Alice Diver

A Law of Blood-ties - The 'Right' to Access Genetic Ancestry

Springer

A Law of Blood-ties - The ‘Right’ to Access Genetic Ancestry

Alice Diver

A Law of Blood-ties - The ‘Right’ to Access Genetic Ancestry

Springer

Alice Diver
School of Law
University of Ulster
Londonderry
United Kingdom

ISBN 978-3-319-01070-0 ISBN 978-3-319-01071-7 (eBook)
DOI 10.1007/978-3-319-01071-7
Springer Cham Heidelberg New York Dordrecht London

Library of Congress Control Number: 2013947944

Printed on acid-free paper

Springer is part of Springer Science+Business Media (www.springer.com)

For my family

Foreword

Dr Alice Diver has produced an impressive study examining a subject that is integral to every social order and yet remains highly controversial and sensitive. Throughout human evolution, genetic kinship and natal parenthood have been viewed as the natural basis for the family. By contrast, social kinship and familial relationships, developed through such techniques as adoption, have been considered inferior and representing less-respected bonding. As Diver eloquently explains, the emphasis on developing ties akin to biological or genetic kinship has been so strong that even when adoptions have taken place, there have been equally strong efforts to remove memories of previous relationships and bonds. In the process of erasing past identities and relationships, legislative and administrative machinery of states have deployed various strategies, including permanently sealing original birth records, placing a ban on kin contact, and encouraging the renaming of the child. While generating a sense of assurance and security in the newly established bonds, these arrangements systematically exclude the involvement of the genetic parents in key decisions related to their biological offspring. In lamenting the practices of many contemporary societies and while expressing concerns over attempts to hide genetic kinship, Diver notes that '[t]he need for genetic identity cannot simply be ignored; origin deprived persons should not be expected to simply develop good "coping mechanisms" and quietly accept that they will never have a right to access their ancestry, or that such a right must always become weightless in law when set against the privacy right of the other triad members. . . .[o]rigin deprivation can lead to harmful outcomes; as such, enshrining it as a normative feature of social kinship, rather than as an exceptional occurrence, amounts to a form of highly discriminatory unequal treatment' (Conclusions: Chap. 2).

In addition to sociologists, anthropologists, and family law practitioners, the study has much attraction for international and comparative lawyers, as well as human rights advocates. Diver builds an argument for the establishment and global recognition of a right that she terms as the human right to 'avoid origin deprivation'. In her investigations, she finds the current state of international law significantly limited. As Diver rightly observes, the UN Convention on the Rights of the Child (1989) fails to provide an explicit recognition to familial origins of the child.

Although the best interest of the child remains a paramount consideration for the Convention, such primacy does not take account of the need to preserve genetic heritage identity. The evolving jurisprudence of the Convention may well develop provisions contained, inter alia, in Article 8 and Article 10 to expand the notion of family to allow greater kin contact. That said, the reticence to establish identity of the biological parents is also prevalent at the domestic level, including within the constitutional, administrative, and societal framework of the United Kingdom. The UN Human Rights Committee has criticised the UK in that 'children born out of wedlock, adopted children or children born in the context of a medically assisted fertilization do not have the right to know the identity of their biological parents' (Concluding observations: United Kingdom of Great Britain and Northern Ireland, Committee on the Rights of the Child 31st Session (9 October 2002) CRC/C/15/Add.188, para 31).

As Diver notes in her study, while donor anonymity has been overturned by UK legislation since 1 April 2005, there are considerable limitations in that the parents remain under no obligation to inform the child of his or her conception through assisted reproductive techniques. Amidst these disappointments, Diver does point to variations and variables amongst traditions and values. De facto adoptions e.g. the Islamic *Kafalah*, though not completely immune from its own shortcomings—including difficulties of application—nevertheless provides a useful alternative model. At least in principle, for preserving genetic identity and the possibility of a continuing relationship with the biological parents. There are other models as well, and it is at least arguably the case that amidst modern developed societies, there is a gradual realisation towards greater acceptance of recognising the right to 'avoid origin deprivation'.

With such maturity of analysis and originality of arguments, Diver has produced an excellent study. I wholeheartedly commend this monograph, which in my view will prove to be a reference point for the future.

London, UK Javaid Rehman

Acknowledgements

Sincere thanks are due to Professor Javaid Rehman (Brunel Law School, London) for kindly agreeing to write the foreword to this text and to Sandra Wickenhäuser (Law Editor for Springer International) for providing me with the opportunity to publish this monograph. I would also extend thanks to my PhD supervisors, Mr Ciaran White (School of Law, University of Ulster) and Professor Brian Taylor (School of Sociology and Applied Social Studies, University of Ulster), for their expert guidance and advice throughout the writing of the doctoral thesis upon which this book was based. The comments of Professor Judith Masson (University of Bristol) and Professor Martin Preston-Shoot (University of Bedfordshire), who acted as my external examiners, were also invaluable, as were those of Professor Beverly Brown, who provided detailed suggestions in respect of an earlier draft of the text.

I would also like to thank Professor Emily Hipchen (University of West Georgia, and editor of *ASAC*) for permitting the use of Chap. 4 (previously published in 2012 as an article in the *ASAC* Journal of the Alliance for the Study of Adoption and Culture) and for her endless patience with my many attempts to master the MLA referencing system. I am very grateful also to my colleagues and former colleagues at the University of Ulster, particularly to Professor Mary McColgan (School of Sociology and Applied Social Studies, University of Ulster), Professor Fionnuala ní Aoláin (Transitional Justice Institution, University of Ulster; University of Minnesota), Dr Lynn Ramsey (Letterkenny Inst. of Technology), Dr Gabriele Porretto (The UN, Kosovo), Dr Liam Thornton (University College, Dublin), Professor Christine Bell (Edinburgh University), Professor Joshua Castellino (Middlesex University), Dr Eugene McNamee (Head of School), Grainne McKeever, Dr Thomas Murphy, and Dr Jacinta Miller (all School of Law, University of Ulster), for their helpful and insightful comments on earlier drafts of the various chapters. (Errors contained herein are entirely my own.) I am very grateful also to Janice McQuilkin (Law School Librarian, Magee) and Emer Carlin (School of Law/TJI Secretary) for providing me with unflagging support and assistance in terms of enabling the research and maintaining my sanity.

Thanks are also due to my tortured spouse, Gerry, and children (Ellen, John, Celie, and Eva) for putting up with me throughout and generally seeing to their own dinners.

Contents

Chapter 1
Introduction

1.1 Introduction

The decision to use certain terms was made in the interests of clarity in distinguishing between the various rights and interests of those who might be most profoundly affected by origin deprivation or created forms of legal relatedness. The concept of 'the triad' may be a highly contentious one for anyone who regards themselves as having unwillingly lost a child to adoption; it is a useful term however, for example in relation to analysing the various rights hierarchies that can arise post-adoption or gamete donation. The use of the term 'birth mother' also often provokes hurt and anger amongst that community; it will be used here as sparingly as possible, again in the interests of clarity and generally in the context of case law and policy, to highlight for example the consequences of having one's genetic connections vetoed.[1] Where any terms such as 'real', 'natural' or artificial' are used in relation to parentage or conception these will be as quotations from cases or research on the issue of origin deprivation. The term 'relinquished' is used to represent the loss of genetic connection rather than to necessarily suggest that gently provided consents to adoption are necessarily the norm. Equally, the term 'removed child' appears at times, to acknowledge that substitute child care is often grounded in an acute need to achieve child protection and prevent abuse or neglect at the hands of natal family members.

[1] As a sealed-records Quebec adoptee I would make the suggestion that the prefix 'birth' should not necessarily be omitted from rights discourses on adoption and gamete donation. Despite the argument that its usage may reduce the role of genetic mothers (and fathers) to that of narrowly defined, biological input, the term does sharply underscore the unique nature of the losses that can occur where the blood-tie is removed or relinquished in respect of severing the profound connection between child, original parent and denying their shared heritage. Arguably, the notion of the '*birthright*' is made more poignant by virtue of the 'birth' prefix, perhaps carrying a bit more weight in terms of persuading decision-makers that, in cases involving genetic ancestry and heritage, they are often tasked with protecting more than just a basic set of rights.

A. Diver, *A Law of Blood-ties - The 'Right' to Access Genetic Ancestry*,
DOI 10.1007/978-3-319-01071-7_1,

The book's purpose is not to denigrate the practices of adoption or assistive reproduction (or the work done by social workers and the family law practitioners) but to highlight how some of the legal and social processes underpinning these created forms kinship have served to create and perpetuate discrimination and inequality of treatment, and in some cases, to violate basic human rights. It argues that a much more child-centric focus is needed at the level of domestic decision-making, to better embed the principle that the welfare of the child must be the paramount concern.[2] The book's central arguments focus mainly upon the situation of the genetically 'kinless' in terms of preventing harms, losses and rights-inequality, rather than on examining in great detail the interests or experiences of others involved in adoption or gamete donation processes. It aims primarily to establish that a 'law of blood-ties' is gradually emerging from amongst the various strands of jurisprudence and this may yet be of use in embedding a more justiciable right to genetic connection and biological identity at domestic level.

Access to ancestry should be a normative rather than exceptional feature of creating social kinship ties; permanent vetoes on accurate, identifying, birth information should only occur in exceptional circumstances, with child welfare paramountcy serving as the guiding principle. By the same token, where laws and policies have systematically protected the rights of one group over those of another then such a template merits scrutiny, and calls for reform.

Genetic connections, despite having much socio-cultural and psychological significance, remain almost weightless in terms of rights, laws and policies. No juridical right currently attaches for example to the psychological need, or sociological desire, to access biological identity, or repair natal bonds that have been legally severed during the processes of social 'kinning'.[3] The validity or otherwise of this assertion is evaluated here against the backdrop of both international and domestic law frameworks, and across a range of jurisdictions. The conflicting socio-cultural and psychological aspects of origin deprivation are examined in the opening chapters to highlight the wide range of harms that can flow from the loss of genetic kinship. The double-edged nature of the concept of relatedness, in respect of the laws and cultural norms which have grown up around it, is also discussed, with a view to contextualising the sometimes equivocal judicial discourses referred to in the later chapters on 'blood-tie jurisprudence'. Arguably, the ambivalence that can be found in some of the judgments echoes the tone of some of the 'fear or revere ancestry' tales of traditional folkloric warnings on 'kinless-ness'[4] not least in respect of the stigmatising effects of being regarded as 'other' to one's kinfolk, social or natal.

[2] A key assumption of this monograph is that a significant number of origin-deprived persons will probably, at some stage in their life, attempt to seek out some level of basic information on their genetic ancestry. On searching see further Lifton (1990), pp. 85–92; Carp (1998); Triseliotis (1985), pp. 19–24.

[3] Howell (2003), pp. 465–484.

[4] See for example Bremmer (1999), pp. 1–20; Kenna (2001).

The suggestion will also be made that within some open records jurisdictions (i.e. where original birth certificates are not generally subject to permanent closure[5]) other factors may act to diminish the socio-legal significance of one's original blood-ties. Judicial bars on kin contact,[6] the practice of separating genetic siblings post-adoption,[7] or the granting of a very wide degree of discretion to social parents on issues such as information release or paternity testing[8] have frequently served to weaken the bonds of natal kinship, sometimes to the point where they essentially seem 'irrelevant' or perhaps incapable of being repaired. Many of the ethical issues surrounding promises of confidentiality made to 'triad adults'[9] have also, in some jurisdictions, translated into rigid legal frameworks of absolute secrecy.[10] These can easily 'orphanise' (and perhaps permanently infantilise) origin deprived persons. Arguably, the 'right' to identity within this context effectively becomes more of a non-right,[11] rendered void by the 'weightier' over-arching privacy rights of triad adults. The welfare paramountcy principle, in focussing on the 'best interests of the child'[12] also remains open to a wide variety of interpretations in such contexts; this may be further compounded by the presence of judicial 'balancing exercises' which might afford priority to parental interests.[13]

The case law selected for analysis in the later chapters does not focus solely on situations involving social kinship triads but looks also at those wider issues that

[5] See for example the United Kingdom, via The Adoption Act 1976 (as amended by S 60 of the Adoption and Children Act 2002, enacted 30 December 2005) and Northern Ireland's equivalent legislation, Article 54 of The Adoption (NI) Order 1987. Note however the power of veto which vests in the inherent jurisdiction of the High Court, in respect of ordering the non-release of identifying information: see *R v Registrar-General ex p Smith* [1991] 2 QB 393 (Court of Appeal).

[6] See for example *Re K* [2002] NIFam 13; *Re H* [1981] 3 FLR 386.

[7] See *Webster* (*The Parents*) *v Norfolk County Council & Ors* (Rev 1) [2009] EWCA Civ 59.

[8] See for example *Re P* (*A Child*) [2008] EWCA Civ 499; *Re H & A* (*Children*) [2002] EWCA Civ 383.

[9] The triad refers here to the 'triangle of relationships' that exists or arises in respect of social kinship: genetic parents, social parents and adoptee or donor-gamete child. On the issue of using the term 'triad' see further http://motherhooddeleted.blogspot.com/2009/08/myth (accessed 01.02.12); http://bastardette.blogspot.com/2007/10/ethics (accessed 17.03.12); on '*Respectful Adoption Language*' see further http://www.originscanada.org (accessed 02.02.11).

[10] See Baldassi (2004–2005), pp. 212–265.

[11] On the concept of rights versus 'no-rights' see further Hohfeld (1913), p. 16.

[12] See the United Nations Convention on the Rights of the Child (1989) Article 3 (1) which states that: '*In 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*' available at http://www2.ohchr.org/English/law/crc.html (accessed 21.07.011). Domestic provisions [such as Article 1(4) of Adoption and Children Act 2002 in England and Wales] frame the best interests of the child as 'paramount' rather than 'primary' however—see http://www.opsi.gov.uk/acts2002/ukpagea_20020038 (accessed 29.07.11).

[13] On the balancing exercise see further Herring (2003).

may arise where a psycho-social need for blood-tied relatedness remains unmet.[14] Identity rights, best interests-led, child welfare paramountcy and the child's 'right to know' parentage are common themes within the jurisprudence.[15] As these blood-tie cases suggest, genetically displaced children seem at times to require a greater degree of long-term, psychological welfare protection than is currently provided for within some of the basic child welfare checklists found in domestic law or policy. If decision-makers do not accept that a longing to be genetically 'kinned with' others constitutes a key psychological need, then they will continue to frame this aspect of identity as a non-rights-bearing concept, perhaps classing it as mere curiosity on the part of the adoptee.[16] The concept of legal relatedness, especially where it has arisen via biological connectedness, can also be easily dispensed with via legal process. Domestic judiciaries therefore play a key role in interpreting and applying the various provisions that might yet confer a juridical right to knowable genetic ancestry.[17] By ordering the opening of closed records or the overturning of adoptive placements, granting or forbidding kin contact, or by delegating actual decisions on such issues to parents or social workers, domestic courts are responsible for a wide variety of outcomes. Many such decisions carry profound, long-term psychological and social consequences, not just for adoptees but for all members of the social kinship triad and possibly also for other genetic relatives outside of it, such as siblings or grandparents.

Chapter 2 asks why visible ties of kinship are so highly regarded in certain contexts yet so easily denied or disregarded in others. The pragmatic, functionalist nature of kinship (avoidance of danger, ensuring clan survival) was a theme common to many of the theorists cited here; the wider notion of clanship might arise not only through shared genealogical ancestry, but via a common social history or a shared sense of cultural identity.[18] It looks also to the socio-cultural consequences of being rendered genetically kinless and examines how the disparate notions of legal and biological relatedness might be regarded in differing contexts, suggesting that a wide range of social benefits depend on whether or not one has

[14] The term 'social kinship' will be used here to refer to the non-genetic forms of relatedness, as created by law (e.g. adoption, Special Guardianship, marriage to a child's mother) custom (de facto 'indigenous' adoption, *kafalah*) or through assisted reproductive technologies (gamete donation or surrogacy).

[15] See for example *Odièvre v France* [2003] 1 FLR 621; *Frette v France* [2004] 38 EHRR 21 (42); *Re L* [2007] EWHC 1771 (Fam) (20 July 2007)*; DeBoer v DeBoer* 509 US 1301 [1995]; *Baby Boy Richard v Kirchner* 513 US 1138 [1995].

[16] See further Nelkin and Lindee (1995): WH Freeman, on the socio-cultural significance of 'genetic essentialism'.

[17] Choudry (2003), p. 119.

[18] Strong bonds of 'clanship' may arise between individuals who otherwise lack commonal genetic ancestry. See Morgan (1871), Murdock (1949), and Pasternak (1976). See also however Carsten (2004).

been legally and visibly 'kinned' with non-stranger others.[19] It does not seek to frame the genetic mode of kinship as innately superior to that of social kinship, but focuses instead upon the question of why the concept of genetic kinship can often provoke a double-edged response of 'fear or revere'. The seminal texts of several kinship anthropologists (Radcliffe-Brown,[20] Levi-Strauss[21] and Goody,[22] for example) provide a definitional starting point, asking whether biological connections can, on their own, give rise to a sense of relatedness.[23] Generally, the research also seems to frame the notion of relatedness as a non-discrete concept, arguing that it overlaps with many of the cultural notions of kinship, and with a wide range of other purposive 'social realities', such as the desire to protect one's property, achieve psychological well-being, or avoid societal injustice. Some of the research discussed here seems to support the argument that self-perceived 'otherness' can affect not only the relationships between social and natal kinfolk, but also serve to influence the way in which a healthy sense of 'self-hood' might be achieved.

In other words, where original onomastic identity has been lost, hidden away or removed, it may be replaced by a profound need to search for authentic, identifiable ancestry, if only to avoid being deemed 'other'.[24] By the same token, access to genetic truths and realities (such as accurate narratives or knowledge of 'clan' surnames) might be seen as enabling strong kinship links and a socio-cultural sense of belonging. Lepri's work highlights for example the apparent dangers and perhaps unvoiced concerns associated with taking in unknown 'outsiders'[25] whilst Miall's study of adoptive parents found that many felt themselves at times to be regarded as socio-culturally inferior to genetic parents.[26] Conversely, the significance of the blood-tie may be completely superseded by the nurturing, protective effects of social ties. Hage for example stressed the value of feeding as a much better means of generating kinship than that of mere biology.[27] Ancestor reverence however could prevent the harms of origin deprivation by preserving or appeasing one's 'ancestral substance'.[28] Highly visible, elaborate graveside rituals[29] may preserve

[19] A number of 'kinning' devices can be found within domestic property law in some common law regions (e.g. the 'good conscience' constructive trust based on good kinship behaviours, or promissory estoppel claims over familial legacies). See for example cases such as *Re Johnson* [2008] NI Ch 11; *Little* (*Junior*) *v Maguire* [2007] NI Ch 7; *McKernan v McKernan* [2006] NI Ch 6.

[20] Radcliffe-Brown (1952).

[21] Levi-Strauss (1949, 1963).

[22] Goody (1973).

[23] See also for example Evans-Pritchard (1951) and Aginsky (1935), pp. 450–457.

[24] See for example Ortner and Whitehead (1981).

[25] Lepri (2005), pp. 703–724.

[26] Miall (1987), pp. 34–39 at p. 34.

[27] Hage (1999), p. 67.

[28] Grace (2008), pp. 257–262 at p. 257. See also Grace et al. (2008), pp. 301–314.

[29] Roesch-Rhomberg (2004), p. 83.

order amongst the wider community or protect vulnerable outsiders from the inherent dangers of their own 'otherness'. Other ceremonies may be used to reassure social parents fearful of having to defend themselves against the 'prior claims'[30] of original parents or angry kinfolk.

Many of the de facto, informal modes of customary adoption emphasize the difficulties of created relatedness, in a way that formalised western adoption models have traditionally seemed unable, or perhaps reluctant, to do. Issues of loss, fear, 'bereavement' and the need to grieve for lost biological relatives, perhaps publicly and repeatedly, are acknowledged and addressed. Intricate rituals aimed at replacing, removing or mimicking the blood-tie, achieving purification or preventing stigma, promoting psychological healing or removing aggrieved or malign 'hereditary ghosts'[31] may be carried out. A wide range of elaborate, perhaps fluid-based ceremonies exist to repair, replace or ward-off the genetic connection; these rituals may be akin to secular, legal or customary ceremonies that enable social kinship, such as birth record-sealing or the re-naming of adoptees.

Chapter 3 examines the psychological aspects of origin deprivation and broken attachments in a bid to better understand the emotional basis of our desire to 'be related' to others. Carp's contention that genetic relatedness continues to occupy a position of 'privilege' is relevant here, not least in relation to gauging whether norms of strict secrecy were actively developed to protect triad members from their innate sense of dissimilarity and quietly discourage searches for biological kinfolk.[32] A number of academics highlight the 'doomed quality'[33] that some adoptees tend to display.[34] Wegar's research on the issue of sealed birth records in the United States lends support to the argument that adoptees have long been labelled as different, and perhaps at times somehow inferior to, those children who have been raised by their natal families. As such, the dominant model of adoption research appears to have largely been one of individualized pathologies.[35] Bowlby's seminal work on the need for strong attachments in early childhood is also discussed here;[36] despite being initially regarded with a degree of ambivalence, it did serve to challenge the widely held view that abandoned or orphaned infants were incapable of grieving, due to their having 'immature egos' and that their need

[30] Hargreaves (2006), pp. 261–283 at p. 279.

[31] Levy-Shiff (2001), pp. 97–104 at p. 103; see also Berg (2003), pp. 194–207; see further Morgan (1877).

[32] Carp (1998), p. viii.

[33] Carsten (2000), pp. 687–703 at p. 691.

[34] Some writers seem to express dislike for the term 'adoptee'. See for example Trinder et al. (2004), p. 3 where it is suggested that the word tends to denote a 'category rather than a person.' If it is accepted that origin deprivation is a form of discriminatory treatment, the categorization of adopted persons as a uniquely disadvantaged group does not seem entirely inappropriate. The term also perhaps captures the degree of passivity that adopted persons might be subject to when entering the process, in terms of their not usually providing consent.

[35] Wegar (1997), pp. 97–118.

[36] Bowlby (1958), pp. 350–371.

for substitute care-giving was easily met, grounded as it was in a pragmatic need to simply receive nourishment. Reference is also made here to some of the earlier, controversial pieces of empirical research which tended to stress the 'debilitating' effects of illegitimate birth status. Such works are included to illustrate how biased social attitudes might serve to actively influence social policies and public perceptions.[37]

Other key texts referred to include: Frisk, on 'genetic ego'[38]; Erikson, on 'identity crisis'[39]; Sandler and Joffe, on the psychological benefits of physically resembling one's parents[40]; Rogers, on the attainment of 'personhood'[41] and Lifton, who described how the creation of an 'artificial self'[42] might serve as a coping mechanism. The focus however is on asking whether social kinship processes must inevitably create a permanent 'marker for difference.'[43] Theories on the 'rehabilitative' properties of created kinship, drawn from empirical research, seem to ask whether long-term stigma arising from an innate feeling of 'otherness' is an inevitable outcome, in societies where biological connection has been traditionally prized as a cultural norm. Arguably, the main ethical issues, such as promises of confidentiality to triad adults, have perhaps left law and policy makers with little option but to construct and enable frameworks of absolute secrecy, whether over birth or gamete donation.

As much of the qualitative research on international adoptions also perhaps suggests, many respondents do cite long term psychological difficulties: generally they associate their problems with having an ongoing sense of 'discontinued identity.'[44] If it is accepted that origin deprived persons run the risk of suffering from some form of 'genealogical bewilderment,'[45] then it perhaps follows that this can constitute a uniquely harmful form of social disenfranchisement. Genetic 'non-origin' may produce long term effects, not least a sense of having to cope throughout one's lifetime with powerful 'refusals of belonging'[46] As later chapters will seek to argue, origin deprived persons could be viewed in law and custom as a uniquely disadvantaged minority group, worthy of special legal protections, on the basis of the harms that they may be likely to suffer.

---

[37] Goddard (1912). The text argued for the permanent institutionalization (rather than the adoption or fosterage) of illegitimate children within the United States. The subsequently discredited research apparently arose from Goddard's 'work' with one of his female patients in the Training School for Backward and Feeble-Minded Children.

[38] Frisk (1964), p. 31.

[39] Erikson (1968).

[40] Sandler and Joffe (1969), pp. 585–595.

[41] Rogers (1961).

[42] Lifton (1990), pp. 85–92.

[43] Melosh (2002), p. 2.

[44] Ryburn (1995), pp. 41–64 at p. 42.

[45] Sants (1964), pp. 133–141.

[46] Yngvesson and Mahoney (2000), pp. 77–110 at p. 79.

As Antze and Lambeck have argued, memories remain crucial to the construction of personal identities and 'selfhood'.[47] The psychopathologies of non-attachment often comprise of quantitative studies involving adoptees and abused children.[48] The negative effects of having insecure or broken 'attachment' bonds highlight how child welfare needs may differ significantly where origin deprivation is involved. Such research frames the child's 'need to know' as a basic welfare entitlement, rather than as a personal desire to uncover 'non-essential' genealogical information. Much of the work also challenges early adoption policies and practices, which tended to advocate well-meaning, fictive options, such as telling adoptees that they had been orphaned, placing their Adoption Orders or original birth certificates in safe deposit boxes, or simply 'not telling' children that they had been adopted.[49]

Later studies on the need to access accurate information highlight more clearly the potential harms of genetic kinlessness, by stressing how problems can arise. As Wegar suggested, examination of 'the structure of adoption as a social institution' must be a central objective of any bid to redress the unique, recursive harms of origin deprivation. Blaming 'individual shortcomings'[50] of triad children or expecting them to develop strong coping mechanisms, is unacceptable. The early policies of removing the 'social flaws'[51] of illegitimate children (by placing them with new kinfolk and hiding their original background) contrast sharply with the more recent emphasis on 'Positive Adoption Language'[52] and the child-protective aims of modern practice.[53] Such policies are primarily concerned with meeting the acute needs of highly vulnerable children, rather than serving to expand family units, 'cure' infertility, or hide illegitimacy. A brief outline of the various policy changes that have shaped legislative reforms in the open records jurisdictions referred to is also included, by way of suggesting a possible policy template for reforming practice in closed records or veto-bound systems.

Chapter 4 asks whether a juridical 'right' to genetic kinship (via knowable ancestry or meaningful contact) might yet be found to exist amongst international law provisions. It expands upon some of the questions raised by the previous chapters, such as whether a stable sense of national identity might be underpinned by collective kinship, or by common connection to place.[54] Smith, for example,

[47] Antze and Lambeck (1996).

[48] See for example Schechter (1960), p. 21.

[49] See for example Wellisch (1952), p. 41 who observed that identification with one's relatives was often easier where there was some degree of physical resemblance. He suggested that, as a result, adoption might be better suited to orphans.

[50] Wegar (1997).

[51] See for example Kornitzer (1959), p. 102; Kellmer-Pringle (1967), p. 25.

[52] See for example Spencer (1979), p. 450 who argued that terms such as 'natural mother' seek to remove any recognition of relatedness between parent and adopted child. She advocated instead the use of 'emotionally correct' words.

[53] See Triseliotis (1973).

[54] Eriksen (2004), pp. 49–62 at p. 49.

argued that the strong bonds of '*ethnie*' (ethnic community) are often based mainly upon shared folkloric wisdoms, customs, common memories, and identification with territorial heritage.[55] The 'growing consciousness of a personal right to compose one's identity'[56] in respect of nationality rights, could perhaps yet provide significant precedent in respect of preventing the loss of birthright heritage. The importance of finding ascertainable collective ethnonyms in enabling and maintaining group identity is especially clear where a displacement of cultural histories or the loss of shared 'descent mythologies'[57] has occurred, as can happen in the worst examples of 'assimilation', where a child's ethnicity might be deliberately hidden, for example in the wake of wars or conflicts, through illegal adoptions or via baby-trafficking.[58] Although there are no explicit protections for blood-tied kinship within international law, a number of significant entitlements to enjoy a sense of 'relatedness' might be inferred from some of the main provisions: the right to a name[59] or nationality,[60] the avoidance of degrading treatment[61] and the need for respect for 'cultural integrity',[62] are some examples. Wider principles on enabling equality and preventing discriminatory treatment are also relevant in respect of preventing harm amongst vulnerable persons, and will be referred to here and in later chapters.[63] Mainly however this chapter attempts to conceptualize the child's 'right' to genetic identity as an important aspect of human rights law. To do so, it looks largely to the Committee Guidance (of the Children's Convention)

[55] See Smith (1986, 1998, 1991).

[56] See Franck (1996), pp. 359–383 at p. 359.

[57] Smith (1986, 1998, 1991).

[58] On baby-trafficking see for example Meier and Zhang (2008–2009), pp. 87–130; see also Smolin (2009–2010), p. 441.

[59] See for example Articles 16 (1) (a) and 30 (1) of The Convention on Protection of Children and Co-Operation in Respect of Inter-Country Adoption (1993) ('Hague Convention on Inter-Country Adoption') available at http://hcch.e-vision.nl/upload/outline33e.pdf accessed 13.07.11.

[60] See for example The European Convention on Nationality (1997) (ETS No 166) ('The Nationality Convention') available at http://conventions.coe.int/Treaty/en/Treaties/Word/166.doc accessed 20.07.11.

[61] See for example Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) ('ECHR') available at http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm#FN1 accessed 01.06.11.

[62] See Article 27 of The International Covenant on Civil and Political Rights (1966) ('ICCPR') available at http://www2.ohchr.org/english/law/ccpr.htm accessed 30.07.11. On the issue of international legal and customary norms of non-discrimination and the duty upon states to protect the 'cultural integrity' of individuals and groups see also Anaya (2000), pp. 97–103.

[63] See for example Article 2 of the Universal Declaration on Human Rights (1948) which states that '*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*' See also Article 25 (2) which stresses that '*Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.*' Available at http://www.un.org/en/documents/udhr/index.shtml accessed 10.07.11.

contained in Concluding Observations and Country Reports.[64] A key factor here is that of domestic interpretation of the best interests principle, not least in relation to how signatory states actually seek to implement meaningfully the principle of child welfare paramountcy at the level of domestic proceedings.[65] It will be argued that national courts could at times allow themselves to be more fully persuaded by the 'identity rights' provisions of such instruments as the Children's Convention, especially given its focus on life-long protection of child welfare.

Arguably, the 'rights-based approach' of the Children's Convention has at least encouraged a 'decisive shift'[66] in respect of domestic judicial attitudes towards the rights of children, not least where court decisions involve issues of psychological welfare. The chapter also includes a brief examination of how identity and family life rights (and, arguably, the best interests principle itself) may be entirely overruled by the presence of a domestic veto, even in the face of regionally enacted human rights charters aimed at embedding human rights principles.[67] It also makes the tentative suggestion that the notion of genetic identity kinship has to date been generally aligned with 'second generation', socio-economic and cultural property rights, rather than framed as a stronger, civil, political entitlement.[68] As such, any rights that might be found to attach to the concepts of genetic kinship and original identity may run the risk of being classed as largely non-juridical, or subject to the problems of overcoming wide margins of appreciation, and gradual, aspirational modes of domestic implementation.[69]

Chapter 5 examines 'blood-tie' case law from The European Court of Human Rights, for example, in connection with the rights enshrined in Articles 8 (and, to a lesser extent, Article 6) of the European Convention on Human Rights. The various

[64] See Article 3 (1) of The United Nations Conventions on the Rights of the Child (1989) ('The Children's Convention') which states that: '*In 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*.' Available at http://www2.ohchr.org/English/law/crc.html accessed 21.07.11.

[65] See Sinclair and Franklin (2000), Sinclair (2004), pp. 106–118, and Kirby and Bryson (2002).

[66] McCarthy (2004), pp. 1–32 at p. 1.

[67] See Baldassi (2004–2005), pp. 212–265; see also *Kelly v Superintendent of Child Welfare and Williams* (1980) 23 BCLR 299 (SC); *Re Adoption of BA* (1980) 17 RFL (2d) 140 (Man Co Ct) where 'identity issues' were insufficient to open sealed birth records. See however by way of contrast *Ross v PEI* (Supreme Court, Family Division, Registrar) (1985) 56 Nfld & PEIR 248 [1985] PEIJ No 1 (PEISC) (QL).

[68] Similarly, if a positive obligation to prevent origin deprivation were found to exist in human rights law, possibly as a type of cultural property right (e.g. in preventing cultural assimilation) then arguably such a duty could, in theory at least, be framed as perhaps akin to those peremptory norms that attach to the protection of Native status and title. See further Merry (1997), p. 31; Samson (2001), pp. 226–248.

[69] See also Alston (1984), pp. 607–615. See also The International Declaration on Human Genetic Data (2003) Article 3 which states that '*Each individual has a characteristic genetic make-up*. *Nevertheless*, *a person's identity should not be reduced to genetic characteristics*, *since it involves complex educational*, *environmental and personal factors and emotional*, *social*, *spiritual and cultural bonds with others and implies a dimension of freedom*.'

discourses focus on the right to respect for family and private life from the perspective of both adult and child and on the concept of child welfare paramountcy in decision-making aimed at protecting the best interests of the child.[70] The cases reflect a fairly diverse range of issues and outcomes, including such topics as familial contact, the need for identity, anonymous birth registration, paternity, child protection and parental involvement in matters of process. As Herring has argued, a narrow, rights-based approach may serve to promote the rights of adults at the expense of protecting those of their children.[71] The cases in this chapter suggest however that child welfare has increasingly become the paramount concern in cases involving disputes over parentage and parenthood.[72] That said, a fairly wide margin of appreciation still tends to attach to issues of private family life, especially where questions have arisen over whether there is a positive obligation on the part of the state to preserve the genetic connection: the keeping of birth records, domestic regulation of surrogacy or gamete donation and parental discretion over information release are particularly difficult areas in terms of finding a degree of societal consensus.[73]

A number of Dissenting Opinions are also referred to here, given their fairly clear support for the child's need for some degree of 'identity dignity'.[74] The chapter will further argue that 'gaps' in domestic law in respect of the enforcement of certain Convention rights (and in some cases, of the best interests principle) perhaps mirror the judicial equivocation that can attach to the issue of blood-ties in general. Jurists have traditionally seemed to focus on the question of whether a juridical form of 'family life' actually or potentially exists before considering, if they do so at all, the psychological importance of establishing an accurate sense of identity or whether there is much social significance in having an ascertainable ancestral heritage. Some of the case law perhaps suggests that because newborn infants cannot demonstrate that they remember their natal relationships, they are likely to lack a meaningful level of 'family life' and cannot claim to have suffered an interference with their Article 8 rights. Because of this they will then also perhaps have no right to maintain contact with any of their genetic relatives. That said, relatives from outside of the triad, who in the past might well have been excluded entirely from the remit of family life (unmarried fathers, birth siblings,

[70] Especially that generated in connection with Article 8 of the European Convention on Human Rights.

[71] See Herring (2003).

[72] See for example *Neulinger and Shuruk v. Switzerland* (2010) [GC], no. 41615/07 ECHR; *Y C v United Kingdom* (2012) (App 4547/10) ECHRR; *R and H v United Kingdom* (2011) 54 EHRR 28.

[73] See for example *Kearns v France* ECHR 10 January 2008 (Application no 35991/04); *S.H. And Others v. Austria*—57813/00 [2011] ECHR 1878 (3 November 2011); *Ahrens v Germany* (App 45071/09) ECHRR (22 March 2012).

[74] *Odièvre v France* [2003] 1 FLR 621 (App no 6833/74) Dissenting Opinion at para 7, per Judges Wildhaber, Sir Nicolas Bratza, Bonello, Loucaides, Cabral Bonetto, Tulknes and Pellonpää.

grand-parents, foster parents or step-parents for example) have made progress in respect of gaining legal recognition.[75]

Some of the case law seems also to suggest that a right to family life can exist, even where there is little more than genetic kinship to serve as its basis. Such jurisprudence also often provides key insights into how judges arrive at difficult, rights-balancing decisions involving competing sets of rights and interests: it also offers some degree of guidance as to how the various laws, regulations and policies surrounding this area might eventually be improved upon, to prevent or at least minimise the wide range of harms suffered by origin deprived persons.[76] In terms of procedural matters, the involvement of birth family members in the proceedings has become increasingly significant. The need for timely assessment of parenting skills and to have legal representation for birth parents at pre-hearing meetings to discuss post-adoption contact arrangements for example, might be important factors in terms of deciding whether Convention rights have been unlawfully infringed, especially where serious issues with the potential to impact upon family life rights (such as bars on contact) have arisen.[77]

Chapter 6 looks at how domestic laws and policies on determining legal parentage may serve to veto genetic connections. Donor anonymity (as enshrined in British Columbia's recent *Pratten* decision[78]) is particularly relevant, given that issues of inequality and discrimination clearly attach to this particular form of genetic identity veto. The United Kingdom's domestic jurisprudence on parentage rights is also of interest, in relation to possibly providing useful precedent on the nature of the 'right' to access an accurate genetic identity. The Human Fertilisation and Embryology Act (2008) for example has effectively re-defined some of the socio-legal aspects of genetic kinship in an attempt to bring the law into line with the realities of modern assistive reproductive techniques and to reflect the changing nature of family life and parenthood.[79] Legal disputes over parentage and parenthood are now largely settled by reference to the issue of consent; donor-gamete children of same-sex couples may be deemed legally 'fatherless' or, in surrogacy cases, essentially 'motherless.' This chapter will argue also that donor anonymity regimes at times reflect the harsher aspects of closed records adoption practice. Similar issues arise for example in respect of the child's 'right' to know their origins and the degree of discretion which might be afforded to triad parents in terms of 'telling' their children the truth about their biological heritage. The question of

[75] See for example *Marckx v Belgium* (1979) (application no 6833/74) (1979); *P C and S v United Kingdom* (2002) 35 EHRR 1075; *Anayo v Germany* [2010] ECHR 2083 (21 December).

[76] See for example *Neulinger and Shuruk v Switzerland* (2010) [GC] app no 41615/07.

[77] See for example *R and H v United Kingdom* (2011) 35348/06 ECHR 844; *Y C v United Kingdom* (2012) (App 4547/10) ECHRR.

[78] *Pratten v British Columbia* (*Attorney General*) [2012] BCCA 480.

[79] See also The UK's Human Fertilisation and Embryology Bill [HL] 2007–2008 Part 2 and Schedule 6, on the proposed changes to the legal definition of parenthood, available http://www.publications.parliament.uk/pa/cm2007C accessed 15.10.2011; see also The Human Fertilisation and Embryology Act 2008.

'whether to tell' remains especially relevant in relation to this 'second generation,' technology-led form of origin deprivation.[80]

Other cases on parentage examine in some detail the concepts of the blood tie and of legal relatedness; the best interests principle is also discussed here, as is the issue of how best to balance conflicting sets of rights. Some of the cases involve DNA testing, while others appear to focus more generally on the question of whether child welfare paramountcy should include a juridical right to 'biological truth'.[81] Judicial reluctance to interfere with family autonomy is again apparent, not least in cases that involve some form of kin contact dispute. Some of the dicta involving parentage disputes appear to define the concept of family life as clearly grounded in social rather than genetic relatedness. Several of the judgments provide highly conflicting precedent, especially in relation to actually defining the best interests of the triad child in such situations. Issues such as parental consent, the need to avoid causing the child to suffer the loss of a parent, and the framing of information provision as a form of indirect contact, are all discussed here. Arguably the concept of a right to genetic connection has been lent some measure of support by cases such as *Re G* (2013)[82] where the Court of Appeal granted a sperm donor father the right to seek leave to apply for ongoing direct contact with the child, and by cases involving surrogacy which highlight the importance of having a 'legal reality which matches the day to day reality'[83] of biological parentage. An Irish case involving egg donation and surrogacy has particularly stressed the significance of the blood-tie, granting legal maternity to the egg donor mother rather than to the surrogate mother, and removing an archaic legal presumption on motherhood ('*mater simper certa est*') in the process.[84]

Chapter 7 focuses on those domestic legal matters that have the ability to affect the genetic connection in open records regions. Case law for example on issues such as the removal of parental rights, challenges to adoptive placements and decisions on post adoption contact often includes some discourse on the need for blood-ties to be severed, suspended, maintained or repaired. The principle that the welfare of the child is the paramount concern in such cases has been repeatedly endorsed across a fairly wide variety of contexts. Northern Ireland's adoption law is currently under reform and merits discussion here;[85] over the past decade, this region has seen a

[80] See Braude et al. (1990), pp. 1410–1412; On parental privacy see however the arguments of Walker and Broderick (1999), pp. 38–44.

[81] On 'biological truth' see Franklin (2003), pp. 65–85; On the 'legal truth' of parentage see also Eekelaar (2006), pp. 54–77.

[82] *Re G* [2013] EWHC 134 (Fam) Here, a sperm donor father (who had originally been friends with the child's lesbian parents) sought the leave of the Court to make an application for contact with the child.

[83] *A v P* [2011] EWHC 1738 (Fam) para 26.

[84] *M.R & Anor -v- An tArd Chlaraitheoir & Ors* [2013] IEHC 91.

[85] See for example *RE TMH* [2009] NIFam 11; *Re EFB* [2009] NIFam 7. See also Section 1 Children Act 1989; Article 3 Children (NI) Order 1995 on the 'make no Order' principle. Adoption practice in the region came in for considerable criticism in *Down Lisburn Health and Social*

number of changes in terms of evolving judicial attitudes towards the making of orders which 'free' the child for adoption. Until fairly recently, the courts perhaps seemed to adhere to the view that 'post-adoption contact of any kind may have a limited value.'[86] Arguably, an important policy concern was to reassure prospective adopters that they would not be subject to unwelcome intrusion by birth relatives and that 'permanence' of placement was the best means of resolving such issues. Although the courts now tend increasingly to require that prospective adoptive parents should pre-agree to the enablement of some level of post-adoption contact[87], in the absence of a court order for contact being made, no legal duty to facilitate it will actually arise.[88]

This chapter also examines the emotive issue of child 'relinquishment' (voluntary and non-consensual) with a view to gauging whether devices such as Special Guardianship Orders (in England and Wales) may be regarded as a child-centric, 'halfway house' between adoption and long term fosterage.[89] Recent case law on the issue of post-adoption contact also highlights the difficulties associated with ensuring that the long-term welfare needs of vulnerable children are fully addressed in court proceedings.[90] Siblings may be permanently separated from each other, with no order for contact being made by the court which has placed them into different homes. Similarly, genetic relatives such as grand-parents may seek to raise an at-risk child, or at least preserve some degree of contact with the child who has been taken into care or is being considered for adoption. The need for placement stability is often cited during hearings aimed at precluding or limiting contact with natal kin and, in some cases, to over-rule the recommendations of expert witnesses.[91] The issue of non-consensual, birth-parental relinquishment is also discussed here,[92] with the dicta perhaps most significant in respect of the insights that they provide into the attitudes of the affected mothers.[93] Differing domestic interpretations of Article 8 ECHR rights and of the best interests of the child

Services Trust v H [2006] UKHL 36 (see the dissenting Opinion of Baroness Hale LJ). On Freeing Orders and delays See further Kelly and McSherry (2003), Kelly and McSherry (2002), pp. 297–309; '*Adopting the Future*' Consultation Report Responses (2006) DHSSPS available http://www.dhsspsni.gov.uk/adopting-the-future-consultation-report-final-2.pdf (accessed 05.10.11).

[86] *Re A* [2001] NIFam 23 per Gillen LJ.

[87] See *SEHSST v LS* [2009] NIFam 14; and Re JJ [2009] NIFam 2.

[88] See *Re NI and NS* [2001] NIFam 7 (24 March 2001). Contact often takes the form of indirect methods such as 'letter-box' contact; it may also be restricted to a few instances per year, conditional upon natal kin not having a disruptive effect upon the placement. See *Re EFB* [2009] NIFam 7.

[89] See Bainham (2007), pp. 520–523; Talbot and Kidd (2004), p. 273.

[90] *Webster* (*The Parents*) *v Norfolk County Council & Ors* (Rev 1) [2009] EWCA Civ 59 (11 February 2009).

[91] See for example *Re P* (*A Child*) [2008] EWCA Civ 499.

[92] See *Down Lisburn Health and Social Services Trust v H* [2006] UKHL 36. The use of 'Freeing Orders', and the lack of kin contact pending adoptive placement was particularly criticized.

[93] See for example *Re J and S* (2001) NIFam 13 (23 May 2001); Re *CBCHSST v JKF* [2000] NIFam 76.

principle are also evident, through some of the discourses on related issues: long-term fostering, the role of expert witness evidence and the long-term, 'lifelong' consequences of being placed for adoption.

Chapter 8 offers an examination of case law that has essentially framed preservation of the blood-tie as the paramount consideration. The cases selected tend to represent a blunt inversion of the traditional, 'clean-break' kinship rights template, with genetic connection seen as the central concern.[94] Although repatriation with natal kinfolk is a common outcome, with the blood-tie being afforded a very high level of judicial protection, it is often the case that extrinsic issues have brought about the reunion rather than the blood-tie per se. Time limits attaching to parental objection to adoption and adoptive placement[95] or the 'unlawful detention'[96] of a child by the prospective adoptive parents may underpin the court's reasoning and limit the scope of the eventual outcomes. Such 'blood-tie as paramount concern' case law does not generally however shrink from addressing the lifelong impacts of origin deprivation. A number of cases refer repeatedly to the issue of broken 'attachments' between kin, both social and genetic and the effect of such losses upon relatives who may be outside the traditional triadic rights remit. Equally, the concept of the blood-tie may be framed as an essential, much-valued aspect of indigenous cultural heritage rights.[97]

It will be argued here that genetic kinship in this context has clearly been promoted to a position of primacy: origin deprivation may have become a highly exceptional occurrence rather than a normative feature of social kinship under this harshly inverted template. Many of the outcomes cannot however be described as representing a best interests-led solution in respect of the child's welfare. Although the jurisprudence stresses the need to preserve or restore blood-tied kinship, the courts' decisions tend to largely turn upon the following factors: an over-arching need to preserve cultural or racial heritages (i.e. in indigenous, customary, trans-racial or international adoption contexts) or the judicial desire to prevent a breach of adult-centric rights to parenthood. These frameworks contrast sharply with the kinship severing decisions of the preceding chapters. Here, the blood-tie has been re-defined as an essential component of kinship identity, perhaps as an item of heritage or birthright, and as a key means of achieving long-term psychological welfare. Legislation (such as the Indian Child Welfare Act 1978 in the United States) may, for example, require written consents from natal parents, or from the child's custodian, before adoption can proceed.

Hearings may occur at tribal courts (applying customary tribal law) where objection to the process of formal adoption may be raised by the child's tribal elders. Similarly, Adoption Orders may be overturned, where for example fraud or duress was found to have coerced parental consents or where peripheral issues such

[94] See for example *Re Bridget R et al* (*Minors*) (1995) BO93520.

[95] See for example *In Re BGC* (1992) 496 NW 2d 239 (Iowa).

[96] *N & Anor v Health Service Executive & Ors* [2006] IESC 60.

[97] See further, Crawford (2000), pp. 211–236; Jackson (2003).

as parental residence on tribal land are at issue.[98] Children will generally be returned to their original parents if the requirements of the legislative provisions have not been adhered to.[99] As Hollinger has suggested, pre-occupation with concepts such as 'tribal survival'[100] clearly influence interpretation of the best interests of the child principle in such a context. Bakeis also noted that legislation such as the 1978 Act may lead to unfair treatment of triad members. Child protection issues, delays or frequent placement changes often run counter to the child's best interests.[101] The value of maintaining genetic ties and preventing origin deprivation is clearly open to question where child protection might be an issue of acute concern.[102] In non-indigenous cases, where natal parents are seeking the overturn of an adoptive placement post-relinquishment, the problems of this alternative framework also become apparent. The placed child may have formed strong attachments to his adoptive parents, or be facing a risk of abuse or neglect if returned to the original parents or other genetic relatives. An Irish Supreme Court decision (the '*Baby Anne*' case[103]) is also looked at here, given its eventual outcome and the intense controversy that surrounded it.

Chapter 9 outlines briefly how the domestic statutory checklists of the United Kingdom are aimed at promoting and protecting the best interests of the child. It then argues that a number of guiding principles can be gleaned from the various strands of jurisprudence that currently exist in respect of the case law on blood-ties, and that these offer a useful means of preventing origin deprivation without compromising the principles of child welfare paramountcy. Children's longer term needs might not be as easily sidelined, if decision-makers were obliged to consider more fully the possible effects of genetic kinlessness. Such an approach might also serve to focus attention more closely upon the duty to protect the best interests of origin deprived children. The application of the six principles[104] to a selection of 'hard cases' drawn from previous chapters (i.e. vetoes on genetic

[98] *In Re Bridget R et al, Minors* (1995) 25 USCA 1901 *op cit* at n 22.

[99] Hollinger (1988–1989), pp. 451–501.

[100] *Ibid* p. 453.

[101] Bakeis (1996).

[102] See further Hazeltine (2002), pp. 58–84.

[103] *N & Anor v Health Service Executive & Ors* [2006] IESC 60, wherein a 'voluntarily relinquished' child had lived with her prospective adopters for several years. The case turned not on the issue of her best interests but on the Constitutional rights of her birth parents to avoid State interference with their right to family life.

[104] 1. The fundamental right to an authentic, ancestral identity is often a key component of child-welfare led best interests and the right to family and private life. 2. In terms of realising the right to identity, the best interests of the child may be closely tied to such issues as contact, 'potentiality' of relatedness or relationship, or to procedural matters such as passage of time. 3. The welfare of the child is the paramount consideration. 4. The best interests of the child may require informational disclosure given the significance of the genetic connection and that a positive, juridical obligation to preserve or repair this connection exists. 5. Loss of genetic connection ought to occur only in exceptional circumstances. 6. Preserving genetic connections should not compromise the principle of child welfare paramountcy.