

THE CHILD'S INTERESTS
IN CONFLICT

The Intersections between Society,
Family, Faith and Culture

Edited by
Maarit JÄNTERÄ-JAREBORG



intersentia

Cambridge – Antwerp – Portland

Intersentia Ltd
Sheraton House | Castle Park
Cambridge | CB3 0AX | United Kingdom
Tel.: +44 1223 370 170 | Fax: +44 1223 370 169
Email: mail@intersentia.co.uk
www.intersentia.com | www.intersentia.co.uk

Distribution for the UK and Ireland:
NBN International
Airport Business Centre, 10 Thornbury Road
Plymouth, PL6 7 PP
United Kingdom
Tel.: +44 1752 202 301 | Fax: +44 1752 202 331
Email: orders@nbninternational.com

Distribution for the USA and Canada:
International Specialized Book Services
920 NE 58th Ave. Suite 300
Portland, OR 97213
USA
Tel.: +1 800 944 6190 (toll free) |
Fax: +1 503 280 8832
Email: info@isbs.com

Distribution for Germany and Switzerland:
Stämpfli Verlag AG
Wölflistrasse 1
Postfach 5662
3001 Bern
Switzerland
Tel.: +41 31 300 66 77
Email: verlag@staempfli.com

Distribution for Europe and all other countries:
Intersentia Publishing nv
Groenstraat 31
2640 Mortsel
Belgium
Tel.: +32 3 680 15 50 | Fax: +32 3 658 71 21
Email: mail@intersentia.be

The Child's Interests in Conflict. The Intersections between Society, Family, Faith and Culture

© Maarit Jänterä-Jareborg (ed.) 2016

The author has asserted the right under the Copyright, Designs and Patents Act 1988, to be identified as author of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

ISBN 978-1-78068-346-1
D/2016/7849/12
NUR 822

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

PREFACE

This collection consists of nine contributions on situations where the interests of society, family, faith and culture concerning the child's welfare are in conflict. The focus is thus on one of the burning issues of any pluralistic, multicultural society encountering a diversity of norms, whether legal, cultural or faith-based. The English summary of the Swedish Law Commission's report *Strengthened Protection against Forced Marriages and Child Marriages*, which formed the basis of Sweden's 2014 law reform in the field, is included in order to demonstrate societal responses to encountered problems.

My thanks go to all the speakers, chairpersons, and participants at the "Families, Faith and Functions, The Child in the Intersections between Family, Society, Faith and Culture" symposium, held at Uppsala University in May 2013 on the occasion of the fifth anniversary of the university's multidisciplinary research programme "The Impact of Religion: Challenges for Society, Law and Democracy". One of the most vital themes of this research programme, funded as a Linnaeus Centre of Excellence (2008–2018) by the Swedish Research Council, is "Family and Society". I wish to thank, in particular, my dear colleague and co-convener of the symposium Professor Anna Singer, as well as the Wenner-Gren Foundation and FORTE Research Council. Thanks are due also to Karolina Markgren LL.M who assisted me with the drafting of the index and the final editing of this volume. All the presentations have been updated and rewritten for the purpose of this publication.

Uppsala, November 2015

Maarit Jänterä-Jareborg

CONTENTS

<i>Preface</i>	v
<i>List of Authors</i>	ix

The Child in the Intersections between Society, Family, Faith and Culture

Maarit JÄNTERÄ-JAREBORG	1
1. Introduction	1
2. Focus on Europe and the Nordic States – but with Global Implications.	4
3. How Human Rights Instruments Tackle the Child’s Conflicting Interests	8
4. The Child’s Right to Religious Identity.	14
5. Navigating between Parents’ Convictions and the State’s Interest in Equal Education for All	15
6. Removal of Children from Parental Care.	18
7. Protecting Children from Marrying.	21
8. Circumcision of Boys: What is at Stake?.	24
9. Cooperation Instead of Confrontation: the Malta Process	28
10. The Child as the “Sacrificial Lamb” to Society, Family, Religion and Culture	30

Born or Becoming: Children, Religion and Identity

Jane MAIR.	31
1. The Badge of Identity	31
2. Identity Rights	34
3. The Situated Child: the Best and the Least.	39
4. Identifying Relationships: a Case Study	49
5. The Limits of Labelling	53

State Curriculum and Parents’ Convictions under the European Convention on Human Rights

Sanna MUSTASAARI and Sanna KOULU.	55
1. Travelling with Children in Strasbourg	55
2. Religion and Education: Between Parental and State Authority	56

3. The European Court on a Tightrope between the State and the Parents?	60
4. Exemption from Education in National Laws	64
5. Best Interests of the Child: from Universal Rules to Particular Contexts and Back?	66
6. Child's Freedom of Religion or Parents' Convictions?	69
7. Planning Future Travels	71

Care Placements of Children Outside their Parental Home – Concerns of Culture

Sanne HOFMAN and Kirsten SANDBERG	73
1. Introduction	73
2. The Law	75
3. Cultural Background in the Consideration of Serious Neglect	77
4. Refugee Children	77
5. Physical Violence	78
6. The Best Interests Assessment	79
7. The Placement	80
8. Overall Evaluation	83

Child Marriages and the Law – with Special Reference to Swedish Developments

Göran LAMBERTZ	85
1. Introduction	86
2. Some Points of Departure	88
3. Legislation or Not?	92
4. No Possibility of Exceptions to Marriage Age?	100
5. Criminalisation?	102
6. How Should We Counteract Negative Effects?	109
7. Closing Remarks	110

Circumcision of Young Boys: A Conflict between Parental and Child Rights. The Swedish Experience from a Medical Point of View

Staffan JANSON	111
1. Introduction	111
2. The Practice and its Historic Background	113
3. The Swedish Situation	115
4. The 2012 Statement by the American Pediatric Academy	119
5. The Statement of the Scandinavian Ombudsmen	123
6. Conclusion	124

The Body as Identity Marker. Circumcision of Boys Caught between Contrasting Views on the Best Interests of the Child	
Marie-Claire FOGLETS	125
1. Introduction	126
2. Different Perspectives Associated with the Appraisal of Child Care, Identity and Personhood.....	142
3. Some Personal Reflections by Way of a Conclusion.....	161
Malta Process and Cross-Cultural Aspects in Family Disputes	
Louise Ellen TEITZ	163
1. Introduction: the Challenges of Cross-Border Family Relationships	163
2. Discussion	167
3. Conclusion.....	180
The Child as the “Sacrificial Lamb” to Society, Family, Religion and Culture. A Comment	
Esin ÖRÜCÜ	185
<i>Annex</i>	187
<i>Index</i>	201

LIST OF AUTHORS

Marie-Claire Foblets

Director at the Max Planck Institute for Social Anthropology (Law and Anthropology Department), Halle, Germany; Professor of Law and Anthropology, Faculty of Law, Catholic University of Leuven, Belgium

Sanne Hofman

Legal Advisor in Child Rights, Save the Children, Norway; Chair of the Norwegian Forum for the UN Convention on the Rights of the Child

Staffan Janson

Senior Professor of Public Health at Karlstad University; guest Professor of Pediatrics, Uppsala University

Maarit Jänterä-Jareborg

Professor of Private International Law and International Civil Procedure, Faculty of Law, Uppsala University; Former Deputy Director of the Research Program ‘The Impact of Religion: Challenges for Society, Law and Democracy’ (Centre of Excellence 2008–2018), Uppsala University, Sweden

Sanna Koulu

LL.D., Lecturer in Child and Family Law, University of Rovaniemi, Finland

Göran Lambertz

Justice of the Supreme Court of Sweden; Chair of the Law Commission on strengthened protection from forced marriages and child marriages; former Chancellor of Justice

Jane Mair

Professor of Private Law, School of Law, University of Glasgow, Scotland

Sanna Mustasaari

Doctoral candidate, Faculty of Law, University of Helsinki, Finland

Esin Örüçü

Professor Emerita of Comparative Law, University of Glasgow, Scotland, and Erasmus Universiteit Rotterdam, the Netherlands

Kirsten Sandberg

Professor of Law, Department of Public and International Law, University of Oslo, Norway

Louise Ellen Teitz

Professor of Law, Roger Williams University School of Law, Rhode Island, USA;
Former First Secretary of The Hague Conference on Private International Law