Letter of Intent—Children’s Rights—Yehezkel Margalit

I have been researching and teaching family law and more specifically parent–child relationships for more than a decade and a half. My Ph.D. thesis was titled *Determining Legal Parentage by Agreement*. One of its substantial conclusions is the acute need to subordinate every private agreement between any (two) individuals who intend to become a parent of a child to the doctrine of the best interests of the child (BIC) so that such child’s rights are protected.[[1]](#footnote-1)

Since completing my Ph.D. thesis a decade ago, I have published numerous articles in leading international and Israeli law journals. In addition, I authored two monographs published by Cambridge University Press: The Jewish Family—Between Family Law and Contract Law (2017); Determining Legal Parentage—Between Family Law and Contract Law (2019). The golden thread throughout my research is the significant prerequisite to take into consideration both the BIC and the protection of the child’s rights in any private parental agreement between any (two) individuals planning to become legal parents of a child. In my recent book I intensively explored these two doctrines.[[2]](#footnote-2)

Several weeks ago, Bar-Ilan University advised me that they that they are interested in publishing my book, which will be titled: Parent–Child Relationships—Between Family Law and Contract Law (Bar-Ilan University Press, 2022). This book consolidates my research of the Israeli law over the past decade, including extensive deliberations of the said two principal doctrines.

Following the conclusion of my 2019 book that the peak of the children’s rights revolution has not reached its deserved destination, about two years ago I launched a new comprehensive research project. It is hoped that this will be published with the working title: Taking Children’s Rights Seriously.

Its three main themes will be: the unborn child’s rights; the new frontiers of children’s rights as human rights; Israeli and Palestinian children as human beings.

Regarding the first theme, I have elaborated on the “rights” of both the frozen embryo and the fetus. Therefore, I conducted in 2020 at Bar-Ilan University an interdisciplinary research group on the ethics of cryopreserved fertilized embryos. Off the back of this, I recently finished an article titled *From (Moral) Status (of the Frozen Embryo) to (Relational) Contract and Back Again to (Relational Moral) Status*. I presented it to this forum as well as to the Israeli Contract Forum. It will also be presented to the forthcoming tenth conference in the Obligations series, to be held in Banff, Canada (July 11–15, 2022).

In 2021, on the theme of abortion, I published an article titled *Towards A New Archimedean Point of Maternal vs. Fetal Rights*? 81 Louisiana Law Review 447 (2021). Likewise, my *Abortion* entry was accepted for publication in Marriage and Divorce in America: Issues, Trends, and Controversies (forthcoming, Jaimee L. Hartenstein ed., 2022).

Finally, I have an article currently being peer-reviewed, which is titled *Abortion and Coronavirus—Between Women’s Rights Discourse and Obligations Discourse*.

At the moment, I am collaborating with Professor Benjamin Shmueli from Bar-Ilan University in co-authoring an article—*Between the Unborn Child’s Rights and His Intending Parents’ Rights and Between the Patient’s Rights Law and Contract and Negligence Laws*.

Regarding the second theme, after more than thirty years since the Convention on the Rights of the Child (CRC) came into force and in light of recent developments in childhood studies, human rights discourse, including in the international context, I intend to shed light on the most recent cutting-edge dilemmas and deliberations in this field. *Inter alia*, following the prolific scholarly research regarding children’s participation (Nigel Thomas, Children, Family and the State: Decision-making and Child Participation (2000); Nigel Thomas, *Towards a Theory of* *Children’s Participation*, 15 Int’l J. Child. Rts. 199 (2007); Nigel Thomas, A Handbook of Children and Young People’s Participation: Perspectives from theory and practice (2009)), I will explore the urgent implementation of this “child-led” right also in the field of children as researchers/participatory research (Nigel Thomas & Claire O’Kane, *The Ethics of Participatory Research with Children*, 12(5) Children & Society 336 (2006); Research with Children: Perspectives and Practices (Pia Christensen & Allison James eds., 3d ed. 2017); Claire O’Kane, *Participatory Research on Kinship Care in East Africa* *id*. 165) in the Israeli context. Due to the Covid-19 outbreak, a variety of children’s rights have been severely damaged—the right to education, the right to health, the right to employment, etc. (OECD Policy Responses to Coronavirus (COVID-19), Combatting COVID-19’s effect on children (2020), Combatting COVID-19’s effect on children (oecd.org); OECD Policy Responses to Coronavirus (COVID-19), Youth and COVID-19: Response, recovery and resilience (2020), Youth and COVID-19: Response, recovery and resilience (oecd.org)). What can and should be done to cure these epidemic crises’ considerable risks for young people, and especially for vulnerable youth?  
At the end of 2021, if we are still contemplating giving children a Magna Carta (Michael Freeman, A Magna Carta for Children? Rethinking Children’s Rights (2020)), how should we improve and enforce children’s rights in the digital age? In the wake of the updated writing in the field (The Oxford handbook of children and the law (James G. Dwyer ed., 2020), how can we prevent the miserable phenomenon of children continuing to face poverty, violence, war, disease, and disaster? Given this, are existing recognized children’s rights adequate? How should we rethink these for the foreseeable future and what should be the key issues for reform?

Finally, my abovementioned first theme and the implementation of the relations between ethics and the moral status of the unborn child’s rights squarely converge with the prolific writing of James G. Dwyer (The Relationship Rights of Children (2006); Moral Status and Human Life: The Case for Children’s Superiority (2010)), as I will extensively elaborate on the notion of children’s relational/moral rights.

In relation to the third theme, in light of the prevailing academic writing (Nadera Shalhoub-Kevorkian, Incarcerated Childhood and the Politics of Unchilding (2019); Hedi Viterbo, Problematizing law, rights, and childhood in Israel/Palestine (2021)), and some international UN/UNICEF reports (UNICEF, Children in Israeli Military Detention: Observations and Recommendations, Children in Israeli Military Detention: Observations and Recommendations—UNICEF report—Question of Palestine), I want to reevaluate how we should better promote and protect the human rights of Palestinian children in line with the CRC and other international laws, norms, and standards. Among others, I will focus on the most substantial and vexing issues when they encounter the Israeli military detention system—solitary, fatalities, and “security” detainees, etc.—including the legal framework, establishment of a juvenile military court, age of criminal responsibility, and penalties under military law.

1. As I concluded:

   Determining intentional and functional legal parentage subordinated, first and foremost, to the BIC and preserving his rights […] each private agreement should be thoroughly inspected in the prisms of the BIC and preserving his rights, the two main doctrines in the field of parent–child relationships […] the main required restriction to implementing the normative model is narrowing the “freedom of contract” to preserve the BIC and his rights.

   (*Id*. at xxx–xx) [↑](#footnote-ref-1)
2. And concluded as follows:

   began in the eighteenth century and reached its peak in the mid-twentieth century, with judicial recognition of children’s constitutional rights, the emergence of social movements, such as the Children’s Rights Movement, and the enactment of international conventions bolstering children’s rights, the most important being the United Nations Convention on the Rights of the Child (CRC). Notably, several scholars, whom I want to join, forcefully claim that the revolution in children rights hasn’t yet reached its peak, and we should continue to fight to reach this deserving destination. The shift in the legal status of children is clearly reflected in the main current doctrines: the BIC and preservation of the child’s rights.

   (*Id*. at xxx–xx) [↑](#footnote-ref-2)