

Children's Right to Identity, Selfhood and International Family Law

Marilyn Freeman
University of Westminster, England

Nicola Taylor
University of Otago, New Zealand

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University
of Otago
OTARU WHAKATO WAI
NEW ZEALAND

UNIVERSITY OF
WESTMINSTER

A photograph of a white lighthouse with a black top, situated on a grassy cliff overlooking a blue sea. The cliff is dark and rocky, with the sea below. The sky is blue with some clouds.

Our New Co-edited Book

- Framed by the child's **right to identity** set out in **Article 8** UNCRC and which applies in the countless circumstances that permeate a child's life
 - Links with **Articles 3, 5, 7, 11 & 12**
 - Topics are unarguably & inextricably **connected to families**
 - **Domestic and cross-border contexts**
 - **Recognition of when & how children's identity may need to be preserved or addressed**
- brings together a **unique interdisciplinary examination** of child identity within domestic and international family law

Article 8 UNCRC

A right hidden in plain sight



1. States Parties undertake to respect **the right of the child to preserve his or her identity**, including **nationality, name and family relations** as recognised by law without unlawful interference.

2. Where a child is **illegally deprived** of some or all of the elements of his or her identity, **States Parties shall provide appropriate assistance and protection**, with a view to re-establishing speedily his or her identity.

*First human rights treaty to explicitly recognise
the right to preservation of a child's identity*

Argentina: Disappearance of children during military junta 1976-1983

Broad Scope & Narrow Interpretation of Article 8

- Deliberately formulated in a **broad manner** → allows for its dynamic interpretation & evolution over time
- *Nationality, name, and family relations* → give an indication of aspects covered by Art 8, but **do not limit its scope**

CRC Committee: no substantive comment on Art 8 → does provide some direction, but generally cautious in General Comments and Complaints Procedure

Review of Dutch Case Law: Art 8 **increasingly being cited** → immigration + **family law** cases → *“its scope appears (too) small”* → Art 8 is **still in its infancy** → Similar conclusions likely in **other jurisdictions** → should be applied more often (Bou-Sfia, 2025)

Identity and Selfhood

*What I am as a self, my identity, is essentially defined by **the way things have significance for me.***

*My identity is defined by the commitments and identifications which provide the **frame or horizon** within which I can try to determine from case to case what is good, or valuable, or what ought to be done, or what I endorse or oppose. In other words, it is **the horizon within which I am capable of taking a stand.***

(Charles Taylor, 1989)

The Evolving Nature of Identity

Our identity is initially **attributed to us by others at birth**
→ **evolves over time** as it is shaped & developed by each of us
throughout our lives in response to **experiences, relationships,**
changes and transitions

*... a child's identity, like that of an adult's, is
'never completed, never finished' but is an
ongoing process consisting of both static
and dynamic dimensions.*

(Tobin & Todres, 2019)

Impact of Protective and Risk Factors on Identity

Protective factors can positively influence identity development

Early life adversities / disruptive life experiences can interrupt or cause maladjustment in identity development → leading to an unclear sense of one's own personal identity

→ Importance of the protection provided by **the UNCRC** to minimise the detrimental impact of potentially negative external risk factors on a child's identity

→ How can **family law & related fields** take better account of children's identity when significant life-altering events & transformations are experienced?

Identity Issues Addressed in Book Chapters 1-5

Chapter	Title	Author(s)
	Foreword	Mia Dambach
1	Unveiling the Connection between Child Identity and Family Law	Marilyn Freeman & Nicola Taylor
2	Article 8 UNCRC: To Protect or Neglect? Consideration of Its (Potential) Meaning and Effect	Soraya Bou-Sfia
3	Identity: A Psychological Perspective	Astrid Martalas
4	Cultural Identity: 'Ko au te awa, ko te awa ko au - I am the river and the river is me'	Trudy Ake & Sarah Calvert
5	Discovering Our Donor Conception as Adults: A Sisters' Selfhood Dialogue	Fiona Darroch & Kathleen Pithouse-Morgan

Identity Issues Addressed in Book Chapters 6-11

Chapter	Title	Author(s)
6	International Adoption and Cross-Border Placement of Children	Laura Carpaneto & Ester di Napoli
7	Surrogacy and Identity: Moving Beyond Genetics?	Michael Wells-Greco
8	Relocation and International Child Abduction: The Impact on Children's Identity	Nicola Taylor & Marilyn Freeman
9	Care and Protection of Children: Identity Formation for Children in Out-of-Home Care	Amy Conley Wright and Judy Cashmore
10	Violence and the Child's Sense of Identity	Mariëlle Bruning
11	Forced Marriages, Child Brides and Forced Religious Conversions of Women and Girls	Sulema Jahangir and Carolina Marín Pedreño

Identity Issues Addressed in Book Chapters 12-17

Chapter	Title	Author(s)
12	The Child's Right to Gender Identity	Claire Fenton-Glynn
13	Children's Rights and the Justice System: Exploring the Meaning and Application of the Right to Identity	Ursula Kilkelly
14	Unaccompanied Migrant Children, Including Trafficked Children and Asylum Seekers	Ronaldah Lerato Karabo Ozah & Fortunate Seneka Mongwai
15	Children, Identity and the Impacts of Parental Deportation: A Famigration Perspective	Nazia Yaqub and Helen Stalford
16	The (Self)Identity of the Child Soldier: International Law and Best Practices	Mark Drumbl
17	The Evolving Scope of International Transformations of Children	John Tobin

The Family Law Veil

Two approaches required:

1. *Lifting the veil in Family Law proceedings* so identity becomes **visible and relevant** within its welfare-based sphere
2. *Unveiling Family Law* so that its principles and welfare considerations are more widely applicable in related fields of law like **Education, Immigration** → ‘famigration’ approach (Yaquub & Stalford, 2025), & **Asylum** to enhance the relevant **assessment and decision-making processes** that impact on family members

We Advocate Change in Thinking, Practice, Legal Policy

The fuller implementation of Article 8: by placing much greater emphasis on **the impact of life events and transformations on children's identity** in a way that has not really occurred before.

Raising awareness about the broad meaning and importance of identity in the family law and related fields: to open up critical new possibilities for how we think about children and their development, wellbeing and best interests, the potential value and scope of Article 8, and the responsiveness of the law in the relevant specialist and cross-border domains.

Our Recommendations

- **CRC Committee** gives serious consideration to developing a **General Comment on Article 8**
- Consider **Article 8** more extensively in relation to **Articles 3, 5, 7, 11 & 12**
- **Lift the veil on family law** to better address child identity issues more directly
- **Unveil family law** by rolling out its principles/values in related areas of legal justice decision-making
- Consider incorporating identity in **child-related statutory enactments** (*not essential though*)
- Include identity in the way we **teach family law** & in **continuing education/training** for family justice professionals
- Undertake **legal/interdisciplinary research** on the impact of life events & transformations on children's identity & on the significance of Article 8 in specific legal domains



Final Reflection

*The right to identity is so obvious. **It's in front of our noses [yet] we almost don't see it.** And so, we really have to make an effort to reflect on it and to realise that it is present in almost all the issues we deal with.*

(Benoit van Keirsbilck, CHIP Video)₁₄