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Dilemmas of Indissoluble Parenthood: Legal Incentives, Parenting, and the Work-Family Balance

Lynn D. Wardle*

I. INTRODUCTION: THE REALITY OF INDISSOLUBLE PARENTHOOD AND A BOOK OF PROFOUND IMPORTANCE

Family Law and the Indissolubility of Parenthood,1 by Professor Patrick Parkinson (hereinafter “Indissolubility of Parenthood”) is a very important book; its impact is global because the issues it addresses are global. This article agrees with Professor Parkinson’s thesis and modestly expands upon three themes of his book. Indissolubility of Parenthood shows how statutes, regulations, and caselaw in many nations reflect growing concerns about quality parenting. This article expands that point by showing that concerns about parenting and children are reflected in provisions of the national constitutions of nearly all nations today. The primary focus of Indissolubility of Parenthood is upon parenting impediments and issues that arise after a child is separated from a parent due to marital dissolution or nonformation. This article expands that analysis by suggesting its application to children and parents in ongoing marriages. Professor Parkinson suggests that wise laws and policies can reduce the detrimental impact that divorce and out-of-wedlock solo child-rearing have on parenting. This article suggests similar reform of some existing American laws that may create perverse incentives to impede effective, committed parenting in ongoing marital families.

The main theme of Indissolubility of Parenthood, articulated in the first chapter, is that “many of the conflicts about family law around the Western world today derive from the breakdown of the model on which divorce reform was predicated in the late 1960s and early 1970s.”2 That model assumed a “clean-break” divorce- free of ongoing entanglements.3 However, “The experience of the last forty years has shown that whereas

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2. Id. at 12.
3. Id.
marriage may be freely dissoluble, parenthood is not.\textsuperscript{4}

Indeed, Professor Parkinson asserts with strong support that the state is just as involved in using law to seek to preserve family relationships as it was a century ago, but the focus has shifted from maintaining marriage to preserving the “indissolubility of biological parenthood” and its financial rights and responsibilities.\textsuperscript{5} One important and major contribution of Parkinson’s book is that it shows the breadth and depth of the indissolubility of parenthood. The book reveals how numerous the legal facets, dimensions, branches, tendrils, and effects of the indissolubility of parenthood are today, especially in our family laws and public policies.

Parkinson convincingly demonstrates that the “conventional wisdom” that family-policy conflict is driven by differing gender perspectives or agendas is an inadequate oversimplification.\textsuperscript{6} He also effectively shows how the divorce revolution (from fault to de facto or de jure unilateral-no-fault divorce) was based upon and fostered the old clean-break and “self-sufficiency” mentality, thus distorting parenting.\textsuperscript{7} He explains that there is a global movement in family law away from the old clean-break perception of divorce and toward recognition of the significance for both children and adults of continuing parental relations after divorce.\textsuperscript{8} He also shows the impact of this new realization of indissoluble parenthood on the demise of sole custody and the rise of shared parenting\textsuperscript{9} and notes the conundrums of family violence and postdivorce relocation in the new understanding of the importance of postseparation parenting.\textsuperscript{10} He highlights the value of alternate dispute resolution and of new approaches to less-adversarial adjudication and correlates these developments with the recognition of the indissolubility of parenting.\textsuperscript{11} He also considers the financial implications of indissoluble parenthood for child support and support of former spouses.\textsuperscript{12}

The powerful final chapter of Parkinson’s book explores the terrain “[b]etween two conflicting views of separation and divorce.”\textsuperscript{13} Marriage is no longer the only option on the relationship menu, but it is “just one choice of partnering now; many people choose to live together without

\begin{thebibliography}{13}
\bibitem{4} Id.
\bibitem{5} Id. at 14.
\bibitem{6} Id. at 3–15.
\bibitem{7} Id. at 16–42.
\bibitem{8} Id. at 45–65.
\bibitem{9} Id. at 66–90.
\bibitem{10} Id. at 121–80.
\bibitem{11} Id. at 183–96.
\bibitem{12} Id. at 211–65.
\bibitem{13} Id. at 269.
\end{thebibliography}
marrying," and same-sex relationships are recognized in various ways in many jurisdictions. "A plurality of forms of legal recognition has emerged . . . ." Many countries have "stumbled into [adopting 1970s no-fault] divorce reform without really thinking the issues through." As British scholar Pamela Symes noted, "The one question that was not answered was how it was going to be paid for. . . . The costs to the public purse from the divorce revolution in most Western countries have certainly been immense." Indeed, "waves of poverty . . . have resulted from the divorce revolution." "The social cost of free terminability has proved to be enormous, with women and children as its primary victims." Professor Parkinson asserts that, globally, we continue to "waver[] between two opinions" regarding parenting. While the reality of the continuation of parental relations following parental separation is now widely recognized, many people in unhappy marriages strive to terminate intertwined-co-parental relationships with finality—to completely liberate themselves and their children from all connection with the former relationship partner. Parkinson notes: "The promise of personal autonomy and a new beginning that the divorce revolution offered has proven largely to be an illusion. . . . [They] cannot shed the connections with former relationships when there are children involved." "Having sought freedom from the pain of broken relationships, people have had to come to terms with the limitation on that freedom. Autonomy is limited by the connectedness of parenthood for as long as each parent desires that close connection. . . ."

Human beings have never worked out a satisfactory way to combine the free terminability of relationships with parenthood in a way that does not lead to disaster or discontent. . . . Eventually, there may come a time when policy makers in even the most liberal western countries survey the instability of family forms, and the effect of that instability on children, and seek to find ways again to promote order, stability, and cohesion in family life. . . . The enormous public costs of relationship breakdown from welfare payments and expenditure on the family law and child support systems, together with ancillary services . . . may

14. *Id.*
15. *Id.*
16. *Id.* at 273.
17. *Id.* at 273 74.
18. *Id.* at 275.
19. *Id.* at 272 (discussing the Bolshevik-era Russian family law reforms).
20. *Id.* at 275 76.
21. *Id.*
22. *Id.* at 278.
23. *Id.*
eventually require a rethink of social policy.  

Parkinson concludes his book with the convincing admonition that “[f]acing up to the indissolubility of parenthood is one of the great challenges of our time.”

Professor Parkinson’s Indissolubility of Parenthood is like a jewelry box filled with valuable and precious insights and perceptions about children, parents, families, family law, and our societies in the Western world in the twenty-first century. He provides empirical support and legal insight to validate the truth expressed by Pulitzer Prize winner Marilynne Robinson, who wrote: “It is a terrible thing to break up a family [with children]. If you understand that, you will understand everything that follows.”

This Article begins, in Part II, by adding a little bit of confirming data to Parkinson’s about the deterioration of the structural-parenting environment in American families that so heavily influences the quality of parenting. The data shows that the home environment in which American children are being raised has deteriorated greatly and has become more risky, less stable, and less adequate for meeting the needs of children.

This Article then addresses three other aspects of the indissolubility of parenthood that are relevant to ongoing (nondissolved or nonformed) families. Part III presents evidence that in global-comparative-constitutional law doctrines nearly unanimously, expressly recognize the profound importance of parenting. They explicitly provide protections for parents and children, and they recognize parenting as a basic human right and fundamental constitutional right. Validating Parkinson’s thesis, it appears that formal legal recognition of and commitment to constant, quality parenting is now the nearly-ubiquitous standard in virtually all nations on earth. Even in the United States, one of the few nations lacking a constitutional provision explicitly protecting parenting and children, significant constitutional protection of parenting has been extended by Supreme Court interpretation of some of the general fundamental rights provisions of the Constitution of the United States.

Part IV then discusses the significance of the indissolubility of parenthood for the ongoing family. Part IV highlights the distinction between the external, formal, legal, and structural influences on parenting and the internal, intangible quality and nature of parenting. Thus, even in some intact, married, two-parent homes, our cultures,
societies, and some parents have effectively minimized, neglected, and abandoned parenting. Application of the indissolubility of parenthood to the work-family balance provides important insights on how to resolve the tension that individuals and couples feel between their commitment to their work (profession, business, career, employment), religion (or spiritual duties), and family responsibilities, especially the responsibilities of parenting.

Part V considers how laws influence behavior and suggests that some family laws may promote the de-facto dissolution of parenthood by promoting behavior that impedes and impairs quality parenting. Family laws may give parents incentive to neglect or abandon their parental responsibilities, or they may provide parents with disincentives to participate in quality parenting that is effective, committed, and time-intensive. This Article suggests that a review of our laws for the impact on quality parenting may be beneficial to society in general, and specifically, to many ordinary imperfect families.

The conclusion, in Part VI, reminds that it is not too late for individuals, families, and society to rebuild the kinds of family environments that foster and nurture good parenting. Legal recognition of the indissolubility of parenthood may encourage parents to recognize the permanent nature of their parenthood and to revive and renew quality parenting in their lives and in family laws.

II. THE STRUCTURAL DETERIORATION OF PARENTHOOD IN AMERICA

The problems of co-parenting following the breakup of marriages and nonmarital cohabitations are major issues but are only part of the entire problem of the deterioration of parenthood in America and in many other affluent nations around the world. The scope of the problem is enormous and predictive of major social and economic strains and upheavals for at least the next generation or two. Focusing on the external, structural factors that concern the physical and systemic family environment in which children are raised, indisputable evidence shows the serious deterioration of families—which is the relational site and location of parenting. Four indicia illustrate the disintegration of American families.

27. The concern raised in this Part IV is shown in two favorite cartoons. One cartoon shows two parents and a small child in a rich dining room, and a maid—"the help,"—taking away the dishes as one of the parents says to the child, "Of course we love you; hasn't Maria told you that?" Another cartoon shows the workaholic dad telling his daughter, "A new study says that sticking you in day care while your career-obsessed parents work doesn't hurt you a bit, Sandy," and she replies plaintively, "It's Mandy, dad."

28. See infra, notes 30 31. Childbearing out of marriage impacts at least two future generations. See further infra note 36 (Jonathan Sacks commenting about British rioting).
First, there has been a dramatic increase in cohabitation without marriage. The social value of, desirability of, and status of marriage has plummeted. For example, in 1960, just one percent of all US couples living together were unmarried, whereas in 2010, nearly twelve percent (11.6%) of all couples were cohabiting without marriage. This means that more children than ever before are born and/or raised in homes in which the parents are unmarried or in which the custodial parent (usually the birth mother) is living with a partner in a nonmarital relationship—both significant, high-risk factors for child well-being.

Second, the number (1.7 million) and percentage (41%) of children born out of wedlock in the United States are at unprecedented, high levels. Childbirth out of wedlock is strongly correlated with major disadvantages for children, including poverty, abuse, increased exposure to harmful substances, and less educational achievement.

Third, while the rate of divorce has stopped rising and has leveled off (likely due significantly to the rise in nonmarital cohabitation, especially since cohabiting-couple breakups, are not included in the divorce statistics), the incidence of divorce has stabilized at extremely high levels (about 40% of all marriages still end in divorce). Moreover, recent data show dangerous signs of social-class separation in divorce patterns in America, with the less-educated getting divorced at much higher rates...
than the well-educated, and the middle-class paralleling lower-class divorce patterns.\textsuperscript{33}

Fourth, there has been a dramatic increase in the number (approximately 20 million) and percentage (over 26\%) of children being raised by single parents, mostly their mothers.\textsuperscript{34} The crisis of "fatherlessness"—the separation of children from their fathers during their critical developmental years—is a harbinger of problems, not only for those children but also for all of the society in which those children live—and sometimes lash out, act out, and drop out.\textsuperscript{35}

The deterioration of parenthood has costly financial effects and numerous other effects on all members of society. The annual-public-taxpayer costs of breakup and child-bearing out of wedlock in the United States (totaling about $112 billion annually, according to one respected conservative estimate),\textsuperscript{36} are about equal to the annual U.S. military costs of fighting the "war on terror" in both Iraq and Afghanistan combined (some years).\textsuperscript{37} Breakup and single parenting are direct causal forces linked with more crime, more child abuse, more public-health expenses, higher social-services costs, less educated workforce, intergenerationally transmitted behaviors, etc.\textsuperscript{38} Apostle Neal A. Maxwell of The Church of

\textsuperscript{33} Wilcox, supra note 32.


\textsuperscript{37} AMY BELASCO, CONG. RESEARCH SERV., RL33110, THE COST OF IRAQ, AFGHANISTAN, AND OTHER GLOBAL WAR ON TERROR OPERATIONS SINCE 9/11 (2011), available at http://www.fas.org/spp/ers/crs/natsec/RL33110.pdf (spending on operations in Afghanistan averaged about $5.5 billion per month in FY2009 and 2010; spending in Iraq averaged about $7 billion per month in the same period; The Department of Defense's FY2012 funding request was $118 billion; total war funding including FY2012 projected at $1.425 trillion total since 9/11); see also Amy Bingham, The Cost of War: Iraq by the Numbers, ABC NEWS (Oct. 21, 2011), http://abcnews.go.com/Politics/cost-war-iraq-numbers/story?id=14788211#4 ("about $3.8 billion per month" for war in Iraq).

\textsuperscript{38} See supra notes 36–37.
Jesus Christ of Latter-day Saints (LDS Church) put it this way: "As parenting declines, the need for policing increases. There will always be a shortage of police if there is a shortage of effective parents! Likewise, there will not be enough prisons if there are not enough good homes."

The costs in personal lives are even more heart-wrenching: more incarceration, more child abuse, more poverty, more health problems, lower educational achievement, lower employment success, less family stability, etc. The environment in which American children are raised has deteriorated severely and the consequences are enormous and tragic. America has lost its child-centeredness.

Similar social trends exist in most other western European nations, as well. For example, Lord Sacks of the British House of Lords (and the Chief Rabbi in the United Kingdom) attributed the shocking violence and looting during the London riots of August 2011 to the breakdown of the family, the loss of moral values, and the diminution of religion in

39. Neal A. Maxwell, Take Especial Care of Your Family, ENSIGN, May 1994, at 88, available at http://www.lds.org/ensign/1994/05/take-especial-care-of-your-family?lang=eng (last visited Feb. 21, 2012) ("There is, as we all know, much talk about family values, but rhetoric, by itself, cannot bring reform. Nostalgically, many wish for the family life of yesteryear; they regard family decline as regrettable but not reversible. Others, genuinely worried over the spilling social consequences, are busy placing sandbags downstream, even when the frenzied use of sandbags often destroys what little is left of family gardens. A few regard the family as an institution to be drastically redefined or even to be rid of."). (emphasis added); id. ("Society should focus anew on the headwaters—the family—where values can be taught, lived, experienced, and perpetuated. Otherwise . . . we will witness even more widespread flooding downstream, featuring even more corruption and violence (see Gen. 6:11-12; Matt. 24:37). . . . Dikes and sandbags downstream will be no match for the coming crests. More and more families, even nations . . . will suffer."). (emphasis added). Neal A. Maxwell also said: "Good homes are still the best source of good humans." Eternalism vs. Secularism, ENSIGN, Oct. 1974, at 69, see also NEAL A. MAXWELL, THAT MY FAMILY SHOULD PARTAKE 122 (1974) ("[I]n a world filled with much laboring and striving in parliaments, congresses, agencies, and corporate offices, God’s extraordinary work is most often done by ordinary people in the seeming obscurity of a home and family.").

40. See generally PARKINSON, supra note 1, at 274-77.

41. These riots and looting left five people dead and more than a dozen others injured. Ten firefighters were wounded by rioters, 3,443 crimes were reported, 3,100 individuals arrested, and at least 100 homes were destroyed by arson and looting; damage and destruction losses were estimated to be between £100-£200 million, and over 48,000 local businesses suffered additional financial losses. 2011 England Riots, WIKIPEDIA, http://en.wikipedia.org/wiki/2011_England_riots (last visited Feb. 21, 2012); see also England's Week of Riots, BBC NEWS (Aug. 15, 2011), http://www.bbc.co.uk/news/uk-14532532 ("About 3,100 people so far have been arrested, of whom over 1,100 have been through the courts for offences ranging from burglary and arson, to violence and disorder."); London Riots: More Than 2,000 People Arrested over Disorder, MIRROR NEWS (Aug. 25, 2011), http://www.mirror.co.uk/news/uk-news/london-riots-more-than-2000-people-185548 ("Scotland Yard’s Operation Withem team has recorded a total 3,443 crimes across the capital linked to the disorder."); Elaine Moore, Riots Hit Retail Shares 'At Worst Time', FINANCIAL TIMES (Aug. 12, 2011), http://www.ft.com/cms/s/2/a60382c6-c1d2-11e0-bc71-00144feabc0.html#axzz1We4Wbh5 ("Four nights of rioting and looting on the streets of English cities have resulted in 48,000 shops, restaurants, pubs and clubs suffering financial losses . . . and insurers estimate that the total cost has now reached £200[£millions]."). Some vivid photos of the riots, burning, looting, and aftermath are available at London Riots, BOSTON.COM (Aug. 8, 2011), http://www.boston.com/bigpicture/2011/08/london_riots.html.
society. He commented:

You do not have to be a Victorian sentimentalist to realize that something has gone badly wrong . . . . In Britain today, more than 40% of children are born outside marriage. This has led to new forms of child poverty that serious government spending has failed to cure. In 2007, a Unicef report found that Britain's children are the unhappiest in the world. The 2011 riots are one result. But there are others.

Whole communities are growing up without fathers or male role models. Bringing up a family in the best of circumstances is not easy. To try to do it by placing the entire burden on women—91% of single-parent families in Britain are headed by the mother, according to census data—is practically absurd and morally indefensible. By the time boys are in their early teens they are physically stronger than their mothers. Having no fathers, they are socialized in gangs. No one can control them: not parents, teachers or even the local police. There are areas in Britain's major cities that have been no-go areas for years. Crime is rampant. So are drugs. It is a recipe for violence and despair.

. . . .

We have been spending our moral capital with the same reckless abandon that we have been spending our financial capital. 43

So the loss of child-centeredness in public policy is not unique to the United States. The same factors that have caused the disintegration of marital parenting and undermined commitment to the rising generation in America are occurring in many other nations around the world.

III. PARENTHOOD IS UNIVERSALLY RECOGNIZED AS A CONSTITUTIONAL HUMAN RIGHT AND RESPONSIBILITY IN INTERNATIONAL CONSTITUTIONAL LAW

The dramatic, demonstrable deterioration of children's life-environments and of parenting of children is remarkable because never before has there been more explicit recognition of and formal commitment to parenthood, children, and parenting in the basic constitutional charters of nations around the world. 44 Constitutions are generally understood (indeed, intended) to express some of the core or aspirational values that underlie and guide or inspire the legal system of a nation. 45 They are key sources to which judges and scholars look to

43. Sacks, supra note 35.
44. Likewise, never before has there been more professional, legal recognition of the importance of these environmental factors for a child's wellbeing.
discern fundamental human rights.

For those reasons, it is of great significance that constitutional protection of parenting and children is today clearly the global standard. Most of the 193 sovereign nations recognized by the United Nations that have written constitutions have explicit provisions protecting parenting, parents, children, and parental-child relations. As Appendix I shows, at least 180 of the 193 sovereign nations in the world recognized by the United Nations (more than 93%) have written constitutions containing explicit provisions regarding parent-child relations, usually providing special constitutional protection to them. That written recognition manifests incredible global consensus that protection of parenting is a universal, core value of international human rights and global-constitutional jurisprudence.

At least ten general categories of constitutional provisions relating to parenting show, in the aggregate, that protection of parenting is a ubiquitous, global human-rights concern. A few examples from each category illustrate the depth and breadth of the formal constitutional commitment to protection of children, parents, and parenting.

(1) At least ninety national constitutions contain substantive protections for “mother,” “motherhood,” “father,” “fatherhood,” and “parents.” The Constitution of Poland expressly protects these entities: “[m]arriage ... as well as the family, motherhood and parenthood shall be placed under the protection and care of the Republic. . . .” The state constitutions attempted to set forth in writing universal principles, grounded in reason.”)


Constitution of Russia not only declares that "[m]atrimony, childhood and family shall be protected by the State" but, like more than a dozen other national constitutions, also provides explicit constitutional protection for "fatherhood" as well.

(2) More than 150 nations have provisions explicitly regarding and extending special protection to "child," "children," "childhood," etc. For example, the Constitution of the Republic of Armenia provides: "The basic tasks of the state in the economic, social and cultural spheres are: 1) to protect and patronage [sic] the family, the motherhood and the childhood." The Constitution of Greece provides: "The family, being the cornerstone of the preservation and the advancement of the Nation, as well as marriage, motherhood and childhood, shall be under the protection of the State." The Constitution of the Republic of Algeria guarantees "the protection of the family, . . . of youth and of infancy." The Constitution of Qatar guarantees that the government will "protect maternity, childhood, and old age."

(3) In seventy national constitutions, parent-child relations and parenting are said to be pre-existing, natural, inherent rights, not merely created by positive law of state endowment but prior to and superior to the state and its positive law. Many constitutions use the term "natural right" to describe parental rights. For example, the Burkina Faso


54. Algeria Const., 1996, art. 63 (amended 2008); see also Moldova Const., 1994, art. 49 (amended 2003) (protecting "motherhood, the children and the youth").
55. Qatar Const., 2003, art. 21 (emphasis added); see also Article 29 Doustour Jomhouriat Al-Iraq [The Constitution of the Republic of Iraq] of 2005; U.A.E. Const., 1971, art. 16 (protecting "childhood and motherhood . . . minors and others unable to look after themselves for any reason, such as . . . old age").
56. See, e.g., Burkina Faso Const., 1991, art. 23 (amended 2002); Burundi Post-Transition Const. (Interim) 2004, art. 30; Central African Rep. Const., 2004, art. 6; Chad Const., 1996, art. 38; Dem. Rep. Congo Const., 2005, art. 40; Gabon Const., 1991, art. 1(16) (amended 1997); Grundgesetz für die Bundesrepublik Deutschland [Grundgesetz] [GG] [Basic Law], May 23, 1949, BGBl. I art. 6 (Ger.); Ghana Const., 1992, art. 28 (amended 1996); Kazakhstan Const., 1995, art. 27 (amended 2007); Const. (1987), art. XIV, sec. 2 (Phil.); Senegal Const., 2001, art. 20 (amended 2008); Swaziland Const., 2005, § 29; see also Bolivia Const., 2009, arts. 58-59 (describing inherent rights of children and adolescents including "the right to live and to grow up in the bosom of his or her natural or adoptive family").
Constitution provides that “parents have the natural right and the duty to bring up and to educate their children.”57 The Basic Law of Germany provides that “[t]he care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them.”58 The Constitution of the Central African Republic mentions parental rights as “natural” and “primordial.”59 In many more constitutions, the family is identified as the foundation or basic unit of society. For example, the Constitution of Kyrgyzstan provides: “Family shall be the foundation of the society. Family, paternity, maternity and childhood shall be the subject of care of the entire society and preferential protection by law.”60 Similarly, the Constitution of Costa Rica provides: “The family, as the natural unit and foundation of society, is entitled to State protection . . . .”61 These provisions recognize the profound state interest in parenting, family, and family relations, including parent-child relations, forming the basis of society, social order, stability, and welfare in the nation.

(4) Many constitutions contain provisions that express particular concern for and provide special protections to fatherless children.62 Equal protection for such children (historically considered “illegitimate”) is a primary concern. Brazil extends special protection to the family


58. Grundgesetz für die Bundesrepublik Deutschland [Grundgesetz] [GG] [Basic Law], May 23, 1949, BGBl. I art. 6(2) (Ger.).


62. See infra notes 69–72 (protections for the child’s right to know identity, parentage, and family).
including single-parent families, and provides, *inter alia*: "The community formed by either parent and his or her descendants is also considered a family unit." 63 The Constitution of Ecuador provides:

To protect the rights of persons who are members of a family:
1. Responsible motherhood and fatherhood shall be fostered; and the mother and father shall be obliged to take care, raise, educate, feed, and provide for the integral development and protection of the rights of their children, especially when they are separated from them for any reason.
2. The community formed by either parent and his or her descendants is also considered a family unit.

3. To protect the rights of persons who are members of a family:
   a. The mother and father shall be obliged to take care, raise, educate, feed, and provide for the integral development and protection of the rights of their children, especially when they are separated from them for any reason.

4. The State shall protect mothers, fathers and those who are the heads of family, in the exercise of their obligations and shall pay special attention to families who have broken up for whatever reason.

5. The State shall promote the joint responsibility of both mother and father and shall monitor fulfillment of the mutual duties and rights between mothers, fathers, and children.

6. Daughters and sons shall have the same rights, without any consideration given to kinship or adoption background.

7. No declaration of the quality of the kinship shall be required at the time of registering the birth and no identity document shall refer to the type of kinship. 64

The Constitution of Spain provides that children are "equal before the law, regardless of their parentage," provides for "investigation of paternity," and imposes child support upon parents for "their children, whether born within or outside wedlock." 65 The Constitution of Serbia declares: "A child born out of wedlock shall have the same rights as a child born in wedlock." 66

(5) Dozens of national constitutions expressly recognize a right to know and have a personal association in a special parent-child relationship that is not to be disregarded or breached except for substantial, serious cause. For example, the Basic Law of Germany provides: "Children may be separated from their families against the will of their parents or guardians only pursuant to a law and only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect." 67 Bolivia’s constitution specifically

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66. *Serbia Const.*, 2006, art. 64.
67. *Grundgesetz für die Bundesrepublik Deutschland* [Grundgesetz] [GG] [Basic Law], May 23, 1949, BGBl. I art. 6(3) (Ger.); see also *Belarus Const.*, 1996, art. 32 (“Children may be separated from their family . . . only according to the verdict of the court of law.”); *Cape Verde Const.*, 1992, art. 44(1) (“[c]hildren shall only be separated from their parents through
recognizes a right to reunification: "The State shall attend in a positive, humanitarian and efficient manner to requests for family reunification presented by parents or children who are given asylum or refuge." The Constitution of Venezuela guarantees every person "the right to know" the identity of his or her parents, the "right to investigate maternity and paternity," and the right "to obtain public documents constituting evidence of their biological identity." The Constitution of Bolivia guarantees children the right "to their ethnic, socio-cultural, gender and generational identity" as well as "the right to identity and filial relationship with respect to his or her parents."

(6) Over eighty nations have constitutional provisions obligating the state to provide for, or oversee, and ensure that children are reasonably educated. After identifying that parents have the natural right and duty to educate and care for their children, the Basic Law of Germany mandates that "[t]he State authorities supervise the fulfillment of this duty." The Constitution of Angola obliges "[t]he State, with the collaboration of the family and society" to "promote the harmonious development . . . [and] education" of youth. The Constitution of Kuwait guarantees that "education is a right for Kuwaitis, guaranteed by the State," and the Kyrgyzstan Constitution provides: "The state shall ensure the maintenance, upbringing and education to child orphans and children deprived of parental care."
(7) The right of parents to control the education of their children, including their moral and religious training, is clearly and explicitly protected in scores of national constitutions. Over 120 national constitutions recognize that parenthood includes both a right and a duty on the part of the parents to educate their children, including directing their moral and/or religious upbringing, and to raise them to be responsible individuals and good citizens. Indeed, more than eighty national constitutions have such protection of parental rights to direct the education of their children, and the specific term “duty” is used in this context in nearly half of these national constitutions. For example, the Central African Republic Constitution provides: “Parents have the natural right and primordial duty to raise and educate their children with the end to develop in them good physical, intellectual and moral aptitudes.” The Basic Law of Germany provides: “The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The State shall watch over them in the performance of this duty.” The Constitution of Ireland declares: “The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of


79. Grundgesetz für die Bundesrepublik Deutschland [Grundgesetz] [GG] [Basic Law], May 23, 1949, BGBl. I art. 6(2).
parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children." Parental discipline (for children's moral education) is explicitly protected in some constitutions. For example, the Constitution of Malta provides parental discipline exceptions to the protections of privacy, expression, and association. These provisions recognize the profound importance of parenting for the good of the state and of society—recognizing that how children are raised has great impact on the welfare and strength of the nation.

(8) More than 100 national constitutions provide special protection for children because of their dependence and vulnerability, and many guarantees protection against exploitation and child labor. For example, the Afghan Constitution provides: "The state shall adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother, upbringing of children . . . ." The Constitution of Malta declares: "The State shall provide for safeguarding the labour of minors and assure to them the right to equal pay for equal work." The Constitution of Serbia provides: "A child shall be protected from psychological, physical, economic and any other form of exploitation or abuse."

(9) The parental-child relationship is especially important in many constitutional provisions relating to immigration and citizenship. More
than eighty nations have such provisions. For example, the Constitution of Poland provides: “Polish citizenship shall be acquired by birth to parents being Polish citizens.”\textsuperscript{85} The Constitution of Chile defines nationality for those born in the territory as well as children of citizens living abroad.\textsuperscript{86}

(10) Many other miscellaneous and incidental provisions are included in many constitutions (relating to pensions, adoption, testimonial privilege, eligibility for public office, royalty, etc.).\textsuperscript{87} These provisions are examples of explicit constitutional protection for specific aspects of the parental relationship between parents and their children from nations around the world (e.g., for protection of financial support, establishing parentage for parentless children, nondiscrimination on family basis, etc.).

Some constitutional provisions like Argentina’s are structural rather than substantive, empowering the government or a particular branch to provide legal protection to parental relationships.\textsuperscript{88} While not explicitly guaranteeing any substantive protection, by explicitly, specifically, and carefully identifying the objects of special constitutional attention (children, women, the elderly, disabled, the unborn child, pregnant mothers, and school children), structural provisions show special legal relationships between parents and children and special constitutional status for parents and children.

Written constitutional provisions alone do not deliver or ensure real social or governmental commitment to children and parenting.\textsuperscript{89} Nonetheless, the formal-constitutional recognition of the value of parenting and the formal-constitutional commitment to protect parenting and children are ubiquitous, and they suggest that parenting is a matter of global human rights and is protected by norms of customary international law. And real-legal protection is more likely in the presence of such formal, constitutional commitments.

Even the absence of explicit constitutional text protecting children,

\textsuperscript{85} THE CONST. OF THE REPUBLIC OF POL. APR. 2, 1997, art. 34.


\textsuperscript{87} See, e.g., Art. 89, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.) (requiring President to be “the son of a native born citizen”).

\textsuperscript{88} See Art. 75(23), CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

\textsuperscript{89} Ironically, lifestyles popular in many of those same countries, including child-bearing out-of-wedlock, permissive and especially unilateral divorce-on-demand, elective abortion-on-demand, and use of adoption and assisted reproductive technologies by single adults or same-sex couples deprive children of at least half of the parent-child relationship which the constitutions purport to protect. See generally Lynn D. Wardle, Global Perspective on Procreation and Parentage by Assisted Reproduction, 35 CAP. U. L. REV. 413, 441 51 (2006) (schizophrenic policies and practices in the US); see also Wardle, supra note 29.
parents, and parenthood does not necessarily mean that constitutional protections are nonexistent. For example, while the Constitution of the United States of America is in the small minority of nation constitutions that do not contain explicit textual provisions regarding children, parents, and parenting, a long line of U. S. Supreme Court decisions interpreting the Fourteenth Amendment have established parental rights as fundamental constitutional rights in U.S. constitutional jurisprudence. The plurality opinion in the important recent Supreme Court case, Troxel v. Granville, summarized the constitutional protection of families, children, and parental rights extended by judicial interpretation:

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." Washington v. Glucksberg, 521 U.S. 702, 719, 117 S.Ct. 2258 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." Id., at 720, 117 S.Ct. 2258; see also Reno v. Flores, 507 U.S. 292, 301–302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993).

The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in Meyer v. Nebraska, 262 U. S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in Pierce v. Society of Sisters, 268 U. S. 510, 534–535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in Pierce that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." Id., at 535, 45 S.Ct. 571. We returned to the subject in Prince v. Massachusetts, 321 U. S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Id., at 166, 64 S.Ct. 438.

In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, e. g., Stanley v. Illinois, 405 U. S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) ("It is plain that the interest of a parent in
the companionship, care, custody, and management of his or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements" (citation omitted); Wisconsin v. Yoder, 406 U. S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); Quilloin v. Walcott, 434 U. S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); Parham v. J. R., 442 U. S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); Santosky v. Kramer, 455 U. S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); Glucksberg, supra, at 720, 117 S.Ct. 2258 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the right ... to direct the education and upbringing of one's children" (citing Meyer and Pierce)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.90

So in formal constitutional law, it is undeniable that protecting children, parents and parenting is a matter of fundamental human rights throughout the world today. The importance of parenting and parent-child relations is recognized explicitly in both international-human-rights law and by interpretation in American (and other nations') constitutional law. The value of parenting is established in formal law beyond question. And that makes the deterioration of families and parenting all the more remarkable. There seems to be profound cognitive dissonance between our highest formal, expressed, legal values and our as-lived, personal and societal values and priorities.

IV. THE CONUNDRUM OF THE WORK-FAMILY TIGHTROPE BALANCING ACT

While Professor Parkinson's book focuses on the external-environmental effects of separation and divorce-related challenges to effective co-parenting, there are similar internal, intangible obstacles, and detrimental patterns, practices, and influences impacting the quality of parenting even in intact marriages. Thirty-five years ago, Professor Bruce C. Hafen eloquently uncovered one of the comforting legal fictions used to mask our neglect of the indissolubility of parenthood in ongoing families in the title of his article, *Children's Liberation and the New Egalitarianism: Some Reservations about Abandoning Children to Their Rights.*91 Some parents prefer to think of themselves as liberating their children, as respecting their children's rights and recognizing their individuality and autonomy, rather than thinking that they simply may be neglecting or abandoning their children. Children's liberation and children's rights rhetoric may be euphemistic masks for liberation-seeking parents to abandon their children.

As Pulitzer Prize winning author Marilynne Robinson has written, parental abandonment of children "is the common experience.... The only mystery is that we expect it to be otherwise."92 In one of her works, she writes a daughter's description of a mother who structured her life to avoid any significant demands on her attention from her children.

She tended us with a gentle indifference that made me feel she would have liked to have been even more alone—she was the abandoner, and not the one abandoned [though her husband had left her].... [We two daughters] used to watch our mother sitting on the couch, one foot tucked under her, smoking and reading The Saturday Evening Post.... At last we... slid from her lap like one of those magazines full of responsible opinion about discipline and balanced meals.

Some parents may strive to organize their parenting to avoid "any significant demands" on their attention. Some accommodate parenthood "with a gentle indifference that" makes their children feel that their mother (or father, or both) "would like[] to [be] even more alone." While formally still a parent, he or she really may have abandoned parenting, and children may slide away.

Some busy parents raise their children with a detached efficiency—as if the children were inanimate objects that need to be cleaned or rearranged or dealt with or organized, like the laundry or an unkempt

92. ROBINSON, supra note 26, at 215.
93. Id. at 109–10.
family room or monthly bills or plastic containers of bedding flowers purchased from the Wal-Mart garden center that must be planted before they wilt. Because their priorities lie elsewhere, they structure their parenting so that it will impose minimal demands upon their time, attention, or lifestyle. They master “checklist parenting” that puts a premium on numbers, lists, and efficiency, while neglecting the “weightier matters” of parenting. 94

Most parents live highly fragmented lives, giving a piece of themselves to this and another piece of themselves to that. We are drawn and quartered temporally by our multiple responsibilities. We must commit some time to career here, another bit of time to children there, a modicum of time for husband or wife, a little box of time to social involvement (their church communities, other service organizations, cultural clubs, social relations and events), and, of course, some time and attention to our own health, hobbies, and fitness. Indeed, all parents’ lives are to some extent a continuous juggling act.

However, children need some real, regular, consistent, personal, one-on-one time with both parents (both mom and dad). At various stages of infancy, childhood and adolescence, a child’s legitimate time demands on their parents’ time varies. The risk, however, is that too much fragmentation of our lives, too much balkanization of our time, can lead to frustration, incompetence, incompletion, and lack of fulfillment in all parts of life, and can produce stressful, unhappy, unhelpful, and busy-but-empty lives. Thus, parents need to set time priorities, and children, especially when they are young, in their formative years, need to be at or near the top of the priority list; children require significant parental investment of time and attention—focused, fully-engaged, loving parenting time. 95

A highly-respected attorney and friend once told the story of a friend of his, also a lawyer, who struggled to balance his commitments to his family and his job. The partners in his law firm invited him to undertake a major responsibility representing an important client in a major case. The man knew that, if he accepted, the case would consume nearly all of his time for many months, and if he did well, it would ensure his position in the law firm and also would ensure his financial position in life. So he decided to accept the offer and he metaphorically put his wife and children into a cardboard box and set them on a shelf in a back closet of

94. See generally Matthew 23:23 (King James).
his life for many months. He succeeded well in his professional undertaking, but when he went back to open the box into which he had dumped his wife and children, he found that the box was empty. He had lost what ultimately he valued the most because of his temporary-but-substantial neglect of his family relationships.

To some extent, all parents face the same dilemma. There never seems to be enough time to do the best job we can in our professional, employment, or career interests, and juggle the other extra-familial responsibilities we have, and also do the best job we are capable of doing as parents and spouses. Children grow and change, and in a very short time they move from one developmental stage to another; windows of opportunity for parents to influence their children’s development for good open and close quickly. If we turn away from parenting for even a modest period of time, children change and move on. They will not wait to grow up until we have time to parent them properly. They grow constantly and need parenting daily.

Some careers and jobs are very demanding, and consume parents’ time, energy, attention, and even their ability to do the work of parenting. Some full-time employees and entrepreneurs are so focused on comparing themselves to others, competing for the prizes of the marketplace and for position in their professional or social circles that they overlook the needs of their own families, the opportunities presented in their own homes, and forget or fail to perceive their greatest hope for their greatest success, for lasting happiness. Parenting requires sacrifice (significant time investment) that may curtail for a time other worthwhile aspirations.96 The most meaningful work parents will do, and the greatest opportunity to make the most powerful difference in this life is within the walls of their own home, where they are challenged to lose their lives in constant, committed, caring service to those who are least from the perspective of career and market—even their children, their aging parents, and their spouses. As many religious leaders have admonished in many different ways, “no other success can compensate

96. Spencer W. Kimball, Oneness in Marriage, ENSIGN, March 1977, at 3, reprinted in MARRIAGE AND FAMILY RELATIONS PARTICIPANT’S STUDY GUIDE (200), available at http://www.lds.org/manual/marriage-and-family-relations-participants-study-guide/lesson-3-nurturing-love-and-friendship-in-marriage?lang=eng (“Every decision must take into consideration that there are two or more affected by it. As she approaches major decisions now, the wife will be concerned as to the effect they will have upon the parents, the children, the home, and their spiritual lives. The husband’s choice of occupation, his social life, his friends, his every interest must now be considered in the light that he is only a part of a family, that the totalness of the group must be considered.”); id. (“Often there is an unwillingness to settle down and to assume the heavy responsibilities that immediately are there... Through both spouses’ working, competition rather than cooperation enters the family. Two weary workers return home with taut nerves, individual pride, increased independence, and then misunderstandings arise. Little frictions pyramid into monumental ones.”).
for failure in the home."97 Pope John Paul II famously said, "As the family goes, so goes the nation, and so goes the whole world in which we live."98

Magistrate Paul Warner, a Brigham Young University (BYU) Law School adjunct professor, once spoke to BYU law students about balance in life. He described a time a few years after his graduation from law school when he was a rising young attorney in government service. He had a lovely wife, four young children, and he was serving as the bishop of his LDS Church congregation (ward). He said he always felt torn; no matter where he was or what he was doing, he had a nagging concern that he needed to be somewhere else doing something else. When he was at his law office, he felt he needed to be home helping his wife and children; when he was home, he felt he needed to be doing more to help some individuals in his ward; and when he was at the church, he felt he needed to be at his law office doing more work to prepare his cases.99

Some parents are afflicted by what Charles Dickens in Bleak House labeled "telescopic philanthropy."100 Dickens describes a highly-respected mother, Mrs. Jellyby, who was renowned for her great charity service. Mrs. Jellyby was very active in many philanthropic organizations, and was raising funds for needy families and tribes in Africa. Despite her great empathy for and passion about needy children and families on a distant continent, Dickens portrays her as blatantly neglectful of the glaring, crying needs of her own children (and husband).101

For some adults, parenting is treated like a fashion accessory, a status to be acquired and worn sensibly as any fashion accessory. But too much visibility of any accessory is gauche. So parenting to a fashionable degree is permitted, but children must not be given too much time, commitment, or priority—that is inconsistent with what is expected of suave men and sophisticated women.

Other parents compensate for systemic neglect by over-managing


101. Id.
their children's lives. Busy-ness is their preferred substitute for parenting. They over-program their children as if they were robots and wear them (and themselves) out with daily schedules that are grueling—exhaustingly filled with activities, lessons, teams, and classes. Again, they measure their success as parents by how many items on the latest checklist for modern parenting they can check-off at the end of the day or week.

One major influence on parent-time and parenting is parental employment. In recent decades, "[n]ot only did women's workforce participation increase across the board, it increased dramatically for the married mothers of young children."\textsuperscript{102} For example, the U.S. labor force participation rates among mothers of all children under 18 rose from 47.4\% in 1975 to 72.9\% in 2000; among mothers of children aged 6–17 labor force participation rates rose from 54.9\% in 1975 to 79\% in 2000; among mothers of children aged 3–5 the labor force participation rates rose from 45.0\% in 1975 to 71.5\% in 2000; and among mothers of children under age 3 labor force participation rose from 34.3\% in 1975 to 61.0\% in 2000.\textsuperscript{103} As of 2008, both parents were employed in 62.1\% of all married couples, while 71.4\% of U.S. women with children under 18 were employed in 2008.\textsuperscript{104} Since the recession/economic downturn of 2008 negatively impacted employment of men more than women,\textsuperscript{105} the proportion of all employees who are mothers may have increased.\textsuperscript{106}

\begin{itemize}
  \item \textsuperscript{106} See Kelly Evans, *In Downturn's Wake, Women Hold Half of U.S. Jobs*, WALL. ST. J., Nov. 12, 2009, at A21, available at http://online.wsj.com/article/SB125797318108844061.html (noting that the number of employed women has risen in this recession to 71.7 million, while the number of employed men has fallen to 82.3 million); see also Catherine Rampell, *As Layoffs Surge, Women May Pass Men in Job Force*, N.Y. TIMES, Feb. 6, 2009, at A1, available at http://www.nytimes.com/2009/02/06/business/06women.html?pagewanted=all.
"The rising rate of mothers' employment [and other factors] have prompted some researchers to study mothers' balancing of work and family roles in particular."¹⁰⁷ Two impacts of maternal employment on family life will be briefly reviewed here: impact on quality of family life in general, and upon quality of parenting (i.e., measured by effects on children) in particular.

Since this is a very controversial subject, two caveats must be emphasized at the outset. First, generalizations are difficult to make because the data about the effects of maternal employment are influenced by so many individualized factors and maternal employment is of so many different kinds, types, and circumstances. A variety of other factors may offset (or enhance) either the detrimental or the beneficial effects of maternal employment upon children in any given case. Second, it is important to clarify that this Article is not arguing that all (or any particular) mothers should or should not be employed, or employed in any particular way. How to balance the work-home-parenting conflict is a decision every mother can and must make for herself—preferably in consultation with her family who will be impacted by her decision.

One set of consequences of maternal employment is on quality of family life generally and parenting in particular. Comparing family relations and parental interactions in families where mothers are employed with those in which the mothers are not employed outside the home there is some data indicating that comparative quality of family life generally suffers measurably by maternal employment. For example, one study recently found that employed mothers spend six fewer hours with their children.¹⁰⁸ In families with employed mothers, parents are “less likely to report that they laugh with their children every day”, and “fathers . . . may be somewhat more likely to raise their voice or yell at their children on a daily basis.”¹⁰⁹ There appears to be “a little more stress in dual-earner homes” than in homes where the mother is not employed.¹¹⁰ Similarly, parents in families with employed mothers read to their children less,¹¹¹ and do not eat their main meal together as often.¹¹² Employed mothers report getting approximately 4 hours less


¹⁰⁹. Id. at 318.

¹¹⁰. Id.

¹¹¹. Id.

¹¹². Id.
sleep per week than unemployed mothers, 113 "have about 12 hours less free time," 114 are also found to be "three times [more] likely to report always feeling rushed," and are twice as likely to "multitask most of the time." 115 They also are found to have more depressive symptoms, 116 which may detrimentally impact family life. So, in general, the quality of family life may be reduced in some measurable, if individually minor, ways by maternal employment. Working mothers are generally aware of these concerns, and time with children and related parenting concerns often are heavy influences upon how mothers resolve the work-family balance tension. 117

The other impact that has been studied extensively is the effect of maternal employment upon children—children's behaviors, development, struggles, and achievements. 118 Much of the research focuses on surrogate care for children of working mothers. Again, the data results are widely varied. 119 One of the leading researchers, Jay Belsky, found in his early research that high quality (university-affiliated) child care had no measurable negative impact upon children. 120 However, he continued his research and soon found that children in the more common (less elite) day care programs experienced a wide array of detrimental effects, which provoked a lot of controversy (and personal attacks upon Dr. Belsky). 121

Interestingly, it appears that children in higher socioeconomic status families may be more negatively affected by maternal employment than children in families with a lower socioeconomic status, as the costs and

113. Id. at 321.
114. Id.
115. Id.
118. See, e.g., NICHD Study of Early Child Care and Youth Development - Study Overview, NAT'L INST. OF CHILD HEALTH & HUM. DEV., http://www.nichd.nih.gov/research/supported/seccyd/overview.cfm (last updated Jan. 11, 2012) (Under the auspices of the National Institutes of Health, "[t]he NICHD Study of Early Child Care and Youth Development (SECCYD) is a comprehensive longitudinal study initiated by the NICHD to answer questions about the relationships between child care experiences, child care characteristics, and children’s developmental outcomes."); Lois Wladis Hoffman, Effects of Maternal Employment in the Two-Parent Family, 44 AM. PSYCHOLOGIST 283, 283 (1989) (Increased maternal employment “has stimulated new public concern and increased research activity focused on the effects of maternal employment on the young child, and particularly the infant.").
121. Id. at 37.
losses from mother absence in the former are higher. The deprivation of a highly competent mother and substitute of a surrogate caregiver has greater negative impact upon children’s cognitive, academic, behavioral, and emotional functioning than deprivation of a less-capable mother. However, the negative effects on children of maternal employment have also been shown to be greater in low-income families in circumstances in which the mothers are more stressed and in which the quality of the surrogate child care is poorer.

Although maternal employment anytime in the first year of a child’s life negatively affects the cognitive and behavioral outcomes of white children, another study found that the effects are especially significant if the mother returns to work prior to the fourth quarter of that year. Both the negative cognitive effects and the negative behavioral outcomes also showed some signs of persisting to the ages of seven or eight. However, other studies have concluded that early maternal employment shows few significant effects on a child’s cognitive, academic, behavioral, or emotional functioning.

The timing of a mother’s return to the labor force earlier in a child’s life is associated with an increase in the negative effects to the child. One study of the intellectual ability of four-year-olds found maternal employment to negatively affect children’s intellectual ability only if the mother returned to work in the first year of the child’s life. Likewise, the length of time that the mother works outside the home may also affect the degree to which her employment impacts the development of her children; some studies indicate that the negative effects of maternal employment on the achievement of elementary and high school students were stronger the longer the mother worked.

Some studies report that the negative cognitive effects and the negative behavioral outcomes persisted in children to the ages of seven

123. Wen-Jui Han et al., The Effects of Early Maternal Employment on Later Cognitive and Behavioral Outcomes, 63 J. MARRIAGE & FAM. 336, 351 (2001) (concluding that the employment of “a cognitively stimulating mother” is more detrimental to a child’s cognitive development than the employment of a less cognitively developed mother); Elizabeth Harvey, Short-Term and Long-Term Effects of Early Parental Employment on Children of the National Longitudinal Survey of Youth, 35 DEVELOPMENTAL PSYCHOL. 445, 455 (1999). It is reasonable to speculate that, perhaps, the opposite is also true; substitution of a highly competent surrogate parent for an incompetent parent may in some ways benefit the child.
124. Han, supra note 123, at 344, 346.
125. Id. at 351–52.
126. Id. at 346, 351.
127. Harvey, supra note 123, at 455.
128. Desai, supra note 122, at 557.
or eight, while other studies indicate that early maternal employment shows few significant long-term effects on a child’s cognitive, academic, behavioral, or emotional functioning. Race and gender also may be associated with the effect of maternal employment on the development of children.

Recent research seems to show that there may be some linkage between aggression in children and adolescents and some surrogate mothering (day care), though high quality day care in which language skills are developed may have a buffering or positive effect. Children who spend much time in day care in the first three years of life may have retarded development of stress coping skills and long-term memory consolidation. It appears that the more time a child spends in surrogate child care in the first four-and-one-half years of life, regardless of quality or type, is related to the child having more problem behaviors, less social competence, and poorer academic work habits in the third grade. However, higher quality child care and more time in such day-care centers also predicted better cognitive, linguistic, and academic

130. Id.; see also Han, supra note 123, at 346, 351.
131. Harvey, supra note 123, at 455.
132. Milne, supra note 129, at 135–38 (finding negative effects only in white elementary and high school students); Han, supra note 123, at 351–52 (finding significant negative effects on the behavioral and cognitive outcomes of only white children).
133. Jay Belsky, Quality, Quantity and Type of Child Care: Effects on Child Development in the U.S., in SUBSTITUTE PARENTS: BIOLOGICAL AND SOCIAL PERSPECTIVES ON PARENTING ACROSS HUMAN SOCIETIES, 304 (Gillian Bentley & Ruth Mace eds., 2009) (showing that when low levels of mother sensitivity were coupled with more time spent in non-maternal care, children showed higher levels of aggression and disobedience, regardless of child care quality or type, and more time in child care centers was associated with greater cognitive-linguistic development and increased aggression and disobedience).
achievement.\textsuperscript{137}

To some degree, the disadvantages and advantages of non-daycare child rearing are linked to the time (and quality) of maternal hands-on parenting. With more interaction with competent mothers, children seem to develop more fully and faster than children with less interaction with their competent mothers.\textsuperscript{138} If their mothers are not competent, day care childrearing may provide advantages.\textsuperscript{139}

Neglect of responsible parenting by fathers is an equally serious and widespread problem that has profound detrimental impact upon children. For example, Professor Paul Amato has reported that: “Regardless of the quality of the mother-child relationship, the closer [sons and daughters] were to their fathers, the happier, more satisfied, and less distressed they reported being.”\textsuperscript{140} Fathers and mothers nurture and express love for their children in different ways, both of which contribute distinctly to healthy child development.\textsuperscript{141} Delinquency rates among boys whose father is absent from their home is significantly higher than the rate for boys with a father at home.\textsuperscript{142} “[D]aughters raised outside of intact marriages are approximately three times more likely to end up young, unwed mothers than are children whose parents married and stayed married.”\textsuperscript{143} “The most authoritative evidence on children growing up in single-parent
families (most often headed by single mothers) concluded that such children are three times more likely to have a child out of wedlock, twice as likely to drop out of high school, 1.4 times more likely to be idle (out of school and out of work) and 2.5 times more likely to be teen mothers. Apart from family breakup or nonformation, father-absence due to father’s career-obsession or mismanagement of other priorities can be extremely harmful to father-deprived children and spouses. Thus, recognition of the indissolubility of parenthood is not just about post-breakup families with children, but it is equally applicable to ongoing families who struggle to cope with the work-family balancing challenge. Because parenthood is indissoluble, children will have needs and expectations and hopes regarding parental involvement and relationships regardless of their circumstances, and parents can only succeed or fail to be good parents in the moment—they cannot postpone or transfer or delegate or escape from their parental responsibilities. The tension between giving adequate time to fulfill commitments to their work (profession, business, career, employment, or calling) and giving adequate time to fulfilling parental responsibilities can only be successfully balanced by giving priority to parenting.

V. LEGAL INCENTIVES AND DISINCENTIVES FOR PARENTS TO "ABANDON THEIR CHILDREN"

Professor Parkinson’s book is not just about the indissolubility of parenthood, but it is especially about the impact of family laws on parenting. That is critical, for laws can have profound impact upon human behavior. In particular, family laws can recognize, teach, highlight, facilitate, reinforce, support and incentivize responsible

144. Byrd, Gender Complementarity, supra note 141, at 213.
behavior associated with indissoluble parenthood. Such laws may also conceal, dismiss, obfuscate, neglect, or weaken responsible parenthood by incentivizing behavior that denies, ignores or dismisses the responsibilities associated with the indissolubility of parenthood. Family law can influence not merely families in the process of divorce of post-dissolution proceedings, but can influence how family members behave during marriage. For example, some scholars have expressed "concerns about the effect of no-fault divorce on ... members of intact families ... because no-fault divorce creates incentives for many adults to focus more on their own self-interest, and less on that of their family." Thus, by the mid-1980s, the adoption of unilateral-no-fault laws and the rejection of reliance upon marriage as a significant legal distinction in welfare "effectively eliminated marriage's mediating role in defining the parameters of family obligation."

Most of the influences, pressures, and centrifugal forces that pull parents away from good, quality parenting are not legal but are social, cultural, and in human nature. However, those pressures of the world, market, professions, job, society, personal interests, groups, church, economy, and human nature can be buffered, tempered, and, to some extent neutralized or reduced, by good family laws. Or these negative

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146. Research has long confirmed that family laws have some influence upon human behavior and also that the extent of influence generally corresponds to the degree to which the laws are perceived to reflect the mores (moral order) of society regarding the subject of the law. See Elaine Walster et al., New Directions in Equity Research, 25 J. PERSONALITY & SOC. PSYCH. 151 (1973). See generally JULIUS COHEN ET AL, PARENTAL AUTHORITY: THE COMMUNITY AND THE LAW 195–98 (1958).

147. Allen M. Parkman, Reforming Divorce Reform, 41 SANTA CLARA L. REV. 379, 379–80 (2001). Parkman asserts that "no-fault divorce created incentives for both spouses to work full-time outside the home, even when those choices reduce the welfare of the family. See Allen M. Parkman, Why Are Married Women Working So Hard?, 18 INT'L REV. L. & ECON. 41 (1998) (describing how no-fault divorce is shown to cause married women to work longer hours); Allen M. Parkman, Unilateral Divorce and the Labor-Force Participation Rate of Married Women, Revisited, 82 AM. ECON. REV. 671 (1992) (showing how no-fault divorce causes married women to increase their work outside the home). Although not attributing the change to no-fault divorce, others have observed that married women have been working more hours at a job and in the home in the period since no-fault divorce was introduced. See VICTOR R. FUCHS, WOMEN'S QUEST FOR ECONOMIC EQUALITY 78 (1988). Other commentators have criticized the current state of marriage noting that liberation and self-fulfillment have imposed a substantial cost on others, especially children. These authors frequently see the problem as being a shift in values and, therefore, they do not see no-fault divorce as being at the core of the problem. See BARBARA DAFOE WHITEHEAD, THE DIVORCE CULTURE (1997) (showing how the nation's 30-year experiment with divorce has created a low-commitment culture full of broken families and shattered lives); MAGGIE GALLAGHER, THE ABOLITION OF MARRIAGE: HOW WE DESTROY LASTING LOVE 380 n.2 (1996) (showing the devastating effects a broken marriage has on everyone it touches with the government contributing to its decline)." Id. at 380 n. 2. See generally ALLEN M. PARKMAN, GOOD INTENTIONS GONE AWRY: NO-FAULT DIVORCE AND THE AMERICAN FAMILY (2000).


149. Allen M. Parkman, Good Incentives Lead to Good Marriages, in REVITALIZING THE INSTITUTION OF MARRIAGE FOR THE TWENTY-FIRST CENTURY 69 (Alan J. Hawkins et al. eds.,
pressures and obstacles to quality parenting can be exacerbated and magnified by ill-considered or poorly drafted family laws. Laws can create incentives for good parenting and disincentives for abandoning parenting. Or laws can create incentives for superficial, shallow, neglectful, and inadequate parenting. They can also provide disincentives for parents to make important investments of themselves in the lives of their children.

Some specific family law doctrines and rules may give incentives for parents to engage in good parenting behaviors that invest in their children. Some examples include (1) primary caretaker presumptions in custody laws (especially if they are holistic, comparative, and not magnified by ill-considered or poorly drafted family laws).

2002) available at http://www.unm.edu/~parkman/Revitalizing.pdf (general review of economic incentive theory applied to laws designed to support marriage). See generally, Allen M. Parkman, The Contractual Alternative to Marriage, 32 N. KY. L. REV. 125, 126 27 (2005) ("[S]ubstantial social science literature suggests that individuals have always tended to base their decisions on their perceived self-interest. . . . [T]he problem with having a successful marriage is not due to people basing decisions on their self-interest so much as how they interpret how decisions will improve their welfare. Based on their perceived self-interest, people are making decisions that have reduced the likelihood that their marriage will be a success. Beyond the obvious need for love and physical attraction, the keys to a successful marriage are sacrifices on behalf of the relationship, the expectation of reciprocity by the other family members, and a commitment by both spouses to their relationship. With that in mind, the law should encourage people who desire a successful marriage to search diligently for a partner and then, when they make a commitment to that partner, to make decisions during the relationship that will increase the likelihood that it will be successful.").

150. Id. at 127 ("Current marital laws do not encourage these actions. When a couple marries, they enter into an arrangement over which they have very little control during it and potentially at its dissolution. On closer scrutiny, the statutes governing marriage in most states create perverse incentives that discourage people from taking the steps that are mostly likely to make their marriages a success. . . . By making divorce easier and often less financially costly to a divorcing spouse, this shift reduces the incentives for spouses to make a long-term commitment to their marriage. . . . Their self-interest encourages them to focus more narrowly on themselves and less on their family. Current marital statutes that permit unilateral divorce and regulate the financial and custodial arrangements at divorce do not accommodate the preferences of those people who view a long-term commitment as important in achieving a successful marriage."); Jana Singer, Divorce Reform and Gender Justice, 67 N.C. L. REV. 1103, 1115 (1989) (discussing how family laws create incentives for women to work part-time or full-time); Margaret F. Brinig & June Carbone, The Reliance Interest in Marriage and Divorce, 62 Tul. L. REV. 855, 869 (1988) (family law influences division of marital responsibilities during marriage, and inequities result upon divorce because it does not recognize the contributions and sacrifices of non-income earners or property-possessors). See generally PARKMAN, GOOD INTENTIONS, supra note 147, at 71 (discussion of perverse incentives resulting from adoption of no-fault divorce laws).

151. See generally MARGARET M. BRINIG, FROM CONTRACT TO COVENANT: BEYOND THE LAW AND ECONOMICS OF THE FAMILY 173 77 (2000) (explaining that marriage laws created incentives that influence who couples live in or leave their marriages); Margaret F. Brinig & Douglas W. Allen, "These Boots Are Made for Walking": Why Most Divorce Filers Are Women, 2 AM. L. & ECON. REV. 126 (2000) (asserting that self-interest drives the filing for divorce, and women do so first often in order to obtain a perceived advantage in getting custody of children); PARKMAN, GOOD INTENTIONS, supra note 147, (arguing that no-fault divorce laws created incentives to divorce); Judith T. Younger, Responsible Parents and Good Children, 14 L. & INEQUALITY 489, 517 (1996).

zero-sum in nature) that encourage parents to spend time with children, 153 (2) parental interference and alienation doctrines that respond to behaviors that undermine, discourage, or interfere with parenting by the other parent with the threat of change of custody, 154 (3) tax policies that give financial advantages to the caretaking parents (especially if they are comparative and not zero-sum in nature) and that encourage home ownership, 155 (4) international, federal, and state laws that disallow and punish child abduction, 156 and (5) legal efforts to promote predivorce counseling and support unhappy parents who want to try to save their marriages. 157 Policies that might be seen to give disincentives to parental


154. See Edward B. Borris, Interference with Parental Rights of Noncustodial Parent as Grounds for Modification of Child Custody, 8 DIVORCE LITIG. 1, 1–2 (1997), available at http://www.fact.on.ca/info/pas/borris97.htm (reviewing cases and finding that most states consider interference with visitation appropriate grounds for a change in primary custody); Celia Guzaldo Gamrath, Visitation Abuse v. Unlawful Visitation Interference – Is There Comfort for Noncustodial Parents? 91 ILL. B.J. 450, 468 (2003) (“Illinois courts clearly acknowledge the importance of the problem of visitation interference and other forms of parental alienation and have demonstrated the willingness to transfer custody to the other parent when the behavior becomes detrimental to the best interest of the child.”); Richard A. Warshak, Bringing Sense to Parental Alienation: A Look at the Disputes and the Evidence, 37 FAM. L.Q. 273, 294 (2003) (“With severe alienation, Gardner recommends transfer of custody to the alienated parent . . . .”); Rita Berg, Parental Alienation Analysis, Domestic Violence, and Gender Bias in Minnesota Courts, 29 L. & INEQUALITY 5, 7–9 (2011) (distinguishing parental alienation from parental alienation syndrome and noting that transfer of custody is recommended only in severe cases).

155. See generally Douglas W. Allen & Margaret F. Brinig, Child Support Guidelines: The Good, the Bad and the Ugly, 45 FAM. L.Q. 135, 150 n.40 (2011) (“Under U.S. tax law, there are often considerable advantages to custodial households in obligor states . . . because the custodial parent is the head of a household and able to claim a larger standardized deductions. The custodial parent is likely the only one who can claim the dependent exemptions, and custodial parents are the only ones eligible for child tax credits, such as children’s tax exemptions, earned income tax credits, and dependent care tax credits.”).

156. See generally Susan Kreston, Prosecuting Parental Kidnapping, 15 NOTRE DAME J.L. ETHICS & PUB. POL‘Y 533, 533 (2001) (“Parental kidnapping is a crime, recognized as such in the United States by every state, the District of Columbia, and the federal government.”); Catherine F. Klein et al., Border Crossings: Understanding the Civil, Criminal, and Immigration Implications for Battered Women Fleeing Across State Lines with Their Children, 39 FAM. L.Q. 109, 117 (2005) (“Currently, almost every state criminally forbids custodial interference by parents or relatives of the child.”); Wardle, Global Perspective, supra note 89, at 448–49 (“The federal PKPA denies interstate full faith and credit recognition to custody decrees obtained by a parent who has abducted his or her child to another state. Congress also amended the Fugitive Felon Act to make it applicable to parents who abduct or retain their children in violation of state law and extended the Federal Parent Locator Service to abducted children. Congress additionally enacted the Prosecutorial Remedies and Other Tools To End the Exploitation of Children Today Act of 2003 (PROTECT Act), which establishes criminal liability for attempting to remove a child from the United States with the intent to interfere with another person’s legal custody of the child.”).

investment include (1) doctrines that reward unilateral relocation (especially for personal adult reasons) that disrupts parental association with an active co-parent, 158 (2) policies that do not enforce co-parenting, joint custody, or visitation, 159 (3) laws that allow quickie, unilateral, no-fault divorces when there are children, 160 (4) policies that fail to recognize the social and child-benefit value of homemaking or that penalize homemakers in social-program eligibility or with rigid income imputation in child support or alimony computation, 161 and (5)


158. PARKINSON, supra note 1, at 150-80 (discussing the conundrum of post-divorce residential move by custodial parent); id. at 179 (The relocation problem must involve a balance between post-divorce autonomy and the best interest of the child. “Thus far, the empirical research on relocation would not appear to support a general assumption of parental relocation being in the best interest of the child.”); Charles P. Kindregan, Jr., Family Interests in Competition: Relocation and Visitation, 36 SUFFOLK U. L. REV. 31, 32, 38 (2002) (contrasting the importance of stability in child’s relationship with residence parent and courts’ increasing deference to unilateral relocation preferences of custodial parents).


160. Pamela Laufer-Ukeles, Reconstructing Fault: The Case for Spousal Toris, 79 U. CIN. L. REV. 207, 237 (2010) (“Scholars have voiced serious concern over the ease of unilateral no-fault divorce in light of the potential harms of divorce on children. Several commentators have argued that allowing ‘easy divorce’ in the no-fault system does not adequately incentivize parents to work out their problems and remain in the marriage . . . . Scholars and legislators have therefore proposed a two-tier divorce system, making it harder for couples with children to divorce. William Galston has even proposed eliminating unilateral no-fault divorce for marriages with minor children.”); Elizabeth S. Scott, Rational Decisionmaking About Marriage and Divorce, 76 VA. L. REV. 9, 36 (1990) (“Empirical research clearly associates divorce with detrimental effects on children. If the law condones the harm by facilitating quick and easy divorce, then some reevaluation is in order in light of the state’s responsibility toward children’s welfare.”). A Time/CNN survey May 7-8, 1999, reported that 61% of Americans surveyed agreed that it should “be harder than it now is for couples with young children to get a divorce.” See Walter Kirn, The Ties That Bind: Should Breaking Up Be Harder to Do? The Debate Over Easy Divorce Rages On, TIME, Aug. 18, 1997, at 49 (citing a poll by Time/CNN, May 7-8, 1997); see also William J. Doherty & Leah Ward Sears, Delaying Divorce to Save Marriages, WASH. POST, Oct. 19, 2011, available at http://www.washingtonpost.com/opinions/delaying-divorce-to-save-marriages/2011/10/19/gIQAKh0f1L_story.html.

government programs and rules that financially reward parents for not marrying or for leaving marriages.\textsuperscript{162}

The matter is complicated.\textsuperscript{163} For example, while the primary caretaker doctrine is an example of a positive law that generally gives incentive to spend time parenting, if such a law is written to be a zero-sum rule, all-or-nothing, recognizing the parental time, commitment, attention, and contributions of only the primary caretaker, then its effect, ironically, may be to discourage parental time and commitment by the other parent whose obligations to work to provide for the family will prevent him or her from winning the zero-sum game and thus from getting any legal recognition for other critical parenting contributions, time, and commitment.\textsuperscript{164} (It also must be remembered that nonlegal incentives can be just as effective in some cases as legal incentives to good parenting.)\textsuperscript{165}

While there is not space or place in this Article to fully examine and discuss how laws create incentives or disincentives for good parenting, it is important to raise the subject and to acknowledge the potential influences of good and bad legal policies. Recognition that laws can create incentives or disincentives that influence the quality of parenting is the first step toward developing rational child-centered family law entitlement to marriages of a specific duration (focusing on long-term marriages) fails to recognize the potentially long-term economic impact of childcare/homemaking duties which can arise even in marriages of relatively short duration."). See generally Lynn D. Wardle, \textit{A Justification of Alimony in the Public Interest}, \textit{1 UTAH J. FAM. L.} 40 (2010) (economic value of homemaking discussed).

162. See, e.g., Allen M. Parkman, \textit{The Government’s Role in the Support of Children}, \textit{11 B.Y.U. J. PUB. L.} 55 (1997). See generally Allen & Brinig, supra note 155, at 135 (stating that child support guidelines create incentives for spouses to divorce and seek custody and support payments; income shares approach provides no perverse incentives but the percentage-of-obligor-income approach does, and the Canadian child support guidelines “creates very large negative incentives for marriage stability”).


164. Thus, one of the strong criticisms of the primary caretaker presumption is that it is gender-biased in favor of the kind of parenting contribution that mothers make most (time, nurturing) and against the kind of contributions that fathers make (financial, play, intensity). Survey, \textit{Gender Fairness Task Force Report}, \textit{43 S.D. L. REV.} 642, 644 (1998); Cynthia A. McNeely, Comment, \textit{Laggard Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court}, \textit{25 FLA. ST. U. L. REV.} 891, 909-910, 918 (1998); Ronald K. Henry, \textit{“Primary Caretaker”: Is It a Ruse?}, \textit{17 FAM. ADVOC.}, Summer 1994, at 53. A similar dilemma exists with other custody presumptions; equal custody presumptions can distort negotiations for parents who have “asymmetrical preferences for custody. . . .” Elizabeth S. Scott, \textit{Pluralism, Parental Preference, and Child Custody}, \textit{80 CAL. L. REV.} 615, 651 (1992).

reforms that will support parenting and discourage abandoning parental responsibilities during marriage (as well as after dissolution).

VI. CONCLUSION: A SISYPHEAN TASK AND OPPORTUNITY

Professor Parkinson has correctly warned: "Facing up to the indissolubility of parenthood is one of the great challenges of our time." But it is not a hopeless challenge. In the words of Pulitzer Prize-winning author Marilynne Robinson, "[Because t]here is remembrance, and communion, . . . families will not be broken. Curse and expel them, send their children wandering, drown them in floods and fires, and old women will make songs out of all these sorrows and sit in the porches and sing them on mild evenings."

As imperfect mortals, we all fail as parents sometimes and in some ways. We all abandon and neglect the needs of children because the pulls and pressures of the world we live in compel us to do so—force us to do so sometimes. The external pressures for abandoning children are constant and will never abate, so they must be balanced by similarly constant counter-pressures that motivate us and give us incentives to parent, care, love, teach, and spend lots of time (quiet time as well as busy time) with our children. Creating such counter-pressures is one of the chief functions of the law.

Our families matter and the story of any family is not short. The history of our parenting (in our individual families and in our society) should not be written prematurely. Today, as in the most ancient sacred stories, "the first event is known to have been an expulsion, and the last is hoped to be a reconciliation and return." So while we recognize the deterioration of parenting on both social and individual levels, the story is not finished; the tale has not ended; and it is not too late to reform our laws and our lives for the sake of our children. There still is time to salvage and renovate, time to rebuild, restore, and renew the tasks of parenting. But we hesitate and waffle. As Professor Parkinson puts it, it is time to quit halting between two opinions, time to choose, and commit to renew our dedication and duty to parenting and parental responsibilities.

166. PARKINSON, supra note 1, at 279.
167. ROBINSON, supra note 26, at 194.
169. ROBINSON, supra note 26, at 192.
170. PARKINSON, supra note 1, at 269–75.
Appendix
Sovereign Nations (180 of 193) with Constitutional Provisions Regarding Parents and/or Children
(July 2011)
Based on data compiled by David Roscheck (J.D. candidate, 2012), and edited by Lynn Wardle (with special thanks to Denny Gee and Jessica McDonald)

Argentine Republic: Arts. 75, 89, CONSTITUCIÓN NACIONAL [CONST. NAC.]*
Australia: AUSTRALIAN CONSTITUTIONS 51 (amended 1977).*
Bahamas: BAHAMAS CONST., 1973, preamble, arts. 3, 5, 6, 7, 8, 9, 14, 19, 122, 123 (amended 2002).
Bahrain, State of: BAHRAIN CONST., 2002, art. 5.
Bhutan, Kingdom of: **PARLIAMENTARY ENTITLEMENTS ACT, 2008**, arts. 2, 6, 8, 9, 23.


Brazil, Federative Republic of: **CONSTITUIÇÃO FEDERAL [C.F.]** arts. 5, 6, 7, 12, 24, 201, 203, 208, 226, 227, 228, 229 (amended 2010).


Burundi, Republic of: **BURUNDI POST-TRANSITION CONST. (INTERIM)**, 2004, arts. 12, 19, 30, 44, 45, 46.


Chad, Republic of: **CHAD CONST., 1996**, arts. 36, 38, 39, 62, 125.


Congo, Republic of: **CONGO CONST., 2001**, arts. 31, 32, 33, 34.


Cote D’Ivoire: **CÔTE D’IVOIRE CONST., 2000**, arts. 6, 8, 35.


Denmark: RIGES GRUNDLOV, 1953, art. 76.


Finland, Republic of: FINLAND CONST., 2000, arts. 5, 6, 9, 12, 19 (amended 2007).


Gambia, Republic of The: GAMBIA CONST., 1996, arts. 9, 10, 16, 29, 36, 176, 216.


Germany, Federal Republic of: GRUNDEGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDEGESETZ] [GG] [BASIC LAW], May 23, 1949, BGBl. I arts. 3, 6, 7.


Guinea-Bissau, Republic of: GUINEA-BISSAU CONST., 1984, arts. 5, 25,

Haiti, Republic of: HAITI CONST., 1987, arts. 11, 32-5, 32-6, 260, 261.


India: INDIA CONST. arts. 5, 6, 8, 15, 21A, 24, 28, 39, 42, 45, 51A, 66, 350A.


Japan: NIHONKOKU KENPÔ [KENPÔ], art. 27.


Korea, Republic of: DAEHANMINKUK HUNBEOB [HUNBEOB] arts. 31, 32 (S. Kor.).


Kuwait: KUWAIT CONST., 1962, arts. 4, 9, 10, 40.

Lesotho, Kingdom of: Lesotho Const., 1993, arts. 13, 27, 32, 38, 39, 43, 150, 151.
Luxembourg, Grand Duchy of: Luxembourg Const., 1868, art. 6 (amended 2009).
Mexico: Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended in 2007, arts. 2, 4, 18, 20, 30, 31, 82, 123, Diario Oficial de la Federación [DO], 5 de Febrero de 1917.
Montenegro: Montenegro Const., 2007, arts. 30, 64, 69, 72, 73, 74, 75, 120.
Mozambique, Republic of: Mozambique Const., 1990, arts. 11, 12, 14, 15, 17, 18, 19, 23, 24, 56, 66, 69, 118, 179.
Nauru, Republic of: NAURU CONST., 1968, arts. 11, 72, 76.
Netherlands, Kingdom of the: Grondwet voor het Koninkrijk der Nederlanden (Constitution of the Kingdom of the Netherlands) [Gw.] arts. 25, 26, 27, 28, 34, 37 (amended 2002).
Norway, Kingdom of: NORWAY CONST., 1814, arts. 2, 6, 12, 47, 92, 100 (amended 2004).
Oman, Sultanate of: OMAN CONST., 1996, art. 5.
Panama, Republic of: PANAMA CONST., 1972, arts. 9, 10, 28, 52, 56, 59, 60, 61, 63, 70, 72, 91, 94, 98, 107, 110, 113, 293, 326 (amended 2004).
Philippines, Republic of the: CONST. (1987), arts. II, VI, XIII, XIV, XV.
Saudi Arabia, Kingdom of: SAUDI ARABIA CONST., 1992, ch. 3, arts. 9, 10.
Serbia, Republic of: SERBIA CONST., 2006, arts. 37, 38, 43, 44, 63, 64, 65, 66, 68, 97, 190.
Sierra Leone, Republic of: SIERRA LEONE CONST., 1991, arts. 8, 9, 13, 22, 24, 120, 161, 162, 178.
Southern Sudan Interim: SOUTHERN SUDAN CONST. (INTERIM), 2005, arts. 9, 20, 21, 25, 37, 42, 43, 48, 121.
Sudan Interim National: SUDAN NAT’L CONST. (INTERIM), 2005, arts. 7, 14, 15, 32, 36, 47, 75.
Sweden, Kingdom of: Regeringsfromen [RF] 2, 8 (amended 2002).
Thailand, Kingdom of: THAILAND CONST. 2007, secs. 34, 40, 52, 80, 84, 115, 152, 259, 265, 269.
Trinidad and Tobago, Republic of: TRINIDAD & TOBAGO CONST., 1976, arts. 4, 17, 133, 134 (amended 2000).
Tuvalu: TUVALU CONST., 1986, arts. 9, 17, 18, 45.
Zimbabwe, Republic of: ZIMBABWE CONSTITUTION, 1979, arts. 5, 6, 7, 10, 13, 14, 15, 16, 19, 20, 21, 26, 80, 81, Schedule 6, Article 1, Schedule 6, Article 2 (amended 2009).

(* = nonsubstantive provision only)