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NEITHER DYAD NOR TRIAD: CHILDREN'S RELATIONSHIP INTERESTS WITHIN KINSHIP CAREGIVING FAMILIES

Sacha M. Coupet*

Utilizing a research design lens as a platform for exploring children's relationship rights, this Essay examines first, the limitations of a rights-based framework and second, insufficient participation by children in decision-making regarding their access to and interest in relationships with significant others. This Essay posits that neither the dyadic rights-based framework in domestic relations nor the, ostensibly, triadic one in child welfare serve the interests of children, since children's rights are invariably subordinated to those of adults and the state. In place of a rights-based approach, this Essay endorses an interests-based model more attuned to the holistic aim of child well-being. Acknowledging that even if an interests-based approach were to grow in favor, this Essay highlights the limitations of its implementation since the proverbial "best interests of the child" remains too attenuated as a critical decision-making factor due to currently limited mechanisms of children's participation. This Essay argues that these limitations are particularly harmful to the development of a meaningful discourse on children's relationship rights.

I was invited to share my reflections on the broad issue of how best to protect the legal interests of children and children's relationship rights, with a specific focus on how these issues impact kinship caregiving families¹ and the children being raised within them. Although this is a rich topic, I have chosen to narrow the scope of my comments to focus on two specific points that bear on the relationship rights of children: (1) the limitations of a rights-based framework, and (2) the pressing need to develop meaningful mechanisms to facilitate children's rights to participate in the

* Assistant Professor of Law and Director of Research Civitas Child Law Center, Loyola University Chicago School of Law; Ph.D., University of Michigan; J.D., University of Pennsylvania. I extend my sincere thanks to Professor Don Duquette, Director of the University of Michigan Law School Child Advocacy Law Clinic, for the invitation to participate in this remarkable anniversary celebration and critical examination of where child advocacy and child welfare has arrived in the thirty years since the inception of CALC. Kudos to Don and to all of the incredibly talented, innovative, and pioneering child advocates who have passed through CALC's doors, many of whom we were fortunate to hear from throughout the symposium. My thanks, as well, to Brigitte DeLay (Loyola J.D., 2006) whose concern for children's right to participate and tireless work on behalf of child well-being continue to inspire me.

1. Kinship caregiving is generally understood to be "the full-time nurturing and protection of children by relatives, members of their tribes or clans, godparents, stepparents, or any adult who has a kinship bond with a child." Child Welfare League of America: Kinship Care: Fact Sheet, <http://www.cwla.org/programs/kinship/factsheet.htm> (last visited June 11, 2007).

decisions that concern them. Reframing the existing discourse surrounding the balance between children's and parents' rights and expanding the range of input into this discussion will undoubtedly inform the best interests of the child standard in a way that serves broader aims of child well-being, beyond just custodial rights.

As I currently teach a course entitled Science in the Law, I tend to observe things in my environment through a research design lens, focusing on exploring the ways in which flaws in research design may yield questionable outcomes and, more importantly, on how those flaws may inappropriately orient the parameters of the ensuing discussion. Applying a research design perspective to the topic at hand, in order to appropriately assess the legal interests and relationship rights of children, one must first *operationalize* the concept of children's legal interests and relationship rights and collect relevant data in a scope and manner that will best facilitate this assessment. In the research design context, *operationalization* is the process of defining a concept through the operations by which we measure them.² The process of developing a working definition of these terms is inevitably shaped by the larger contextual or theoretical lens within which a definition is generated. Defining the terms "children's legal interests" or "children's relationship rights" requires acknowledging the role these terms would play in decision-making about children's lives as well as the overarching social, psychological, political, and historical framework that influences their import and meaning.

Perhaps it might help to begin this discussion with an anecdote that reflects the value of developing clearly operationalized concepts and the potential pitfalls of unsound data collection. This anecdote also reveals the genesis of my interest in the topic of kinship caregiving and serves as a cautionary tale for those quick to dismiss the import of a child's perspective on relational rights and interests. As a therapist-in-training at the University of Michigan Center for the Child and the Family ("UCCF"), 1993–1995, I

2. I use the phrase "research design perspective" in the colloquial sense as distinguished from "operationalize," referring to "putting in practice" or "putting into operation." JOHN MONAHAN & LAURENS WALKER, *SOCIAL SCIENCE IN LAW* 55 (6th ed. 2006) ("The universally accepted way to define variables in the social sciences is to specify the procedures or operations used to measure them."). For example, in a study exploring the relationship between two variables, child well-being and foster care spending, the child well-being variable may be operationalized by measuring self-report of comprehensive factors indicative of well-being, including, for example, presence, absence or degree of behavioral difficulties, or physical and emotional health. Note that the child well-being variable is more difficult to operationalize than foster care spending, which may be more easily measured by dollars spent, either per child in the aggregate or in any other measured form. As one can easily surmise, it is critical to sound research design that the variables under review—especially when subjective—be specifically defined by the measures or concepts used to assess them.

worked with a number of children who did not reside on a full-time basis with their legal parents, many since birth. This fact, however, was not always made clear at the outset of treatment. In one such case, a middle-aged African-American woman sought treatment for her four year-old charge whose behavior in Head Start³ had drawn the attention of staff such that she was referred to UCCF. Apart from the typical assessment of child well-being, what struck me about this child at first was her curious use of language relating to relationships. In her play and direct speech, she made frequent but unremarkable references to her “mother,” who I had assumed to be the middle-aged woman who had brought her in for treatment. I did not learn until the following session that the person to whom she referred repeatedly as “mother” was, in fact, her paternal grandmother. The child had been left in her full-time care for the past 3 years. As a new psychology intern, my antennae were raised. I ruminated anxiously over this child, questioning the strength of her reality testing given her distorted attribution of parental roles. What I failed to grasp, however, was that this child’s operationalization of the term “mother” was really the most accurate reflection of her reality—a critical observation that I might have otherwise dismissed had I not listened to and valued her voice. Too often, professionals, particularly legal advocates working with children, fail to appreciate the richness of relationships that defy conventional norms and those that, although central to children, have a subordinated place in a rights-based discourse. As professionals engaged in the eternally perplexing search for children’s elusive best interests, we are only sufficiently informed when we can appreciate the meaning attached to the terms we use and when our data collection tools appropriately capture each child’s viewpoint.

Although generating a precise definition of the concept of children’s relationship rights exceeds the scope of this brief Essay, it is still worth noting how the mere operationalization of these terms within a rights-based framework tends to limit the manner in which children’s interests emerge, for interests tend to be outweighed by rights.⁴ Not only will important and significant *interests* continue to

3. Created in 1965 as part of President Lyndon Johnson’s War on Poverty, Head Start is a federally funded program that focuses on assisting children from low-income families through comprehensive school readiness services for children ages three through five. Administration for Children and Families: Office of Head Start, <http://www.acf.hhs.gov/programs/hsb> (last visited June 11, 2007).

4. Barbara Bennett Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parents’ Rights*, 14 CARDOZO L. REV. 1747, 1812 (1993) (“Rather than seeking to provide adults for children who need them [an interests-based approach], law seems intent on securing children for adults who claim them [effectively, a rights-based approach].”).

be subordinated within an operationalization that myopically registers, recognizes, and prioritizes *rights* only, but there is a danger that those interests can become largely irrelevant.⁵ If the operationalization of these terms focuses on recognized rights alone, it is rights, rather than interests, that will always hold sway and our discourse will continue to reflect a contest of rights, typically those of competing adults. To put the danger of a myopic fixation on rights in colloquial terms, if the only tool in your toolbox is a hammer, every problem you endeavor to solve looks suspiciously like a nail.

In its current state, the rights-based regulation of children's relational lives is wholly sensitive to the competing rights of *parents*, either against one another or the state, but is insufficiently keyed to *children's* psychological, emotional, and developmental needs. It remains indeed more attuned to a hierarchy of adult rights of access to children.⁶ This is because the contextual lens through which the issue is viewed places the debate over the right of control over children's relational bonds squarely between competing adults, or in the case of children in the child welfare system, between adults and the state. Of course, this debate is far from novel. Critics have long decried the fact that in the pursuit of the broadly-defined "best interests of the child" standard, it is all too common for the state to cause harm to the same vulnerable population it strives to protect.⁷ This is particularly acute in the context of the state's exercise of authority to make decisions about the relational lives of children, a daunting dilemma that is often resolved on the basis of, at least in part, "supposed rights and/or interests of people

5. *Id.*

6. Woodhouse, *supra* note 4, at 1819 ("The possessive tilt of rights rhetoric and its focus on adult interests inexorably shifts our concern from children to adults.").

7. See, e.g., JAMES DWYER, *THE RELATIONSHIP RIGHTS OF CHILDREN 2* (2006); Hazel Glenn Beh & Milton Diamond, *The Failure of Abstinence-Only Education: Minors Have a Right to Honest Talk about Sex*, 15 COL. J. GEN. & L. 12, 50 (2006) ("Children's rights advocates argue that, with regard to issues concerning children, the conflict should not be viewed as principally one of balancing state interests against parental rights . . . and [that] children's rights should not be subordinated to either state interests or parental rights."); Deborah Paruch, *The Orphaning of Underprivileged Children: America's Failed Child Welfare Law and Policy*, 8 J.L. & FAM. STUD. 119, 163 (2006) (noting that in certain child welfare proceedings the interests of children are subordinate both to parents and to the state); Elizabeth S. Scott & Robert E. Scott, *Parents as Fiduciaries*, 81 VA. L. REV. 2401, 2401 (1995) (noting that "as the emphasis of legal regulation has shifted to protecting children's interests, critics have targeted the traditional focus on parents' rights as impeding the goal of promoting children's welfare"); Elizabeth P. Miller, Note, *DeBoer v. Schmidt and Twigg v. Mays: Does the "Best Interests of the Child" Standard Protect the Best Interests of Children?*, 20 J. CONTEMP. L. 497, 497 (1994) (noting that "courts in the United States give lip service to the best interests of children, but uniformly subordinate those interests to the rights of parents and guardians").

other than the children immediately involved.”⁸ It is a discourse grounded in adult rights with only supposed consideration for the genuine interests of children.⁹

While children’s relationship rights and legal interests emerge in a variety of legal contexts, none arise more frequently than in the scope of domestic relations and child welfare law. Disappointingly, neither of these fora sufficiently focus on the topic at hand—children’s needs, interests, and rights.¹⁰ The private domestic relations framework still continues to reflect the competing possessory rights of parents over their children, although there is at least growing recognition of the need to better incorporate the views of children.¹¹ The primary focus in family law on parental autonomy and parental prerogatives, reinforced by the presumption that parents act in the best interests of their children, shifts the focus away from a meaningful inquiry into what would actually be in the child’s best interests. This presumption was reinforced in the landmark visitation case of *Troxel v. Granville*.¹² In this decision, the Supreme Court declared a Washington third-party visitation statute, under which grandparents sought greater access to their granddaughters, unconstitutional. In the plurality opinion reflecting the varied views of the members of the Court, Justice O’Connor reinforced the constitutional right of fit parents to direct the care of their children, including all decision-making with respect to the persons with whom their children have contact.¹³ Framed within a domestic relations context, an overly broad interpretation of *Troxel* has all but eliminated visitation rights of third-parties, including kin and “fit” parents (however they are defined),

8. DWYER, *supra* note 7, at 3. See Ira C. Lupu, *The Separation of Powers and the Protection of Children*, 61 U. CHI. L. REV. 1317, 1318 (1994) (observing that the current legal regime in which children’s legal interests are determined, including decisions about their relational lives, “purports to respect children but generally disempowers them”).

9. Woodhouse, *supra* note 4, at 1819.

10. See James Dwyer, *Children’s Interests in a Family Context—A Cautionary Note*, 39 SANTA CLARA L. REV. 1053, 1055–56 (1999) (noting that “in all kinds of cases posing a conflict between parents and the state, judges’ primary concern is with the rights and preferences of parents rather than with the interests of children. The rights and preferences of parents may coincide to some degree with the interests of children, but rarely do so perfectly and often do so very little.”) (citation omitted).

11. ABA CENTER ON CHILDREN AND THE LAW, *A JUDGE’S GUIDE: MAKING CHILD-CENTERED DECISIONS IN CUSTODY CASES*, at xiii (2001) (noting that “[w]hile the child’s best interests form the basis of most decisions, the concept itself is usually addressed by mere recitation of the statutory or case law factors” rather than a substantive integration of specific best interest findings).

12. *Troxel v. Granville*, 530 U.S. 57 (2000).

13. Solangel Maldonado, *When Father (or Mother) Doesn’t Know Best: Quasi-Parents and Parental Deference after Troxel v. Granville*, 88 IOWA L. REV. 865, 869 (2003).

while parents retain a presumption of authority that is arguably detached from any best interests determination.¹⁴

Similarly, in the public child welfare context, although the relevant framework on its face suggests an equitable distribution of competing rights and interests of the Child, Parent, and State, this model does little in reality to advance the true interests of children. Since children possess the most nebulous body of constitutional rights, they tend to represent the weakest prong of the traditional triad.¹⁵ At this point, we encounter another operationalization quandary. As noted earlier, operationalization of critical variables is not determined solely by the measures used to assess them. The selected measures themselves are so chosen because they reflect a particular perspective on the matter being studied. Child well-being, for example, taps into dimensions of children's affective lives or their progress along developmental milestones, given the interest and/or bias of the researcher. As it relates to children's relationship rights, the question is then, whose rules, lens, language, and framework should apply—private domestic relations or public child welfare law? In assessing children's needs and interests, the context in which these questions are raised matters, as each context typically serves to either limit or expand the ways in which children's needs and interests are construed and accorded weight.

The answer to the above question carries significant importance when applied to kinship caregiving families. Framing of the issue as one of adults' competing rights of access has yielded particularly pernicious outcomes for children and the "kin," defined expansively, with whom they have formed enduring and essential relationships. Although kinship caregivers assume parental roles and engage in parental conduct, they typically have, at best, seriously subordinated rights of access in the current framework. In most cases, they have no constitutionally protected relationship rights at all.¹⁶ Moreover, in cases where kinship caregivers' posses-

14. *Id.*

15. Laura Rosenbury, *Between Home and School*, 155 PA. L. REV. 833, 839 (2007) (observing the subordinated status of children in the traditional triangular relationship between parents, state and the child, and that "children are rarely given power to control their own destinies, but rather are subject to the decision of either their parents or the state") (citation omitted).

16. See Anne Argiroff & Ann Rout, *Grandparents Have No Constitutional Rights to Custody and Visitation: The Effect of Troxel v. Granville on Michigan Law*, MICHIGAN BAR JOURNAL, JUNE 2001, at 13; Gerald Wallace, *The Big Legal Picture: Grandparents Parenting Grandchildren: A New Family Paradigm*, ELDER L. ATT'Y, Summer 2000, at 10, 12, available at <http://www.nysnavigator.org/pages/elderlaw-summer00.pdf> (noting that "[u]nlike parents, third-party [caregivers, including kinship care providers] do not have a fundamental constitutional interest in the permanency of their relationship with the children").

sory rights are acknowledged, it is their approximation to parents that is valued or the degree to which their actual caregiving work resembles that of parenting, not the strength, longevity, or import of their relationship with the child.¹⁷

Many kinship caregiving cases, however, do not arise within a private domestic relations context, but rather in the sphere of public child welfare or dependency law. In this context, the relational needs and interests of children are operationalized within a triadic relationship that, at least in statutory form, gives greater weight to the child's best interests than is evident in private domestic relations law, but still falls short of granting sufficient weight to or addressing the full scope of children's needs.¹⁸ It is also likely that as many kinship cases shift out of the public child welfare system and back into the private sphere, via domestic relations or probate filings, kinship caregivers will still face the same post-*Troxel* obstacles that have maximized parental autonomy, often at the expense of children's needs and interests.¹⁹ In both private and public settings,

17. Melissa Murray, *The Networked Family*, 94 VA. L. REV. (forthcoming 2008). See also, Christopher W. Nicholson & Murray O. Singerman, *Grandparent Visitation and Intact Marriages: An Unresolved Maryland Family Law Issue*, 21 U. BALT. L. REV. 311, 321 (observing in the context of grandparent rights that "[l]iberty interests in the childrearing setting arise only with the establishment of a custodial relationship, similar to the parent-child relationship, where one undertakes day-to-day responsibility for nurturing and upbringing of the child.") (citation omitted).

18. Although there is no uniform standard of representation for children in dependency proceedings, Congress created a minimal guarantee that children's interests would be represented when it enacted the Child Abuse Prevention and Treatment Act of 1974 (hereinafter "CAPTA"). 42 U.S.C. §§ 5101 et seq. CAPTA facilitated representation by conditioning federal funding on, among other things, the provision of a "guardian ad litem" to represent children in abuse or neglect proceedings. Later amendments to CAPTA specified that the guardian ad litem may be an attorney or a court appointed special advocate. 42 U.S.C. § 5106 (b)(2)(A)(xiii). By contrast, no such federal mandate exists in the domestic relations context where children are infrequently represented, and if so, usually at the discretion of the court.

19. Amendments in certain jurisdictions have had the effect of shifting kinship caregiving cases from a public child welfare forum to those of private domestic relations or guardianship. In Illinois, for example, a 1997 amendment created an exception to the definition of "neglected child," excluding from the definition any child who had been left by his or her parent in the care of an adult relative. This amendment brought a new set of statutes into play pertaining to guardianship or child custody, with less emphasis on the juvenile court. See Abused and Neglected Child Reporting Act, 325 ILCS § 5/3 (2005) ("A child shall not be considered neglected for the sole reason that the child's parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time."); see also Juvenile Court Act, 705 ILCS § 405/2-4(2) (1987) (excluding from the definition of dependent minor under the Juvenile Court Act any child whose "parent or guardian has left the minor for any period of time in the care of an adult relative"). An underlying issue not fully explored in this Essay concerns the application of domestic relations rules or principles onto custodial claims that arise *outside* of a traditional domestic relations sphere, whether within an intact marriage or not. It may very well be the case that critiques leveled against multiple parentage in domestic relations cases, or parent by estoppel and de

however, it bears repeating that once the issue of children's relationship needs and interests is framed a priori as a matter of competing rights of adults, we miss out on an opportunity to maximize the relational richness of children's lives. Even more disturbing are the law's clumsy attempts to resolve the complex connections that children have with significant others that continue to miss the mark.

This brief Essay does not attempt to confront the thornier challenge of developing a sufficiently elaborated solution to the supposed research design problems that I describe. Rather than resolve this quite vexing dilemma, my modest aim is to expand the dialogue about the balance between adults' rights and children's interests, especially as they arise in kinship caregiving families. While not a perfect solution, I believe there is room to consider both the utility of Barbara Woodhouse's generism model²⁰ and a fiduciary model,²¹ as defined by Elizabeth and Robert Scott. Both of these take into account the reality of children's relational lives, the import of such relationships to child well-being, and the need to better harmonize conflicting parental rights of control and children's interests in maintaining relationships with meaningful others.²² In describing a trend expressed in recent federal child welfare legislation, Woodhouse notes that there is a growing understanding of the need to "support[] and recogniz[e] the more mutable and subjective notion of the de facto parent and the functional family," guided by the underlying belief that such expanded

facto parent status reflected in the ALI Principles of the Law of Family Dissolution, might be differently assessed if the claims arose instead in the child dependency arena. For example, Institute for American Values Vice-President, Elizabeth Marquardt's recent New York Times Op-Ed article decrying family court rulings that have established multiple parentage as an accepted custodial arrangement might be less critical of such arrangements as arising in the context of dependency case decision-making. Elizabeth Marquardt, Op-Ed., *When 3 Really is a Crowd* N.Y. TIMES, July 16, 2007, available at <http://www.nytimes.com/2007/07/16/opinion/16marquardt.html?ex=00&en=2037cf55a2a68aa0&ei=5070> (last visited July 26, 2007).

20. Woodhouse, *supra* note 4, at 1814–15 (“[G]enerism, calls for a metaphor of dynamic stewardship, in which power over children is conferred by the community, with children's interests and their emerging capacities the foremost consideration. Stewardship must be earned through actual care giving, and lost if not exercised with responsibility. Generism would place children, not adults, firmly at the center and take as its central values not adult individualism, possession, and autonomy, as embodied in parental rights, nor even the dyadic intimacy of parent/child relationships.”).

21. Scott & Scott, *supra* note 7, at 2402 (describing the fiduciary role of parents as one in which parents are encouraged “to act so as to serve the interests of the child rather than [their] own conflicting interests”).

22. See, e.g., Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637, 639 (2006) (critiquing the privileging of rights in the context of public child welfare law because, “[a]s currently implemented, the rights-based model of child welfare protects neither the parent nor child in the typical case”).

definitions would maximize children's relationship resources and protect significant attachments.²³ Shifting the lens to one in which the interests of children are more meaningfully considered opens up a host of previously unconsidered possibilities, such as the concepts of two legal mothers or fathers or three attachment figures with shared legal authority to make decisions as responsible stewards for the children in their collective care.²⁴ These are circumstances that are not sufficiently explored when the rhetoric of adult rights wholly eclipses genuine concerns for children's needs and interests. In assessing competing rights of access to children, I would argue that it is not always in the best interests of children to simply restore the original parent-child dyad or the child-parent-state triad, but is necessary in many instances to give legal recognition to those meaningful relationships formed by the child with any adult who, in the immediately preceding period, was most responsible for the child's daily care and supervision, has fulfilled the role of good steward, or has been found to have a significant attachment relationship with the child. From a child well-being perspective—one in which interests are prioritized—"the restorative ideal . . . is a figure who will provide perfect '[c]ontinuity of relationships, surroundings and environmental influence,'" not necessarily the one whose due process claims over the relationship with the child trump all.²⁵ While a holistic model encompassing the above-noted continuity of relationships, surroundings, and environment may not necessarily facilitate a

23. Barbara Bennett Woodhouse, *Ecogenerism: An Environmentalist Approach to Protecting Endangered Children*, 12 VA. J. SOC. POL'Y & L. 409, 410 (2005) (advocating an "environmentalist paradigm" that goes beyond her earlier "generism" model to focus more broadly on the ecology of childhood rather than the limited child/parent/state triad); see also Brief for Children's Policy Practice & Research at the University of Pennsylvania as Amicus Curiae Supporting Respondent at 1, *Troxel v. U.S.*, 530 U.S. 57 (1999) (No.99-138) (arguing that although the Washington State visitation statute was impermissibly broad, the "Court should avoid sharpening the battle of rights over children by delineating a fixed scheme of constitutional priorities that unduly emphasizes the rights of parents and devalues the role of grandparents, extended family and informal kin.").

24. See, for example, recent third party custody legislation passed by the Council of the District of Columbia, a region in which kinship caregiving, particularly by grandparents, is quite prevalent. The Safe and Stable Homes for Children and Youth Act of 2007 (B17-0041), passed on June 5, 2007, achieves a delicate balance of rights and interests in permitting "certain persons other than parents to seek and obtain custody of a child when the child's best interests so require, while recognizing and enforcing the constitutional rights of parents." In the District of Columbia, there are 16,723 children residing in grandparent-headed households, a figure which represents 14.5% of all children in D.C. Of these, 10,702 children are residing without either parent present in the home. The Brookdale Foundation, Kinship Care Fact Sheets, <http://www.brookdalefoundation.org/rappstatefactsheets.htm> (last visited June 15, 2007).

25. Peggy Cooper Davis, *The Good Mother: A New Look at Psychological Parent Theory*, 22 N.Y.U. REV. L. & SOC. CHANGE 347, 354 (1996) (quoting JOSEPH GOLDSTEIN, ANNA FREUD, & ALBERT J. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 31-34 (1973)).

strifeless distribution of responsibility for children among interested adults, “it invites us to ask questions [about this distribution] that are more relevant to children’s lives.”²⁶

Continuing along the research design theme, I draw attention to issues of data collection, focusing on the currently flawed manner in which children’s best interests are assessed and the degree to which best interests are therefore prevented from playing a more meaningful role in decision-making as it relates to children’s rights to have access to persons with whom they have formed deep connections. As earlier described, data collection techniques are the tools and procedures that scientists use for implementing research designs and obtaining relevant measurements. It is axiomatic that if one lacks critical data, or if data is improperly collected, it is nearly impossible to make accurate or meaningful deductions. Unfortunately, this is too often the case as it relates to a “best interests of the child” inquiry. With respect to assessing interests, there is significant resistance among certain members of the child advocacy community to “ceding” authority to non-legal professionals as it relates to family and/or relationship decision-making. In my own experience, the most vocalized concern from child advocates is that of potentially compromised due process rights that may arise when such decision-making is left in the hands of non-lawyers. These due process concerns, however, often result in formation of territorial boundaries around the issue, which reserves a right to participate in the discussion only for those who are versed in the language of “rights,” leaving no room to discuss interests and needs. If relevant data on children’s best interests is truly what is sought, the due process discourse, with its focus on adults’ due process rights, is woefully inadequate as a best interests assessment tool. Thus, non-lawyers can often be much more skilled than lawyers at eliciting children’s thoughts and opinions and at translating their expressions in ways that give children a voice, as non-lawyers aim to facilitate the collection of data directly from subjects, rather than to protect strictly-established due process rights. That said, the data collection process is only useful if children’s direct input is actually sought, valued, and considered. While traditional child development research has unfortunately undervalued the ability of children of all ages to participate in decision-making, there has been a recent renewal of interest in exploring the manner in which children’s voices enter into the discourse concerning their needs

26. Woodhouse, *supra* note 23, at 429.

and interests.²⁷ It is hoped that states will begin to provide broader avenues for children to communicate their views, intentions, and preferences and for adults to respect their perspectives—in essence, meaningful participation.²⁸

This data collection dilemma, as well as the operationalization task that typically precedes it, of course, begs the following questions: How do we understand and define children's best interests? Moreover, if children's best interests are understood to be a guiding principle in the work that we, as child advocates, hold dear, how well can and do we assist and develop children's meaningful participation in defining this principle? It is my hope that this anniversary symposium and the continuing inquiry among child advocates that it has sparked will move us closer to an answer.

27. See, e.g., Ellen Greenberg Garrison, *Children's Competence to Participate in Divorce Custody Decision Making*, 20 J. OF CLINICAL CHILD PSYCHOL. 78, 78–87 (1991); Anne B. Smith, Nicola J. Taylor & Pauline Tapp, *Re-Thinking Children's Involvement in Decision-Making After Parental Separation*, 10 CHILDHOOD 201, 203–218 (2003); Nicola Taylor, *What Do We Know about Involving Children and Young People in Family Law Decision Making? A Research Update*, 20 AUSTRALIAN J. OF FAM. L., 154, 154–178 (2006); Nicola Taylor & Robyn Fitzgerald, *Children's Participation in Family Law Proceedings in New Zealand and Australia: Inclusion and Resistance* (2005), available at http://www.cryp.scu.edu.au/directory/documents/632/Childhoods_Conference_paper_0-023F.pdf.

28. Ruth Lister, *Why Citizenship: Where, When and How Children?*, 8 THEORETICAL INQ. L. 693, 701–09 (2007) (elucidating the importance of children's participation in decision-making as a matter of substantive citizenship and the grounding of the right to participate in the U.N. Convention on the Rights of the Child); see also United Nations Convention on the Rights of the Child art. 12, Nov. 20, 1989, 28 I.L.M. 1448 (Section 1 of Article 12 states that "State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."); Bobbe J. Bridge, *Solving the Family Court Puzzle: Integrating Research, Policy and Practice*, 44 FAM. CT. REV. 190, 195 (2006) (noting that "[c]hild welfare and legal systems designed to protect our children too often fail to respect children's rights to participation and voice.") (internal citation omitted).

