



Disability, parenting & the rights of the child

David McConnell, PhD



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UN Convention on the Rights of Persons with Disabilities (2006)



- affirms the right of persons with disabilities to marry and found a family (Article 23)

requires states parties to

- “take effective action and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships...” (Article 23 (1)), and
- “...render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.” (Article 23 (2)).



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obstinate controversy



- *What about the children?*
- Are such concerns ‘valid’?
- *Where do these concerns emanate from?*



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controversy driven by...

- Cultural injustice
 - Disrespect
 - Non-recognition
- Culturally 'hegemonic' discourse on parental responsibility
- *Culturally pervasive 'risk adversity' (particularly with respect to children, 'bubble wrap' generation)*





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Rights discourse



- Individualizing
- Attenuating parent-child & strengthening child-state link
- Supporting adversarial child protection framework/process
- ‘Naturalizing’ child removal



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Irving N., Dawn, N., & Sandra N
v.

Rhode Island Dept. of Children,
Youth, and Families



- “a termination-of-parental-rights proceeding does not constitute the sort of service, program or activity that would be governed by the dictates of the ADA” (i.e. dictate of equal, non-discriminatory treatment)
 - “[Such] proceedings are held for the benefit of the child, not the parent. Therefore, the ADA is inapplicable when used as a defense by the parent(s) in proceedings such as here under review”.
- US Supreme court decision rejecting the petition for a writ of certiorari...



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A relational approach to 'rights'



- world comprised of relationships rather than of people standing alone
- Emphasis on prevention and preservation
- Strengthening rather than disrupting parent-child relationship
- Communicative rather than adversarial process



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Parents' v. children's rights



- *inviolable Children's rights*
- *conditional Parent's rights*
- paramountcy principle: the best interests of the child
- principle of the primary importance of the family to the child



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Communicative v. instrumental reasoning

- The 'right' outcome is necessarily the result of a genuine 'discourse' oriented to 'understanding'
- What are the conditions necessary for a just discourse?



Principles for a 'just' discourse

1. that all persons affected by the outcome and capable of speech and action can freely participate in the process of argumentation—*the principle of universal moral respect* (Benhabib, 1990);
2. that participants have an equal right to introduce and question claims, to put forward reasons, to express needs, interests, desires and so on—*the principle of egalitarian reciprocity* (Benhabib, 1990);
3. that no participant be prevented from exercising their right to, and of, participation—*the principle of non-coercion* (Owen, 1996);
4. that participants be open to the other, to listen to and empathise with each other—*ideal role taking* (Flyvbjerg, 1998);
5. that participants openly explain their goals and intentions, and in this connection desist from strategic action—*transparency* (Flyvbjerg, 1998).



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New books

