

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.

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