The child’s right to genetic ancestry as a key element of the best interests principle in adoption, donor and surrogacy contexts: reforming adoption law in Northern Ireland

Dr Alice Diver
School of Law
Ulster University
Research focuses on the ‘right’ to genetic connection – access to information - familial contact, kinship care

• Recent case law – England, Ireland, European Court of Human Rights, Canada
• Recent legislative reforms – Ireland, UK
• Open records – birth information – kin contact?
Draws upon the literature on ‘origin deprivation’ – context of adoption, donor gametes, surrogacy

• Sociological: genetic identity, social kinship, *de facto* (customary) adoptions
• Psychological: genetic ‘abandonment’; non-attachment, welfare, long-term
• Needs = Rights?
For example- on ‘biological truth’ and ‘legal fiction’

Adoption .identity ..kinship


C Hill and M Edwards ‘Birth Family Health History’ Adoption and Fostering (2009) 33 (2) pp 45-53 on the potentially adverse consequences of a lack of information on the child’s health history and the ability of adopters to offer ‘therapeutic parenting’.


International Law provisions - Examples..

UDHR – anti-discrimination? Art 25(2) ‘..motherhood and childhood..’

UNCRC – drafting stage ..biology avoided? – Art 21 – adoption – parental consent, no financial gain; Art 20(1) ‘special protection and assistance’ -but see also Committee Guidance and Country Reports..

2005 Day of Discussion
ECHR – Art 8, Art 6, Art 14 – Art 3? family life – adult-centric?

Hague Convention (1993) – Art 31- use of information gathered
Strasbourg Case law on genetic ties/identity and best interests

- Anayo v Germany [2010] ECHR 2083
- R and H v United Kingdom (2011) 54 EHRR 28
- Y C v United Kingdom (2012) (App 4547/10) ECHRR
- S.H. And Others v. Austria - 57813/00 [2011] ECHR 1878 (3 November 2011)
- Ahrens v Germany (App 45071/09) ECHRR (22 (March 2012)
- Kearns v France ECHR 10 January 2008 (Application no 35991/04)
- Odièvre v France [2003] 1 FLR 621 App no 6833/74) –see Dissenting Opinion
Domestic case law

*Re G (2013) EWHC 134 (Fam)*- sperm donor agreement - genetic father permitted leave to apply for ongoing direct contact with the child

*G (A Child) [2013] EWCA Civ 965*- welfare balancing exercise - checklists

*Irish Supreme Court - M.R. and D.R. & Ors -v- An t-Ard-Chláraitheoir & Ors [2014]*
IESC 60 – defining legal motherhood

Canada:
Legislation:
HFEA Act 2008 s.54 ‘commissioning couple’
(2010 Order – ties to s.1 2002 ACA – best interests)

Ireland:
Adoption (Identity and Information) Bill 2014
Children and Family Relationships Bill
Surrogacy?
Significance for Northern Ireland legislators?

Welfare Checklist(s)?
- Surrogacy?
- ‘3 parent’ children? (mitochondria donation)
- Best Interests – balancing exercises?
- Positive obligations? (financial support?)
- Implications for international adoptees, looked after children, kinship care
Further reading..


See also comments on the Nuffield Report by E Blyth available

and a differing perspective offered by C Smart available


On apologies see for example Australia http://www.guardian.co.uk/world/2013/mar/21/julia-gillard-apologises-forced-adoptions (accessed 31.03.13)

On the issue of using the term ‘triad’ see also: 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)
Knowledge Exchange Seminar Series (KESS)

...is a forum that encourages debate on a wide range of research findings, with the overall aim of promoting evidence-based policy and law-making within Northern Ireland.