



# 6. The Caring Role of the School: A Discussion on the Relationship between Care, the Rights of the Child, and the School

Mona Martnes

**Abstract** Childhood is believed to be a phase of inevitable dependency on physical and emotional care. Care is a relational concept, connected to the role and relationship between children and their parents. However, most children spend considerable time at school, and their relationship with other children and the school staff can be of fundamental importance. This chapter discusses the school's caring role and whether lack of care might be a problem for protection and fulfilment of children's rights.

**Keywords** care | relationship | rights | school | vulnerability

## 6.1 INTRODUCTION

Children are often described as vulnerable and dependent. As Jonathan Herring explains, “[a]t the heart of the law’s protective role is an assumption that children are vulnerable”, and it is almost definitional.<sup>1</sup> As a consequence, children are believed to need protection.<sup>2</sup> In Norway, vulnerability is a central concept in many legal and political discussions about children and the role of institutions, including schools. Schools are believed to prevent vulnerability and especially mental health problems.

---

1 Jonathan Herring, *Law Through the Life Course* (Bristol: Bristol University Press 2021), 85.

2 Herring, *Law Through the Life Course*, 85.

Martha A. Fineman's vulnerability theory addresses human vulnerability. In her approach, vulnerability is not centred on specific individuals, on specific groups or on human rights.<sup>3</sup> To be human is to be vulnerable.<sup>4</sup> Fineman focuses on what we share as human beings and what we should expect of the law, the underlying social structures and our institutions. Dependency is central in vulnerability theory.<sup>5</sup> Fineman explains that "[b]ecause we are embodied creatures, we are also dependent on social institutions and relationships throughout the life course".<sup>6</sup> She describes two types of dependency: inevitable and derivative.<sup>7</sup> Inevitable dependency on physical and emotional care from others is episodic – typically in childhood, sickness, and old age – and may vary along factors such as the child's development and capacity. Derivative dependency captures that those who care for others, such as parents, are dependent on access to sufficient material, institutional and physical resources in order to accomplish that care successfully.<sup>8</sup> In this chapter, the focus is on children's inevitable and parents' derived dependency on the school as an institution, and more particularly their dependency on a caring school.

Schools are, in addition to the family, the most important institution for the majority of Norwegian children over six years of age. For a period of over 10 years, most children spend considerable time in school. Therefore, it makes sense to highlight the school's potential to have a positive effect in children's lives. Although in legal terms all children have an equal right to education, the reality is that the right is not safeguarded on an equal basis for all children. Neither is the right to health. Some children, for instance, neurodivergent children, including children with learning disabilities, autism and/or ADHD, may be at greater risk than others of not having their rights ensured.<sup>9</sup> Nevertheless, the group of children whose

3 Martha Albertson Fineman, "Vulnerability and Social Justice," *Valparaiso University Law Review* (2019): 341–370, 342.

4 Martha Albertson Fineman, "Reasoning from the Body: Universal Vulnerability and Social Justice," in *A Jurisprudence of the Body*, eds. Chris Dietz, Mitchell Travis and Michael Thomson (Palgrave Macmillan, 2020), 17–34, 19.

5 Fineman, "Reasoning from the Body," 17–34, 27.

6 Martha Albertson Fineman, "Beyond Equality and Discrimination," *SMU Law Review Forum*, vol. 73(1) (2020): 51–62, 51.

7 Fineman, "Vulnerability and Social Justice," 341–370, 360.

8 Fineman, "Vulnerability and Social Justice," 341–370, 360.

9 See, for instance, Ellen Kathrine Munkhaugen, Elen Gjevik, Are Hugo Pripp, Eili Sponheim and Trond H. Diseth, "School Refusal Behaviour: Are Children and Adolescents With Autism Spectrum Disorder at a Higher Risk?," *Research in Autism Spectrum Disorders*, vol. 41–42 (September 2017): 31–38; Marie-Lisbet Amundsen, Anne Kielland and Geir Møller, "School Refusal and School-Related Differences among Students with and without Diagnoses," *Nordisk tidsskrift for pedagogikk og kritikk*, vol. 8 (2022): 34–48; Official Norwegian Reports (NOU) 2019: 23, *Ny opplæringslov* [New Education Act], 155–156.

rights are not being safeguarded is far from heterogenous and may include children that would not necessarily be described as belonging to a “vulnerable group”. Lack of care in schools might contribute to these problems. Therefore, a fundamental discussion about what role the school should have is necessary.

In this chapter, I explore the school’s role in caring for the child and discuss whether lack of care might be a problem in protecting the child’s right to education. An important question is how children’s need for physical and emotional care might influence the protection of the right to education. Another question is what the United Nations Convention on the Rights of the Child (CRC)<sup>10</sup> says about children’s need for care: how care is connected to rights, how care is defined in the Convention, and how the division between the duty of the state (and school) and the responsibility of the parents is drawn. Before I examine caring in the CRC (Section 6.3) and the school’s role (Section 6.4), I start with how care is defined (Section 6.2). Sections 6.2 and 6.3 have a theoretical and general character, while the discussion in Section 6.4 has more practical content. In the final section, I draw on Norwegian legislation, with the discussion being influenced by the values within the Nordic welfare state model. The topic of this chapter is extensive. Therefore, I will only be able to go into some central aspects.

## 6.2 DEFINITIONS OF CARE AND CARING

It is not just children for whom being cared for is a basic need. Caring is believed to serve a *fundamental human need*.<sup>11</sup> Care is a broad concept. Although every human has a relation to care, care is, as Herring states, “notoriously difficult” to define.<sup>12</sup> However, a good starting point is Bernice Fisher and Joan C. Tronto’s suggestion that care on the most general level is viewed as a “species activity that includes everything that we do to maintain, continue, and repair our ‘world’ so that we can live in it as well as possible”.<sup>13</sup> Included in that world is “our bodies,

---

10 Adopted by the United Nations, 20 November 1989.

11 See Kathleen Lynch, “Affective Equality: Who Cares?” *Development*, vol. 52(3) (2009): 410–415, 410; Jonathan Herring, *Caring and the Law* (Oxford: Hart Publishing, 2013), 11; Daniel Engster, “Rethinking Care Theory: The Practice of Caring and the Obligation to Care,” *Hypatia*, vol. 20(3) (2005): 50–74, 56.

12 Jonathan Herring, “Compassion, Ethics of Care and Legal Rights,” *International Journal of Law in Context*, vol. 13(2) (2017): 158–171, 159.

13 Berenice Fisher and Joan C. Tronto, “Toward a Feminist Theory of Caring,” in *Circles of Care*, eds. Emily K. Abel and Margaret K. Nelson (Albany, New York: SUNY Press, 1990), 36–54, 40; See also Joan C. Tronto, *Caring Democracy: Markets, Equality and Justice* (New York: New York University Press, 2017), 19.

our selves, and our environment”.<sup>14</sup> Suggestions have been made over the years to narrow or nuance this broad definition in different ways.<sup>15</sup>

Central to caring is *meeting needs*. Daniel Engster highlights how the first aim of caring is connected to meeting needs.<sup>16</sup> He states that “we care for others when we help them to satisfy the basic biological needs necessary for survival and basic functioning”, such as food, clothing, shelter, protection from harm and “at least among infants and children for physical contact and holding”.<sup>17</sup> As a second aim, which I think also could be seen as a way of meeting needs, Engster places *fostering capabilities*: “caring is helping others to develop or sustain their basic capabilities for sensation, emotion, movement, speech, reason, imagination, affiliation, and in most societies today, literacy and numeracy”.<sup>18</sup> He elaborates the goal to “enable individuals to develop and sustain as much as they are able the capabilities necessary for basic functioning in society and to pursue their conception of the good life”.<sup>19</sup> The third basic aim of caring he draws up is *avoidance/alleviation of pain*, meaning “helping individuals to avoid or relieve suffering and pain so that they can carry on with their life as well as possible”.<sup>20</sup> And again, these aims seem to be connected to meeting needs.

Herring has suggested four markers of care, with “meeting needs” as the first.<sup>21</sup> Herring argues “that care should be understood broadly to include the meeting of the full range of a person’s needs”.<sup>22</sup> He includes “not only basic biological needs such as food and shelter; but also broader social needs for emotion, relationship and play”.<sup>23</sup> Herring sees Engster’s definition as narrower since he seems to focus on bodily and rational activities and to exclude emotional well-being. However, as Herring also states, well-being could be a part of the reference to “affiliation”, and in my opinion also “emotion”. I believe it is important to expressly highlight the need for emotional well-being – not just because it is fundamental and might be a prerequisite for other needs to be met but also because care and well-being are

---

14 Fisher and Tronto, “Toward a Feminist Theory of Caring,” 36–54, 40; and Tronto, *Caring Democracy*, 19.

15 See, for instance, Tronto, *Caring Democracy*; Engster, “Rethinking Care Theory,” 50–74, 50–57.

16 Engster, “Rethinking Care Theory,” 50–74, 51.

17 Engster, “Rethinking Care Theory,” 50–74, 51.

18 Engster, “Rethinking Care Theory,” 50–74, 52.

19 Engster, “Rethinking Care Theory,” 50–74, 52.

20 Engster, “Rethinking Care Theory,” 50–74, 53.

21 Herring, “Compassing, Ethics of Care and Legal Rights,” 158–171, 159; and Herring, *Caring and the Law*, 45.

22 Herring, *Caring and the Law*, 16.

23 Herring, *Caring and the Law*, 16.

connected to rights under Article 3 of the CRC and could thereby serve as a bridge between care theory and children's rights.

In addition to meeting needs, Herring suggests "respect, responsibility and relationality" as the other three markers of care.<sup>24</sup> This partly overlaps with what Engster calls the "virtues of caring".<sup>25</sup> These are attentiveness (entailing empathy and the ability to anticipate needs), responsiveness (engaging with the person receiving care and monitoring their response) and respect (the idea that others are worthy of attention and responsiveness and presumed capable of understanding and expressing their own needs).<sup>26</sup> If we add *caring for a child* to Engster's summary, caring includes everything we do directly to help children meet their needs, develop or sustain their basic capabilities and alleviate or avoid pain or suffering, *in an attentive, responsive and respectful manner*.<sup>27</sup> As Engster states, this definition captures central aims and virtues of activities such as parenting and teaching.<sup>28</sup> Tronto and Fisher also highlight attentiveness (caring about) as the first quality of care.<sup>29</sup> In addition, they see responsibility (caring for) as the second (someone must take responsibility for meeting the needs) and competence (caregiving) as the third (the actual caregiving, involving a moral element) quality of care.<sup>30</sup> They see responsiveness (care receiving) as the fourth ethical quality of care.<sup>31</sup>

To draw on Herring's definition, caring for a child means meeting the child's needs in a way that respects the child as a person and acknowledging the responsibilities that come with caring. This must be understood in the context of mutual relationship.<sup>32</sup> As the definition clarifies, Herring sees care as a *relational concept built on mutuality*. This is important. Children are often described as passive recipients of care in a way that underevaluates their relational capacity. Children can (and, I would also argue, are entitled to as part of their right to family and private life)

---

24 Herring, "Compassing, Ethics of Care and Legal Rights," 158–171, 159; and Herring, *Caring and the Law*, 45.

25 Engster, "Rethinking Care Theory," 50–74, 54.

26 Engster, "Rethinking Care Theory," 50–74, 54.

27 Engster, "Rethinking Care Theory," 50–74, 55.

28 Engster, "Rethinking Care Theory," 50–74, 55.

29 Joan Tronto, *Caring Democracy: Markets, Equality, and Justice* (NYU Press, 2013), 34–35; Fisher and Tronto, "Toward a Feminist Theory of Caring," 36–54.

30 Tronto, *Caring Democracy: Markets, Equality, and Justice*, 34–35; Fisher and Tronto, "Toward a Feminist Theory of Caring," 36–54.

31 Tronto, *Caring Democracy: Markets, Equality, and Justice*, 34–35; Fisher and Tronto, "Toward a Feminist Theory of Caring," 36–54.

32 Herring, "Compassion, Ethics of Care and Legal Rights," 158–171, 159.

engage in caring in ways that meet all the ethical qualities of care.<sup>33</sup> As Kathleen Lynch states, all people have the capacity for intimacy, attachment and caring relationships, and “[b]onds of friendship or kinship are frequently what bring meaning, warmth and joy to life”.<sup>34</sup> In primary care relations (often between parents and their children), Lynch, together with Sara Cantillon, places nurturing, involving mental and emotional work, physical work, commitment, time, trust, belongingness, presence and mutuality.<sup>35</sup> However, since the topic in this chapter concerns the school’s role in caring, the focus here is not on primary care relations alone. An important subject in this context is the division between caring relationships in families and at school and the connection between caring and children’s human rights.

## 6.3 CARING IN THE CRC

### 6.3.1 The Connection between Care and Rights

As described above, meeting needs is central in caring. The way I see it, care might contribute to (or be crucial for) fulfilling many fundamental human rights. Bruce Abramson states that “[r]ights are social constructions for protecting the interests of people”.<sup>36</sup> He elaborates that when talking about rights, the word “interests” is used to “refer to the particular aspect of human dignity that is being injured”.<sup>37</sup> He places “well-being” as the “sum total of all of a person’s interests put together”. The well-being of the child is mentioned in several places in the CRC, including Article 3(2) concerning care. Interests and needs are strongly related. An individual’s strong interest, which is protected by rights, is often linked to needs, and caring is central to *realising* these needs. For instance, caring might be fundamental to realising biological needs such as an adequate standard of living (food and shelter) (CRC Art. 27), relationship, affiliation and play (CRC Arts. 8, 16 and 31), avoidance/alleviation of pain (CRC Arts. 19 and 24) and developing capabilities for literacy and numeracy (CRC Arts. 28 and 29). This underlines that caring is necessary for ensuring a range of rights, and the next question is who is responsible in this context.

33 See Jonathan Herring, “Children Care,” in *Disability, Care and Family Law*, eds. Beverley Clough and Jonathan Herring (Routledge, 2021), 51–65.

34 Lynch, “Affective Equality,” 410–415, 410.

35 Sara Cantillon and Kathleen Lynch, “Affective Equality: Love Matters,” *Hypatia*, vol. 32(1) (2017): 169–186, 174.

36 Bruce Abramson, “Article 2. The Right of Non-Discrimination,” in *A Commentary on the United Nations Convention on the Rights of the Child*, eds. Ton Liefwaard and Julia Sloth-Nielsen (Leiden: Martinus Nijhoff Publishers, 2008), 26.

37 Abramson, “Article 2,” 26.

### 6.3.2 The Division between the Parents' Responsibility and the Duty of the State

As a human rights instrument, the CRC compels State Parties to respect, protect and fulfil the rights recognised in the Convention. Therefore, it is the state that is responsible in the first instance for ensuring the child's rights. However, as Wouter Vandenhoe writes, "in children's rights law, an intermediary level of parents or legal guardians has been included".<sup>38</sup> This level is explicitly connected to care.

The CRC highlights children's need for care, safeguards, and assistance as early as in the preamble. CRC Article 3(2) states that the parties shall "undertake to ensure the child such protection and care as is necessary for his or her well-being". The article is concerned with both the state and the parents' role.<sup>39</sup> In Article 18(1) it is stated that "[p]arents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child". And further that "[t]he best interests of the child will be their basic concern". Here, care is connected to the child's development, upbringing and best interests, and the parents shall have primary responsibility.

Together, Articles 3 and 18 show that parents shall protect and care for the child and have responsibility for upbringing and development in the best interests of the child. However, they are "holders of what has been defined as limited and functional rights".<sup>40</sup> Parents' rights are limited both by the evolving capacities of the child after Article 5 and the child's full range of the other rights recognised in the CRC.<sup>41</sup> On a general basis, this indicates that in caring for their children, parents should be guided by the child's rights. In addition, if parents are unable to fully care for their children alone, Article 18(2) clarifies that the state has a duty to assist.<sup>42</sup> Furthermore, the state must take "all appropriate legislative and administrative measures" to "ensure the child such protection and care as is necessary

---

38 Wouter Vandenhoe, "Distinctive Characteristics of Children's Human Rights Law," *Children's Rights Law in the Global Human Rights Landscape*, eds. Eva Brems, Ellen Desmet and Wouter Vandenhoe (Oxfordshire, 2017), 21–51, 29.

39 See also Article 5.

40 Roberta Ruggiero, Diana Volonakis and Karl Hanson, "The Inclusion of 'Third Parties': The Status of Parenthood in the Convention on the Rights of the Child," *Children's Rights Law in the Global Human Rights Landscape*, eds. Eva Brems, Ellen Desmet and Wouter Vandenhoe (Oxfordshire, 2017), 71–89, 75.

41 Ruggiero, Volonakis and Hanson, "The Inclusion of 'Third Parties,'" 75; Elaine, E. Sutherland, "The Enigma of Article 5 of the United Nations Convention on the Rights of the Child," *The International Journal of Children's Rights*, vol. 28 (2020): 447–470, 448.

42 See also John Tobin and Florence Seow, "Article 18 Parental Responsibility and the State Assistance," in *The UN Convention on the Rights of the Child*, ed. John Tobin (Oxford: Oxford University Press, 2019), 646–686, 663.

for his or her well-being”; cf. Article 3(2). So, although the Convention directs the state to place care primarily in the responsibility of parents, this does not imply that parents alone are responsible for meeting the full range of the child’s needs, fostering all capabilities, and making sure that pain is avoided or alleviated. States have a duty to enable parents to fulfil their responsibilities.<sup>43</sup> Still, some needs might be best met in families, and the division between parents’ responsibilities and the state’s role is unclear and complex.

The division becomes even more complex when considering the connection between meeting needs, children’s full range of rights, and thereby the intersection of care and rights. Therefore, the connection between the state’s duty and the parents’ responsibilities must be fluid, dynamic and situational. For instance, children separated from their parents are entitled to public care, and, more pertinent to the topic here, children in health institutions, day care or school must receive care that is necessary for their well-being *when they are there*. This is partly reflected in Article 18(3), which states that the authorities shall “take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible”. Further, both Article 23 (rights for disabled children) and Article 24 (the right to the highest attainable standard of health) focus on health *care*. However, neither Article 28 nor 29 (both about the right to education) mentions the need for care. Nor is children’s need for care explicitly mentioned in General Comment no. 1 (Article 29(1): The Aims of Education). Nevertheless, Articles 28 and 29 must be interpreted in the light of the other rights in the CRC, and especially the four principles. When developing and shaping legal frameworks and institutions, such as education regulation and schools, the state has a duty to respect, protect and fulfil these rights, and this cannot be done without ensuring that the child is actually cared for.

### 6.3.3 Caring as a Concept in the CRC

By its wording, Article 3(2) seems to be key to the responsibility for caring and the obligation to ensure the child’s well-being. Since childhood is often linked to dependency and the need for care, one would think that this article was thoroughly analysed by the CRC Committee. However, as John Eekelaar and John Tobin state, the CRC Committee has done little to address the function and

---

43 See, for instance, Mona Martnes, “The Child’s Right to Information on Sensitive Topics – Ensuring a Child-Rights Approach by Balancing the Right to Information and the Best Interests of the Child,” *Nordisk Socialrättslig Tidskrift*, 34 (2022): 67–95.



meaning of Article 3(2) and has largely overlooked it in its work on Article 3.<sup>44</sup> They elaborate that this “is understandable given that the principal aim of this provision, which is to impose a general obligation to protect children’s well-being, might be considered an unnecessary inclusion in a treaty containing forty substantive articles which each aim to achieve this same end”.<sup>45</sup> This illustrates the connection between caring and rights, where both have the same aim, namely, the child’s well-being. Despite the partial overlap between the aims, Eekelaar and Tobin recognise Article 3(2) to be of fundamental importance as an “umbrella provision which aims to guarantee children’s well-being generally”.<sup>46</sup> In addition, I would add that a conceptualising of care/caring could bring important elements to the discussion on how to ensure the substantive rights in the Convention. A discussion about the practice of caring could also highlight how different needs, and in the elongation also different rights, are connected to each other. Therefore, one important question is how to define care in relation to the Convention.

The preamble to the CRC highlights “that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”. In addition, it is stated that “the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity”. These statements must be read in connection; they illustrate that needs must be met in an atmosphere of happiness, love and understanding and that an important need is to be prepared for living in society – and, in my opinion, as an important part of preparing children to live in society, society must meet them with, at the very least, happiness and understanding. Since love is connected to more intimate relationships such as families, it cannot be expected between participants in other institutions, but other markers of care, such as respect, responsibility and relationality might serve as important substitutes.

Although General Comment no. 14 is about the best interests of the child (Article 3(1)), the committee also briefly commented on Article 3(2). The CRC Committee stated:

---

44 John Eekelaar and John Tobin, “Article 3 The Best Interests of the Child. Analysis of Article 3,” *The UN Convention on the Rights of the Child*, ed. John Tobin (Oxford: Oxford University Press, 2019), 73–107, 101.

45 Eekelaar and Tobin, “Article 3 The Best Interest of the Child,” 73–107, 101.

46 Eekelaar and Tobin “Article 3 The Best Interest of the Child,” 73–107, 101.

When assessing and determining the best interests of a child or children in general, the obligation of the State to ensure the child such protection and care as is necessary for his or her well-being (art. 3, para. 2) should be taken into consideration. The terms “protection and care” must also be read in a broad sense, since their objective is not stated in limited or negative terms (such as “to protect the child from harm”), but rather in relation to the comprehensive ideal of ensuring the child’s “well-being” and development. Children’s well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety.<sup>47</sup>

By this, the committee highlights the close connection between the best interests of the child, and care and well-being. In addition, the committee’s statement indicates that well-being (as the goal) and thereby care (as the tool, practice and action) must be understood broadly to include meeting the full range of needs. This further indicates that the Convention can be seen as building on the broad understandings of care of the kind discussed above.

The CRC Committee further highlights that emotional care is a basic need of children.<sup>48</sup> However, it only mentions parents or other primary caregivers’ role in this context and states that

if parents or other primary caregivers do not fulfil the child’s emotional needs, action must be taken so that the child develops a secure attachment. Children need to form an attachment to a caregiver at a very early age, and such attachment, if adequate, must be sustained over time in order to provide the child with a stable environment.<sup>49</sup>

Since the best interests of the child shall be a primary consideration “[i]n all actions concerning children”, it may be necessary to assess emotional needs and how care is necessary for meeting these needs also in different contexts, for instance, in school. This is particularly important if we consider that the school might be of fundamental importance in preparing the child for life in society.

When assessing the expectations for parents in caring for their child after CRC Article 18, Tobin and Florence Seow highlight the guidance from Article 5 on the evolving capacity of the child, the right to freedom from all violence, the best

---

47 UN Committee on the Rights of the Child, *General Comment no. 14 (2013) on the Right of the Child to Have His or Her Best Interest Taken as a Primary Consideration (Art. 3, Para. 1)*, CRC/C/GC/14, (May 29, 2013), para. 71.

48 CRC/C/GC/14, para. 72.

49 CRC/C/GC/14, para. 72.

interests of the child and the right to an adequate standard of living conditions, including “nutrition, clothing and housing”.<sup>50</sup> In addition, I believe it is difficult to rule out the right to development in Article 6, which, together with “upbringing”, is explicitly mentioned in Article 18.

Development and upbringing are elements that differ, at least in intensity, from caring between adults. However, caring in general, not just in connection to children, is also connected to development.<sup>51</sup> Both meeting needs and fostering capabilities may lead to a development for all, not just for children. Nevertheless, the expectation that caring shall facilitate and shape the child’s future differs from caring between adults. Development of the child is seen as such a central part of the CRC that the right in Article 6 is considered as one of the four general principles in the Convention (together with Articles 2, 3, and 12).<sup>52</sup> As a fundamental principle, it is meant to guide the interpretation and implementation of other rights and contribute to a child rights perspective.<sup>53</sup> The fundamental character of the right to development is important for the child’s well-being in the future, but might also create tension between having a present-time perspective and a long-term perspective. If such tension arises, the best interests of the child and the child’s right to be heard (Article 12) might help harmonising the different perspectives.

When adding the state’s duty to care, *all the rights* in the Convention may be relevant. So, caring in relation to the Convention must be understood broadly, in line with the definitions above. In addition to the meeting of needs and who is responsible for meeting these needs, also other markers/virtues of care are present in the Convention. As already highlighted, several rights in the Convention are concerned with children’s *relationship* to their families. In addition to Articles 3, 5 and 18, Articles 7, 8, 9 and 16 also direct and commit the state to respect and support family relationships.<sup>54</sup> Further, as Eekelaar and Tobin state, in promoting a child’s best interests, “maintain[ing] the child’s relationship with his or her parents and other members of their community will be a key feature, since relationships

50 Tobin and Seow, “Article 18 Parental Responsibility and the State Assistance,” 646–686, 657.

51 Engster, “Rethinking Care Theory,” 50–74, 51.

52 UN Committee on the Rights of the Child, *General Comment no. 5 (2003) General Measures of Implementation of the Convention on the Rights of the Child (Art. 4, 42 and 44, para. 6)*, CRC/GC/2003/5 (November 27, 2003), para. 12.

53 See CRC/GC/2003/5, para 12; UN Committee on the Rights of the Child, *General Comment no. 12 (2009) The Right of the Child to Be Heard*, CRC/C/GC/12, (July 20, 2009), para. 2; CRC/C/GC/14, para. 1.

54 See also CRC/C/GC/14, para. 58–70; see further Herring, *Caring and the Law*, 235, on caring, and the European Convention on Human Rights Article 8 on the right to respect for private and family life.

are central to most people's well-being".<sup>55</sup> But, as they also elaborate by referring to Herring, "no one has a right to be subject to a relationship that damages their well-being", and in my opinion this is important not just for intimate relationships but also, for instance, in schools.<sup>56</sup> Articles 2, 5 and 12 (in addition to 19) seem to be especially relevant for caring to be done in a *respectful and responsive* manner, by ensuring that the child's opinion is heard and emphasised and in a manner consistent with the evolving capacities of the child, without discrimination. Article 5 is also relevant in training the child in caring for themselves and being attentive to their own needs. Article 3(1) might be important to ensure *attentiveness* in caring, by directing both parents and the state to anticipate the child's needs. This is also connected to *competence*, particularly when the task is carried out by public authorities.<sup>57</sup>

To sum up, the CRC clearly recognises children's need for care, and there is a distinct connection between care and rights. This connection needs to be further analysed, especially on how caring is necessary for protecting and fulfilling children's rights. In the following sections, I will go into some aspects of this issue, but only in relation to school.

## 6.4 CARE IN SCHOOL, AND EDUCATION AS A CARING ACTIVITY

### 6.4.1 The School's Main Mandate

The school's social task is extensive. Both national legislation and the CRC show that the school shall meet a wide range of needs, including fostering capabilities. According to CRC Article 29(1), the education shall be directed to "[t]he development of the child's personality, talents and mental and physical abilities to their fullest potential". The aim clarifies, in line with Article 3, that the needs of the individual child shall be met at school. The CRC Committee has stated that the goal is "to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence".<sup>58</sup> Further, the committee has highlighted "that education is not only an investment in the future, but

55 Eekelaar and Tobin, "Article 3 The Best Interest of the Child," 73–107, 106.

56 Eekelaar and Tobin, "Article 3 The Best Interest of the Child," 73–107, 106, with reference to Jonathan Herring, "Forging a Relational Approach: Best Interests or Human Rights?" *Medical Law International*, vol. 13(1) (2013): 32–54.

57 CRC/C/GC/14, para. 86.

58 UN Committee on the Rights of the Child, *General Comment no. 1 (2001), Article 29 (1), on Aims of Education*, CRC/GC/2001/1 (April 17, 2001), para. 2.

also an opportunity for joyful activities, respect, participation and fulfilment of ambitions”, and this also brings in the importance of a present-time perspective.<sup>59</sup>

The Norwegian Constitution and the Education Act express the school’s main mandate as twofold. First, schools shall provide an education that ensures the individual child’s capabilities and needs, and second, they shall ensure the needs of a democratic society.<sup>60</sup> In the preparatory work to the constitutional right to elementary education, it is stated that education is important for the freedom of the individual, self-realisation and the ability to participate in society.<sup>61</sup> So, both the Norwegian Constitution and the CRC clarify that education should meet the child’s needs, and thereby education is in principle meant to be a caring activity. However, between the needs of the child and society, there might be tensions, depending on – and varying according to – how society’s needs are defined. Further, the underlying politics and values always influence the education system and its regulation. In addition, economic resources and priorities, influenced by municipal government, might also create tensions and lead to schools not being able to ensure individual children’s needs. Although education and schools might be expensive, the clause in CRC Article 4 regarding economic, social and cultural rights is only partly relevant, since the right to education is also a civil and political right. In addition, for Norway, with its resources, Article 4 is of even less relevance. Still, economic priorities are an element influencing the school and the protection of the right to education.

Adriana Jesenková writes from a Slovakian perspective that “there is a neoliberal discourse in which the economic needs of the market and the labor market dominate in the formulation of the goal and measures of the education strategy of the government and the state”.<sup>62</sup> This has become increasingly evident in Norway too. There is a strong focus on what society needs.<sup>63</sup> In Norway, the legislation and the education framework plan are fixed and specified in detail, leaving little room for individual adaptations. Thus, schools normally have little room to meet the needs of the child if those needs do not harmonise within the overall educational

---

59 CRC/C/GC/14, para. 79.

60 See Kongeriket Norges Grunnlov [The Norwegian Constitution] 17 May 1814 section 109 and Act 17 July 1998 No. 61 om grunnskolen og den vidaregåande opplæringa (opplæringslova) [relating to Primary and Secondary Education and Training, the Norwegian Education Act]), section 1-1.

61 Doc. 16 (2011–2012), 222.

62 Adriana Jesenková, “Deficit of Democratic Care in the Education System in Slovakia,” in *Care Ethics, Democratic Citizenship and the State*, eds. P. Urban and L. Ward (International Political Theory, 2020), 259–276, 271.

63 See, for instance, Official Norwegian Reports (NOU) 2015: 8, *Fremtidens skole* [The School of the Future].

framework, something that might further become a problem for the fulfilment of rights. In addition, there is very little autonomy left for the individual child. The tensions between the child's needs and society's interests become more complex when adding in both a present-time and a long-term perspective on the child's needs and different children's needs having to be met in different ways. Some, for instance, need more support than others, and some have health issues. Without caring schools, there is a high risk that children's needs become or remain unmet.

#### 6.4.2 Unmet Needs in School

Contrary to a general assumption, recognition or understanding of children (and adults) as vulnerable, the overriding rule in the education regulation seems to be that children can manage school without too much support and care.

The Norwegian Education Act is built on the idea that most children can pursue the same education in a classroom with about 25 other children and one or two teachers.<sup>64</sup> Any need for more support than the ordinary level is viewed as an exception, emphasised by the term "special education".<sup>65</sup> A child has the right to special education when the child does not satisfactorily benefit from ordinary education. However, every child has a right to an adapted education.<sup>66</sup> This means that before a child has the right to special education, the school must try to adjust the ordinary education to the child's capabilities. Because the ordinary education is regulated in detail in law, administrative regulations and a framework plan determined at the national level, such adjustments might be difficult in individual cases. Therefore, the detailed regulation expands the need for special education. In addition, many schools are largely underfinanced, and this means that they have difficulty fulfilling the right to special education, with children who need most support potentially being handed over to assistants without any educational training. These factors might lead to unmet needs among children, particularly children who learn in other ways than ordinarily expected or who have difficulty concentrating, have health problems or for any other reasons require more support or time than the larger group. Furthermore, all children are exposed to some sort of learning pressure and repeated evaluations. In school, all children are strongly

64 This depends on how the school practices the norm for how many children per teacher. Around 17% of schools did not manage to follow the norm at all, <https://www.utdanningsforbundet.no/nyheter/2021/minstenormen-har-fort-til-bedre-larertetthet/>. See the Norwegian Education Act section 8-3 and Regulations [forskrift] 23 June 2006 no. 724 til opplæringslova [on the Norwegian Education Act] section 14A-1.

65 See the Norwegian Education Act section 5-1.

66 See the Norwegian Education Act section 1-3.

considered as being in the process of becoming something (“becomings”), and this might take up too much space at the expense of their need (and right) to be beings.<sup>67</sup>

When looking at the education legislation, Fineman’s description of the legal subject is relevant. Fineman states that the “liberal subject is a fully functioning adult – in charge and capable of making choices”.<sup>68</sup> She elaborates that this subject, “[u]nrestrained by the state, [...] will be rewarded according to his particular talents and individual efforts”. Obviously, the legal subject in the Education Act is not a fully functioning adult, but I believe that the main subject is a normally developed, healthy and fully functioning child, capable of managing the duties, task and demands of school (but with little autonomy). With the help of her fully functioning parents, she will be rewarded according to her talents and individual efforts. Even though there is legislation aimed at regulating the exceptions, the ordinary child norm creates strong pressure to conform (for children, parents and the school alike). Combined with the narrow room for developmental differences and the little autonomy, this leaves children open to the risk of failing to master school.

Ole Martin Moen has written an article about child maltreatment in schools, encompassing both neglect and abuse/mistreatment, from a Norwegian perspective.<sup>69</sup> He refers to maltreatment as the gap between what the child needs and what the child receives, regardless of the reason for the unmet needs.<sup>70</sup> The WHO defines neglect as “both isolated incidents, as well as a pattern of failure over time on the part of a parent or other family member to provide for the development and well-being of the child – where the parent is in a position to do so – in one or more” specific areas.<sup>71</sup> These areas are health, education, emotional development, nutrition, shelter and safe living conditions. The first three are particularly relevant, not just for parents but also for schools. The specification of “where the parents are in a position to do so” is important when assessing whether there is neglect in the family. However, there must be a stronger obligation on the school to ensure that the child’s needs are met, especially since the child has an obligation to attend primary education and lower secondary school. I would argue that

67 See Michael Freeman, *A Magna Carta for Children? Rethinking Children’s Rights* (Cambridge: Cambridge University Press, 2020), 35, 37 and 39, about children as becomings and beings.

68 Fineman, “Vulnerability and Social Justice,” 356.

69 Ole Martin Moen, “Skolens omsorgssvikt,” in *Skolens mening. 50 år etter hvis skolen ikke fantes av Nils Christie* [The Meaning of School. 50 Years Since If School Didn’t Exist by Nils Christie ], eds. Espen Schanning and Willy Aagre (Universitetsforlaget, 2022), 91–115, 94.

70 Moen, “Skolens omsorgssvikt,” 91–115, 94.

71 World Health Organization, *Preventing Child Maltreatment* (Genève, 2006), 10.

schools are obligated to meet any need that the parents cannot provide for from a distance. In addition, the child must under no circumstances be exposed to physical, emotional and psychological abuse in school.

The Norwegian Education Regulation chapter 9A emphasises that all children have the right to a good physical and psychosocial environment conducive to health, well-being and learning.<sup>72</sup> The regulation involves elements of care, protection, and respect for the individual child. However, the number of children reporting being bullied or worrying about going to school is persistently high.<sup>73</sup> In addition, the approach in the legislation is somewhat narrow. It mainly points to offences and violations from others, not unmet needs such as lack of support and good relationships, or stress related to education or how the school day and education is constructed.<sup>74</sup> Moen is particularly concerned about children in lower secondary school and their emotional and social needs.<sup>75</sup> He points out that teachers have very little time to follow up on the children beyond their educational needs. Class teachers and counsellors have only a total time of two to three hours per child in a six-month period.<sup>76</sup> He further points out that children appear to be systematically malnourished in schools.<sup>77</sup> Of course, parents can send a packed lunch with the child, but the school must at least ensure there is time to eat. In Norway, breaks for children in school are not regulated, and it is reported that many younger children are not given the recommended 20 minutes to eat every day.<sup>78</sup> Perhaps more serious are the points Moen makes under the topic of mistreatment by schools, where he particularly looks at emotional abuse through persistent exposure to harmful stress.<sup>79</sup>

As Moen highlights, children are under constant evaluation at school.<sup>80</sup> Grades may be a continuous confirmation for a child that he or she is not mastering the schoolwork. Also, children are often reminded that lack of mastery at school will have a negative effect on their later lives. Over recent years, the public debate has been concerned in a rather narrow way about all the negative effects of not mastering

---

72 See Norwegian Education Act chapter 9A.

73 Official Norwegian Reports (NOU) 2019: 23, *Ny opplæringslov*, 156; Moen "Skolens omsorgssvikt," 91–115, 97.

74 See Mona Martnes, "Ufrivillig skolefravær hos autistiske barn. Er bestemmelsene i opplæringslova egnet til å ivareta retten til inkluderende utdanning?" [Involuntary School Absence Among Autistic Children], *Kritisk Juss*, vol. 48(3) (2022): 190–212, 207.

75 Moen, "Skolens omsorgssvikt," 91–115, 95–98.

76 Moen, "Skolens omsorgssvikt," 91–115, 96.

77 Moen, "Skolens omsorgssvikt," 91–115, 96.

78 Official Norwegian Reports (NOU) 2019: 23, *Ny opplæringslov*, 156.

79 Moen, "Skolens omsorgssvikt," 91–115, 98.

80 Moen, "Skolens omsorgssvikt," 91–115, 98.



school, the importance of good grades, and the risk factors of not finishing high school. Little attention has been paid to the fact that this system is a social construction and there is a lack of alternatives for those who cannot find their way through it.

Since homework is a major requirement from the school, and children's social life is strongly connected to school, there is no clear division between school and leisure time. This seems to be a deliberate policy, connected to the important role the school as an institution is meant to have for children. The downside is that for children who do not master or thrive in school, there is no sanctuary, except, perhaps, for in their home. A further potential risk factor for harmful stress is that constant evaluation does not consider other factors that hinder or obstruct learning, such as lack of care in school or education that is not adapted to the child's needs. Even if the child is sick over a longer period, the grades are based on the activities and performances from the time the child was not able to do any schoolwork.<sup>81</sup> Although children in Norwegian primary schools are not graded, they are nevertheless evaluated and tested. For the youngest children, the need for emotional and responsive care from adults and from other children is even more precarious than for the older children.

When Lynch writes about the inevitability of interdependency not just in personal relationships "but also in workplaces, in public organisations, in voluntary groups or other social settings", she elaborates that "[a]lthough it is obvious that we cannot flourish personally without support, encouragement and affirmation, even in our paid-work lives, we can only flourish fully if we work with others who are nurtured, fed and supported so they are willing and able to work".<sup>82</sup> This is also true if we replace "work" with "school". All the children and the adults must have their needs ensured for the school to be a caring place. For instance, if one child does not get his or her need for support, breaks or shielding, and therefore is constantly overwhelmed and acts out, this will affect the whole class. Therefore, a good start would be if the legislation clearly reflected that care is essential, and in a way that also reflects the central marker of care, including responsibility. The regulation on day care is a good example in this context.

The need for emotional care is clearly acknowledged in the Norwegian legislation concerning day care. In the Kindergarten Act<sup>83</sup> section 1, it is stated that "[t]he Kindergarten must, in collaboration and close understanding with the home, safeguard the children's need for care and play". The preparatory works highlight that the day care must build on existing knowledge about children's development

---

81 See Moen, "Skolens omsorgssvikt," 91–115, 100.

82 Lynch, "Affective Equality: Who Cares?" 410–411.

83 Act 17 June 2005 No. 64 om barnehager [Norwegian act relating to kindergartens].

and needs and ensure individual follow-up, support and stimulation.<sup>84</sup> The framework plan for day care also highlights children's need for care. It states that care is a prerequisite for the children's safety and well-being and for the development of empathy.<sup>85</sup> Interestingly, the framework plan highlights that day care shall *actively facilitate caring relationships* between the children and the staff as well as between the children.<sup>86</sup> This should serve as a basis for well-being, joy and mastery. So here the need for caring relationships is explicitly recognised. The personnel shall meet all children with openness, warmth and interest and show care for each individual child in a sensitive way.<sup>87</sup> Further, they shall work for an environment that not only makes the children recipients of care, but also values the children's own acts of care.<sup>88</sup> Despite the lack of similar provisions in the Education Act, children's need for care is not completely overlooked in connection to school.

The Norwegian Directorate for Education and Training has stated that schools have a responsibility of care for all children during school time.<sup>89</sup> In the Official Norwegian Report about the new Education Act, it is stated that schools have both a right and duty to exercise guardianship and caring responsibility, including when it involves the use of necessary, accepted physical and verbal measures.<sup>90</sup> The responsibility of care is linked to children's right to feel safe at school.<sup>91</sup> At the same time, the directorate elaborated that school's responsibility means that it might use force against children in some situations. Situations mentioned are when force is necessary to stop children from hurting themselves, other children, employees or objects at the school.<sup>92</sup> Here, the responsibility of care is understood as intervening when necessary.<sup>93</sup> A paradox is that the necessity of interventions might occur

---

84 Draft resolution No. 72 (2004–2005) para. 5.1 and 5.2.1.

85 Regulations 24 April 2017 No. 487 Rammeplan for barnehagen [on the framework plan for Norwegian kindergartens' content and tasks], para. 3.

86 Regulations 24 April 2017 No. 487 para. 3.

87 Regulations 24 April 2017 No. 487 para. 3.

88 Regulations 24 April 2017 No. 487 para. 3.

89 The Norwegian Directorate for Education and Training and the use of intervention measures in school, <https://www.udir.no/regelverkstolkninger/opplaring/Skoleeiers-ansvar/Bruk-av-nodrett-og-andre-inngripende-tiltak/> (last visited 03.10.2022).

90 Official Norwegian Reports (NOU) 2019: 23, 484.

91 See the Norwegian Education Act chapter 9A concerning the school environment. See also second vote in the Supreme Court of Norway, judgment Rt. 2012, 146.

92 The Norwegian Directorate for Education and Training and the use of intervention measures in school, <https://www.udir.no/regelverkstolkninger/opplaring/Skoleeiers-ansvar/Bruk-av-nodrett-og-andre-inngripende-tiltak/> (last visited 03.10.2022).

93 See also Official Norwegian Reports 2019: 23, 478.

because a child has unmet needs.<sup>94</sup> Lack of care might lead a child to react with anger and violence, which again leads to the use of force against that child.<sup>95</sup>

To a certain extent, the right to inclusive education might ensure that individual children's needs are met and thereby contribute to care in schools. Article 24(1) of the United Nations Convention on the Rights of Persons with Disabilities (CRPD)<sup>96</sup> holds that states shall secure "an inclusive education system". No article in the CRC explicitly mentions inclusive education, and, as Philip Veerman has stated, the concept seemed not to exist in the drafting period of the Convention.<sup>97</sup> He elaborates that since 2006 the CRC Committee has interpreted Articles 23, 28 and 29 as though the Convention has a provision of inclusive education.<sup>98</sup> The Committee has stated that, at its core, inclusive education is "a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students".<sup>99</sup> The Committee has further elaborated that "inclusion should not be understood nor practiced as simply integrating children with disabilities into the regular system regardless of their challenges and needs".<sup>100</sup>

The ECtHR seems to acknowledge the centrality of schools for the foundation of relationships and the importance of inclusive education in this context.<sup>101</sup> In a judgment where the ECHR found a violation on the right to education without discrimination for an autistic girl, the Court stated that "the discrimination suffered by the applicant is particularly serious as it occurred in the framework of primary schooling, when the foundations are laid [wh]ich provides the bases for overall education and social integration and the first experiences of living together".<sup>102</sup> However, inclusive education might not be in all children's best interests. As stated in a concurring opinion in the same ECHR judgment, for some children "inclusive education may cause great suffering and be detrimental to their personal development, whereas special schools achieve much better results and can

94 See, for instance, Ross Greene, *Lost at School: Why Our Kids with Behavioral Challenges Are Falling Through the Cracks and How We Can Help Them* (Scribner Book Company, 2014).

95 See Moen, "Skolens omsorgssvikt," 91–115, 100–101, about symptoms of neglect in school.

96 Adopted by the United Nations, 13 December 2006.

97 Philip Veerman, "The Best Interests of the Child and the Right to Inclusive Education," *The International Journal of Children's Rights*, vol. 30 (2022): 499–523, 516.

98 Veerman, "The Best Interest of the Child and the Right to Inclusive Education," 516.

99 UN Committee on the Rights of the Child, *General Comment no. 9 (2006) The rights of children with disabilities*, CRC/C/GC/9 (February 27, 2007), para. 67.

100 CRC/C/GC/9 para. 67.

101 See ECHR judgment, 10 September 2020, *G.L. v. Italy*, Application no. 59751/15.

102 *G.L. v. Italy*, para. 62 and 70.

reduce their suffering”.<sup>103</sup> Verman is also concerned with the need for some special schools and that not all children can benefit from regular education. He states that “[t]he best interests of the child should remain the guiding principle for children”.<sup>104</sup> Although I am in agreement, more children could benefit from regular education if inclusion were understood as real inclusion, not as a formalistic approach of integration. As Jesenková mentions, there is a need to understand and consider the complexity of inclusion processes in schools.<sup>105</sup>

Identity is formed by the relationships to others.<sup>106</sup> When children experience failing in school, this is assumed to be among the most serious risk factors for mental illness.<sup>107</sup> I believe this applies both for lack of mastering schoolwork and for the social part of the school. With more caring schools, much suffering could be avoided. Therefore, it is a paradox that the Norwegian education legislation, created within a Nordic welfare state model, has so little focus on children’s need for care. I think there is a need to highlight that ensuring the right to inclusive education requires caring schools that acknowledge the responsibilities that come with caring and that meet the needs of the child in an attentive, responsive and respectful manner, and this must be understood in the context of a mutual relationship.

### 6.4.3 Derived Dependency

Parents’ derived dependency on caring schools is not explicitly stated in Norwegian legislation, although this is of course recognised as an underlying premise and is part of the aim of ensuring the needs of the democratic society, not just the individual child. Other institutions are also dependent on schools. Health institutions and child welfare authorities, for instance, are both dependent on schools that ensure children’s individual needs. However, as Fineman points out, a weakness in one system can be compensated for in another. Fineman uses the example of a strong family being able to help minimise the impact of a less sterling education system.<sup>108</sup> At the same time, flaws with one institution, such as health institutions, can have a negative impact on education or family life, so there is a risk of a

103 See concurring opinion of judge Wojtyczek in *C.L. v. Italy* para. 5.

104 Veerman, “The Best Interest of the Child and the Right to Inclusive Education,” 517.

105 Jesenková, “Deficit of Democratic Care in the Education System in Slovakia,” 271.

106 See inter alia Sandra Fredman, “Substantive Equality Revisited,” *International Journal of Constitutional Law*, vol. 14(3) (2016): 712–738, 731; Herring, *Forging a Relational Approach: Best Interests or Human Rights?* 34.

107 Official Norwegian Reports (NOU) 2019: 23, 155.

108 Fineman, “Reasoning from the Body,” 17–34, 29.

negative cumulative effect. And flaws with schools may shift the problem to health institutions or the child welfare authorities. Given the central and important role of schools in society and for individual families, the cost and burden of schools that do not meet the child's needs can be huge – not just for the child, but also for the child's parents and for society.

## 6.5 CONCLUDING ASSESSMENT: A CHILD RIGHTS APPROACH TO CARING SCHOOLS?

In the introduction, I posed the question of whether lack of care might be a problem for the protection of the child's right to education. My conclusion to this is yes. Needs, as rights, are interrelated and interdependent. Unmet needs can hinder or block learning. The education legislation in Norway fails to see that children's inevitable dependency on caring schools is not restricted to certain areas or only some children, but is a fundamental human need that should lay the groundwork for how schools are constructed. Merely focusing on the right to education will not fix this problem. Instead, focusing on all the rights of the child – and, as the sum of all of a child's interests, their “well-being” – is central. In my opinion, the education legislation must be built on the universal need for care, in addition to the rights contained within the CRC. A caring school, built on ensuring rights and thereby meeting needs, could be a school that meets the needs of all children, including the needs of those who are sick, injured, traumatised or neurodivergent. In addition, such schools could be able to meet the needs of a child whose parents are sick, are in a difficult situation, or for other reasons need extra support in caring for their child. Caring depends on knowledge of the individual child's needs and being sufficiently flexible to meet those needs in a relational, attentive, responsive and respectful manner. The responsibility for this, when the child is at school, rests with the school – and the state must ensure that schools are able to assume this responsibility.

## BIBLIOGRAPHY

- Abramson, Bruce. “Article 2. The Right of Non-Discrimination.” In *A Commentary on the United Nations Convention on the Rights of the Child*, edited by André Alen, Johan Vande Lanotte, Eugeen Verhellen, Fiona Ang, Eva Berghmans and Mieke Verheyde (Leiden: Martinus Nijhoff Publishers, 2008).
- Act 17 June 2005 no. 65 om barnehager [Norwegian Act relating to kindergartens].
- Act 17 July 1998 no. 61 om grunnskolen og den vidaregåande opplæringa (opplæringslova) [The Norwegian Education Act].

- Amundsen, Marie-Lisbet, Anne Kielland and Geir Møller. "School Refusal and School-Related Differences among Students with and without Diagnoses." *Nordisk tidsskrift for pedagogikk og kritikk*, vol. 8 (2022): 34–48.
- Cantillon, Sara, and Kathleen Lynch. "Affective Equality: Love Matters." *Hypatia*, vol. 32(1) (2017): 169–186.
- Doc. 16 (2011–2012).
- Draft resolution No. 72 (2004–2005).
- ECHR. Judgment, 10 September 2020. *G.L. v. Italy*. Application no. 59751/15.
- Eekelaar, John, and John Tobin. "Article 3 The Best Interests of the Child. Analysis of Article 3." In *The UN Convention on the Rights of the Child*, edited by John Tobin, 73–107. Oxford: Oxford University Press, 2019.
- Engster, Daniel. "Rethinking Care Theory: The Practice of Caring and the Obligation to Care." *Hypatia*, vol. 20(3) (2005): 50–74.
- Fineman, Martha Albertson. "Beyond Equality and Discrimination." *SMU Law Review Forum*, vol. 73(1) (2020): 51–62.
- Fineman, Martha Albertson. "Reasoning from the Body: Universal Vulnerability and Social Justice." In *A Jurisprudence of the Body*, edited by Chris Dietz, Mitchell Travis and Michael Thomson, 17–34. Palgrave Macmillan, 2020.
- Fineman, Martha Albertson. "Vulnerability and Social Justice." *Valparaiso University Law Review* (2019): 341–370.
- Fisher, Berenice, and Joan C. Tronto. "Toward a Feminist Theory of Caring." In *Circles of Care*, edited by Emily K. Abel and Margaret K. Nelson, 36–54. Albany, New York: SUNY Press, 1990.
- Fredman, Sandra. "Substantive Equality Revisited." *International Journal of Constitutional Law*, vol. 14(3) (2016): 712–738.
- Freeman, Michael. *A Magna Carta for Children? Rethinking Children's Rights*. Cambridge: Cambridge University Press, 2020.
- Green, Ross. *Lost at School: Why Our Kids with Behavioral Challenges Are Falling Through the Cracks and How We Can Help Them*. Scribner Book Company, 2014.
- Herring, Jonathan. *Caring and the Law*. Oxford: Hart Publishing, 2013.
- Herring, Jonathan. "Forging a Relational Approach: Best Interests or Human Rights?" *Medical Law International*, vol. 13(1) (2013): 32–54.
- Herring, Jonathan. "Compassion, Ethics of Care and Legal Rights." *International Journal of Law in Context*, vol. 13(2) (2017): 158–171.
- Herring, Jonathan. "Children Care." In *Disability, Care and Family Law*, edited by Beverly Clough and Jonathan Herring, 51–65. Routledge, 2021.
- Herring, Jonathan. *Law Through the Life Course*. Bristol: Bristol University Press, 2021.
- Jesenková, Adriana. "Deficit of Democratic Care in the Education System in Slovakia." In *Care Ethics, Democratic Citizenship and the State*, edited by P. Urban and L. Ward, 259–276. International Political Theory, 2020.
- Kongeriket Norges Grunnlov [The Norwegian Constitution]. 17 May 1814.
- Lynch, Kathleen. "Affective Equality: Who Cares?" *Development*, vol. 52(3) (2009): 410–415.
- Martnes, Mona. "The Child's Right to Information on Sensitive Topics – Ensuring a Child-Rights Approach by Balancing the Right to Information and the Best Interest of the Child." *Nordisk Socialrättslig Tidskrift*, vol. 34 (2022): 67–95.

- Martnes, Mona. "Ufrivillig skolefravær hos autistiske barn. Er bestemmelsene i opplæringslova egnet til å ivareta retten til inkluderende utdanning?" *Kritisk Juss*, vol. 48 (3) (2022): 190–212.
- Moen, Ole Martin. "Skolens omsorgssvikt." In *Skolens mening. 50 år etter hvis skolen ikke fantes av Nils Christie* [The Meaning of School. 50 Years Since *If School Didn't Exist* by Nils Christie], edited by Espen Schanning and Willy Aagre, 91–115. Universitetsforlaget, 2022.
- Munkhaugen, Ellen Kathrine, Elen Gjervik, Are Hugo Pripp, Eili Sponheim and Trond H. Diseth. "School Refusal Behaviour: Are Children and Adolescents with Autism Spectrum Disorder at a Higher Risk?" *Research in Autism Spectrum Disorders*, vol. 41–42 (September 2017): 31–38.
- Norwegian Supreme Court Judgment. Rt. 2012 pp. 146
- Official Norwegian Reports (NOU) 2015: 8, *Fremtidens skole* [The School of the Future].
- Official Norwegian Reports (NOU) 2019: 23. *Ny opplæringslov* [New Education Act].
- Ruggiero, Roberta, Diana Volonakis and Karl Hanson. "The Inclusion of 'Third Parties': The Status of Parenthood in the Convention on the Rights of the Child." In *Children's Rights Law in the Global Human Rights Landscape*, edited by Eva Brems, Ellen Desmet and Wouter Vandenhoe, 71–89. Oxfordshire, 2017.
- Regulations 23 June 2006 no. 724 til opplæringslova [on the Norwegian Education Act].
- Regulations 24 April 2017 no. 487 Rammeplan for barnehagen [On the framework plan for the Norwegian kindergarten's content and tasks].
- Sutherland, Elaine, E. "The Enigma of Article 5 of the United Nations Convention on the Rights of the Child." *The International Journal of Children's Rights*, vol. 28 (2020): 447–470.
- Tobin, John, and Florence Seow. "Article 18 Parental Responsibility and the State Assistance." In *The UN Convention on the Rights of the Child*, edited by John Tobin, 646–686. Oxford: Oxford University Press, 2019.
- Tronto, Joan C. *Caring Democracy: Markets, Equality, and Justice*. New York: NYU Press, 2013.
- Tronto, Joan C. *Caring Democracy: Markets, Equality and Justice*. New York: New York University Press, 2017.
- UN Committee on the Rights of the Child. *General Comment no. 1 (2001), Article 29 (1), on the Aims of Education*. CRC/GC/2001/1. April 17, 2001.
- UN Committee on the Rights of the Child. *General Comment no. 5 (2003) General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6)*. CRC/GC/2003/5. November 27, 2003.
- UN Committee on the Rights of the Child. *General Comment no. 9 (2006) The Rights of Children With Disabilities*. CRC/C/GC/9. February 27, 2007.
- UN Committee on the Rights of the Child. *General Comment no. 12 (2009) The Right of the Child to Be Heard*. CRC/C/GC/12. July 20, 2009.
- UN Committee on the Rights of the Child. *General Comment no. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration* (Art. 3, para. 1). Crc/c/gc/14. May 29, 2013.
- Vandenhoe, Wouter. "Distinctive Characteristics of Children's Human Rights Law." In *Children's Rights Law in the Global Human Rights Landscape*, edited by Eva Brems, Ellen Desmet and Wouter Vandenhoe, 21–51. Oxfordshire, 2017.
- Veerman, Philip. "The Best Interests of the Child and the Right to Inclusive Education." *The International Journal of Children's Rights*, vol. 30 (2022): 499–523.
- World Health Organization (Who). *Preventing Child Maltreatment*. Genève, 2006.