“C” IS FOR CONSTITUTION: RECOGNIZING THE DUE PROCESS RIGHTS OF CHILDREN IN CONTESTED ADOPTIONS

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In contested adoptions, those unfortunate situations in which biological parents and adoptive parents fight for custody of a child, all too often the child’s interests are not considered when determining with whom she will ultimately reside. In the tug-of-war for custody, the courts’ references to the rights of biological and adoptive parents seem to liken the child to a piece of property. In far too many cases, the courts make their decisions without regard to the severe psychological and developmental harm that will result to the child from removing her from the only home she has ever known and sending her to live with virtual strangers. As one expert has noted, “Whenever there’s a clash between rights, somebody’s needs get trampled—usually the children’s.”

A recognition of the constitutional rights of children, as individuals, to a due process hearing on their best interests, accompanied by statutory reform in adoption laws, would obviate custody decisions that treat children as chattels and

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2 For clarity, “she” is used in this Comment to refer to children of both genders.

3 See Gilbert A. Holmes, The Tie That Binds: The Constitutional Right of Children to Maintain Relationships with Parent-Like Individuals, 53 Md. L. Rev. 358, 381 (1994) (“These decisions reduce the child to an object instead of treating the child as a person. The child becomes a nonentity and is not accorded any rights, consideration, or value.”) (internal citations omitted).

4 See Marcus T. Boccaccini & Eleanor Willemens, Contested Adoption and the Liberty Interest of the Child, 10 St. Thomas L. Rev. 211, 219-20 (1998) (“If a child is removed from the only secure home she has known, she is at risk for difficulties in human interaction and relationships, underachievement, and failure to successfully parent the next generation.”).

5 Dianne Hales, What About the Best Interests of the Child?, OMAHA WORLD HERALD, Jan. 22, 1994, at 20 (quoting Dr. Dennis Donovan, Medical Director of the Children’s Center for Developmental Psychiatry in St. Petersburg, Fla.) (discussing contested adoptions).
subject them to undue suffering merely because one person has established a superior "right" to custody of the child. Indeed, in making a custody decision, "[w]ho has more interest ... than the child?"5 Unfortunately, however, the child's interests and rights are usually subordinated to those claimed by the adults involved in the dispute.6

I. CURRENT ADOPTION LAWS AND STANDARDS

A. Biological-Parental Fitness Standard and the "Best Interests of the Child" Standard

In contested adoption cases, courts normally use one of the following standards in deciding whether a prospective adoptive parent should retain custody: a biological-parental fitness standard7 or a "best interests of the child" standard.8 Under the biological-parental fitness standard, the standard used in the majority of states,9 courts must return the child to the custody of the biological parent absent a showing of unfitness or a voluntary relinquishment of parental rights.10 This is done upon the biological parent's demand without consideration of whether this will cause severe harm to the child.11 With the "best interests" standard, the needs and interests of the child are considered paramount in determining whether to award custody to the adoptive parents or biological parent.12

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5 Joel D. Tenenbaum, Everyone's Constitution, DEL. LAWYER, Summer 1994, at 4. 4-6 (arguing that children should be entitled to independent counsel in child custody and termination of parental rights proceedings).
6 See, e.g., Virginia Mixon Swindell, Comment, Children's Participation in Custodial and Parental Right Determinations, 31 HOUS. L. REV. 659, 661 (1994) ("A child's needs, interests, and rights have become subordinated to the conflicting desires of various adults claiming some interest in the child.").
7 See In re Kirchner, 649 N.E.2d 324, 334 (Ill. 1995) (stating that the biological parental fitness standard is the "law of the land").
9 See Woodhouse, supra note 8, at 2510-11.
10 See id.
11 See id. at 2511 (criticizing the standard for its harmful effects on the children in question).
B. Problems With the Current Standards

The danger with using the biological-parental fitness standard is that courts do not take into consideration the serious harm that will result from removing a child from the custody of a person with whom she has an "attachment." "Attachment" is a term used by psychologists to explain the important connection between babies who are psychologically well-cared for and their caregivers. Attachment, which develops over the course of the first year of life, is crucial to an infant's and child's normal development. It enables the child to connect with others and provides the "secure base" from which the child can develop independence and learn on her own.

Research shows that insecurely attached babies have less advanced communication skills and less advanced motor and cognitive development in certain areas than securely attached babies. On the other hand, secure attachment leads to "more complex and better language skills and higher levels of intellectual development." Attached children "become very disturbed if they are separated from their primary caregivers and do not readily accept substitute caregivers." This separation can lead to "conduct disorders and antisocial development." Even a psychologist testifying on behalf of a biological father in a contested adoption case conceded that removing the two-and-a-half-year-old child from the custody of his adoptive parents would be a...
"nightmare" for him. Research has proven that a child's early experience of attachment has a "powerful life-long influence" on the child.

In addition to ignoring the dangers of removing children who have developed healthy attachments to their primary caregivers, courts using the biological-parental fitness standard often do not consider past violent or neglectful behavior of the biological parents when making their custody determination. With the presumption of fitness of the biological parent and his or her concomitant right to custody, this behavior, absent truly egregious conduct, often does not enter into the custody determination. As one judge has explained, the biological-parental fitness standard:

has acquired rigidity from the dubious and amorphous principle that the natural parent has some sort of constitutional 'right' to the custody of his child. This principle comes dangerously close to treating the child in some sense as the property of his parent, an unhappy analogy which the Supreme Court has been guilty of in another context.

On the other hand, the "best interests of the child" standard, while rejecting a property-like analysis in determining custody, is also problematic. One of the major criticisms is that "best interests" is a vague standard, often defined from an adult perspective that focuses on the socioeconomic status of the parties involved. Critics of this standard are concerned that under a "best interests" determination, judges may let their prejudices regarding, for example, class, race, or sexual orientation, guide their decision, rather than a real "best interests" analysis. Such critics argue that social en-


\[\text{Id.}\]

Boccaccini & Willemesen, supra note 3, at 217.

See Woodhouse, supra note 8, at 2515 n.62 (describing cases in which one biological father seeking custody was convicted and served time for sexual assault, another had failed to financially support or even visit two prior children he had fathered, and yet another was accused of physical abuse by the biological mother of the child).

See id. (describing cases in which biological parents won custody of their children despite past evidence of unfitness).

In re Baby Girl Clausen, 502 N.W.2d 649, 670 (Mich. 1993) (Levin, J., dissenting) (arguing that the majority's decision to uphold Iowa's ruling granting custody of a child to her biological parents would only be proper if the dispute concerned a "carload of hay.").

See Woodhouse, supra note 8, at 2504-05 (comparing a child-centered perspective to an adult-centric one).

Melanie Togman Sloan, No More Baby Jessicas: Proposed Revisions to the Parental Kidnapping Prevention Act, 12 YALE L. & POL'Y REV. 355, 378 (1994) (commenting that "[Judges can disguise decisions based on improper factors by vague recitations of general language, and as a result, the real reasons underlying a custody award may be very different from the stated ones.").
gineering is inherent in this standard and allege that courts using this determination tend to award custody to adoptive parents because they are usually in a higher social class than the birth parents and can provide more to the child in terms of material goods.28

C. Child-Centered Standard

While the above arguments are not without merit, a "best interests" standard that truly considers a child's needs and interests defines such interests from the child's perspective.29 In the same way that children do not use blood ties in order to determine whom to love, they do not define their attachments in terms of material goods.30 For young children, their "parent" could be any person who fulfills their needs and with whom the child has formed an emotional attachment.31 From the child's perspective, parenthood is "based on continuous day-to-day interaction, companionship, interplay, and mutuality."32 For these reasons, courts using a "best interests" standard should take into account:

an assessment of the child's age, the extent of bonding with the prospective adoptive parent or parents, the extent of bonding or the potential to bond with the birth parent or parents, and the ability of the birth parent or parents to provide adequate and proper care and guidance to the child.33

A child-centered "best interests" standard is the only way to ensure that the child's rights are being protected.34 This standard can only be mandated through constitutional recognition of a child's due process right to a hearing on her best

28 See Toni L. Craig, Comment, Establishing the Biological Rights Doctrine to Protect Unwed Fathers in Contested Adoptions, 25 FLA. ST. U. L. REV. 391, 405-06 (1998) (arguing that "the biological rights doctrine serves . . . state social, economic, and administrative interests").
29 See Woodhouse, supra note 8, at 2504-05 (arguing for a child-centered perspective in custody cases); see also Sloan, supra note 27, at 364-74 (explaining the standard and discussing its application by various courts in different custody cases).
30 See Boccaccini & Willemsen, supra note 8, at 217 (explaining that children form attachment bonds with those whom they recognize as attendant to their wants and needs).
31 See Sloan, supra note 27, at 376 (describing how children view their relationships with their caregivers).
32 Id. (suggesting that "[t]he law needs to recognize that after significant time has passed, whatever the cause and whoever may be responsible, the child does not recognize biological parents as his or her psychological parents.").
33 Kaplan, supra note 19, at 940 (citing CAL. FAM. CODE § 8815(d) (West 1995)).
34 See Woodhouse, supra note 8, at 2504-05 (arguing that unlike the parent-centered "best interest" standard, "a child-centered perspective values relationships of attachment, because they are so important to children").
interests. In contested adoption cases, recognition of children as individuals deserving of constitutional protection would alleviate the problems of inconsistent adoption laws among the states and property-like analyses in custody determinations.

The basic rights of a child to a secure upbringing and emotional well-being should not depend upon the state in which the child or her parents happen to reside, nor should it depend upon vague or arbitrary factors. Our legal system needs to acknowledge that although adoptive and biological parents, and even the states, may have certain rights in contested adoption cases, these rights do not take precedence over the constitutional rights of the child.

II. CHILDREN AND THE CONSTITUTION

A. Framers' Intent

The United States Constitution does not contain any specific reference to children, parents, or families. Nothing about children or parents appears in the records or debates leading to the drafting and ratification of the Constitution.

Constitutional scholars have advanced various reasons for the omission of any specific mention of children. For instance, perhaps it never occurred to the Framers that children needed separate constitutional status from adults, i.e., that children's interests were sufficiently protected by their parents; or possibly, the Framers may have believed it was within the province of the states to regulate the parent-child relationship. Others, however, have expressed more cynicism, suggesting that the Framers did not even consider children's rights and noting that the Society for the Prevention of Cruelty to Animals was founded before a similar society was founded to protect children.

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35 See Homer H. Clark, Jr., Children and the Constitution, 1992 U. Ill. L. Rev. 1, 19-29 (1992) (arguing that inconsistencies in adoption decisions may be alleviated by greater focus on the constitutional rights of the child).
36 See id. at 5-6 (discussing the Supreme Court's decision in In re Gault, 387 U.S. 1 (1967), which recognized that children have basic rights under the Due Process Clause and the Bill of Rights).
37 See generally U.S. Const.
38 See Clark, supra note 35, at 1 (noting that children or parents are not mentioned in the Constitution).
39 See id. at 2 (discussing theories about why the Constitution does not specifically apply to children).
40 See Tenenbaum, supra note 5, at 4 (advocating equal constitutional rights for children).
B. The Fourteenth Amendment

Nevertheless, while the Constitution does not explicitly mention children or family rights, the history behind the adoption of the Civil War Amendments shows that “the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments made family freedom a constitutional right.” These amendments, passed to abolish slavery and to guarantee freedom to all persons regardless of race or color, demonstrate that the drafters and advocates of the Fourteenth Amendment “understood rights of family as aspects of liberty, fundamental to proper definitions of freedom and citizenship and necessary to the governmental structure envisioned for a reconstructed Union.”

Before the passage of the Civil War amendments, slaves suffered an almost complete denial of family rights: they could not legally marry, had little voice in the upbringing of their children, and were often physically separated from their families through the sale of a family member or the apprenticeships of their children to other slaveholders. From the moment of birth, the child of a slave was legally considered the property of the slaveowner and therefore completely subject to the slaveowner’s will.

Abolitionists believed that the Constitution should not only prohibit slavery, but also protect the basic aspects of freedom: the fundamental rights to marry and raise children. Members of the Reconstruction Congress “repeatedly acknowledged the fundamental and inalienable character of

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41 See U.S. CONST. amend. XIII (abolishing slavery); U.S. CONST. amend. XIV, § 1, stating that:
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Id.; U.S. CONST. amend. XV (guaranteeing the right to vote regardless of “race, color, or previous condition of servitude”).
43 Id. at 9 (arguing that the history of the Fourteenth Amendment establishes the “constitutional legitimacy of family rights doctrine”).
44 See id. at 30-35, 90-102 (recounting personal narratives of people whose families had been torn apart by slavery).
45 See id. at 91 (discussing the subordinating effects of the denial of family rights).
46 See id. at 111 (arguing that the rights to marry and to become parents are fundamental prerequisites to a free society).
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rights of family," and supporters of the Fourteenth Amendment regarded it as "an instrument to reenshrine family rights as inalienable aspects of national citizenship and natural law."

C. Development of Constitutional Rights for Parents and Children

While some scholars believe that the Supreme Court's decisions do not "teach as well as [they] might why the Constitution, read in the context of the forces that produced it, protects the right of families to function with a significant measure of autonomy," the Supreme Court has accorded constitutional protections to parents and the family unit through the Fourteenth Amendment. However, the Court has also held that parents' rights are not absolute: the State, acting as parens patriae, may restrict parental authority "in things affecting the child's welfare."

The Supreme Court has also recognized that children are "persons" under the Constitution and that they possess "fundamental rights which the State must respect." Indeed, as the Court explained in Planned Parenthood of Central Missouri v. Danforth: "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights." However, while acknowledging that children do have constitutional rights, the Court has also ruled that "the constitutional

47 Id. at 113 (recounting the debates in the U.S. Senate over the Thirteenth Amendment).
48 Id. at 10 (describing the attitudes of the Reconstruction Congress and abolitionists).
49 Id. at 6 (arguing that "[t]he [Supreme] Court's story of family liberty has thus far been written from a perspective that obscures important evidence").
50 See Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925) (holding that parents have a constitutional right to direct the upbringing and education of their children); Meyer v. Nebraska, 262 U.S. 390, 399-400 (1923) (holding that the liberty interest guaranteed by the Fourteenth Amendment includes the right to "bring up" and educate one's children).
51 Prince v. Massachusetts, 321 U.S. 158, 166-67 (1944) (upholding, over guardian's objection, a state statute prohibiting children from selling magazines on the street).
52 Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 511 (1969) (holding that suspensions of students for wearing black armbands was a violation of the students' constitutional rights under the First Amendment).
54 Id. at 74 (invalidating as unconstitutional a blanket state provision requiring parental consent before an unmarried minor could obtain an abortion).
rights of children cannot be equated with those of adults . . . ."\(^{55}\)

This does not mean that children's rights are lesser than those of adults in the context of contested adoption. It simply means that due to "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing,"\(^{56}\) the State may have the right to involve itself in areas, such as child labor and mandatory schooling, in which it could not get involved to the same extent with adults. It is precisely for the aforementioned reasons that children need special protection, not a refusal of protection.\(^{57}\)

One must also question the notion that recognizing the constitutional rights of parents will protect those of children.\(^{58}\) "[T]he protective nature of the family should not insulate the child from receiving the guarantees of the Constitution."\(^{59}\)

This is especially true since "in contemporary society the interests of parents and children sometimes do not coincide and in fact often conflict."\(^{60}\) Contested adoption cases are clear proof of this conflict.\(^{61}\)

**D. The Supreme Court and the Family**

Certain Supreme Court holdings in family cases support a rejection of the strict biological-parental fitness doctrine as potentially violative of a child's constitutional rights. In *Lehr v. Robertson*,\(^{62}\) the Court upheld a stepparent adoption of an out-of-wedlock child over the objection of the child's biological father.\(^{63}\) The Court ruled that "the mere existence of a bio-

\(^{55}\) Bellotti v. Baird, 443 U.S. 622, 634 (1979) (holding that a state statute requiring a pregnant minor seeking an abortion to obtain the consent of her parents or to obtain judicial approval following parental notification was unconstitutional).

\(^{56}\) Id. at 634 (explaining why children's constitutional rights are not equal to those of adults).


\(^{58}\) See Clark, *supra* note 35, at 40 (arguing that adults and children need different protections from the law).

\(^{59}\) Holmes, *supra* note 2, at 387 (arguing that children are entitled to constitutionally-guaranteed rights despite the roles and wishes of their parents).

\(^{60}\) Clark, *supra* note 35, at 40 (discussing intra- and inter-family conflicts over children's best interests).

\(^{61}\) See id.


\(^{63}\) Id. (holding that a biological father's Fourteenth Amendment rights were not violated where the biological mother's new husband adopted the biological father's
logical link does not entitle a natural father to the same constitutional protection regarding his child as a father who "demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child." The Court also held that "[p]arental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring."

Lehr is a clear articulation that a mere biological connection between a parent and child is not dispositive regarding custody of the child. The Court recognized that biological parentage is not equivalent to or indicative of the best interests of the child. This holding acknowledged that "the state's interest in establishing workable adoption procedures was based on the needs of children... for secure adoption placements." Supreme Court precedents do indicate that parents have certain rights regarding their children, but their rights are not absolute, and, as Lehr has shown, "[blind adherence to a policy favoring the biological definition of family is more often than not contrary to the best interests of the children."

In a case similar to Lehr, the Court in Quilloin v. Walcott sustained the adoption of a child by his stepparent over the objection of the natural father. The Court framed the issue as whether the biological father's interests "were adequately protected by a 'best interests of the child' standard" and held in the affirmative. The biological father did not abandon his child, nor was he found to be unfit. However, the Court upheld the adoption because it gave "full recognition to a family

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64 Id. at 261.
65 Id. at 256 (quotation marks and emendation omitted).
66 Id. at 260 (emphasis in original omitted) (quoting Caban v. Mohammed. 441 U.S. 380, 397 (1979) (Stewart, J., dissenting)).
67 See id. at 262 (noting that if a biological father fails to take responsibility for his child "the Federal Constitution will not automatically compel a state to listen to his opinion of where the child's best interests lie").
68 Clark, supra note 35, at 22.
69 See Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925) (rejecting state statute requiring parents to send their children to public schools); Meyer v. Nebraska, 262 U.S. 390, 403 (1923) (overturning a statute proscribing the teaching of foreign languages to children).
70 See Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (noting that the "rights of parenthood are [not] beyond limitation").
71 Tenenbaum, supra note 5, at 6.
73 Id.
74 See id. at 254.
75 See id. at 247.
unit already in existence," and because it was "a result desired by all concerned, except [the biological father]."  

Lehr and Quilloin demonstrate that the Constitution does not accord protection to a mere biological link but to an existent family." As the Court explained, albeit in dicta, in Smith v. Organization of Foster Families: "[b]iological relationships are not exclusive determination of the existence of a family" and that "the importance of the familial relationship... stems from the emotional attachments that derive from the intimacy of daily association."  

E. Recognizing Children's Individual Constitutional Rights

The Supreme Court has never ruled on whether a child who has been in long-term custody with non-biological "parents" and has formed an attachment to them acquires a right to a custody hearing that addresses her interests and welfare separate from her biological parents' rights. However, the Court has held that the Constitution applies to children and previous Court decisions regarding children's due process rights seem to indicate that the child does have protected constitutional rights in the situation of contested adoption.

In Goss v. Lopez, the Supreme Court held that the Fourteenth Amendment's Due Process Clause requires that, before suspending a student for ten days or less, a high school must give the student notice of the charges against her and an opportunity to respond to them. In the case of In re Gaul,...
the Court held that compliance with the due process guarantees of the Fifth and Fourteenth Amendments means that, in juvenile delinquency proceedings, minors have a constitutional right to notice, to counsel, and to confront witnesses against them. Minors also enjoy the protections of the Fifth Amendment privilege against self-incrimination. These cases and others regarding children lead to the conclusion that the Due Process Clause and the Bill of Rights apply to children. In fact, the Gault Court affirmatively stated that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."

If minors have due process rights in juvenile delinquency proceedings, it follows that children have due process rights in other proceedings that threaten their liberty, including contested adoptions. As Justice Fortas observed in In re Gault: "Due process of law is the primary and indispensable foundation of individual freedom." Individual freedom, as the American slavery experience has proven, encompasses personal liberty (i.e., freedom from bondage) and rights of family autonomy for both adults and children, such as the right to marry and the right to be raised in a home without the threat of removal without due process of law.

Indeed, Justice Fortas's quote in In re Gault regarding the meaning of due process and the applicability of the Constitution to children can be read as not limited to the context of delinquency proceedings:

In their zeal to care for children neither juvenile judges nor welfare workers can be permitted to violate the Constitution, espe-

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65 See U.S. Const. amend. V ("Nor [shall any person] be deprived of life, liberty or property, without due process of law.").
66 In re Gault, 387 U.S. at 31-57 (holding that the manner of a delinquency proceeding in which a fifteen-year-old boy was committed to state industrial school was a violation of the boy's constitutional rights).
67 See id. at 47 (noting that the privilege against self-incrimination is a safeguard that assures that admissions or confessions are voluntary).
68 See, e.g., Carey v. Population Servs. Int'l, 431 U.S. 678, 693 (1977) (holding that minors have a right of privacy concerning decisions regarding procreation); Danforth, 428 U.S. at 74 (overturning blanket parental notification requirement for minors seeking abortions); In re Winship, 397 U.S. 358, 368 (1970) (holding that in juvenile delinquency proceedings, due process requires proof of guilt beyond a reasonable doubt); Tinker, 393 U.S. at 506 (holding that minors have First Amendment free speech rights).
69 See Clark, supra note 35, at 5-6 (discussing the Court's decision in Gault).
70 In re Gault, 387 U.S. at 13.
71 See id. at 20.
72 Davis, supra note 42, at 247 ("Freedom meant the right to form a legally recognized family within which one might develop a 'family theology'... [and] supervise the socialization, learning, and value formation of one's children.").
cially the constitutional provisions as to due process that are involved in moving a child from its home. The indispensable elements of due process are: first, a tribunal with jurisdiction; second, notice of a hearing to the proper parties; and finally, a fair hearing. All three must be present if we are to treat the child as an individual human being and not to revert, in spite of good intentions, to the more primitive days when he was treated as a chattel.\textsuperscript{94}

Permanently removing a child from her home without a hearing that addresses her interests in the context of contested adoption is treating her as a chattel and can be just as violative of her right to individual freedom and just as psychologically detrimental as being committed to a juvenile detention facility.\textsuperscript{95} In fact, it is plausible to argue that it is an even greater violation. Gerald Gault was facing a six-year removal from his home. In contested adoption cases, children face permanent removal from their homes and permanent severance of their established family ties.

In addition, if a child has due process rights in school, certainly she must have due process rights outside of that setting because the stakes are so much greater. A child's liberty interest in not being removed from her home environment without due process must be stronger than her liberty interest in not being barred from school for a period of up to two weeks without a proper hearing.

The Fourteenth Amendment must be recognized as protecting children's liberty from state-imposed physical, psychological and developmental harm in all contexts.\textsuperscript{96} Indeed, in its decisions regarding students' rights in schools\textsuperscript{97} and in juvenile delinquency proceedings,\textsuperscript{98} the Court accorded chil-

\textsuperscript{94} In re Gault, 387 U.S. at 19 n.25 (quoting ARTHUR T. VANDERBILT, VIRTUE: BASIC STRUCTURE FOR CHILDREN'S SERVICES IN MICHIGAN, Foreword p. x (1953)).

\textsuperscript{95} See Holmes, supra note 2, at 387 ("Extending the children's constitutional rights to the familial setting, as in other institutional settings, will limit the courts' ability to deny children constitutional rights . . . the protective nature of the family should not insulate the child from receiving the guarantees of the Constitution.").

\textsuperscript{96} See Suellyn Scarneccia, A Child's Right to Protection from Transfer Trauma in a Contested Adoption Case, 2 DUKE J. GENDER L. \& POLY 41, 46 (1995) (arguing that a child has a "right to due process when state action, in the form of a transfer of custody, is likely to cause substantial harm to the child").

\textsuperscript{97} See New Jersey v. T.L.O, 469 U.S. 325 (1985) (holding that the Fourth Amendment applies to searches of student property brought to school but, because schools have a strong interest in maintaining order, searches are conducted under a "reasonable" rather than a "probable cause" suspicion); Tinker v. Des Moines Indep. Sch. Dist., 393 U.S. 503 (1969) (upholding students' First Amendment right to protest the United States' involvement in Vietnam in school).

\textsuperscript{98} See In re Winship, 397 U.S. 358 (1970) (holding that there exist certain due process requirements in the adjudication of a child charged with an act that would constitute a crime if committed by an adult); In re Gault, 387 U.S. 1 (1967) (review-
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... children the same constitutional protection as adults except where such protection would interfere with the responsibilities of school officials or the purposes of the juvenile justice system. Both the provision of due process rights and their limitation were based on the needs of children as the Court saw them.

III. STATES AND CONTESTED ADOPTION CASES

An examination of how some states have made custody decisions in contested adoption cases shows why it is necessary to recognize a child's independent constitutional right to a hearing on her best interests before making a custody determination.

A. Baby Jessica

In the case of "Baby Jessica," a contested adoption case that made national headlines, the Iowa Supreme Court awarded custody of two-and-a-half-year-old Jessica, who had lived almost her entire life with her adoptive parents and had never even met her biological parents, to her biological parents. The court made its decision based on the fact that her biological father had never formally relinquished his rights.

When Jessica's biological mother placed her up for adoption, she lied about the identity of Jessica's biological father. She and the purported father signed a release of pa...
rental rights and the child was placed in the custody of her adoptive parents soon after her birth. When Daniel, the biological father, learned that he was the father of Jessica, he intervened in the adoption proceedings and asserted his parental rights. What resulted was a tug-of-war between the biological parents and adoptive parents in which each side claimed the right to custody of Jessica.

What is most striking about the court's decision is that the court seemed to recognize that it would be in Jessica's best interests to remain with her adoptive parents, yet the court awarded custody to her biological parents. The court noted that Daniel "had a poor performance record as a parent" with his two other children, that he had "largely failed to support these children financially and . . . failed to maintain meaningful contact with either of them." In contrast, the court stated that Jessica's adoptive parents had provided her with "exemplary care." Unfortunately, the court's decision was made according to Iowa's adoption statute which states that the best interest of the child cannot be considered unless the biological parents consent to adoption or forfeit their right to withhold consent. The court stated: "While cognizant of the heartache which this decision will ultimately cause, this court is presented with no other option than that dictated by the law in this state."

of the child's biological father] was that she was dating Scott [the purported father] at the time she found out that she was pregnant" and did not want to create problems in her new relationship).

104 See id. at 241 (noting that the mother and purported father signed waivers of notice of the termination hearing and subsequently, custody of the child was given to the adopted parents).

105 See id. at 246 (noting that the biological father met with an attorney after learning he was the baby's father which led to his filing a petition to intervene in the adoption case of the baby).

106 See id. at 245 (stating that "[t]he argument that the best interests of the baby are best served by allowing her to stay with R.D. and J.D. [her adoptive parents] is a very alluring argument.").

107 Id. at 245.

108 Id. (agreeing with the district court's finding that the adoptive parents "have provided exemplary care for the child [and] view themselves as the parents of this child in every respect.").

109 See id. (quoting IOWA CODE § 600.3(2)), stating that: [t]he general rule is that . . . the court may not consider whether the adoption will be for the welfare and best interests of the child where the parents have not consented to an adoption or the conditions which denote the necessity of their consent do not exist. However, where a parent by his conduct forfeits the right to withhold consent [and] . . . contests the adoption, the welfare of the child is the paramount issue.'

In re B.G.C., 496 N.W.2d at 245.

110 Id. at 246 (quoting the district court's statements as it awarded custody of the child to the biological father).
A constitutional recognition of Jessica's individual constitutional rights would have precluded such an unhappy outcome. It would bar state courts and legislatures from enforcing rules that require blind adherence to the biological-parental fitness standard. Instead, courts would be compelled to conduct a hearing to explore the effects on the child of a rupture of her established relationships. In Jessica's case, testimony established that such a rupture would be highly detrimental to Jessica, placing her "at an elevated risk for future difficulties with human interaction, relationships, and achievement."\(^{111}\)

**B. Baby Richard**

The courts in Illinois also follow the biological-parental fitness doctrine in situations of contested adoption. This standard led the court to remove four-year-old "Baby Richard" from the home of his adoptive parents and place him in the custody of the biological parents he had never known.\(^{112}\)

Baby Richard's biological parents had ended their relationship before he was born, and his biological mother, Daniella, unilaterally decided to place him for adoption.\(^{113}\) Richard's adoptive parents met Daniella while she was living in a shelter for battered women, and they adopted Richard soon after his birth.\(^{114}\) Apparently, Baby Richard's biological father, Otto, was told the baby had died.\(^{115}\) When he found out that Richard was alive, he filed a claim to nullify the adoption.\(^{116}\)

The state supreme court reversed the decision of the appellate court which had ruled in favor of the adoptive parents, or more accurately, in favor of Richard. The appellate court had asserted:

To hold that a child is the property of his parents is to deny the humanity of the child. Thus, in the present case we start with the premise that Richard is not a piece of property with property rights belonging to either his biological or adoptive parents.

\(^{111}\) Boccaccini & Willemsen, supra note 3, at 221.

\(^{112}\) See *In re* Kirchner, 649 N.E.2d 324, 334-36 (Ill. 1995) (stating that, absent voluntary relinquishment of the right to care, custody and control of a child, these rights belong to the natural parents of the child).

\(^{113}\) See *id.* at 326-27 (recounting the facts of the case relating to the circumstances surrounding the decision to put the child up for adoption).

\(^{114}\) See *id.*

\(^{115}\) See *id.* at 327.

\(^{116}\) See *id.*
Richard 'belongs' to no one but himself.\textsuperscript{117}

Unfortunately, the Illinois Supreme Court rejected this characterization of Richard's rights. It held that Otto, as Richard's biological father, was entitled to speak for his son's interests,\textsuperscript{118} and it rejected the notion that Richard had individual due process rights.\textsuperscript{119} Instead, in an opinion that accused the adoptive parents of deceit and subterfuge and which described their relationship with Richard in property law terms as one of "mere possession,"\textsuperscript{120} the court found that Otto had greater rights to custody of his son.\textsuperscript{121} Most disappointing from Richard's point of view was the court's ruling that, while "[t]he United States Supreme Court has never decided whether a child has a liberty interest symmetrical with that of a natural parent in maintaining his current relationship . . . no such liberty interest exists as regards Richard's psychological attachment to [his adoptive parents]."\textsuperscript{122}

The dissenting justice in this case objected to the holding on the grounds that Richard's due process rights under both the federal and state constitutions had been violated.\textsuperscript{123} He rejected the majority's determination that Otto could best represent his son's interests because Otto's interests were clearly adverse to his son's.\textsuperscript{124}

The court's holding was contrary to the protection accorded to individuals by the Fourteenth Amendment of the Constitution.\textsuperscript{125} The constitutional rights of children as distinct from their natural parents must be recognized by the Supreme Court in the context of contested adoption so that

\textsuperscript{118} See In re Kirchner, 649 N.E.2d at 330 (stating that "Otto, as Richard's natural father whose rights have not been terminated, has equal if not greater standing to assert what is in his son's best interests").
\textsuperscript{119} See id. at 339 (holding that "[w]hile children have a due process liberty interest in their family life, that interest is not independent of the child's natural parents' interest absent a finding of unfitness").
\textsuperscript{120} Id. at 335 (stating that since the adoption of Richard was invalidated, the adoptive parents only retained "physical possession of Richard but not his custody.").
\textsuperscript{121} See id. (stating that because the biological father did not voluntarily place the child in the care of the adoptive parents, the right of custody was never relinquished by the biological father).
\textsuperscript{122} Id. at 339.
\textsuperscript{123} See id. at 344 (McMorrow, J., dissenting) ("Virtually the entire focus of the majority opinion relates only to the rights of Kirchner [the biological father], and ignores the rights of Richard and the Does [his adoptive parents].").
\textsuperscript{124} See id. [noting that "Kirchner's [the biological father's] interests are adverse to and in conflict with the child's best interests. Consequently, the general presumption [that the biological father is in the best position to represent his child's best interests] should fail"].
\textsuperscript{125} See U.S. CONST. amend. XIV, § 1 ("Nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .") (emphasis added).
DUE PROCESS RIGHTS OF CHILDREN

their needs and interests are protected.

C. The Rost Twins

Contrary to the Iowa and Illinois courts, courts in California recognize that "children are not merely chattels belonging to their parents, but rather have fundamental interests of their own" which "are of constitutional dimension." 120

The Bridget R. case involved twins, Bridget and Lucy Rost, who were given up for adoption by their biological parents. 127 The biological parents, who were of Native American descent, subsequently attempted to invalidate their relinquishment of parental rights on the grounds that the adoption was not executed pursuant to the Indian Child Welfare Act ("ICWA"). 128 While the adoption may have been invalid under the ICWA (primarily because the biological parents lied about their ancestry), the court of appeals reversed the trial court's order vacating the termination of parental rights. 129

The appeals court recognized that, in a contested adoption, "the interests of... the biological family may be in direct conflict with the children's strong needs, which we find to be constitutionally protected, to remain through their developing years in one stable and loving home." 130 Rather than finding that the biological parents had a greater "right" to custody, the court held that:

[As a matter of simple common sense, the rights of children in their family relationships are at least as fundamental and compelling as those of their parents. If anything, children's familial rights are more compelling than adults', because children's interests... also include the... need]... to have stable and permanent homes....

The court properly held that, while it was preferable to maintain a child's custodial ties with her biological parents, a court could not constitutionally make a custody decision in the situation of contested adoption before conducting a hearing on the child's behalf to determine her best inter-

127 See id. at 1491 (stating the facts of the case).
128 See id. at 1521-22 (reversing a trial court's order that the children be returned to their biological parents).
129 See id. at 1490 ("We reverse an order of the trial court made pursuant to sections 1913 and 1918 of the Indian Child Welfare Act of 1978.").
130 Id. at 1502 ("An individual's many related interests in matters of family life are compelling and are ranked among the most basic of civil rights.").
131 Id. at 1504 (stating that stability in the home is necessary for healthy development in childhood).
The Bridget R. opinion should serve as a model for other courts in contested adoption cases. The court did not allow statutory procedures to violate a child's constitutional rights. Nor did it fail to recognize that biological parents have constitutional rights which prospective adoptive parents do not necessarily possess.

IV. THE UNIFORM ADOPTION ACT

A legislative effort that better addresses the rights of children in the context of contested adoption is the Uniform Adoption Act ("UAA"). The National Conference of Commissioners on Uniform State Laws ("NCCUSL") approved the text of the UAA in 1994. The NCCUSL recognized that state adoption laws are inconsistent and confusing, and fashioned the UAA as "a comprehensive and uniform state adoption code that...promotes the interest of minor children in being raised by individuals who are committed to, and capable of, caring for them."

The UAA is written to protect children's interests and with an eye toward avoiding contested adoptions. Before finalizing an adoption, the court must determine whether an unknown father can be identified and located for the purpose of notifying him of the adoption proceeding. Biological parents may only consent to adoption after their child is born and may revoke consent within 192 hours after the child's birth. If the

132 See id. at 1517 ("[W]e believe it would constitute a violation of the due process clause of the Fifth and Fourteenth Amendments to remove a child from a stable placement...without a hearing to determine whether the child would suffer harm if removed from that placement.").

133 The court did remand the case for trial on issues raised by the ICWA—namely to determine whether there was evidence that the twins were part of an existing Indian family so as to justify the application of the ICWA. See id. at 1521-22. The case was settled before trial. See discussion infra Part VII.

134 See id. at 1506 (noting that parental rights are generally accorded deference under the Constitution).


136 The NCCUSL is a nonprofit organization comprised of judges, lawyers, law professors, and state legislators. NCCUSL members are "appointed by the governors of every state to draft proposed legislation on a broad range of topics." See Joan Helfetz Hollinger, Adoption and Aspiration: The Uniform Adoption Act, The DeBoer-Schmidt Case, and the American Quest for the Ideal Family, 2 DUKES. J. GENDER L. & POLY 15, 40 n.4 (1995).

137 See UNIF. ADOPTION ACT, Historical Notes at 1.

138 Id., Prefatory Note, at 2 (stating the goals of the UAA).

139 See id. at § 3-404 (providing for investigation and notice to unknown father).

140 See id. at § 2-404(a) (stating time and prerequisites for execution of consent or relinquishment).
biological parent revokes consent within 192 hours, the prospective adoptive parent must immediately return the child to the custody of the person revoking consent.\textsuperscript{141} If the prospective adoptive parent does not return the child, the person revoking consent may petition the court for relief and the court must hear the petition "expeditiously."\textsuperscript{142}

The UAA further safeguards against custody fights by requiring that the biological parent[s] be informed of the consequences of adoption and be offered personal and legal counseling before executing a consent to adoption.\textsuperscript{143} Persons who explain and witness the consent to adoption "must be knowledgeable about adoption and not have a conflict of interest with the parent or guardian."\textsuperscript{144} For example, the witness cannot be a lawyer representing an adoptive parent.\textsuperscript{145}

As a general rule, both biological parents of a minor child must consent to the adoption of their child.\textsuperscript{146} In some situations where a man who may be the child's father has not manifested "parenting behavior," however, the UAA does not require the father's consent.\textsuperscript{147} The UAA recognizes that "an individual's biological ties to a child are not alone sufficient to bestow full parental rights on that individual."\textsuperscript{148} The consent provisions of the UAA are "[i]n accord with federal and state constitutional decisions since the early 1970s on the status of unwed fathers in adoption proceedings."\textsuperscript{149}

Should a contested adoption arise, the UAA contains comprehensive procedures to resolve the custody dispute.\textsuperscript{150} The UAA requires an expedited hearing\textsuperscript{151} and the appointment of a guardian \textit{ad litem} for minor children.\textsuperscript{152} The requirement of a guardian \textit{ad litem} "is intended to encourage the court and the contestants to pay attention to the needs of the minor, in-
luding the need for expeditious resolution of the dispute." During a contested adoption proceeding, courts must make an interim custody order "according to the best interest of the minor." This is to protect the child from "detrimental disruptions of [a] stable custodial environment."

Most importantly, the UAA recognizes that children do not "belong" to a biological or adoptive parent. In accordance with attachment theory, the UAA "is premised on the belief that children's ties to the individuals who actually parent them—or who are committed to parenting them—deserve legal protection even if those ties are psychologically and socially constructed and not biologically rooted." For example, even if there is some fault with the adoption procedure, after the 192 hour period for revoking consent expires, the child is not automatically returned to the custody of her birth parent:

The fact that a birth parent's status as a legal parent may be restored or recognized upon the setting aside of a consent or a relinquishment is not tantamount to a determination that the minor must be placed in that parent's custody... [T]his Act requires the court to make an independent determination with respect to the minor's custody. That determination ultimately depends on what the court decides is not detrimental to the minor... or is in the minor's best interests.

The UAA is a statutory attempt to recognize that children's rights to a secure upbringing should be constitutionally protected. Unfortunately, while the UAA is written to ensure that a child who cannot be raised by her biological parents is placed in a secure, nurturing home, and contains procedural safeguards to avoid custody disputes that may be psychologically detrimental to the child, Vermont is the only state that has enacted the UAA. The widespread failure of the states to enact this carefully-written and comprehensive adoption statute provides a compelling reason for the Supreme Court to explicitly recognize that children possess individual constitutional rights in the context of contested adoption. States are not taking the initiative to protect children's rights, and

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153 Id. at § 3-201 cmt. at 42 (requiring appointment of a lawyer or guardian ad litem).
154 Id. at § 3-204 (requiring interim custody determination during pendency of proceeding).
155 Id., Prefatory Note, at 4.
156 Hollinger, supra note 136, at 17.
158 Id., Table of Jurisdictions Wherein Act Has Been Adopted at 1.
as discussed, *supra*, the state in which a child happens to reside should not limit the child's basic liberty rights.

V. THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

In 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child. The main rationale for drafting a separate human rights treaty for children was that children "need[] special safeguards and care, including appropriate legal protection." While respecting parental rights, the Convention, similar to the UAA, declares that "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the *best interests of the child shall be a primary consideration.*" Unlike most of the states in this country, the Convention recognizes that children have rights, including rights to the family relationship, that are independent of parental rights.

Not surprisingly, the United States has yet to ratify the Convention. Some commentators believe that opposition to the Convention comes from adherence to the "property theory" of parenthood, that critics of the treaty believe that recognition of children's rights as individuals would undermine parents' rights to raise their children in the manner they see fit. The Convention, however, is a human rights treaty; the requirement that the best interests of the child be considered "is not meant to undermine parental authority, but to place limits on governmental authority to violate the human rights of children." Since the rights of parents recognized by the Supreme Court are not rights of ownership, the Convention does not contradict the United States Constitution. The Convention, like the UAA, should serve as a model for recognizing the individual interests of children. Rather than weak-

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160 Id. at Preamble.
161 Id. at Art. 3, para. 1 (emphasis added).
163 See id. at 313-14 (outlining the history of the "property theory" of parenthood).
164 Id. at 318.
165 See id. at 319 ("[i]f the constitutional rights of parents are grounded in the rights of their children," not in the "rights of ownership," then "endowing a child with 'rights' of her own" will not "contradict the basic constitutional scheme.").
ening parents' rights, recognizing children's rights separate from those of their parents would strengthen the family unit because both parents and children would have individually-protected liberty interests.

VI. ENSURING PROTECTION OF A CHILD'S CONSTITUTIONAL RIGHTS AND WELFARE

Once it is recognized that children have constitutional rights separate from those of their parents in the context of contested adoption, then the protection of children's needs and interests can be ensured. The Court's recognition of parents' constitutional right to raise their children should not obscure the fact that children have separate rights from those of their parents. The Court's acknowledgement of parental rights is grounded in the recognition of the fundamental right to family life.166 As discussed previously, the Supreme Court has stated that families are not only defined on biological grounds.167 Furthermore, as the history behind the passage of the Fourteenth Amendment has indicated, both children and parents have constitutionally-protected rights of family autonomy.168

In addition to recognizing a child's constitutional right to a hearing on her best interests when her adoption is being contested, adoption laws need to be clarified and changed to ensure that the child's best interests are being considered. The UAA is an excellent model that balances the rights of children with the rights of those adults who are committed to raising them.

In the situation of a contested adoption, a guardian ad li-

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167 See Smith v. Organization of Foster Families, 431 U.S. 816, 843 (1977) discussed supra Part III.D. ("Biological relationships are not exclusive determination of the existence of a family.").

168 See DAVIS, supra note 42, at 242 (suggesting that "parental autonomy provides a context within which children learn to function as free and self-defining democratic citizens").
tem should always be appointed to investigate the child’s situation and make recommendations as to her best interests. In addition, the child should be appointed her own attorney to protect her interests. This would be consistent with the requirements of the UAA.

In determining the child’s “best interests,” the courts should look to the attachment theory for guidance on the impact of removing the child from her adoptive home. Other factors to be considered are the child’s age, emotional attachment to siblings and their placement, and racial or cultural factors. The changing interests of children as they mature should also be considered. Psychologists and experts in child development should always be consulted in making the “best interests” determination. The wealth or education of the parties should never come into the analysis because the best interests of the child are to be determined from a child-centered perspective.

Those against recognizing a child’s constitutional rights in the context of contested adoption fear that it will encourage prospective adoptive parents to unscrupulously gain physical possession of a child and forge an attachment, thereby gaining permanent custody of the child as a result of a subsequent best interests analysis. However, this problem can

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169 See Tenenbaum, supra note 5, at 6 (asserting that parents who abuse and neglect their children are entitled to counsel and this same right should be afforded to children subject to the same experiences).
171 See Kaplan, supra note 19, at 932-36.
172 See discussion supra Part II.C.
173 See Annette Ruth Appell, Blending Families Through Adoption: Implications For Collaborative Adoption Law and Practice, 75 B.U. L. Rev. 997, 1054 (1995) (arguing that racial and cultural “continuity” is in a child’s best interests and that, as transracial and transcultural adoptions become more commonplace, “the child’s need for ties to his or her heritage should be a factor in determining whether the child will be served by maintaining postadoption familial contact” (with a birth family that places a child for adoption but wishes to retain some contact with the child)).
175 See Woodhouse, supra note 8, at 2504-05 (arguing that a child-centered evaluation of children’s needs would give greater weight to the child’s attachment to his or her parents than is provided by current law. Unlike the best interest standard, which defines “interests” from an adult-centric perspective, a child-centered perspective values relationships of attachment because they are so important to children).
176 See Lewis, supra note 12, at 260 (discussing In re C.C.R.S., 892 P.2d 246 (Colo. 1995), in which a couple attempted to bypass the legal obstacles to adoption, and the court reasoned that regardless of whether the couple could lawfully adopt the boy, the child’s best interests “required placement with the couple because they had
be prevented by giving custody cases priority in the court system and awarding them an expedited hearing. It is not psychologically and developmentally harmful for a child to be placed in a new setting if she has been in a person's care for only a few months. In addition, it may not be in a child's best interests, especially as she matures and begins to ask questions about her upbringing, to award custody to people who have engaged in criminal and/or truly deceitful behavior.

It also needs to be recognized that a child's best interests do not necessarily lie in a choice between one family or another. This is especially true since “[a]doptive children are forever members of two families—the one that gave them life and the one that nurtured them through the process of adoption.” Rather than an all-or-nothing approach, courts should consider more flexible remedies such as open adoption and foster care.

Flexible remedies have worked in the situation of contested adoption. In fact, in one recent case, mediation by a family therapist led to a resolution that was satisfactory to all the adults involved and truly in the interest of “Baby Pete”: his adoptive mother retained custody and his biological father retained legal status as his father. In the Rost twins' case, discussed supra, the adoptive parents and biological parents agreed on an arrangement whereby the girls would remain in the custody of their adoptive parents but would have visits with their biological parents and, as they get older, spend vacations on the reservation where their biological grandmother retained physical possession of the boy throughout his life.

177 See Kaplan, supra note 19, at 935-36 ("[W]hen no one person has cared for an infant for more than a few months, the child should not yet have developed a dependency on any one person at the time of placement. Thus, placing the infant in a new setting should not have an adverse impact on him.") (quoting In re Doe, 627 N.E.2d 648, 664 n.1 (Ill. App. Ct. 1993) (Tully, P.J., dissenting)).

178 See Woodhouse, supra note 8, at 2509 n.45 (suggesting that more flexible remedies such as open adoption should be considered rather than relying on the all-or-nothing approach of absolute and exclusive rights); see also Suellyn Scarneccia, Who Is Jessica's Mother? Defining Motherhood Through Reality, 3 AM. U. J. GENDER & L. 1, 12 (1994) (“We must push our clients, the parents, to talk with each other, to acknowledge that the child needs all of them, and that compromise is almost always in the child's best interests.").


180 Id. at 1001 (“Open adoption is a flexible concept encompassing a spectrum of relationships that range from the exchange of information among the [adoptive and birth] parents to ongoing participation of the birth family in the life of the adoptive family.").

181 See Woodhouse, supra note 8, at 2509 (stating that foster care often evolves into a desire to adopt because of the power of attachment).

182 See Hales, supra note 4, at 20.
resides in order to remain connected with their Native American heritage. 8

VII. CONCLUSION

The Supreme Court's decisions regarding the constitutionality of various state adoption statutes have not provided the states with the clear direction they need to safely and validly protect children's interests. 184 Prior Court decisions, however, would seem to indicate that children possess constitutional rights separate from those of their biological parents in the situation of a contested adoption.

As previously discussed, it is settled law that the Fourteenth Amendment protects the family relationship. What needs to be recognized is that, "[f]rom the child's perspective, his relationship with his adoptive family is no different from the most traditional family relationships protected in the past from state interference by [the Supreme Court]." 185

A child should not be removed from a stable, secure home and from caregivers to whom she is attached without due process of law. Removing her from her home without a hearing on her best interests is a violation of her constitutional rights to personal liberty and family liberty. In order to ensure that children's interests are safeguarded, it needs to be recognized that children have a right, as persons under the Constitution, to a custody hearing in which their true best interests are considered.

\[183\] Interview with Barbara Bennett Woodhouse, Professor of Law, University of Pennsylvania Law School, in Philadelphia, Pa. (Oct. 27, 1998).

\[184\] See Clark, supra note 35, at 39 (discussing that it is unfortunate that the courts' treatment of the statutes' constitutional validity leaves the states uncertain as to how to safely protect children's interests in adoption).

\[185\] Scarnecchia, supra note 96, at 56.