AGAINST BALANCING INTERESTS IN RELATIONSHIP DECISIONS FOR CHILDREN
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The conference description suggests that there are circumstances in which a balancing of interests among affected family members should be the basis for legal outcomes. The European Court of Human Rights has on numerous occasions stated that such a balancing is called for in many types of cases in which children’s interests appear to conflict with those of parents or other adults, and many family law scholars take it for granted that the interests of adults as well as the interests of children should factor into decision making in disputes over, for example, visitation with non-custodial parents after divorce, termination of parental rights, and visitation requests by non-parents. But neither family law scholarship nor family law doctrine has generated a theory or general principles as to when it is appropriate to balance the interests of all the individuals involved in family law matters or when, on the other hand, the interests or choices of some persons should be deemed irrelevant and the interests and choices of others controlling. Nor has much scholarly or judicial attention been paid to the question of when, as a general matter, it is appropriate for the state to allow broad social policies, such as race and gender equality, to influence legal rules and state decisions concerning family life. I will explain why the proponents of balancing are wrong and why children’s choices or interests should alone determine the outcome of legal disputes over their association with others, drawing from the theoretical analysis I develop in a forthcoming book, *The Relationship Rights of Children* (Cambridge University Press 2006).