

April 2003

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*Introduction to the Symposium: The Relationship Rights of Children*, 11 Wm. & Mary Bill Rts. J. 843 (2003), <https://scholarship.law.wm.edu/wmborj/vol11/iss3/2>

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# WILLIAM & MARY BILL OF RIGHTS JOURNAL

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VOLUME 11

APRIL 2003

ISSUE 3

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## SYMPOSIUM: THE RELATIONSHIP RIGHTS OF CHILDREN

### INTRODUCTION

The *William & Mary Bill of Rights Journal* has been fortunate to have shared a fruitful partnership over the years with the William & Mary Institute of Bill of Rights Law, an alliance which has produced an impressive line of thought-provoking symposia on a wide range of topics. Following in those footsteps, the Institute hosted The Relationship Rights of Children, a symposium which featured pointed discussions from some of the most esteemed scholars in the field. The first part of this issue is dedicated to a number of the papers presented at that symposium, which collectively provide a comprehensive tool for the advancement of the relational rights of children.

The symposium issue opens with Professor James G. Dwyer's *A Taxonomy of Children's Existing Rights in State Decision Making About Their Relationships*, in which he conducts a comprehensive examination of state laws and judicial decisions affecting children's rights as they relate to state decision making about their relationships. Acknowledging that such laws and decisions generally fail to bestow children with explicit rights in this area, Professor Dwyer differentiates state control over children's relational lives by determining the extent to which existing principles impose on the state a duty to protect or take into consideration children's interests.

In *Rights and Duties of Childrearing*, Professor Peter Vallentyne questions the traditional notion that childrearing rights and duties must automatically vest with each child's biological — or procreative — parents, absent any parental abuse of the child. Asserting that children have a much stronger independent moral status than generally supposed, Professor Vallentyne argues that childrearing rights should properly be claimed by anyone for whom possession is suitably in each child's best interest.

The issue continues with *Which Ties Bind? Redefining the Parent-Child Relationship in an Age of Genetic Certainty*, co-authored by Professors June Carbone and Naomi Cahn, which discusses the importance to a child's well-being of genetic ties and the continuity of parental relationships. Rejecting the historical paternity distinctions

between married and unmarried couples, Professors Carbone and Cahn argue that paternity testing should be encouraged at birth as a way to forge parental bonds likely to survive the child's minority. By establishing paternity with greater certainty, children are more likely to enjoy continuity in their parental relationships over the long term. Under such a system, parents would have the option to waive paternity testing, though waivers would be tied to strong estoppel measures and provisions designed to deter fraud.

Professor Elizabeth S. Scott's essay, *Parental Autonomy and Children's Welfare*, responds to recent trends in child custody law by promoting a fiduciary model of parental regulation. By aligning parental interests with those of their children, Professor Scott asserts, divorced parents are more likely to behave like parents in intact families, thereby promoting the children's well-being. The proposed model stresses the importance of parental autonomy to the continued advancement of children's welfare through parental dedication, and it resists any regulatory attempt to curtail that autonomy by third parties.

In *Children's Associational Rights?: Why Less is More*, Professor Emily Buss examines the potential consequences of affording children associational rights, arguing that vesting children with such rights is not only problematic, but impractical. The reliance of children on their parents to identify and assert their rights prevents such a structure from being functional, and the quality of decision making for children will depend on the quality of the parents' decisions.

The symposium concludes with Professor David D. Meyer's *The Modest Promise of Children's Relationship Rights*, in which he debates the creation of independent constitutional rights for children in the realm of family privacy. Professor Meyer favors the transformation of children's "interests" into independent "rights," though he acknowledges that such a change, by itself, will accomplish only modest progress toward promoting the welfare of children.

The *Journal* is honored to publish the works of such an accomplished body of authors, and we believe that the arguments presented will contribute significantly to the ongoing debate over the relationship rights of children. On behalf of the Institute of Bill of Rights Law and the William & Mary School of Law, the *Journal* wishes to thank all who contributed to the successful hosting of this symposium, without whose help the following scholarship would not have been possible.