BRILL
NIJHOFF

INTERNATIONAL JOURNAL OF CHILDREN'S RIGHTS
28 (2020) 666-688

brill.com/chil

Article 5 of the Convention on the Rights of the Child and the Involvement of Fathers in Adoption Proceedings: A Comparative Analysis

Brian Sloan
Fellow in Law, Robinson College, Cambridge, UK
bds26@cam.ac.uk

Abstract

This paper considers the involvement of fathers in decisions about adoption, particularly in circumstances where a mother resists such involvement. It is largely a response to the work of Jill Marshall, who has argued strongly in favour of anonymous birth and adoption for children (without involvement of their fathers) as a choice that can be validly exercised by mothers. The paper argues that Marshall's views are not obviously consistent with the requirements of Article 5 of the UN Convention on the Rights of the Child, requiring states to 'respect the responsibilities, rights and duties of parents … to provide … appropriate direction and guidance' in the child's exercise of her rights.

Keywords

identity – anonymous birth – parents – mothers – baby boxes

1 Introduction

Adoption has profound consequences for the child concerned, since it will often[1] produce a severance of the legal relationship between parent and child,

1 Cf. 'simple adoption', a form of adoption available in France and some other civil law jurisdictions, which 'does not sever the relationship with the family of origin so that the adopted child is not entirely integrated into his or her adoptive family': (Council of Europe (2008: [63]).

and the creation of new legal relationships between the child and a new set of parents. This paper considers the involvement of fathers[2] in decisions about adoption, particularly in circumstances where a mother resists such involvement. The paper is largely a response to the work of Jill Marshall (2012; 2018), who has forcefully argued in favour of anonymous birth and adoption for children (without involvement of their fathers) as a choice that can be validly exercised by mothers. The argument of this paper is that Marshall's views are not obviously consistent with the requirements of Article 5 of the UN Convention on the Rights of the Child (CRC), requiring states to 'respect the responsibilities, rights and duties of parents … to provide … appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention', and other provisions of the CRC such as Articles 7 and 8.

The paper begins by engaging in a detailed policy discussion on issues surrounding the involvement of fathers in the adoption process with reference to Article 5 and other CRC provisions, including whether Article 5 has much to say about adoption at all. With reference to the policy conclusions drawn, it goes on to consider the substantive treatment of the issue in the law of England and Wales, Scotland and Ireland respectively.[3]

2 The CRC, Fathers and Adoption: policy Issues

2.1 *The Core Scenario*

The typical scenario considered in this paper is where a child is born, perhaps following a fleeting or essentially non-existent relationship (involving sexual intercourse only) between the biological parents, to a mother who wants the child to be adopted by strangers swiftly and without the involvement, or perhaps even the knowledge, of the father. Depending on the facts or the legal system in question, the mother may also have succeeded in, purported to or

2 Similar issues could apply to other legal parents who have not given birth to the child. That said, in the United Kingdom, for example, it seems unlikely (albeit not impossible) that a second female parent who has complied with the agreed female parenthood conditions (Human Fertilisation and Embryology Act 2008, s. 44) could end up without parental responsibility, and it will be seen that such responsibility is key to involvement in the adoption process.

3 The law in Northern Ireland largely mirrors that in England and Wales on the allocation of parental responsibility (Children (Northern Ireland) Order 1995), but on adoption it is somewhat modelled on the older law in the English Adoption Act 1976, which did not treat child welfare as the paramount consideration and did not apply a straightforward welfare test to dispensing with consent (Adoption (Northern Ireland) Order 1987). This could have varying consequences for both CRC compatibility and involvement of fathers in adoption.

wished to give birth "anonymously" "in secret", such that no link is even recorded between the child and the mother, let alone between the child and the father. The implications of the CRC for such a scenario, irrespective of the particular national legal system involved, must now be considered.

2.2 *Fathers and the Relevance of Article 5 or Other CRC Provisions*

Article 5 of the CRC requires states to:

> respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

The first question to be addressed is whether this particular article has any relevance to the involvement of fathers in the adoption process.

It could be argued that Article 5 has little explicitly to say about adoption. At the very least, it is significantly less relevant to the issue than other provisions of the Convention, particularly Article 21 with its express reference to adoption. I suggest, however, that a key phrase in Article 5 for present purposes is 'in the exercise by the child of the rights recognized in the present Convention'. Whatever the inherent difficulties in apparently recognising parental rights in a children's rights convention, then (see, e.g., McGoldrick, 1991), Article 5 really has any impact only when read alongside the rest of the Convention. Much of the Convention self-evidently does address adoption. Most obviously, Article 21 requires states that recognise the concept of adoption to ensure that 'best interests of the child' 'shall be the paramount consideration', but also requires that the adoption is 'permissible in view of the child's status concerning parents, relatives and legal guardians' and refers to the 'informed consent to the adoption' of relevant persons.

Other potentially relevant CRC obligations include protecting a child's right, 'as far as possible, … to know and be cared for by … her parents' (Article 7), respecting a child's right to her identity and 'family relations' (Article 8), ensuring that 'a child shall not be separated from … her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child' (Article 9), treating a child's best interests as a primary consideration and ensuring 'such protection and care as is necessary for his or her well-being', but 'taking into account the rights and

duties of his or her parents' (Article 3), and rendering 'appropriate assistance to parents and legal guardians', who 'have the primary responsibility for the upbringing and development of the child', 'in the performance of their child-rearing responsibilities' (Article 18). All of these are in principle rights *of the child*. Thus, while the phrasing may sometimes be awkward, and these articles may well have more force in the adoption context if considered on a stand-alone basis, by being involved in the adoption process a father is arguably providing 'direction and guidance' to the child (or in practice her representatives where she is too young to form a view) in ensuring that (for example) her rights to have her welfare treated as the paramount consideration (particularly given the uncertainty attached to that concept: Sloan, 2013), to know and be cared for by her parents, or to establish her identity, are respected. While much of the focus of the literature on Article 5 is inevitably on 'evolving capacities' (as evidenced by many of the contributions to this special issue), it would surely go too far to suggest that a child has no Article 5 rights where she has yet truly to develop any relevant capacities. Significantly, moreover, it is in its chapter on Article 5 that Unicef's *Implementation Handbook* (Hodgkin and Newell, 2007: 75) notes that '[i]n no sense is the Convention "anti-family", nor does it pit children against their parents', that 'the Preamble upholds the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children"', and that '[s]everal articles emphasize the primary responsibility of parents and place strict limits on state intervention and any separation of children from their parents'. Despite the initial impression, then, I suggest that read in its context Article 5 is highly relevant to the situation considered in this paper, even if it remains less relevant than other articles.

2.3 *Mothers and Article 5 etc.*

Of course, on particular facts, a swift adoption *could* secure the Convention rights of the child, whether facilitating the paramountcy (Article 21) or primacy (Article 3) of her best interests, protecting the child from 'all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation' while in the care of parents, legal guardians or others (Article 19), providing 'special protection and assistance' and alternative care where she cannot remain in her home environment (Article 20), protecting the child's 'inherent right to life' and ensuring 'to the maximum extent possible the survival and development of the child' (Article 6), granting her 'the enjoyment of the highest attainable standard of health' (Article 24), 'a standard of living adequate for the child's physical, mental, spiritual, moral and social development' (Article 27), education (Article 28) and special protection if he or she is

disabled (Article 23). It could be argued that, in at least some circumstances, a *mother* could invoke Article 5 to say that she is providing 'appropriate direction and guidance' in relation to the exercise of these rights by the child by advocating a swift adoption without the involvement of the father (or potentially other, wider, family members). Conversely, she could argue that any 'direction and guidance' provided by the father if involved would not be 'appropriate'.

As is inevitable much of the time with the Convention (Alston, 1994), then, the question is how to resolve a conflict of norms, or potentially a conflict of the same norm invoked from different perspectives leading to conflicting conclusions.

2.4 *Marshall on the CRC and Identity*

It is now necessary to summarise the views of Marshall on the core scenario addressed in this chapter, critiquing them with reference to the interpretations of the CRC put forward in the previous sub-sections. For Marshall, any conflict between legal norms relating to the core scenario in this paper, which on my analysis would include differing interpretations of Article 5, should apparently always be resolved in favour of the mother's wishes, leading to a situation where a father and child may not even be aware of, let alone meet or live with, each other.

In an important initial qualification to her work, however, Marshall (2018: 168) advocates 'a conceptual separation between the one who gives birth and the mother'. Similarly, in her view (2018: 171, n. 25), 'the man who contributes sperm to create the child is not a father by this act alone', such that she 'would like', albeit does not use, 'a different word to denote the distinction between this and genuine fatherhood'. Significantly, Marshall elsewhere (2012) uses quotation marks around the word "father" to reflect her preference. This in itself is potentially problematic for the purposes of Articles 7 and 8.

Much of her view on the nature of motherhood and fatherhood and other points is coloured by the fact (Marshall, 2018: 176) that there is 'no explicit reference in these provisions [of the CRC, among others] … to the biological family and, although the family in which the child is raised will commonly be the genetic/biological family, this will not always be so, including in secret birth situations'. On Marshall's (2018: 177) analysis, Articles 7 and 8 'were … drafted to deal with situations of forced removals, quite unlike voluntary secret births and so to which different considerations should apply'.

She expresses concern that (2018: 179): 'the idea of identity presented by … some interpretations of children's identity rights (… which highlight genetics and biology), depends on an idea of identity based on an unchanging foundational core of the human person', which equates a right to identity with

knowledge of genetic or biological origins'. For Marshall (*ibid.*), this has the potential for oppression, in that it 'can be used to justify the state making people feel that they have to bring to fruition and liberate some inner core, to "find out" who they "truly" are'. She fears that (2018: 180) '[p]erpetuating genetic and biological views of what constitutes a child's identity right pits the child against a woman who wishes not to reveal her own identity and/or the identity of the father', and 'risks making the adopted child, who might otherwise have been content, feel he or she is living an inauthentic life, and that his or her right to identity is being contravened and damaged in some way'. This (*ibid.*) 'could also be used, not only to argue for revelation of this information, but to make the woman feel her decision to relinquish a child is inauthentic and impermissible'. Marshall (177) places much emphasis on the qualification, 'as far as possible' in the wording of Article 7 on the right to know one's parents, but that is open to interpretation and does not necessarily *reduce* the extent of protection of informational rights. As Fenton-Glynn (2014: 188) puts it, 'Geraldine Van Beuren [(1995)] rightly argues that this phrase should be read as relating to the practicality of providing the information, not the legality'.

In Marshall's (2018: 179) view, however, '[i]dentity rights pursuant to the CRC … can … be interpreted differently' to the focus on genetic origin, in that '[r]ather than focusing on the past, on needing to know everything about other people's lives, including those of one's father and birth giver in a unfairly gendered world, and reducing our identity to blood or genes, it is possible to explore different ways in which we can gain a strong sense of our identity through lived existence and belonging from birth'. Her preference for 'lived existence' may derive some support from Ronen (2004), who argues that the CRC does not go far enough in allowing children to maintain ties meaningful to them.

Marshall (2018: 178) appears to advocate a 'more fluid idea of identity focusing on self-determination through lived experience.' In her view (*ibid.*: 179), 'any human right to identity must be related to care and encourage an environment of belonging and inclusion for any newborn and birth giver', which 'has potential to be a more empowering, positive and kinder way to proceed in this context of secrecy in pregnancy and birth and to help lead to a more gender-equal world'. Further (*ibid.*: 180), '[t]he law could, and should, instead enable everyone to be safe, well, and enabled to have a private life through the provision of care and support', encouraging 'a sense of belonging for both birth giver and children born secretly'. Marshall (2018: 184) considers 'it … worth reflecting as to why [sympathetic] attitudes towards anonymity [for mothers] are so sparse in times of peace and beyond the case of rape'. In her view, '[f]amily love and connection from birth are ongoing activities and experiences throughout our lives, forming part of the creation of our identity as a project within

relationships', and '[s]afe relinquishment can … safeguard children from infanticide and abuse, abortion, and abandonment on the street'. This is despite the fact that Fenton-Glynn (2014: 193) finds 'no indication that either anonymous birth or baby-boxes have had any effect on the number of abortions or children illegally abandoned or killed', although a more nuanced empirical picture may have emerged since Fenton-Glynn was writing (see, e.g., Klier *et al.*, 2013).

In contrast to her preference, Marshall (2018: 179) cites 'a shift in judicial attitudes' towards openness about genetic origins, apparently in England and Wales, 'that risks being exploited and manipulated, for example, by biological fathers claiming that they should have a relationship with the child despite the opposition of the mother'. It might surely be questioned, however, whether it is really 'manipulation' when having a relationship with her father would be consistent with the child's welfare and rights, or whether there is not equally a risk of 'manipulation' where a mother successfully convinces a judge that it would be undesirable for a child to have a relationship with the father, potentially because the mother simply wants nothing further to do with him (see, e.g., Sloan, 2009).

Ultimately, Marshall (2018: 185) concludes that '[a] sense of identity can be developed based on the encouragement and support provided to a newborn child, infant and young person through love, care and nurturance and building a sense of their own identity throughout life, through the development of self-esteem and self-confidence'. She (2018: 185) asserts that:

> Showing care and respect by listening to, and acting upon, a girl's or woman's choice to relinquish and to keep her pregnancy and birth secret can coincide with a child's best interests and identity rights by assisting the child to live in security and to be cared for by those who love, want, support, and are capable of looking after the child. Providing social conditions to improve care and belonging for both the child born secretly and the secret birth giver can be part of a process to bring about such freedom.

There is clearly much of merit in Marshall's arguments. There is certainly a case for suggesting that "identity" rights for the purposes of Article 8 would be overly narrowly interpreted if they were said to relate solely to biological or genetic origins. The reference to creating the impression of an "inauthentic life" for someone not raised by the biological family arguably reflects Robert Leckey's (2015) critique of arguments in favour of greater access to genetic information for those who are donor-conceived or adopted. On Leckey's (*ibid.*: 527) analysis, such arguments 'oppose the incomplete, insecure identity of

adopted or donor-conceived individuals to the ostensibly complete, secure identity of those raised by their putatively genetic parents', such that they 'exaggerate what is distinct, and harmful, about being adopted or donor-conceived'. But there is surely a significant risk of social engineering if the state uses "lived experience" or "lived existence" to justify the de-emphasis of biological origins as aspects of identity, particularly since the child will not have much in the way of lived experience at the time of relinquishment in the core scenario considered in this paper. As for Article 7, Bainham (1999: 38) forcefully argues that, because of the history and context of the CRC, '"parents" in the Convention was intended to mean genetic parents and … the onus is very firmly on those who would argue for an unconventional interpretation'. Moreover, the United Kingdom entered a declaration on ratification of the CRC to the effect that it interprets the references in the Convention to "parents" to mean only those persons who, as a matter of national law, are treated as parents' (United Nations, 2019). While this declaration could cause difficulty *after* adoption in relation to knowledge or contact with birth parents (Sloan, 2014), it surely adds weight to the view that in the core scenario under discussion in this paper, "parents" must mean biological parents, who are *prima facie* the legal parents under English law. Otherwise, a child could be rendered legally parentless for the purposes of the CRC, and deprived of Article 7 rights, unless and until adopted. Similar considerations would also apply to references to parents in Article 5, *inter alia*, albeit that Article 5 clearly encompasses the right to receive appropriate direction and guidance from those who are not "parents" but otherwise have legal or de facto responsibility for the child, which may include prospective adopters on particular facts.

It must be recognised that Marshall is arguing that genetic origins should be lessened as an aspect of identity. This is in contrast to what the Committee on the Rights of the Child says about anonymous birth, and access to information. Marshall (2018: 171) notes, with apparent concern, that 'there appears to be a growing assumption that fathers, and wider family members, ought to know of the child's existence', noting (177) that the CRC Committee has 'expressed concern at what it describes as the "alarming spread" of the use of baby boxes in certain parts of Europe', citing Ramesh (2012). Such boxes, as Fenton-Glynn (2014: 186) puts it, 'allow parents to leave children in the care of the state anonymously'. They 'commonly take the form of an incubated crib in a hospital or child welfare centre'. When a child is placed by the mother in the crib, 'a bell is rung, and the mother can leave anonymously before a carer comes to take the child. After a waiting period ranging from two to eight weeks, depending on the jurisdiction, the child is then placed for adoption'. In a Concluding Observation relating to the Czech Republic, the Committee on the Rights of the

Child (2011: [49]-[50]) expressed itself 'seriously concerned about the State party's so-called "Baby Box" programme, which is in violation of, *inter alia*, Articles 6, 7, 8, 9 and 19 of the Convention' and:

> ...strongly urge[d] the State party to undertake all measures necessary to end the "Baby Box" programme as soon as possible and expeditiously strengthen and promote alternatives, taking into full account the duty to fully comply with all provisions of the Convention. Furthermore, the Committee urge[d] the State party to increase its efforts to address the root causes which lead to the abandonment of infants, including the provision of family planning as well as adequate counseling and social support for unplanned pregnancies and the prevention of risk pregnancies.

Concern has also been expressed by the UN about the exclusion of fathers from adoption processes. The *Handbook* (Hodgkin and Newell, 2007: 296) opines that '[s]tates should reconsider ... laws that do not permit fathers of children born outside marriage to have any potential rights in adoption procedures', and the Committee on the Rights of the Child (2004: [42]) has referred to the need for 'both legal parents' to consent to adoption. The UN Guidelines on the Alternative Care of Children (UN General Assembly, 2010: [10]), moreover, provide that '[s]pecial efforts should be made to tackle discrimination on the basis of any status of the child or parents', including, *inter alia*, 'birth out of wedlock' and 'all other statuses and circumstances that can give rise to relinquishment, abandonment and/or removal of a child'.

As Hodgkin and Newell (2007: 296) put it, the Committee has 'made clear that adopted children have the right to be told they are adopted and to know the identity of their biological parents, if they so wish, which implies keeping accurate and accessible records of the adoption'. The Committee (2004: [40]) has expressed 'concern at [a] practice of keeping the identity of biological parents of the adoptee secret'. Hodgkin and Newell (2007: 107) assert that 'children's right to know their parentage could only be refused on the grounds of best interests in the most extreme and unambiguous circumstances', and advises states to ensure that 'information about genetic parents is preserved to be made available to children if possible'. Their *Handbook* (*ibid*.: 108) appears to suggest that states should facilitate the collection of information for future distribution even where the mother faces a risk of 'extreme forms of social condemnation, such as ostracism, injury or death'. This is an extreme proposition (Besson, 2008), and while the *Handbook* is endorsed by the Chairs of the Committee and aims to synthesise the Committee's views, it does not cite a specific source for its assertion. But even if it is possible to argue that the *Handbook*

states the position too strongly, if genetic/biological aspects are still *part* of a child's identity to some extent, there should surely be some scrutiny as to the reasons why such secrecy is necessary on the particular facts. It should be borne in mind that the child did not choose to be born at all, or indeed to be relinquished and brought up outside the biological family. The mother, by contrast, except in the very difficult case of rape, did choose to engage in an activity (namely sexual intercourse) that could (even if this was not intended) produce a child. It is not immediately clear that the mother's interest in keeping that choice secret should automatically prevail over the child's interest when she desires it, even if on particular facts Marshall is correct to say that those interests might coincide. There is surely a distinction between saying that a mother must raise a child and is not permitted to relinquish him or her (which none of the legal systems to be considered in the next section of this paper do), and saying that the mother can simply decide that there should be no link whatsoever between her (and/or the father) and the child. On Fenton-Glynn's (2014: 190) analysis, 'anonymous birth and relinquishment allow the mother to unilaterally decide the extent to which a child's rights can be exercised'. While there may be a limited justification for this phenomenon within Article 5, as she notes it 'deprives the child and his or her father from establishing any relationship, denying the father the chance to care for the child if he so wishes'. Further (*ibid.*: 191), '[t]he right of a child to be cared for by his or her parents is not predicated on the sex of that parent' (see Sloan, 2019 on Article 2 and discrimination between parents as regards parental responsibility), and 'there is no reason why the mother should be permitted to choose the involvement of the father in the child's life, even if she has been the one who has given birth'.

There is also a paradox in Marshall's argument: she (quite reasonably to a significant degree in the practical sense) denies the obligation of the person who has given birth to be a "mother", but at the same time advocates the right of that person to determine conclusively whether the resulting child should have any relationship at all with the biological family. In any event, as Fenton-Glynn (2014: 191) puts it, chiming with what I have argued above, rights 'to refuse motherhood, and to escape defined societal roles and the moral and legal obligations imposed on parents … are not predicated on anonymity, but can be achieved simply through placing the child for adoption in a conventional manner'.

In my view, Article 5, *inter alia*, means that a biological father should be presumptively entitled, for the benefit of the child, to know that his child exists and have some level of involvement in the adoption proceedings. Where it is proposed that this should not occur (and Fenton-Glynn (2017) accepts that there can be no absolute duty to involve the father even when writing from a

children's rights perspective, agreeing to that extent with Marshall), it should be by virtue of a clear judicial finding that, exceptionally, it would be contrary to the best interests of the child for the father to be informed or involved, and the father should not be excluded based on the mere whim or preference of the mother alone. In the language of Article 5, there must be some independent evaluation of which parent's (likely) 'direction and guidance' is most 'appropriate' or consistent with the child's best interests. While Article 8 identity-based rights should not be limited to the biological/genetic manifestations of the concept, they should certainly *include* those elements, and it should be no answer to an allegation that Article 8 has been breached that the "identity" of a particular child has been artificially adjusted by the state at the behest of the mother such that it no longer includes that child's biological parents. Convention rights mean that "anonymous" or "secret" births are potentially problematic and should be subject to regulation if permitted. Presumptively, then, the biological parents should be the parents for the purposes of Articles 7 and 5 *inter alia.* For Marshall's argument prioritising the choice of mothers to be considered valid, such that there is no real scrutiny of what constitutes a child's best interests on particular facts, I would suggest that a route would have to be found outside the corners of the CRC (given its emphasis on child welfare). It must be conceded, however, that matters may be more complicated in circumstances where the mother herself is a child (meaning under the age of 18 by virtue of UNCRC, Article 1) at the time she gives birth. The next section of this paper measures the legal approaches within the British Isles against these suggested implications of the CRC.

3 Substantive Law

3.1 *England and Wales*

Unlike the situation in France and several other jurisdictions (Marshall, 2018; Fenton-Glynn, 2014), the person who gives birth to a child in England and Wales is obliged to register the birth within 42 days (Births and Deaths Registration Act 1953, s. 2). If she is married to the father, that obligation is shared with her husband, but if not, the mother has it alone and is not currently obliged to provide any information about the father on registration (Births and Deaths Registration Act 1953, s. 10; cf. Welfare Reform Act 2009, Sch. 6, considered further below). Despite the obligation to register and be registered in the first instance, the mother will nevertheless be able to consent to the placement of the child for adoption (Adoption and Children Act 2002, s. 19), and to give advance consent to the adoption itself (Adoption and Children Act 2002, s. 20)

by virtue of her automatic parental responsibility (see further Sloan, 2019), albeit that the process cannot be completed without a court order made when treating the child's welfare as the paramount consideration (Adoption and Children Act 2002, ss. 1, 46), with that welfare significantly including the effect throughout the child's life of ceasing to be a member of the birth family (Adoption and Children Act 2002, s. 1(4)(c)).

On Marshall's (2018: 172) analysis, the English case law, 'indicates that the father has no right to know of the child's existence or, if there is a right, it can be lawfully interfered with'. There is, however, an obligation in secondary legislation, 'where the father of the child does not have parental responsibility for the child and the father's identity is known to the adoption agency' (Adoption Agencies Regulations 2005/389, r. 14(3)), and where the agency 'is satisfied it is appropriate to do so', to provide counselling, explain to him the legal effect of adoption and related processes, ascertain his wishes and feelings on the adoption, and ascertain whether he wishes to apply for parental responsibility and/or another relevant order (Adoption Agencies Regulations 2005/389, r. 14(4)). But it is clear that there is much local authority discretion.

The leading case on involvement of fathers in adoption is now *Re A, B and C* (*Adoption: Notification of Fathers and Relatives*) [2020] EWCA Civ 41 (see Fenton-Glynn, 2017 and Sloan, 2009, 2013, 2017 and 2018 for discussion of previous relevant case law, including *Re C* (*A Child*) (*Adoption: Duty of Local Authority*) [2007] EWCA Civ. 1206). In *Re A, B and C*, the Court of Appeal considered three separate appeals on the issue and conducted a comprehensive review of the law. Somewhat controversially, and not necessarily consistently with Article 21 of the CRC, it held that child welfare is not paramount on the question whether a father or other relatives should be notified about a child's existence or proceedings that could ultimately lead to the child's adoption. The matter was held to be neither a decision 'relating to the upbringing of a child' for the purposes of section 1(1) of the Children Act 1989 or 'relating to the adoption of a child' for the purposes of section 1(1) of the Adoption and Children Act 2002, but rather one about 'who should be consulted about such a decision' (*Re A, B and C*, [83]). As such, the correct approach was to balance the interests of the various parties involved in a fact-sensitive manner.

In expounding the balancing approach, the Court of Appeal noted that where a mother desires confidentiality, her right to respect for private life under the European Convention on Human Rights is engaged and can be infringed only when necessary to protect the rights of others. That said, the 'profound importance' of adoption is clearly capable of overriding the mother's request ([85]), depending on the circumstances. The Court noted the pitfalls of the 'often limited and one-sided nature of the information available',

emphasising that '[t]he confidential relinquishment of a child for adoption is an unusual event and the reasons for it must be respectfully scrutinised so that the interests of others are protected' ([85]). In achieving a fair balance on the facts, relevant factors would include: parental responsibility, whose possession by the father would cause 'compelling reasons' to be required before confidentiality could be justified, Article 8 rights, the substance of the relationships between the protagonists, the likelihood of a family placement, the impact on the mother and others of notification, cultural and religious factors, the availability and durability of the confidential information and the impact of delay. Ultimately, 'maintenance of confidentiality is exceptional' ([85]).

In each of the three cases before it, the Court of Appeal refused to sanction confidentiality. In the *A* case, the mother and father were students who previously had a 4½-year relationship. *Inter alia*, the judge had attached undue weight to the alleged impact of disclosure on the mother and her view that the father was unlikely to have anything to offer, failing to achieve an appropriate balance. His decision was overturned. In *B*, paternity was uncertain and the mother had been abused. But a family placement was possible, the judge had appropriately balanced the factors and the local authority should continue its enquiries. In the *C* case, the parents were married with other children but the mother alleged that the child concerned had been conceived as a result of rape and she was worried about the reaction of the father if he found out about the child. Despite the circumstances, confidentiality would be an 'extremely strong course to take' in light of the father's parental responsibility automatically conferred by marriage. The parental responsibility meant that the father's consent was *prima facie* required to any adoption, albeit that it could be dispensed with where the child's welfare 'require[d]' it (Adoption and Children Act 2002, s. 52). Disclosure was held to be appropriate on the facts.

The framework set out in *Re A, B and C* clearly runs contrary to Marshall's preference and is closer to according with the interpretation of Article 5 put forward in the last section of this paper. It remains the case, however, that on particular facts a mother may still be given an effective veto. It is highly significant, for example, that the Court of Appeal regarded *Re C* (*A Child*) (*Adoption: Duty of Local Authority*) [2007] EWCA Civ. 1206) as 'plainly correctly decided' (*Re A, B and C*, [5]). *Re C* involved a mother who had become pregnant after a one-off sexual encounter, and who made it clear that she wished the resulting child to be adopted shortly after birth. She kept the pregnancy secret from her own parents and the biological father, who did not have parental responsibility, and refused to identify him. The local authority charged with the child's care and eventual adoption sought judicial guidance on whether it should attempt to identity the father (it being likely that it could do so if

independent enquiries were made), inform him of the child's birth and possible adoption and assess him as a potential carer even though he did not have parental responsibility. The Court of Appeal ordered the local authority not to take any steps to identify the father. The priority was held to be finding a permanent home for the child, who was four months old by the time of the hearing, without any further delay. This, on the court's analysis, was the course of action most compatible with the child's best interests, and there was no evidence that the father could care for her based on what the mother had told the court. But the precise nature of the parents' relationship is not given detailed consideration in the Court of Appeal's judgments, which is problematic. This may simply have been a case where the mother, irrespective of the child's interests, did not disclose the resulting pregnancy to the father simply because she wanted nothing further to do with him, although it does reflect Marshall's preference. In *A, B and C*, however, the Court of Appeal described *Re C* as:

> …a strong case on its facts, there being no reason to doubt the mother's account that her relationship with the father had been a fleeting one, with the consequence that her wish for privacy was always likely to prevail ([66]).

I would respectfully, suggest, however, that it is not necessarily clear that *Re C* is consistent with the Court of Appeal's own approach in the later case of *Re A, B and C*, and particularly its concern about the potentially one-sided nature of the information provided by the mother.

The focus on the relationship between the parents is also shown by the significance of the presence or absence of parental responsibility, and its impact on consent. This, in turn, is reflected in the Court of Appeal's conclusion in the *C* element of the *Re A, B and C* decision. Since most fathers not married to the mother of their children obtain parental responsibility (usually through registration on the child's birth certificate (Children Act 1989, s. 4(1)(a); only 5.2 per cent of births were registered by the mother alone in 2016 (Office for National Statistics, 2017: 8)), it would be an exaggeration to say that English law excludes unmarried fathers from a *prima facie* requirement to consent to adoption as a rule. But the key point is that parental responsibility for an unmarried father requires either co-operation from the mother or a court order. In this paper's core scenario, the mother is actively trying to prevent the father from having any involvement in the child's life, and if a father does not even know about the child's existence, he is hardly likely to seek a court order that he does not realise he needs.

Schedule 6 to the Welfare Reform Act 2009 could in principle have ameliorated this effect. Somewhat consistently with several other jurisdictions (Sloan, 2017) it would have obliged mothers not married to the fathers of their children to register those fathers as such, except in ostensibly limited, albeit arguably exploitable, circumstances (Department for Children, Schools & Families 2010). But it seems that it will not be brought into effect (Clifton, 2014). It is arguable that, even following *Re A, B and C*, the law should attach greater importance to the child's likely de facto relationship with the father, rather than (at times formalistically) the relationship between the parents per se.

In an overall sense, English law rhetorically complies with the requirements of Article 5 by presumptively at least involving fathers irrespective of parental responsibility and excluding them only in "exceptional" circumstances, even if it is ultimately possible to order adoption against the wishes of fathers. It remains to be seen, however, whether this "exceptionality" will always be truly present even in light of *Re A, B and C*. There may still be scope (*inter alia* because of the unsatisfactory law on parental responsibility allocation) for judges simply to act according to the personal preference of the mother in excluding the father, largely in a manner advocated by Marshall but in my view unfavourable in the light of the requirements of the CRC.

3.2 *Scotland*

It is claimed that the adoption of children looked after by the state in Scotland 'does not happen very often' (Kidner, 2012:10), and the policy context of adoption in England and Scotland may therefore differ (Sloan, 2016). There are also apparently fewer reported cases on the subject of this paper. The basic structure of Scots law's response to this paper's core scenario, however, is essentially the same as in England, including on birth registration (Registration of Births, Deaths and Marriages (Scotland) Act 1965; cf. Scottish Government 2018, Part 12) and the paramountcy of welfare (Adoption and Children (Scotland) 2007, s. 14).

In Scotland, a "parent" whose consent is *prima facie* required for a child's adoption means a parent who 'has any parental responsibilities or parental rights in relation to the child' or does not have them 'by virtue of a permanence order which does not include provision granting authority for the child to be adopted' (Adoption and Children (Scotland) 2007, s. 31(15)). As in England, the consent of even such a father can still be dispensed with on the basis that child's welfare 'requires' it (Adoption and Children (Scotland) Act 2007, s. 31(3)(d) of the 2007 Act, even if the grounds for dispensing with consent 'are specified in greater detail than in sec 52(1) of the [English] 2002 Act' (*S v. L* [2012]

UKSC 30, [25]). The 'welfare requires' provision in section 31(3)(d) of the 2007 Act applies only where the parent has parental responsibilities or rights or is likely to be given them in the future (Adoption and Children (Scotland) 2007, s. 31(5)), and it cannot be said that the parent is 'unable satisfactorily' to discharge or exercise those rights or responsibilities and 'is likely to continue to be unable to do so' (Adoption and Children (Scotland) 2007, s. 31(4)). It has thus been described as 'a residual ground' (*S* [2014] CSIH 42, [28]). Section 31(3)(d) is narrower in scope in the context than the equivalent ground in the English 2002 Act. While it directs a court to consider the extent to which a parent can look after a child effectively (now or in the future) before dispensing with consent, it also underlines the fact that consent can in principle be dispensed with even where no such finding can be made (see further Sloan, 2016).

While the father will have parental rights and responsibilities where he is 'married to the mother at the time of the child's conception or subsequently' (Children (Scotland) Act 1995, s. 3), if he is unmarried he will have such rights and responsibilities if he has been registered as the father on the child's birth certificate (from May 2006 under s. 3) (including re-registration, unlike in England and Wales), by registered agreement with the mother (Children (Scotland) Act 1995, s. 4) or by court order (Children (Scotland) Act 1995, s. 11). Importantly, as Norrie (2013: [6.09]) describes and as reflects the current situation in England and Wales, '[t]he father must have the co-operation of the mother to be registered [on the birth certificate], and so, in the absence of any court decree, the mother is the "gatekeeper" to the father's entitlement to parental responsibilities and parental rights', albeit that (again broadly consistently with England and Wales), only 4.3 per cent of birth registrations in 2016 were sole ones (National Records of Scotland, 2017). The obligations of an adoption agency under secondary legislation towards a father without parental rights and responsibilities are also notably similar to those in England (Adoption Agencies (Scotland) Regulations 2009/154, r. 14). Scots law therefore raises similar issues to English law in relation to the scenario under discussion for the purposes of CRC compatibility, however much relevant case law is lacking.

3.3 *Ireland*

Adoption has had a controversial history in Ireland, involving extreme secrecy (cf. now Adoption (Information and Tracing) Bill 2016, not yet passed at the time of writing) and stigmatised unmarried mothers cruelly treated in mother and baby homes and essentially forced to agree to the child's adoption (McCaughren and Lovett, 2014). Conversely, *married* parents were unable voluntarily to have their child placed for adoption until a change to the

Constitution (Irish Constitution, article 42A.3) and the implementation of the Adoption (Amendment) Act 2017 (see further Sloan, 2018a). It must be noted at the outset that an adoption order may be made by the *quasi*-judicial Adoption Authority rather than a court in Ireland, but it will be seen that courts do have a role to play in the scenario with which this paper is concerned. The welfare of the child is now the 'paramount' consideration (Adoption (Amendment) Act 2017, s. 9), rather than the 'first and paramount' one (Adoption Act 2010, s. 19 (pre-amendment)), consistently with both England and Scotland and Article 21 of the CRC.

In its Concluding Observations on Ireland's initial report, the Committee on the Rights of the Child (1998: [17]) was concerned 'about the disadvantaged situation of children born of unmarried parents due to the lack of appropriate procedures to name the father in the birth registration of the child', which 'also has an adverse impact on the implementation of other rights in relation to adoption which, under current regulations, can take place without the consent of the father'. Whatever the general obligations placed on parents in relation to birth registration (Civil Registration Act 2004, s. 19), it remains true that information about the unmarried father is not required to be registered (Civil Registration Act 2004, s. 22). While reforms were enacted to require information about the father to be recorded except in limited circumstances (Civil Registration (Amendment) Act 2014), these have yet to be commenced and do not grant substantive rights in relation to adoption in any event.

As regards adoption specifically, the basic position (subject to the ability to dispense with consent) is now that an adoption order cannot be made 'without the consent of every person, being the child's mother or guardian or other person having charge of or control over the child' (Adoption Act 2010, s. 26). This may exclude a father who is not a guardian, albeit that the relevant Authority is under a basic duty to 'take such steps as are reasonably practicable to ensure that every relevant non-guardian of the child is consulted in relation to the adoption', except in limited circumstances (Adoption Act 2010, s. 30). One such circumstance is where the adoption authority is satisfied that, 'having regard to' 'the nature of the relationship between the relevant non-guardian of a child and the mother or guardian of the child', or 'the circumstances of the conception of the child', 'it would be inappropriate for the Authority to consult the relevant non-guardian in respect of the adoption of that child' (Adoption Act 2010, s. 30(3)). There, with court approval, the adoption can proceed without consultation with that non-guardian. A 'relevant non-guardian' includes a father who is not a guardian (Adoption Act 2010, s. 3), and a father (in turn) includes a person who 'believes himself to be the father of the child' (Adoption Act 2010, s. 30(1)). Where the father 'is unknown to the Authority and the

mother or guardian of the child will not or is unable to disclose the identity of that father', the Authority is obliged to 'counsel the mother or guardian of the child, indicating' 'that the adoption may be delayed', 'the possibility of that father of the child contesting the adoption at some later date', 'that the absence of information about the medical, genetic and social background of the child may be detrimental to the health, development or welfare of the child', and 'such other matters as the Authority considers appropriate in the circumstances' (Adoption Act 2010, s. 30(4)). After it has done so, the Authority 'may, after first obtaining the approval of the High Court, make the adoption order without consulting [the] father' if 'the mother or guardian of the child either refuses to reveal the identity of that father of the child, or provides the Authority with a statutory declaration that he or she is unable to identify that father', and 'the Authority has no other practical means of ascertaining the identity of that father' (Adoption Act 2010, s. 30(5)).

It can be seen that, for reasons of practicality, the mother retains much control over the process, and much will depend on the exercise of a value judgment by the adoption authority and the court. A possible advantage of the Irish position for the purposes of Article 5, however, is that the circumstances in which a father need not be consulted (alongside what is to be done where the mother will not cooperate) are fairly clearly set out in primary legislation, rather than being the subject of an open-ended assessment and/or weak obligations in secondary legislation. The 'counselling' obligation imposed on the Adoption Authority displays an admirable understanding of the notion of identity and other matters as understood by the Convention and the Committee.

It should nevertheless be noted that the consent to the adoption of a(n unmarried) father who is not a 'guardian or other person having charge of or control over the child' is still not required in the first place (Adoption Act 2010, s. 26(1)), albeit that fathers are more likely to have guardianship by virtue of the reforms introduced by the Children and Family Relationships Act 2015 (Guardianship of Infants Act 1964, s. 2(4A)). As in both England and Scotland, unmarried fathers do not, as a category, automatically acquire "guardianship" (equivalent to parental responsibility or parental responsibilities and rights) for their children. Unlike in those jurisdictions, however, even an unmarried father can in some circumstances obtain guardianship without either the mother's agreement or a court order (see further Sloan, 2019). At first glance, this is encouraging for the purposes of Article 5 etc., albeit that it is still predicated on a relatively substantial relationship between the parents that may not be present in this paper's core scenario. The final Children and Family Relationships Act's formulation is that an unmarried father will be a guardian if he 'and the

mother of the child concerned have been cohabitants for not less than 12 consecutive months occurring after the date on which [the relevant] subsection comes into operation, which shall include a period, occurring at any time after the birth of the child, of not less than three consecutive months during which both the mother and the [father] have lived with the child' (Guardianship of Infants Act 1964, s. 2(4A)), and it is expressly provided that '"cohabitant" shall be construed in accordance with' the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (Children and Family Relationships Act 2015, s. 2). The new provision is clearly an improvement on the previous law (similar to that in England and Scotland), though it still places much control for the automatic granting of guardianship in the hands of the mother (Treoir, 2014: [2.1.1]).

Under the 2010 Act as amended in 2017, the consent *prima facie* required of a relevant parent can be dispensed with (with court approval) where, *inter alia*, parents have failed in their duty towards the child for 36 months 'to such extent that the safety or welfare of the child is likely to be prejudicially affected', that there must be 'no reasonable prospect that the parents will be able to care for the child in a manner that will not prejudicially affect his or her safety or welfare', and that the child must have been in the 'custody' of the applicants for at least 18 months (Adoption (Amendment) Act 2017, s. 24). There is a new requirement (alongside the pre-existing one that 'by reason of the failure, the State, as guardian of the common good, should supply the place of the parents') that 'the adoption of the child by the applicants is a proportionate means by which to supply the place of the parents' (Adoption (Amendment) Act 2017, s. 24).

Overall, despite (or perhaps because of) its difficult history with adoption, in many ways Ireland takes an approach that is likely to be consistent with the interpretation of the CRC put forward in this paper. Conversely, Irish Law is not fully consistent with the approach advocated by Marshall.

4 Conclusion

There are, of course, legitimate debates to be had about whether children's rights and welfare should be prioritised to the extent that appears to be undertaken by the CRC. It is also arguable that the stance taken by this paper risks simply furthering the interests of one parent (the father) over another (the mother) in the adoption process, which is not necessarily any more conducive to furthering the interests of the child. But within the confines of the CRC, it is doubtful whether the secrecy advocated by Marshall on adoption can be justified. The jurisdictions under scrutiny in this paper offer a preferable ap-

proach. It must be emphasised that, even where a father is involved in the adoption process and objects to adoption, it remains perfectly possible to dispense with his consent, essentially on the basis of child welfare, in England, Scotland and Ireland. Moreover, there is still value in involving fathers from an informational perspective even if they prove unsuitable to care for or even have a relationship with the child: while this was rejected in the English case of *Re C* (still regarded as correctly decided in *Re A, B and C*), Fenton-Glynn (2017) has criticised the Court of Appeal for the purposes of the CRC for taking an unduly narrow view of welfare there. From an Article 5 perspective, it seems preferable that neither fathers nor mothers should have essentially uncontested authority either to cause or prevent an adoption, even if this paper has had to concede that Article 5 has less to say on adoption than other provisions of the Convention.

Acknowledgement

The author is grateful, subject to the usual disclaimer, for the comments of participants at the CRC-IP Article 5 colloquium in Cambridge and the anonymous reviewer on an earlier version of this paper.

References

Alston, P., "The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights", *International Journal of Law and the Family* 1994 (8(1)), 1–25. DOI: https://doi.org/10.1093/lawfam/8.1.1.

Bainham, A., "Parentage, Parenthood and Parental Responsibility: Subtle, Elusive Yet Important Distinctions" in A. Bainham, S. D. Sclater and M. Richards (eds.), *What is a Parent? A Socio-Legal Analysis* Oxford: Hart Publishing, 1999. DOI: 10.5040/9781472561961.ch-002.

Besson, S., "Enforcing the Child's Right to Know her Origins: Contrasting Approaches under the Convention on the Rights of the Child and the European Convention on Human Rights", *International Journal of Law, Policy and the Family* 2007 (21(2)), 137–159. DOI: https://doi.org/10.1093/lawfam/ebm003.

Clifton, J., "The Long Road to Universal Parental Responsibility: Some Implications from Research into Marginal Fathers", *Family Law* 2014, 44(6), 858–861.

Committee on the Rights of the Child, "Consideration of Reports Submitted by State[ ] Parties under Article 44 of the Convention – Concluding Observations: Ireland" (Initial Report), CRC/C/15/Add.85, 1998.

Committee on the Rights of the Child, "Consideration of Reports Submitted by State[ ] Parties under Article 44 of the Convention – Concluding Observations: Papua New Guineau" (Initial Report), CRC/C/15/Add.2294, 2004.

Committee on the Rights of the Child, "Consideration of Reports Submitted by State[ ] Parties under Article 44 of the Convention – Concluding Observations: Uzbekistan" (Second Report), CRC/C/UZB/CO/2, 2006.

Committee on the Rights of the Child, "Consideration of Reports Submitted by State[ ] Parties under Article 44 of the Convention – Concluding Observations: Czech Republic" (Third and Fourth Reports), (CRC/C/CZE/CO/3–4, 2011.

Council of Europe, "Explanatory Report to the European Convention on the Adoption of Children (Revised)", 2008.

Department for Children, Schools & Families, *The Registration of Births* (*Parents Not Married And Not Acting Together*) *Regulations 2010: A Consultation*, 2009.

Fenton-Glynn, C., "Anonymous Relinquishment and Baby-Boxes: Life-Saving Mechanisms or a Violation of Human Rights?" in K. Boele-Woelki, N. Dethloff and W. Gephart (eds.), *Family Law and Culture in Europe Developments, Challenges and Opportunities* (Cambridge: Intersentia, 2014). DOI: 10.1017/9781780685274.015.

Fenton-Glynn, C., "Court of Appeal (England and Wales): *Re C v XYZ County Council*" in H. Stalford, K. Hollingsworth and S. Gilmore (eds.), *Rewriting Children's Rights Judgments: From Academic Vision to New Practice* (Oxford: Hart Publishing, 2017). DOI: 10.5040/9781782259282.ch-006a.

Hodgkin, P. and Newell, R., *Implementation Handbook for the Convention on the Rights of the Child* (3rd edn., New York: Unicef, 2007).

Kidner, C., *SPICe Briefing: Child Protection* (Scottish Parliament, 2012).

Klier, C., Chryssa, G., Amon, S., Fiala, C., Weizmann-Henelius, G., Pruitt, S., Putkonen, H., "Is the introduction of anonymous delivery associated with a reduction of high neonaticide rates in Austria? A retrospective study", *BJOG*, 2013 (120), 428–434. DOI: 10.1111/1471-0528.12099.

Leckey, R., "Identity, law, and the right to a dream", *Dalhousie Law Journal*, 2015 (38(2)), 525–548.

Marshall, J., "Concealed Births, Adoption and Human Rights Law: Being Wary of Seeking to Open Windows into People's Souls", *Cambridge Law Journal*, 2012 (71(2)), 325–354. DOI: https://doi.org/10.1017/S0008197312000517.

Marshall, J., "Secrecy in births, identity rights, care and belonging", *Child and Family Law Quarterly*, 2018 (30(2)), 167–185.

McCaughren, S. and Lovett, J., "Domestic adoption in Ireland: a shifting paradigm?", *Adoption & Fostering*, 2014 (38(3)), 238–254. DOI: https://doi.org/10.1177/0308575914543233.

McGoldrick, D., "The United Nations Convention on the Rights of the Child", *International Journal of Law and the Family*, 1991 (5(2)), 132–169. DOI: https://doi.org/10.1093/lawfam/5.2.132.

National Records of Scotland, "Table 3.02: Live births, numbers and percentages, by marital status of parents and type of registration, Scotland, 1974 to 2016" (Edinburgh, 2017).

Norrie, K. McK., *The Law Relating to Parent & Child in Scotland* (3rd edn., Edinburgh: W Green, 2013).

Office for National Statistics, "Statistical Bulletin: Births by parents' characteristics in England and Wales: 2016" (London, 2017).

Ramesh, R., "Spread of 'baby boxes' in Europe alarms United Nations", *The Guardian*, 10 June 2012, www.theguardian.com/world/2012/jun/10/unitednations-europe-news.

Ronen, Y., "Redefining the Child's Right to Identity", *International Journal of Law, Policy and the Family*, 2004 (18(2)), 147–177. DOI: https://doi.org/10.1093/lawfam/18.2.147.

Scottish Government, *Review of Part 1 of the Children (Scotland) Act 1995 and creation of a Family Justice Moderation Strategy. A Consultation* (Edinburgh, 2018).

Sloan, B., "*Re C* (*A Child*) (*Adoption: Duty of Local Authority*) – Welfare and the Rights of the Birth Family in 'Fast Track' Adoption Cases", *Child and Family Law Quarterly*, 2009 (21(1)), 87–103.

Sloan, B., "Conflicting Rights: English Adoption Law and the Implementation of the UN Convention on the Rights of the Child", *Child & Family Law Quarterly*, 2013 (25(1)), 40–60.

Sloan, B., "Post-Adoption Contact Reform: Compounding the State-Ordered Termination of Parenthood?", *Cambridge Law Journal*, 2014 (73(2)), 378–404. DOI: https://doi.org/10.1017/S0008197314000439.

Sloan, B., "Primacy, Paramountcy and Adoption in England and Scotland" in E. Sutherland and L. Barnes Macfarlane (eds.), *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-being* (Cambridge: Cambridge University Press, 2016). DOI: https://doi.org/10.1017/S0008197314000439.

Sloan, B., "Commentary on *Re C v XYZ County Council*" in H. Stalford, K. Hollingsworth and S. Gilmore (eds.), *Rewriting Children's Rights Judgments: From Academic Vision to New Practice* (Oxford: Hart Publishing, 2017). DOI: 10.5040/9781782259282.ch-006a.

Sloan, B., "Finality Versus Fathers: Undoing Adoption to Recognise Biological Ties". *The Cambridge Law Journal*, 2018 (77(2)), 258–261. DOI: https://doi.org/10.1017/S000819731800051X.

Sloan, B., "A New Approach to Adoption in Ireland", *Zeitschrift für das gesamte Familienrecht*, 2018a (18), 1391–1392.

Sloan, B., "Illegitimate Consequences of 'Illegitimacy'?: Article 2 UNCRC and Non-Marital Children in the British Isles. Child Rights and International Discrimination Law" in M. Skivenes and K. H. Søvig (eds.), *Implementing Article 2 of the United Nations Convention on the Rights of the Child* (Oxon: Routledge, 2019).

Treoir, "Submission to the Oireachtas Committee on Justice, Defence and Equality on the General Scheme of a Children and Family Relationships Bill 2014" (Dublin, 2014).

United Nations, "Multilateral Treaties Deposited with the Secretary-General" ch. IV, no. 11, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.(2019).

United Nations General Assembly, "UN Guidelines on the Alternative Care of Children", A/RES/64/142, 2010.

Van Bueren, G., "Children's Access to Adoption Records—State Discretion or an Enforceable International Right?", *Modern Law Review*, 1995 (58(1)): 37–53. DOI: https://doi.org/10.1111/j.1468-2230.1995.tb01993.x.