda of governments and children’s rights NGOs in wealthy states. Libertarian concepts of reproductive and parental rights, and related state non-intervention in the family, rather than dignitarian concepts of children’s rights, parental responsibilities, and related positive obligations of states to responsabilization and empowerment of (future) caregivers still prevail, however, in most if not all states of the world. Traditional systems of child protection and foster (and adoptive) care are by definition not equipped to prevent violations of children’s rights: they are – often seriously flawed – instruments of intervention after grave violations have occurred. In spite of many dignitarian calls for action by the Committee on the Rights of the Child and the Council of Europe, these traditional systems seem to stand in the way of, rather than to contribute to responsible parenthood. For dignitarian reform, we will have to look elsewhere. But even children’s rights researchers and activists appear to be largely absent in this debate. Nonetheless, references to responsibilities in international instruments, whether binding as strict or soft law, are not just moral appeals to people of good will, easy to put aside for libertarians and legal positivists alike. They imply obligations of states to empower people, first of all those with child-rearing responsibilities. Legal specifications and clarifications both of parental responsibilities and of the best interests of the child are urgent dignitarian steps for governments to take. But they are certainly not the only ones. Responsibilization will only open the road to empowerment if it is part and parcel of policies of provision, prevention and participation. Children’s rights, and women’s rights for that matter,

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<sup>43</sup> For some crude and sketchy estimates, *see* chapter 5 of this book.

will not mean very much until responsabilization-and-empowerment are put at the heart of reproductive rights and their corollary: parental responsibility. As we proceed on the road to empowerment, a dignitarian horizon of responsible parenthood will come into sight. The question is: when will we truly embark on this road?

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