The Jurisprudence of Parenting and the Influences of Religion:

Principles and Problems

Lynn D. Wardle
Bruce C. Hafen Professor of Law
J. Reuben Clark Law School
Brigham Young University
Provo, Utah 84602 USA
Tel: 801-422-2617
Email: wardlel@law.byu.edu

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I. Introduction: Parenting, Culture and Religion

The focus of this, the third international academic Symposium on the Jurisprudence of the Family,”¹ is on the jurisprudence² of parenting³ and the influence of culture. “Culture,” for the

¹ The first symposium was in Spring 2009 at Boston College and addressed the Jurisprudence of Marriage and Other Intimate Relationships. See THE JURISPRUDENCE OF MARRIAGE AND OTHER INTIMATE RELATIONSHIPS (Scott FitzGibbon, Lynn D. Wardle, & A. Scott Loveless, eds. 2010).

² The word jurisprudence has multiple meanings, including, inter alia, “the philosophy of law,” and “a system or body of law . . . .” Jurisprudence, n. in Oxford English Dictionary Online, at http://www.oed.com/view/Entry/102159?redirectedFrom=jurisprudence#eid (seen 6 May 2011)
purposes of this paper, means “[t]he distinctive ideas, customs, social behavior, products, or way of life of a particular society . . . [h]ence: a society or group characterized by such customs, etc.” Obviously, “ideas, customs, social behavior, and ways of living” can impact both children

(hereinafter cited “OED-O”); Jurisprudence in Merriam-Webster Online, at http://www.merriam-webster.com/dictionary/jurisprudence (seen 6 May 2011); see also Jurisprudence in Black’s Law Dictionary 992 (Rev. 4th ed. 1968) (herein “Blacks”). For purposes of this symposium, “jurisprudence” refers to the “philosophy of law” that undergirds and makes conceptually coherent the laws regulating parenting, the core principles and fundamental assumptions about regulating the goods of human parenting. OED-O.

3 “Parenting” is used in its commonly-understood meaning, i.e., “[t]he activity of being a parent; the rearing of a child or children . . . .” [P]arenting, n., OED-O, at http://www.oed.com/view/Entry/238725?redirectedFrom=parenting#eid (seen 6 May 2011). A “parent” is “[a] person who is one of the progenitors of a child; a father or mother.” Parent, n. and adj., in OED, A.1.a., at http://www.oed.com/view/Entry/137816?rskey=Hz4D50&result=1&isAdvanced=false#eid (seen 6 May 2011). An “extended” meaning of “parent” includes “a woman or man who takes on parental responsibilities towards a child, e.g., a stepmother, an adoptive father.” Id.

4 Culture, n., OED-O, III. 7.a. at http://www.oed.com/view/Entry/45746?rskey=4rLdoM&result=1&isAdvanced=false#eid (seen 6 May 2011). “Culture” has many other related meanings, including “refinement of mind, taste, and manners” including “the arts and other manifestations of human intellectual achievement
directly and how parents raise children. So culture effects parenting. To measure or assess the quality of parenting requires some reference standard; the standard used most commonly in legal systems is the “best interests of the child” (or “BIC”) standard.\(^5\) “Best” is a normative term, and requires reference to some normative values or content, which culture generally provides.\(^6\) So regarded collectively . . . .” *Id.* at III.6. Similarly, “culture” describes “a way of life or social environment characterized by or associated with the specified quality or thing; a group of people subscribing or belonging to this,” *id.* at III.7.b., and “[t]he philosophy, practices, and attitudes of an institution . . . .” *Id.* at III.7.c.

\(^5\) *__; *__ [get US & international cites]

\(^6\) Professor Robert Mnookin provided the classic explanation of why the “best” interests of the child legal standard is not self-contained but requires reference to some external set of standards in child custody and related issues.

What set of values should a judge use to determine what is in a child's best interests? If a decision-maker must assign some measure of utility to each possible outcome, how is utility to be determined?

Deciding what is best for a child poses a question no less ultimate than the purposes and values of life itself. Should the judge be primarily concerned with the child's happiness? Or with the child's spiritual and religious training? Should the judge be concerned with the economic “productivity” of the child when he grows up? Are the primary values of life in warm, interpersonal relationships, or in discipline and self-sacrifice? Is stability and security for a child more desirable
culture influences parenting in many ways, directly and indirectly, profoundly and incidentally, legally and practically, for better or worse.

One source and form of culture is religion; indeed, one of the alternate meanings of “culture” in the Oxford Dictionary of the English Language Online (OED) is “worship; reverential homage.” Religious communities have their own cultures, sometimes integrated into and generally indistinguishable from the culture of the particular society or nation, but often differing in values and other characteristics from the dominant social culture or from the culture of other religious and non-religious communities within a society or legal system. There may be different sub-cultures within a religious community, as well.


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7 *Id.* at II.4.

8 See supra note 4.

9 Examples include differences between Jews and Christians, Protestants and Catholics, Mainstream and Evangelical Protestants or Catholics, active versus nominal Christians, Muslims and Christians, Muslims and Jews, Shia and Sunni Muslims, etc.)
The culture of a religious community may influence family life and parenting in many ways. The deep and powerful historical and ongoing sociological interrelationships between religion and cultures have long been evident. Differences between religious cultures (or between religious and other, secular, cultures) may create frictions in society. The culture of a religion may even conflict with the dominant culture of a particular state or society. We see that phenomenon discussed almost daily in media and politics in Western nations where immigrants belonging to minority religions clash with the dominant culture and with the state that enforces and protects the dominant cultural values. For example, there have been well-known, high-profile clashes over students wearing scarves and other religious clothing or symbols to school, conflicts about cousin-marriages, conflicts about age of marriage, and frictions concerning other divergent marriage customs (including polygamy), etc.

See infra, note [Wilcox]; at *__; see also Emile Durkhein, *__; *__; *__.


This paper addresses those frictions but focuses first on the jurisprudence of parenting and on the mutually-supportive interests of both state and religion in good, healthy, nurturing parenting. Part II reviews several sources to identify some universal elements of the jurisprudence of parenting. It begins in II.A. by reviewing what the written constitutions of the sovereign nations of the world have to say about parenting.\(^\text{16}\) Part II.B. traces universal elements of the jurisprudence of parenting to the ideas about the relationship of parenting and government expressed by some of the most influential political philosophers of the Enlightenment era. Part II.C. summarizes the strengths and foundational precepts that constitute the universal

\(^{13}\) Baroness Ruth Deech, *Cousin Marriage*, in *The Jurisprudence of Marriage and Other Intimate Relationships* 291 (Scott FitzGibbon et al., eds. 2010)

\(^{14}\) See, *e.g.*, State v. Green, ____ (Utah, ___)* (upholding conviction of man for “marrying” as a “plural wife” and impregnating a thirteen year-old girl); *.


\(^{16}\) Other sub-parts of this section that will be presented at a follow-up symposium analyze what American constitutional principles (lacking textual constitutional protection for parenting) reveal about the jurisprudence of parenting there (where there is no express constitutional protection for parenting), and examine what some of the most influential political philosophers of the Enlightenment era understood to be the jurisprudence of parenting.
jurisprudence of parenting. One of the core jurisprudential principles recognizes the importance of the parental role in preparing the rising generation for the responsibilities of adulthood and citizenship.

Part III reviews some of the empirical evidence that religion generally has a positive impact upon parenting. Many studies support, at least in part, the claim that religion generally has a positive impact upon the quality of parenting, and upon the resulting healthy, positive development of children parents. Thus, as a general proposition that parents who are active in their religious faith tend to be better, more responsible parents, more dedicated to their children, more patient and nurturing, more loving than non-religious parents in the same society. Their children experience fewer problems in their developmental years – less alcohol and drug use, less premarital sex, less juvenile delinquency, etc. However, those results are influenced by several factors, and there are inconsistent results; some marginal religious doctrines and practices are clearly harmful to children (such as child marriage, honor killings, etc.). So the influence of religion upon parenting generally is positive, but that beneficial correlation is only potential, not certain.

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17 By “universal” I do not mean to suggest that these principles are adopted or implemented in all nations, but that there appears to be consensus in most nations that these principles are at least aspirational ideals and that conceptually that are foundational for the good of the state and for the reasonable regulation of parenting in the interests of children, families and society.

18 Another part to be presented later notes some of the limitations of the constitutional “rights” approach in the jurisprudence of parenting, and suggests that an approach that recognizes the unique value of interdependent relational interests in families, and that adding up fractionalized individual rights does not capture the totality (or the essence of the value of) parenting interests of both children and their parents.

19 See infra, note __ (Rajeesh).
Part IV discusses the clashes that arise between the state and parents or when the state must intervene to resolve conflicts between parents in which religious values, interests and practices are implicated.20 Surprisingly, some nations are adopting policies that disfavor and discriminate against particular minority religions (such as Islam or traditional Christianity), or that adopt an extreme form of secularism that disfavors and discriminates against all religions in ways that intrude deeply upon parenting.

Part V reiterates the importance of fostering cultures, including religious cultures, that support, enhance or improve the quality of parenting in a society. It concludes with some suggestions for minimizing unnecessary friction between religious cultures, and between the state and religious communities.

II. The Jurisprudence of Parenting

A. What Provisions of National Constitutions Reveal about the Jurisprudence of Parenting

One accessible resource for discerning whether there are any universal jurisprudential principles regarding parenting and parent-child relations is comparative constitutional law.21 Constitutions are understood to embody the core values that underlie and guide the legal system of a nation.22 Most of the 192 sovereign nations recognized by the United Nations have written

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20 The next installment of this paper, at Malta, will explain that most often those involve custody and visitation disputes and the general parameters are well-established in most western nations: the state is to take a position of neutrality between religious beliefs and adjudicate on the basis of objective criteria regarding the best interests of the child. However, some nations have legal systems or rules that embody express preference for a particular religion in such conflicts. * __; * __.

21 __; __.

22 See generally Vicki C. Jackson & Mark V. Tushnet, Comparative Constitutional Law * __ (2d ed. 2006); Vikram Amar & Mark Tushnet, Global Perspectives on Constitutional Law * __ (2008); Mormon Dorsen, et al, Comparative
constitutions. And most of those national constitutions have provisions regarding parent-child relations, parents, or parenting.

As Appendix I shows, at least one hundred sixty-six (166) national constitutions (in more than 86% of the sovereign nations in the world) have explicit provisions regarding parent-child relations, usually providing special constitutional protection to them.23 Most contain substantive protections for “mother,” “child,” “motherhood,” “parents” “childhood” and extend protections not just to individuals as a matter of individual rights, but to the relationships enjoyed by the parties to those special family relations. For example, the Algerian Constitution guarantees “the protection of the family, the youth and childhood.”24 The Constitution of Armenia provides: “Family, motherhood, and childhood are placed under the care and protection of society and the state.”

Some constitutional provisions are structural, empowering the government or a particular branch to provide legal protection to parental relationships. For example, the Constitution of the Argeentine Nation, Article 75, empowers the national Congress


(23) To legislate and promote proactive measures that guarantee true equality of opportunity and treatment, and the full enjoyment and exercise of the rights recognized by this Constitution and by current international treaties on human rights, in particular with respect to children, women, the elderly and people with disabilities.

To enact a special and integral social security system that protects needy children, from gestation through the end of elementary schooling, and that protects the mother during pregnancy and nursing.25

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) this provision of the Constitution of Argentina extends a constitutional canopy that implies special relationships and status.

These are just a few examples from nations around the world of explicit constitutional protection for the relationship between parents and children.26

Most of these provisions reflect several universal, core values. First, the role of the family as the foundation or basic unit of society is mentioned in nearly half of these national constitutions. For example, Article 26 of the Constitution of Kyrgyzstan (1993, 2003) provides:

“(1) The family is the fundamental unit of society; family, fatherhood, maternity and childhood

25 Const. of the Argentine Nation, art. 75 (23) (1994).
26 Ironically, lifestyles popular in many of those same countries, including child-bearing out-of-wedlock, permissive (on-demand) divorce, permissive abortion-on-demand, and use of adoption and assisted reproductive technologies by single adults or same-sex couples deprives children of at least of the parent-child relationship which the constitutional provisions are intended to insulate and protect. See generally Lynn D. Wardle, The Disintegration of Families and Children’s Right to Their Parents, __ Ave Maria L. Rev. __ (forthcoming Winter 2011-12).
are the subject of concern for the whole society and subject to protection by law; child care and upbringing are the natural right and civic duty of the parents.” 27 Similarly, Article 51 of the Constitution of Costa Rica provides: “The family, as a natural element and foundation of society, is entitled to State protection. . . .” These provisions recognize the profound state interest in the family and family relations, including parent-child relations, in providing the basis of society and social order, stability, and welfare.

Second, parent-child relations are 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; nearly two dozen nations’ constitutions use the term “natural” to describe parental rights. 28 For example, the Burkina Faso Constitution provides that “parents have the natural right and the duty to bring up and to educate their children.” 29

Third, they include a right of personal association in a special parent-child relationship that is not to be disregarded or breached except for substantial, serious cause. 30 For example, Article 6 of the Basic Law of Germany provides: “(3) 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 to perform their duties or if the children are otherwise in danger of

28 See, e.g., Burkino Faso Consti., art. 23 (1991, 200); Central African Republic Consti., art. 6 (2004); Burundi Post-Transition Interim Consti., art. 30 (2004); Chad Consti., art. 38 (1996); Congo (Democratic Republic) Consti., art. 40 (2005); Germany Basic Law, art. 6 (1949, amended to 2009);__.__. <check number>


30 See supra note __ <prior note; replace with citations and examples>.

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serious neglect for other reasons.”31 The Constitution of Azerbaijan provides: “Parents shall have both the right and the obligation to take care of Children and to raise them.”32 Bolivia’s constitution specifically 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.”33

Fourth, parenthood includes a duty on the part of the parents to educate their children and raise them to be responsible individuals and good citizens. Indeed, the term “duty” is used in this context in nearly half of these national constitutions. As the Central African Republic Constitution provides: “Parents have the natural right and primordial duty to raise and educated their children with the end to develop in them good physical, intellectual and moral aptitudes.”34 Article 6 of the Basic Law of Germany provides: “(2) The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The State authorities supervise the fulfillment 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 parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.”35 The

31 Germany Basic Law, art. 6 (1949, amended to 2009).
33 Bolivia Consti., art. 29 (2008).
34 Central African Republic Consti., art. 6 (2004). See also); Chad Consti., art. 38 (1996); Congo (Democratic Republic) Consti., art. 40 (2005); * __; * __ <more examples>.
35 Consti. Of Ireland, art. 42 (1937, 2002).
Constitution of Belarus provides: “Parents or persons in loco parentis shall be entitled and required to raise their children and to take care of their health, development, and education.”36 These provisions recognize the profound importance of parenting for the good of the state and of society; that how children are raised has great impact on the welfare and strength of the nation.

Fifth, parenthood includes some condition of dependence and vulnerability requiring special state protection; that is why motherhood and childhood are singled out for special protection. 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 . . . .”37

Sixth, many constitutions contain provisions that express particular concern for and provide special protections to fatherless children. Equal protection for such children (historically considered “illegitimate”) is a primary concern. Brazil extends special protection to the family including single-parent families, and provides, inter alia, that: “The community formed by any parent and his/her descendants is also considered a family unit.”38 The Constitution of Ecuador provides: “The State protects mothers and fathers who are heads of their families, in the exercise of their obligations. It shall promote the corresponding paternal and maternal responsibility and shall oversee the fulfillment of the reciprocal obligations and rights among parents and

36 Belarus Consti., art. 32 (1996).
37 Afghanistan Consti., art. 54 (2004).
38 Brazil Consti., art. 226 (1988, amended to 2010).
children.” The Vanuatu Constitution provides: Every person has the following fundamental duties to himself and his descendants and to others—

(h) In the case of a parent, to support, assist and educate all his children, legitimate and illegitimate, and in particular to give them a true understanding of their fundamental rights and duties and of the national objectives and of the culture and customs of the people of Vanuatu . . . .

B. What Political Philosophers of the Enlightenment Expressed About the Jurisprudence of Parenting.

The political philosophers of the Enlightenment era laid the intellectual foundations for the liberal democratic forms of government that are now ubiquitous in nearly all the world. They believed (1) that “virtue” in the citizens was essential to maintaining such governments, and (2) that families and religions played essential roles in fostering such virtues in citizens.

[T]he thinkers who influenced the founders all had theories of parental duties in relation to the State.


40 Vanuatu Consti., art. 7 (1980, 1983).


42 Aaron T. Martin, Note, Homeschooling in Germany and the United States, 27 Ariz. J. Int’l. & Compar. L. 225, 253 (2010). Id. (“J.S. Mill noted that while the state had some obligation to protect children, it was ultimately the parents “whose ‘sacred duties’ include giving the child ‘an education fitting him to perform his part well in life toward others and toward himself.’” Mill’s conception of parental responsibilities brought with it an ability to determine the content of one’s education without interference from the State. . . . State-run education for Mill was ‘a
John Locke famously observed said that “[p]arents have an obligation to ‘preserve, nourish, and educate’ their children ‘during the imperfect state of childhood.’” 43

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Locke viewed parental rights over children as necessary to the maintenance of the family which he viewed as a basic social unit of civil government. 44

C. The Strengths and Limits of Constitutional Jurisprudence of Parenting

There are obvious and important benefits to having constitutional recognition and protection of parenthood, parental rights, and parent-child relationships. The jurisprudence of parenting conveys clearly to society in our most important legal documents recognition of the importance of parenting and of parents inculcating virtues in their children. It clearly teaches that parenting is valued formally in society. It shows the need for and provides the authority for protection of dependent family relationships. It provides a legal basis for preventing some abuses by the government and by inappropriate governmental intrusions into parenting and family life.

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43 Aaron T. Martin, Note, Homeschooling in Germany and the United States, 27 Ariz. J. Int'l. & Compar. L. 225, 253 (2010). Id. (“J.S. Mill noted that while the state had some obligation to protect children, it was ultimately the parents ‘whose ‘sacred duties' include giving the child ‘an education fitting him to perform his part well in life toward others and toward himself.’’” Mill's conception of parental responsibilities brought with it an ability to determine the content of one's education without interference from the State. . . . State-run education for Mill was ‘a mere contrivance for molding people to be exactly like one another ... establish[ing] a despotism over the mind.’ It was this bold proposition that ‘social and religious conservatives would transform ... into a philosophical foundation for parental rights and educational choice.’”).

However, there are some limits to and disadvantages to the jurisprudence of parenting drawn from constitutional sources. First, the individual rights paradigm that infuses our constitutional jurisprudence invites us to think fallaciously about parenting and parent-child relationships. Individual rights systems have as their highest values individualism, and independence, and define legal boundaries between persons in order to protect those values. Thus, they invite us and our legalistic societies to think about parenting in terms of boundaries between parents and children, and in terms of the independence of children from their parents. For most of childhood, children are best served by dependence on and interdependence with parents, not independence from them. Second, the jurisprudence of parenting lacks the ability, the tools, to see or implement much that is very important to parenting, that cannot be forced into a framework of “rights. There is much more to parenting than “rights” which an exclusively jurisprudential approach overlooks.

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III. How Religion Strengthens the Constitutional Interests Implicated in the Jurisprudence of Parenting

As noted in Part II, supra, several of the near-universal elements of the jurisprudence of parenting give general recognition of the importance of parenting for the present and future well-being of society and of the state. It has long been recognized not only that the quality of parenting directly effects the immediate physical, social, emotional, intellectual and economic well-being of children, but that it profoundly influences their development (or not) into moral, responsible, contributing citizens and members of society. The inculcation of virtue, morality
and personal responsibility in children profoundly affects numerous state interests including the civic virtue and citizenship of the rising generation, and the future well-being of the nation. So the state has a profound interest in parents raising their children to be virtuous and responsible, and in supporting those cultural influences that held parents to cultivate virtues in their children.

A. The Beneficial Effects of Religion on Parenting and Children

A large body of social science research appears to support the proposition that religions generally have a positive impact on parenting; that is, that parents who regularly participate in religious activities generally manifest a higher quality of parenting on some important scales than parents who are not involved with religion. For example, in 2008, social scientists Dollahite and Thatcher reported that: “A large body of findings has established benefits associated with religiosity in various areas of family life (Mahoney, Pargament, Tarakeshwar, & Swank, 2001), including more warmth and satisfaction in parent-child relationships (see Dollahite, Marks, Dollahite, Thatcher& Goodman, 2004).” A legal commentator summarized

45 See generally Wendy D. Manning & Kathleen A. Lamb, Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families, 65 J. Marriage & Fam. 876, 891 (2003) (finding that religious teens are more likely to do better than non-religious teens in general; closeness of teen's relationship to his/her parents is a better predictor of well-being than parental monitoring); *; *; But see Arnold S. Rosenberg, Motivational Law, 56 Clev. St.L. Rev. 111, 143-146 (2008) (reporting on mixed results of approximately 80 reports of the influence of religion on moral behavior since 1969); *.

the research about the connection between religion and bad behavior in various contexts, and acknowledged that:

Religious homogamy, where spouses share religious affiliation, and frequency of church attendance are both inversely related to domestic violence. Parental religiosity reduces delinquency among the adolescent children of conservative Protestants if both parents share their religiosity, but this effect is significantly reduced if only one parent self-identifies as a conservative Protestant.°

In Soft Patriarchs, University of Virginia Sociologist, Dr. W. Bradford Wilcox compared active Conservative Protestants, active Mainline Protestants, inactive Conservative Protestants, inactive Mainline Protestants, and religiously unaffiliated men and families on a variety of family-quality indicia. 48 Wilcox found that the active Conservatives (“soft patriarchs” as he calls them) and active Mainline Protestants (“new men” he called them) are about one-third more

promotes health and well-being in African-American families, how it promotes fidelity in marriage, how it helps couples resolve conflicts and reconcile and how it facilitates parent-child communications).

° Rosenberg, supra note __, at 145-146. Id. (“However, the same study found adolescent boys generally tend to join in delinquency rather than avoid it [even] when their parents are devoutly religious, though adolescent girls do not display the same tendency.”)

48 W. BRADFORD WILCOX, SOFT PATRIARCHS, NEW MEN: HOW CHRISTIANITY SHAPES FATHERS AND HUSBANDS (2004). √ Wilcox notes: “Paternal involvement is positively associated with the economic achievement, educational attainment, and emotional health of children.” Id. at 6.
affectionate as parents (hugging and kissing and praising their children) than unaffiliated dads,\textsuperscript{49} had more one-on-one interactions with their children than unaffiliated,\textsuperscript{50} spent more time in youth-related activities than unaffiliated men,\textsuperscript{51} and were more likely to monitor (have rules) regarding their children’s television watching,\textsuperscript{52} and were more likely to know their children’s where-abouts than unaffiliated fathers. On average, conservative Protestant fathers spent more time with their children, yelled less at their children, and were more likely to set bedtimes for their children than mainline Protestant or unaffiliated fathers.\textsuperscript{53} Wilcox suggests that religion helps to domesticate men and turn them into better husbands and fathers in ways that make them more responsive to the needs, desires, and aspirations of their wives and children, and to conform more closely to the ideals of their faiths.\textsuperscript{54} Families of active Conservatives were happier and more satisfied in their families than the families of other religionists, or inactive or unaffiliated men.\textsuperscript{55}

\textsuperscript{49} \textit{Id.} at 118-19; see also W. Bradford Wilcox & Jennifer A. Marshall, \textit{Soft Patriarchs, New Men: How Christianity Shapes Fathers and Husbands}, Heritage Lectures No. 880, at 5 (June 6, 2005) (58\% traditional gender traditionalism among active Evangelicals compared to 44\% for active Mainline Protestants, compared to 37\% for unaffiliated).

\textsuperscript{50} Wilcox, \textit{supra} note __, at 113-16.
\textsuperscript{51} \textit{Id.} at 115-17.
\textsuperscript{52} \textit{Id.} at 123-24.
\textsuperscript{53} Wilcox, \textit{supra}, at 116-122.
\textsuperscript{54} Wilcox, \textit{supra} note __, at __. √
\textsuperscript{55} __. “Wives of active Evangelical Protestant family men report the highest levels of happiness with the affection and the understanding that they receive from husbands, and they are followed fairly closely by wives of active mainline Protestant family men. Wives of unaffiliated family men report the lower levels of happiness.” Wilcox & Marshall, \textit{supra} note __, at 5. Wives of active Conservative Protestant family men also reported the lowest levels of domestic violence (2.8 percent) of the five groups, while nominal Protestants had the highest level of violence. \textit{Id.; Wilcox, supra} note __ at 180-82.
Parental religiosity generally correlates with religiosity by the children, and that clearly has a positive and protective influence upon youth. Thus, Dollahite and Thatcher reported:

While comparing adolescents of varying religious activity, Smith and Denton (2005) found that highly religious youth had the best quality of parent-child relationships in every area studied, including levels of honesty, acceptance, and understanding, getting along, and feeling loved and close to their parents. Highly religious adolescents and adolescents with religious parents are more likely to exhibit positive behaviors and fewer high-risk behaviors (Muller & Ellison, 2001; Regnerus, 2003). 

Similarly, a 2011 report by Emily Layton, et al., notes that: “Religiousness has consistently been linked to higher positive outcomes (e.g., prosocial behavior) and lower negative outcomes (e.g.,

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risk taking and psychological disorders) for youth (Koenig, 2008; Smith & Denton, 2005; Wagener, Furrow, King Leffert, & Benson, 2003).”

They summarize the literature as follows:

Much research has examined links between religious commitment and various positive and negative outcomes for youth. Generally, youth who are more religious exhibit higher levels of positive outcomes and lower levels of negative outcomes than their less religious peers. For example, religious commitment is predictive of greater prosocial behavior (Hardy & Carlo, 2005), less depression (Pearce, Little, & Perez, 2003), less substance use (Wills, Yaeger, & Sandy, 2003), and postponed sexual intercourse (Hardy & Raffaelli, 2003). There are a number of possible reasons for these associations; for example, religion teaches prosocial values (Hardy & Carlo, 2005), and provides social controls (Hardy & Raffaelli, 2003) and social capital (King & Roeser, 2009).

Religious commitment is also relevant to moral development. Compelling evidence suggests that religious and moral development are interconnected for many (if not most) people (Walker & Reimer, 2006).

Other research reports that: “[I]t is generally agreed that [religiosity] acts as a “protective factor” against adolescent's sexual risk. While the mediating structures are not fully understood,

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57 Emily Layton, David C. Dollahite and Sam A. Hardy, Anchors of Religious Commitment in Adolescents, 16 J. Adolescent Res. 381, 381-82 (2011) (identifying that religious commitment of American Christian, Jewish and Muslim youth in diverse communities is anchored in seven bedrocks, i.e., (a) religious traditions, rituals, and laws; (b) God; (c) faith traditions or denominations; (d) faith community members; (e) parents; (f) scriptures or sacred texts; and (g) religious leaders . . . “). Id. at 410.

58 Id. at 382 (emphasis added).
it is generally thought that parental religiosity plays a role. . . .”

Reporting recently on a survey of over 4800 adolescents aged 12-14, Professor Margaret Brinig found that “the religiosity of their peers is more related to their behavior, not only on the delinquency index we reported, but also for substance abuse (decrease of nearly 10%) and general behavioral problems (decrease of 8%), both about the same as similar changes in income.” She concluded that: “What the figures show is that, even holding many others constant, religion seems to matter for a child’s well being,” and that “[t]he findings provide mild support for the old adage that ‘the family that prays together stays together’. . . .” Likewise, Professor Robin Fretwell notes that


60 Margaret Brinig, Children’s Beliefs and Family Law, 58 Emory L.J. 55, 61, 66 (2008).

61 Id. (“[P]arental religiosity is related to adolescents’ outlook on life in an important way.” In another paper, Professor Brinig has noted that research showing that religiosity has a profound, positive impact in protecting African-American children growing up in single-parent homes in the southern states, but it did not have similar positive results for children growing up in single-parent homes in Quebec. Margaret Brinig, Marriage and Other Mediating Institutions for the Benefit of Children, paper presented at the International Society of Family Law, Caribbean Regional Conference, March 17-19, 2011, in Nassau, The Bahamas.

62 Brinig, supra note __, at 66.
empirical students show that “religious observance is . . . weakly protective of both adults and children from family violence.”

Social scientists are beginning to study why and how religion seems to have such positive impacts to protect children. Dollahite, et al., reporting on extensive interviews with adolescent American Christians, Jewish and Muslim religious youth, suggest that sacrifices that religion requires of family members “seemed to created a sense of identity and unity within families” for both children and parents. Thus, religious observance may not only strength family relations, but can inculcate virtues that will strengthen the nation as well. Wilcox suggests that religious helps men become better fathers by fostering ethical behavior and encouraging investment in fatherhood, but rituals that foster a family ethos, and by nurturing and supporting social ties and supportive networks that enhance parenting. Thus, religion creates a “cultural context” that is supportive of good parenting. Generic “religiosity” has been found to be “the most salient determinant of family behavior,” while other studies present evidence that distinctive religious and family ideologies also “have significant independent effects on children-rearing behavior.” Emile Durkheim saw that one important way that religion helps generate cohesion, stability, and

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64 See generally Dollahite, supra note __, at __: Dollahite, supra note __, at __:
66 Wilcox, *supra* note __, at 100-101. He also notes that religion fosters an intellectual ideology that anchors fathers in responsible parenting, *Id.* at 102-03.
67 *Id.* at 104. This creates a “sacred canopy” over positive familial and paternal behavior. *Id.* at 105-10.
68 Wilcox, *supra* note __, at 99.
69 Wilcox, *supra* note __, at 99.
collective values in society is by promoting good family life, which contributes to the collective good, provides for the socialization of children (and adults), and strengthens society.\footnote{Wilcox, supra, note \__, at 100.}

However, some studies about the correlation of religiosity and child-well-being or parenting show inconsistent and even contradictory results.\footnote{See generally Rosenberg, supra note \__, at 145-48; *__; *__.} Many factors influence how and the extent to which religion influences parenting. Professor Robin Fretwell notes that empirical studies show “that abuse nonetheless occurs in religious communities,”\footnote{Robin Fretwell Wilson, The Overlooked Costs of Religious Deference, 64 Wash. & Lee. L. Rev. 1363, 1369-73 (2007).} and that “[r]eligious groups often acquiesce in or, worse, condone family violence within the community.”\footnote{Id. at 1373; id. 1373-77 (focusing on violence, particularly wife-beating, within Muslim communities).} Moreover, with an international focus, it must be noted that some clearly harmful parental practices are fostered by some minority religions, such as forced marriages and “honor killings” of children and other family members in some religious communities, especially in developing countries in the third-world.\footnote{Rajesh, supra, note \__, at 115; Nisha Thompson, Does the International Violence Against Women Act Respond to Lessons From the Iraq War? 23 Berkeley J. Gender L. & Just. 1, 8 (2008).} One Indian law professor declares: “Violence in the developing world predominantly stems from religious and cultural indoctrination and practices. Traditional, cultural and religious violence [within the family include] sati (widow burning), . . . female genital mutilation, female feticide/infanticide, child marriages, and honor killings.”\footnote{Anuradha Saibaba Rajesh, Women in India: Abysmal Protection, Peripheral Rights and Subservient Citizenship, 16 New. Eng. J. Int’l & Comp. L. 111, 115 (2010).} So the connection between religion in the home and parenting and childhood experience is not always or necessarily positive, beneficial, or certain.

Taken together it appears that religion has the potential to be a positive factor. However, other factors may dilute or override the potential positive effects. Thus, the content and nature of
particular religious interactions; family structure; interactions with, support from, and attitudes of other family members and peers and church community; doctrinal and practical factors; age and gender factors; and governmental, economic, social, media, educational, and other factors all may buffer or alter the outcome.  

IV. Tensions Between Religion and the State Regarding Parenting

The differences between cultures (including religious cultures) can produce within a society a “culture gap,” a “culture clash,” or even a “culture war.” Those conflicts may

76 See generally David C. Dollahite & Loren D. Marks, A Conceptual Model of Family Religious Processes in Highly Religious Families, 50 Rev. Relig. Res. 373, 375 (2009) (revising previous theory that spiritual beliefs, religious practices and faith communities account for impact of religiosity on quality of family relations and identifying ten processes that influence the results including living the religion in the home, resolving conflicts with prayer, repentance and forgiveness, putting faith or family ahead of personal or secular interests, etc.). See further Rosenberg, supra, note ___ at 146 (summarizing many studies over past forty years about impact of religion on delinquency and finding: “Overall, the data, though weak, suggest that delinquency correlates [negatively] with religiosity among respondents who consider themselves to be affiliated with a moral community and actively participate . . .”).

undermine the positive aspects of the jurisprudence of parenting. So the jurisprudence of parenting must be framed in ways that diminish the potential for religious and other culture frictions.

Recent research about religious liberty suggests that religious violence (violence motivated by or against religious groups or religious values) is more likely to occur in societies with less religious liberty. Some studies seem to support the claim that nations that have greater religious freedom experience less and fewer incidents of violent religious conflict than more restrictive, repressive nations. Religious liberty seems also to strongly correlate with other important social goods and individual freedoms and “better overall outcomes for societies,” (including political freedom, freedom of the press, civil liberties, gender empowerment and

6 May 2011) (i.e., “a difference in values, behaviours, or customs between two cultures or groups of people, esp. as a hindrance to mutual understanding and communication,”).


79 Culture, n., Oxford English Dictionary Online, Compounds at C2., at http://www.oed.com/view/Entry/45746?rskey=4rLdoM&result=1&isAdvanced=false#eid (seen 6 May 2011) (i.e., “(a) a political struggle for control of cultural and educational institutions (rare); (b) a conflict between groups with different ideals, beliefs, philosophies, etc. . . .”).

81 Id. at 83-84; see also id. at 172 (Muslim nations).
equality, lower poverty, economic freedom, etc.).\textsuperscript{82} Generally, religious tolerance within very broad parameters is the first step toward avoiding culture (religious) wars.

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V. Conclusion: A Jurisprudence for the Culture of Parenting

There is a jurisprudence of the family that consists of “universal” values regarding parent-child relations that appear to be recognize explicitly in most and implicitly in nearly all of the constitutional jurisprudence of the nations of the world. Key to that jurisprudence is recognition that the family is the fundamental, core, basic unit of society and that the welfare of the family is essential to the welfare of individuals, society and the state; recognition that inculcating virtues in children is critical for the survival and health of the nation; and that such teaching can best be done by parents.

Religion generally has an important supportive role to aid, assist and improve parenting. Religion can and usually does create and foster a culture of good parenting. The influence of religion on parenting and on children generally is positive. However, numerous other factors can reduce or override such influences, and some religious practices clearly are harmful to good parenting and to the welfare of children.

Religious tolerance, tolerance for minority beliefs and practices that are not directly harmful, is necessary for religious communities to have full potentially positive influence upon parenting. Besides constitutional protection of family and parenting, religious tolerance may best create a culture in which the jurisprudence of parenting can flourish.

\textsuperscript{82} Id. at xiii, and 206.
Appendix I.
Sovereign Nations (166 of 192) with Constitutional Provisions
Regarding Parents and/or Children

Based on research by David Roscheck (J.D. candidate, 2012)

Albania Consti., arts. 54, 59 (1998)
Angola Consti., arts. 29, 30, 47, 48 (1975, 1992)
Antiqua and Barbuda Consti., art. 5, 11 (1981)
Argentina Consti., art. 75 (1994)
Australia Consti., art. 51 (1900, 1977)*
Austria Consti., arts. 10, 65, 102 (1920, 2004)
Bangladesh Consti., arts. 17, 28 (1972, 2004)
Barbados Consti., arts. 13, 103, 104 (1966, 1995)
Belarus Consti., arts. 32, 97 (1996)
Belgium Coordinated Consti., art. 22 (1994, 2008)
Bolivia Consti., arts. 29, 48, 58, 59, 60, 61, 62, 63, 64, 65, 66, 82, 85, 108, 300, 302 (2008)
Brazil Consti., arts. 5, 6, 7, 24, 203, 208, 226, 227, 228, 229 (1988, 2010)
Burundi Post-Transition Interim Consti., arts. 30, 44, 45, 46 (2004)
Cambodia Consti., arts. 31, 46, 47, 48, 73 (1993, 1999)
Cameroon Consti., preamble (1972, 1996)
Cape Verde Consti., preamble, arts. 44, 45, 49, 59, 71, 85, 86, 87 (1992)
Central African Republic Consti., preamble, arts. 6, 7 (2004)
Chad Consti., arts. 36, 38, 125 (1996)
Chile Consti., art. 19 (1980, 2005)
China Consti., arts. 46, 49 (1982, 2004)
Congo (Democratic Republic) Consti., arts. 40, 41, 43, 202 (2005)
Congo (Republic) Consti., arts. 31, 32, 33, 34 (2001)
Cote D'Ivoire Consti., art. 6 (2000)
Croatia Consti., arts. 56, 62, 63, 64, 65, 134 (1990, 2001)
Cuba Consti., arts. 9, 35, 36, 37, 38, 39, 40, 44, 51 (1976, 2002)
Cyprus Consti., arts. 2, 20 (1960, 1996)
Denmark Consti., art. 76 (1953)
Dominica Consti., arts. 3, 95, 96 (1978, 1984)
Dominican Republic Consti., art. 8 (1966, 2002)
East Timor Consti., arts. 18, 19, 39 (2002)
Egypt Consti., arts. 10, 15 (1971, 2007)
Eritrea Consti., art. 22 (1997)
Estonia Consti., arts. 27, 28, 37, 44 (1992, 2005)
Finland Consti., arts. 6, 9, 12, 19 (2000, 2007)
Gambia Consti., arts. 29, 36, 176, 216 (1996)
Germany Basic Law., arts. 6, 7 (1949, 2009)
Greece (Hellenic Republic) Consti., arts. 15, 21 (1975, 2008)
Grenada Consti., arts. 3, 92, 93 (1973, 1992)
Guatemala Consti., arts. 20, 47, 50, 51, 52, 54, 73, 74, 102 (1985, 1993)
Guinea Consti., art. 19 (2010)
Haiti Consti., arts. 260, 261 (1987)
Hungary Consti., arts. 67, 70 (1949, 2007)
Iceland Consti., art. 76 (1944, 1999)
Indonesia Consti., arts. 28B, 34 (1945, 2002)
Iraq Consti., preamble, arts. 4, 18, 29, 30, 37 (2005)
Ireland Consti., arts. 40, 41, 42, 44, 45 (1937, 2002)
Italy Consti., 30, 31, 37 (1948, 2003)
Jamaica Consti., arts. 21, 132, 134 (1962, 1999)
Japan Consti., art. 27 (1947)
Jordan Consti., art. 23 (1952, 1984)
Kazakhstan Consti., art. 27 (1995, 2007)
Kenya Consti., arts. 112, 113 (1963, 2008)
Kiribati Consti., arts. 5, 103, 105 (1979, 1995)
Korea (Democratic People’s Republic of) Consti., arts. 31, 49, 72, 77 (1972, 1998)
Korea (Republic of) Consti., arts. 31, 32 (1948, 1987)
Kosovo Consti., art. 50 (2008)
Kuwait Consti., arts. 9, 10 (1962)
Lao People’s Democratic Republic Consti., arts. 22, 31, 32, 150 (1993)
Liberia Consti., arts. 23, 24, 28 (1944)
Madagascar Consti., arts. 21, 23 (1998)
Malawi Consti., arts. 13, 30, 42 (1994, 1999)
Malaysia Consti., arts. 21, 23 (1995, 1994)
Mali Decree 92-073/P-CTSP, preamble (25 Feb. 1992)
Malta Consti., arts. 113, 114 (1964, 2007)
Mexico Consti., arts. 2, 4, 31, 123 (1917, 2007)
Mongolia Consti., arts. 16, 17 (1992, 2000)
Montenegro Consti., arts. 69, 72, 73, 74, 75 (2007)
Mozambique Consti., art. 56 (1990)
Myanmar Consti., arts. 32, 351 (2008)
Namibia Consti., arts. 15, 20, 95 (1990, 1998)
Nauru Consti., art. 11 (1968, May 1968)
Nepal Interim Consti., arts. 13, 22 (2007)
Nicaragua Consti., arts. 73, 7475, 76, 79, 84, 105 (1986, 2005)
Niger Consti., arts. 18, 19 (1999)
Nigeria Consti., arts. 17, 38 (1999)
Norway Consti., arts. 2, 100 (1814, 2004)
Palau Consti., art. 4 (1981, 1992)
Panama Consti., arts. 56, 59, 60, 61, 63, 70, 72, 91, 98, 110, 113 (1972, 2004)
Paraguay Consti., arts. 13, 27, 49, 53, 54, 55, 56, 61, 130 (1992)
Peru Consti., arts. 4, 6, 13 (1993, 2005)
Philippines Consti., arts. 2, 13, 14, 15 (1987)
Poland Consti., arts. 18, 48, 53, 65, 68, 70, 71, 72 (1997)
Portugal Consti., arts. 36, 64, 67, 68, 69, 70, 74 (1976, 2004)
Qatar Consti., art. 21 (2003)
Rwanda Consti., arts. 27, 28, 34 (2003)
Saint Christopher and Nevis Consti., arts. 5, 11, 88, 89, 119 (1983)
Saint Lucia Consti., arts. 3, 97, 98 (1978)
Saint Vincent and the Grenadines Consti., arts. 3, 88, 89 (1979)
Samoa Consti., art. 15 (1962, 2005)
Sao Tome and Principe Consti., arts. 25, 50, 51, 52, 54 (1975, 1990)
Senegal Consti., arts. 20, 21, 22 (2001, 2008)
Serbia Consti., arts. 37, 43, 44, 63, 64, 65, 66, 68, 97, 190 (2006)
Sierra Leone Consti., arts. 8, 9, 13, 22, 24, 161, 162 (1991)
Singapore Consti., arts. 16, 112 (1965, 2008)
Slovak Republic Consti., arts. 41, 42 (1992, 2006)
Somalia Consti., arts. 53, 56 (1979)
South Africa Consti., arts. 28, 29 (1996, 2009)
Spain Consti., arts. 20, 27, 39 (1978, 1992)
Sri Lanka Consti., arts. 12, 27, 141 (1978, 2001)
Sudan interim National Consti., arts. 14, 15, 32, 47 (2005)
Southern Sudan Interim Consti., arts. 20, 21, 37, 42, 43 (2005)
Suriname Consti., art. 35 (1987)
Syria Consti., arts. 44, 46 (1973, 2000)
Thailand Consti., sections 40, 52, 80, 84, 152 (2007)
Togo Consti., arts. 31, 35 (1992, 2002)
Trinidad and Tobago Consti., arts. 4, 133, 134 (1976, 2000)
Turkey Consti., arts. 41, 61, 62 (1982, 2008)
Tuvalu Consti., arts. 17, 18 (1986)
United Arab Emirates Provisional Consti., arts. 16 (1971)
Uzbekistan Consti., arts. 64, 65 (1992)
Vanuatu Consti., arts. 5, 7 (1980, 1983)
Vietnam Consti., arts. 36, 40, 59, 64, 65, 66 (1992, 2001)
Yemen Consti., art. 30 (1994)
Zimbabwe Consti., arts. 13, 15, 16, 19, 20, 26, 80, 81, Schedule 6, Article 1, Schedule 6, Article 2 (1979, 2009)

(* = nonsubstantive provision only)