

# Birth Parents and the Collateral Consequences of Court-ordered Child Removal: Towards a Comprehensive Framework

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## ABSTRACT

This article aims to capture the full range of consequences that birth parents face, following court-ordered removal of their children on account of child protection concerns. With references to legislative and policy responses in England, the USA, and Australia, we argue that states reinforce parents' exclusion, where the full gamut of challenges these parents face is poorly understood. Drawing on a wealth of criminological research concerned with the collateral consequences of criminal justice involvement we adapt conceptual ideas and vocabularies to describe the combination of informal and formal penalties that parents face at this juncture. Discussion extends previous published studies concerned with loss and social stigma following child removal but charts new theoretical ground regarding legal stigmatization and welfare disqualifications. The article is timely given the continued high volume of children entering state care in a number of international jurisdictions and recent empirical evidence from England that a sizeable population of birth parents who appear as respondents in the family court are repeat clients. Making the case for a fundamental re-appraisal of state responses following court-ordered removal, the article concludes with a call for a more comprehensive family justice response, attuned to the additive burden of child removal on parents whose lives are already blighted by histories of disadvantage.

## I. INTRODUCTION

The impact on parents of court ordered removal of their children on account of child protection concerns is insufficiently theorized, despite the fact that a significant number of parents in a range of international contexts lose their children to the state in this way. For two reasons, there is now some urgency to tackle this omission. Firstly, an increasing number of very young children have entered state care during the past 5 years in a range of international jurisdictions (e.g. England, Australia, and the USA). Secondly, recent research in England has exposed the scale of birth mothers' repeat involvement in the family court, which is no doubt paralleled in nation states with similar child protection systems (Broadhurst et al, 2015a). These observations prompt searching questions about how parents might be helped to salvage

productive lives following child removal and the potential contribution of therapeutic or legislative remedies.

Searching the literature for relevant theoretical insights finds an important body of work on grief responses to the loss of children to state care or adoption. However, the majority of studies have focused on child *relinquishment*, rather than court ordered removal (Deykin, et al, 1984; Askren and Bloom, 1999; Doka, 1989, 1999; Aloi, 2009; Brodzinsky and Livingston-Smith, 2014). Although this work is relevant, the involuntary loss of a child through adversarial court proceedings is a very different experience, because parents are left with an indelible legal record that is highly consequential. In this article we provide a preliminary framework that captures the broad range of informal and formal consequences that follow for this particular group of parents. In addition to mourning the loss of their children, parents can experience social and legal stigmatization, sanctions on kin relationships and reduced welfare entitlements. With references to legislative and policy responses in England, the USA, and Australia, we argue that states (inadvertently) reinforce parents' exclusion, where the full gamut of challenges parents face is poorly understood and post-removal support is lacking. Thus, we add to an important, but limited body of work concerned with parents' life chances beyond family court intervention (Raskin, 1992; Carolan et al, 2010; Schofield et al, 2011; Neil, 2013).

To aid our analysis, we turn to literature in the field of criminal justice that describes the *collateral consequences* of criminal justice involvement. In stark contrast to policy and research neglect of parents following child removal, this literature offers a wealth of theoretical and empirical work concerned with comprehensive support for offender rehabilitation (Logan, 2013; Love, 2015). Although there is some risk in drawing comparisons between parents within family proceedings and offenders within the criminal justice system, theoretical propositions provide a useful starting point for our project. By adapting vocabularies and conceptual ideas from this field, we find a way to capture the broader range of consequences that may help explain parents' repeat appearances before the family court and generate fresh thinking about parent rehabilitation.

This article is divided into a number of sections. Given the dearth of published work on policy and practice responses to parents following child removal, the first section provides readers with an extended background. We outline the reasons why parents are neglected at this juncture and in addition, make the case for a fundamental re-appraisal of state responses to parents beyond family justice involvement. We then turn to the criminological literature and consider what might be learned from an extensive international scholarship concerned with the collateral consequences of criminal justice involvement. Finally, we describe the range of both informal and formal consequences of court-ordered child removal, introducing a multi-dimensional framework that encapsulates the challenges faced by this population of parents, beyond the loss of their children.

## II. BACKGROUND

### 1. Birth parents beyond child removal: policy and legislative responses

Where family courts deem that a child requires permanent placement in out-of-home care or with adoptive parents, birth families typically disappear from the gaze

of services or find it very difficult to access support for their own rehabilitation. In the US and England, policy has moved in the direction of removing children more quickly from birth parents, with successive legislative developments giving greater emphasis to finding new families for young children (Gilmore and Bainham, 2015). In the US, the Federal law of the Adoption and Safe Families Act 1997 has been described as marking a shift away from family preservation towards an emphasis on the health, safety, and permanency needs of children (Whitt-Woosley and Sprang, 2014). This legislation directs child protection agencies and the courts to expedite the termination of parents' rights, where parents are not able to show change within prescribed shorter timeframes. In England, we have witnessed similar legislative developments, with cross-party support for adoption as the preferred permanency option for infants and young children (Department for Education, 2013, 2016). Successive reforms to primary and secondary adoption legislation, now consolidated through the Children and Families Act 2014, emphasize earlier removal and placement with adoptive parents, where children cannot remain in the care of their birth families or extended family networks. In Australia, the most recent amendment to the Children and Young Person's Care and Protection Act has also introduced a 6 months timescale for permanency decisions that concern infants (Fernandez, 2014). While it is entirely reasonable for states to encourage timely permanency plans for children, it is, arguably, unreasonable for parents' own rehabilitation to be cut short because services reduce their involvement with parents following court proceedings. Although final evidence submitted at the close of care proceedings typically includes recommendations regarding parents' treatment needs (e.g. for mental health or substance misuse problems), statutory frameworks in the US, England, and Australia, do not require the courts or children's services to ensure these needs are met. In England, the Adoption and Children Act 2002 requires agencies to provide support to birth parents, but this typically takes the form of support for letter-box contact and brief counselling. In Australia, fewer children are adopted from care, and federal law and policy place a greater emphasis on family restoration. However, critics have argued that in the case of non-relative adoptions, post-adoption support services are limited and this is in spite of provisions set in place following Australia's public apology to families on account of a difficult history of 'forced' adoption (Kenny et al, 2012).

Where children remain in long-term foster care or with kin, the focus of professional services is again on reviewing the child and supporting his or her permanency placement. Birth parents will be kept informed of a child's progress, but services will be reduced once reunification is ruled out. This is because child protection services are primarily focused on children and only tangentially concerned with the needs of parents (Kernan and Lansford, 2004; Wells and Marcenko, 2011; Gilbert et al, 2011). In Australia, the neglect of birth parents where children are in foster care has been subject to significant critique (Kapp and Propp, 2002; Kapp and Vela, 2004). Of course, lack of access to a continued programme of rehabilitation following care proceedings is particularly perilous for parents who return to the family court. For many of these parents, the birth of a new baby will likely trigger children's services and court involvement – given a history of previous removal. If parents cannot

evidence their rehabilitation, the courts are likely to remove the new baby from their care (Broadhurst et al, 2015a).

Court-ordered child removal is the highest sanction that states can impose in the face of parenting failure. Thus, we might question how and why the courts and children's services turn away from parents at this juncture. A number of lines of explanation are relevant. Starting with the notion of the 'best interests of the child' (Goldstein et al, 1996), this concept has international currency and deeply affects how family justice practitioners view family court cases. However, a narrow interpretation of this indeterminate concept can lead to an exclusive focus on the interests of the child at the expense of parents. Successive high-profile inquiries into the deaths of children at the hands of their parents have been implicated in thinking that sets the needs of parents and children in opposition (Featherstone et al, 2014). While recommendations that practitioners should avoid collusion with parents' neglect or maltreatment of children provide a vital caution, these should not be read as an instruction to focus purely 'downstream' on child placement and sideline parents' rehabilitation needs (Guggenheim, 2000). Practitioners on the ground may be uncomfortable with the inattention given to birth parents and wider family networks following the close of care and adoption proceedings, but the pace of work and imperative to deal with the next case can silence this disquiet (Nagel, 1979).

Turning to the judiciary, there is no doubt that a commitment to the highest levels of fairness regarding the legal subject's rights is at the forefront of judicial thinking. However, fairness equates to even-handed treatment of all cases, rather than a concern with broader matters of social justice. Frameworks of rights direct the judiciary towards consistent application of rules, but tend to deliver an impersonal justice divorced from the broader context of individual lives or shortcomings in public policy (Nonet and Selznick, 2009: 66). In the US, in particular, inventiveness is apparent in a range of alternative therapeutic courts, but in England and Australia, alternatives battle against the family courts rooted in legal formalism where fidelity to rules and procedure tend to constrain the judicial imagination. Because judicial involvement in family court cases ceases once permanency decisions for children are determined, the judge is also shielded from the longer-term social effects of his or her decisions, which can compound parents' disadvantage.

Finally, the broader political and economic context of neo-liberalism in its many guises also shapes public policy towards families in need. In England, the US and Australia, the neo-liberal state's ethos towards families is to devolve responsibility for social issues as far as possible to communities. Although the child brings the reluctant state back into family life, this is with a largely forensic gaze, responding to risk rather than need. If risk is unsubstantiated, services will typically withdraw (Marshall et al, 2010). Neoliberal child protection systems tend towards high thresholds for family intervention, concerned primarily with the mitigation of serious risks to children's health and safety, offering limited family support (Parton, 2011). Of course, prevailing political climates also shape family court actions. Although the courts maintain the need to protect the fundamental and natural environment of the birth family as central, for all the reasons described above, there is a sense in England and in the US, that the *active* role that the court might play in family preservation is becoming more difficult. Certainly financial and performance incentives on all

agencies are towards swifter adoption of infants from care, without comparable targets for family preservation (Guggenheim, 2000; Hollingsworth, 2000; Kemp and Bodonyi, 2000; Gilmore and Bainham, 2015). Support for child *permanence at home* has received far less attention than permanence out of home (Hunt and Waterhouse, 2012). Our own evidence is that the number of infants removed at birth has increased markedly over the past 5 years in England, reflecting both a policy emphasis on swifter removal of children from situations of harm and reduced community support services for struggling families (Broadhurst et al, 2015a).

## 2. Time for a fundamental reappraisal: foster care as interim palliative and the discovery of repeat client-hood

There are however, compelling reasons for a fundamental reassessment of obligations to parents following child removal. Aside from the very obvious argument that providing longer-term rehabilitative help to parents would constitute a more humane approach to family justice, there is robust evidence (old and new) that current practices are shortsighted. A lack of attention to parents' needs following child removal is detrimental not just for parents, but also for children, broader family networks, civil society and the public purse.

Regarding children, there is long-standing international evidence that the majority of children removed to public care remain very concerned about their birth parents during their time in care. Although children and young people will have mixed emotions about their parents, preoccupation with their welfare is common (Berridge, 1997; Schofield and Ward, 2011; Holland and Crowley, 2013). Moreover, many young people will return to birth family networks when they age out of care (Schofield and Ward, 2011). Thus, we might conceptualize foster care as an *interim palliative* that can limit immediate harm to children, but may have marginal positive impact on the wider family networks from which children have been removed. Without investment in the wider family network, the potential impact of foster care to improve children's life chances beyond foster care is undermined. For children adopted as infants, legislation in England, the US and Australia enables the tracing of birth parents once children attain adults status (Wrobel and Neil, 2009). A number of published studies have commented on children's overwhelming desire for search and reunion (March, 1995; Rushton, 2007). These observations again endorse investment in birth parents and children's broader family networks, beyond the child's immediate permanency placement.

Secondly, new evidence from England is that a sizeable proportion of parents return to court having previously lost a child to public care or adoption, because their problems are repeated rather than improved (Broadhurst et al, 2015a). This raises new questions about the obligations of the court regarding parent rehabilitation. If at least 1 in 4 women re-appear before the family court, typically with a new baby in arms, child removal can no longer be seen as the end of the problem. The work of Therese Grant and colleagues in the US helps to explain this pattern. Grant et al (2011, 2014) describe the drive to replace a lost child as 'replacement baby' syndrome. From a longitudinal prospective study of 795 women, they found that women who did *not* retain the care of their infants were far more likely to experience

a rapid repeat pregnancy. Repeat pregnancy is an understandable attempt to replace loss (also seen following stillbirth) but maladaptive where women have made little progress with serious problems of drugs, alcohol or mental health. Although empirical evidence is not available about the scale of repeat clienthood in the US or Australia, certainly this phenomenon is described in the literature. For example, in Australia, government reports indicate the successive placement of siblings with substitute foster and kin carers (Australian Institute of Health and Welfare, 2015). Repeat removal of children raises the highest social justice concerns not only for parents, but also for broader family networks that are also multiply bereaved. In addition, return to court places an economic burden on children's services and the courts. Taken together, these facts provide an urgent mandate to think differently about parents' life chances beyond 'case disposal'.

### III. BEYOND FAMILY JUSTICE INVOLVEMENT – WHAT CAN WE LEARN FROM SCHOLARSHIP CONCERNED WITH OFFENDER REHABILITATION?

So, what might we learn from scholarship in the field of criminal justice to aid our pursuit of a more comprehensive understanding of the consequences of child removal and potential rehabilitative responses? In stark contrast to the neglect of parents following family justice involvement, there is a substantial body of work spanning more than four decades, concerned with the welfare of offenders following criminal conviction. Critics calling for a more holistic mindset towards offenders have, over the years, successfully highlighted the combination of *formal and informal* collateral consequences of conviction that undermine offenders' return to productive citizenship (Cohen and Rivkin, 1971; Pinard, 2004; Travis, 2005; Silva, 2010; Chin, 2012a,b). The emergence of what has been described as a major paradigmatic shift in both the philosophy and ideology of criminal justice can be traced to US concerns with the consequences of mass incarceration during the 1970s and 1980s. Harsh sentencing policies enacted during the US 'War on Drugs' and policies that aimed to get 'Tough on Crime' not only led to a huge expansion of the prison population, but, in addition, appeared to do little to prevent recidivism (Langan and Levin, 2002; Pinard, 2004; Mauer and King, 2007; Simon, 2007; Chin, 2012b). In order to reduce re-offending, critics called for a major re-think of responsibilities towards sentenced offenders at their point of re-entry to civil society. A combination of formal civil disqualifications within public housing and education, together with informal penalties of social stigma and social censure were described as tantamount to a second-class citizenship and appeared to have a criminogenic effect (Silva, 2010, 2015).

Thus, a developing international literature began to differentiate *formal* (or system-level) collateral consequences from *informal* consequences and prompted systematic analysis of their varied or inter-connected impact on offender rehabilitation. A body of research evidenced the negative impact of formal collateral consequences against an expanded number of categories that included: housing exclusion, deportation or occupational disqualification, electoral and welfare disenfranchisement (Pinard, 2004; Travis, 2005; Loeffler, 2013). In parallel, research also probed the impact of *informal collateral* consequences, described as operating outside 'specific legal

authority' and bound up with social rejection, shame and isolation (Logan, 2013: 1104). Although informal consequences are deemed less tangible than system-level consequences, scholars described the effects as no less corrosive in terms of diminishing life chances. In addition, informal consequences were captured in relation to third parties – kin and friendship networks suffer the social stigma and social censure associated with criminal conviction.

While further refinement of theory and debate continue, the point we make is that an evidence-informed rationale that legitimates support for a more *comprehensive* criminal justice response is embedded in a range of international contexts. A persuasive evidence base has led to an extension of the remit of the criminal court and roles of its professional actors away from simply a narrow focus on the facts of the case (prosecution and defence), towards a far broader concern with offender rehabilitation (Pinard, 2004). Thus, readers may appreciate how this learning might be applied to the field of family justice. This literature brings into view a number of pressing questions regarding the nature and intersection of collateral consequences for family court respondents and also strategies of self-definition and reinvention in the face of social and legal stigmatization.

#### IV. THE COLLATERAL CONSEQUENCES OF COURT ORDERED CHILD REMOVAL: TOWARDS A COMPREHENSIVE FRAMEWORK

Informed by the conceptual ideas outlined above, in the remainder of this article we map out a preliminary categorical framework that aims to capture the range of consequences that follow court-ordered child removal. Our aim is to connect in a single discuss, the informal and formal penalties that are frequently considered in isolation in the extant literature, or, are not yet described. Our interest is assisting readers to consider avenues for further systematic research regarding the intersection of collateral consequences, their relative weight and impact, while at the same time signalling immediate opportunities for practical intervention.

##### 1. Grief and court-ordered removal of children

A major consequence of losing a child to public care or adoption is grief that is long lasting and difficult to resolve (Millen and Roll, 1985; Condon, 1986; Charlton et al, 1998; Howe et al, 1992; Aloï, 2009). The salience of grief across this population underscores the importance of paying close attention to the *informal consequences* of child removal. Much of our understanding of birth parents' grief responses derives from a valuable literature on women's experiences of relinquishing infants to adoption. Notable in the literature is the work of Millen and Roll (1985) who drew attention to women's intense feelings of guilt in relation to relinquishing an infant to adoption. Equally valuable is the influential work of Doka (1989, 1999) on disenfranchised grief. Doka describes grief that follows personal losses, which are not readily recognized or legitimated in society. In 1992, Howe and colleagues continued to advance our knowledge, based on a study of 'more than half a million' birth mothers who relinquished children to adoption. Howe et al., documented women's heightened anxieties and the rekindling of grief in the context of a subsequent pregnancy, as well as women's pervasive fear of their 'secret' being exposed should lost children

re-appear in their lives. Key themes of guilt, isolation, stigma, and loss have been confirmed in more recent studies of relinquishment (Deykin et al, 1984; Askren and Bloom, 1999; Aloï, 2009).

However, the landscape of child removal has significantly changed since this early work. The majority of parents now lose their children to public care or adoption through court order rather than relinquishment. Although we might rightly question whether unmarried women relinquishing babies in the 1950s and 1960s were truly free to exercise choice, this form of loss is different from that which results from adversarial family court proceedings. Moreover, court-ordered removal brings unique psychosocial challenges as identified in a relatively scant, but important, international literature (Raskin, 1992; Lindley, 1994; Neil, 2006; Novac et al, 2006; Hunt, 2010; Schofield et al, 2011; Kenny et al, 2012). Where parents appear as respondents in family court proceedings, not only are the most difficult details of their personal lives exposed, but in addition, they will frequently be subject to lengthy cross-examination if they contest removal (Dumbrill, 2006). The formal language and protocols of the family court create an alien environment, in which parents can only meaningfully engage through trained legal advocates (Lindley, 1994; Hunt, 2010). Court documents, which make the case for child removal, provide lasting evidence not just for the courts, but also for parents – of their failures (Ryburn, 1994; Mason and Selman, 1997; Dumbrill, 2006; Smeeton and Boxall, 2011). Although published studies of court-ordered removal are few in number, there is general consensus that the *compulsory* nature of removal of children is felt deeply by parents, resulting in enduring feelings of anger towards children's services and the courts. For example, Baum and Negbi (2013) noted the emphasis that fathers placed on the involuntary nature of their loss, in a study of child removal in Israel. Thus, child removal through the family court results in a particular kind of separation trauma for parents whose lives are exposed in this way (Raskin, 1992; Carolan et al, 2010).

A small body of literature paves the way for further systematic study of the *particular grief symptomatology* of involuntary loss and underscores the importance of developing tailored interventions that recognize the psychosocial impact of court-ordered child removal. We need to understand how this form of loss exacerbates pre-existing mental health problems and what might be done to moderate this (Cossar and Neil, 2010). In addition, services need to firmly acknowledge that unresolved anger and hostility will undoubtedly impact on parents' subsequent engagement with professional services in the face of a subsequent pregnancy (Zamostny et al, 2003; Lewis, 2006). In 1992, Raskin called for a substantive service response to the 'special' symptoms of involuntary custody loss – but a substantive response is long overdue.

## 2. Child removal and social stigma

Compounding grief responses is the sheer enormity of the social stigma associated with court-ordered child removal. For this group of parents, stigma permeates everyday social life. How does a parent explain absence of children to other parents whom he or she previously met at the school gates, or to neighbours? As the 'failed' parent looks in on the routine family life of others, this also serves as a daily and painful



reminder of the care (or adopted) status of the parent's own children – stigma intersects with loss (Schofield et al, 2011).

Public disapprobation of parents who neglect or maltreat their children isolates parents whose children are removed through court order. Disclosure will inevitably be met with suspicion by other parents who may fear for the safety of their own children in the face of the abusive or neglectful parent. Although a mother may choose to disclose her own victimhood (typically resulting from domestic violence), media depictions of child abuse may prompt questions as to whether something more sinister lurks behind her testimony. Thus, loss of a child through court order sets this group of parents apart – this is a change in parenthood status experienced by a discredited minority. Thus, the parent cannot readily benefit from *communal experience* to resolve his or her loss, shame, or guilt.

Even within immediate family networks, parents may find limited solace. Feelings of loss, stigma, and confused parental identities are reinforced where there are restrictions on parents' contact with children placed permanently with kin. Although we may consider kinship placements as more palatable to birth parents, this kind of permanency option brings its own challenges because visiting is frequently restricted or supervised. Thus, the birth parent may find him or herself in partial exile from potential sources of family support and supervision of contact by kin fundamentally alters the basis of informal relationships. The negative social impact of child removal can be felt so pervasively that it confers a master status on the record-bearer – he/she cannot escape the fact of loss or restriction on the parenting role in everyday interaction.

Within the published literature, the work of Schofield et al (2011) stands out as one of the few examples of work that has sought to explicitly capture social stigma, empirically. From interviews with parents in a number of European contexts, the authors confirm the stigmatized nature of loss for parents whose children are in foster care who felt like 'outsiders' in society (Schofield et al, 2011: 82). However, the wealth of relevant empirical and theoretical literature concerning stigma (Goffman, 1963; Link and Phelan, 2001) is underexploited. In particular, research that offers insights into how individuals *manage* social stigma and strategies of survival or self-definition is wanting. Again, important studies in the field of criminal justice open up avenues for research with this focus. The work of Giordano et al (2002) on desistance and cognitive transformation is very useful, as is the work of Rowe (2011) on female offender strategies of self-definition or re-invention.

To take understandings forward, we need to capture not just the pervasive impact of social stigma but critically, parents' strategies for survival and transformation. What self-help strategies do parents utilize to withstand social censure; how do they re-build lives in the face of everyday threats to self-esteem and social status? What might professional services contribute? Can we understand a dynamic of child removal and rapid repeat pregnancy as a strategy of re-invention or 'making good'? In our own work, we have captured statistically a pattern of rapid repeat pregnancy associated with family court appearances (Broadhurst et al, 2015b), but it is important to further understand this pattern and consider how parents describe their responses and actions following family court decisions.

### 3. Third party ripple effects

Social stigma does of course not stop at the door of our parents in question, rather it has broader ‘ripple’ effects. Within the criminological literature the impact of stigma has been much discussed in relation to third parties – for example, the children of incarcerated adults. There is clear recognition that the social effects of criminal conviction are felt far beyond the individual offender and can result in a cascade of hardships for other family members (Cho, 2010; Turanovic et al, 2012). Regarding family justice, the effects on wider family can be very immediate, because kin frequently become active parties to court proceedings. For example, grandparents may wish to be assessed as alternative long-term substitute carers for children. Of course kin may or may not be approved to provide for children’s permanency needs, but either way they are frequently and directly implicated in family proceedings. Moreover, for kin, decisions about children’s futures fundamentally alter their own relationship with the child (Kiraly and Humphreys, 2015). For example, in the case of adoption, parents’ rights are permanently removed, but equally the legal status of grandparents is measurably changed within the law (Cossar and Neil, 2010).

Similarly grandparents or older siblings must explain the absence of children within their communities. As illustrated by Australia’s analysis of the impact of ‘forced’ adoption, wider kin are also bereaved and feel the long-term social consequences of court-ordered removals of children (Kenny et al, 2012). Past adoption practices during the second half of the 20th century means that many Australians have some exposure to adoption, particularly in indigenous communities, which has led to detailed reporting of the life-long ‘ripple’ effects for kin (Kenny et al, 2012).

To date, there is a complete absence of research that systematically charts the impact of family justice involvement upon extended family networks. Further work is needed to fully capture the way in which child removal impacts on family systems and processes. In the field of criminal justice, Clear (2002) called for a social ledger of the wider rippling effects of criminal conviction on children, extended families and communities, raising questions of longer-term life chances. This message is highly relevant for the family justice system regarding the longer-term outcomes for kin, whether bereaved through the permanent loss of children to adoption, or wrestling with the complexities and social consequences of providing long-term substitute care.

### 4. Legal stigmatization – nailed down by the past

Conceptualizing the collateral consequences of child removal as multiple requires a consideration of how informal consequences interact with *formal* consequences. For parents whose children are removed through court order, a *non-erasable* family court record results, which has implications far beyond the final determination of the case. As successive published court judgments show in England, the court will frequently be reminded of the reasons for removal of an older sibling when parents return to court — typically following the birth of a new baby. Although the courts ought to be informed of relevant historical facts that have a bearing on a new case, the issue is whether the local authority and the courts pre-judge new cases on this history, or are genuinely open to a change in parental circumstances. Pre-judging in this way was at

the heart of the case of child M, in *L (A Child)*<sup>1</sup> in England. In this case, the local authority was criticized for not fully investigating what the mother claimed were marked changes in her circumstances since the removal of her older children. It appeared that during interim proceedings, both the local authority and the court were considering a *final* plan for a newborn baby but without making a full assessment of current circumstances. The mother's appeal was upheld and her 4-month old baby was returned to her care under an interim supervision order. This is just one of many published cases that illustrate the issue of legal stigmatization. Turnell et al (2007: 116) argue that when workers are faced with cases where parental rights have been previously terminated, anxiety about risk may result in practitioners falling back into the 'safety zone' of a previous assessment, rather than being open to a fresh appraisal of parents' circumstances. Drawing on our own work, statistical evidence from the family courts in England demonstrates that the courts will remove an infant at birth far more frequently and more quickly from parents who have had a child removed before than 'first time' parents (Broadhurst et al, 2015a).

In the US, state agencies are required to make 'reasonable efforts' to reunify child and family under the Adoption Assistance and Child Welfare Act 1980. However, an amendment brought forth with the 1997 Adoption and Safe Families Act (ASFA, P.L. 105-89) allowed states to bypass reunification services to families where very serious abuses had occurred in previous cases and parental rights had been 'involuntarily terminated'. While it is entirely reasonable that state agencies and the courts should consider bypassing the reasonable efforts requirement where parents have been previously convicted of very serious abuses of children, critics have pointed to considerable variation between US jurisdictions in how they exercise this latitude (D'Andrade and Berrick, 2006; Berrick et al, 2008). The ASFA set out certain 'objective conditions' that would warrant a reunification bypass, such as a previous conviction of a violent crime against a child. However, as Berrick et al (2008) write, not all cases fit neatly into objective categories – rather their seriousness is a matter of professional judgement. In examining California's particular criteria ('aggravated circumstances') for denial of reunification services, the authors note the following two conditions which illustrate the point that (subjective) professional judgement must play a part in bypass decisions:

Permanent plan ordered for sibling or half-sibling and parent has not made reasonable effort to treat problems.

Termination of parental rights ordered for sibling or half-sibling and parent has not made reasonable efforts to treat problems (Berrick et al, 2008: 166).

Based on analysis of the use of the reunification bypass in six counties in California, the authors concluded that variability between counties was disconcerting – and that a lack of data to inform local practices meant that any inequity in application of the bypass could not be detected. This leaves important questions about due process in the enactment of the ASFA is impossible to answer. In the absence of comparative data the authors stated that 'judges have no relative standards against which to measure their own decisions' (Berrick et al, 2008: 179).

For family court record-bearers, a range of *civil disqualifications* also impacts on parents' ability to resume productive lives following child removal. In England, Australia, and the USA, access to employment in the human services now requires that applicants consent, not just to disclosure of criminal convictions, but also to what are termed 'soft disclosures' (Baldwin, 2012). Soft disclosure material includes actions that have not resulted in criminal conviction, but nevertheless raise questions of personal character or integrity, such as having been involved in child protection or family court proceedings. Expanded public protection networks request and supply background checks on individuals to verify their suitability for employment for work with children and vulnerable adults. This non-conviction material appears in the form of an 'enhanced disclosure certificate'. In the case of individuals with a 'non-clean' certificate, which can apply to parents with a family court history, this will most likely be met with caution on part of employers. Thus, a family court history is particularly negative in a curriculum vitae, which will typically limit job opportunities. Indeed, many human services often operate on a blanket policy of 'clean certificates' only. Although a commitment to proportionality lies at the heart of legal systems, processes of vetting do not readily differentiate non-conviction cases regarding the level of risk they pose to the public. This raises particular issues of privacy for parents with a family court history, because the factors that led to child removal will be highly variable, with some constellation of risks more amenable to change than others. Although in some cases parents are convicted of a serious crime against a child in criminal proceedings alongside a finding of fact in the family court, in the vast majority of cases parents' sins are of omission and their cases will not reach the criminal court. In the absence of research and debate, questions of privacy, proportionality and the possibilities for family court histories to be spent, are wanting.

The part that legal stigmatization plays in parents' return to court and subsequent employment opportunities is insufficiently interrogated in a range of international contexts. Again, this stands in contrast to the literature in the field of criminal justice, where the potential criminogenic consequences of criminal justice involvement have been much researched. On the basis of current published research, it is impossible to determine how a family court record shapes parents' near and longer-term social and economic prospects.

### 5. Welfare penalties

A critical issue facing parents who have had a child removed from their care is a reduction in welfare and housing entitlements. Parents who appear before the family courts are frequently lone mothers and many will be dependent on welfare benefits for their income (Bywaters, 2014). In addition, they will typically live in social housing paid for through housing benefits. Given this set of circumstances, the loss of full-time care of children, whether through foster care or adoption, will result in significant reductions in income and may also threaten housing security. Writing on conditions in the US, Whitt-Woosley and Sprang (2014: 123) raise questions of justice where the state takes away 'welfare and housing benefits from impoverished families once they lose custody of their children'.

Each geopolitical context poses different welfare challenges for vulnerable populations. In the US, parents arguably face the harshest welfare penalties, compounded by the fact that many will be uninsured, which also limits treatment options (Rosenbua and Whittington, 2007). Australia has also been described as something of a welfare laggard and family breakdown can equally result in homelessness due to a very limited safety net for poor families (Sharman and Hulse, 2014). Although England has, by comparison, offered more generous supports towards poor families, austerity has ushered in a far harsher climate resulting in material cuts to income supports and housing entitlements for the poorest families. Of recent genesis in England is new legislation commonly described as the 'bedroom tax'. Introduced as part of broader austerity measures that aimed to reduce the welfare burden, social housing tenants now face financial penalties where their homes are deemed to be *under-occupied*. While the welfare state previously met 100 per cent of eligible housing costs, housing benefits are reduced by 14 per cent for those with one spare room and 25 per cent for those with two spare rooms. The bedroom tax aims to incentivize tenants to occupy houses of 'appropriate' size, but for multiple self-evident reasons has been subject to considerable outrage (Gibb, 2014). Where entitlement to housing support is highly restrictive, as is the case in the USA, Australia and England, this also makes moving away from problematic networks very difficult and increases the likelihood of homelessness. In turn, homelessness undermines job prospects and can make individuals more at risk of sexual and physical assault. Thus, the inevitable emotional downturn in parental functioning following child removal is compounded by further formal civil disqualifications for parents whose lives are already characterized by considerable adversity. There is compelling evidence that poverty and homelessness are associated with parenting difficulties (Lindsey, 1991; Guggenheim, 2000; Bywaters et al, 2014), which does not bode well for parents who genuinely wish to recover their parenting capacity. Moreover, a reduction in parents' income and inadequate housing make it far harder for parents to engage in consistent and meaningful contact with children placed permanently in kin networks or foster care.

Helping parents with the emotional pain of losing their children will take time and clearly there are questions about whether such losses can ever be fully resolved. However, there are immediate practical opportunities to moderate the impact of child removal by preventing further material disadvantage arising from reductions in welfare entitlements.

## V. DISCUSSION

It is impossible to describe and capture the extent of the emotional devastation that is involved in temporarily losing custody and then permanent removal and loss of custody of your children. The pain of the process of initial loss, and then watching other women provide mothering for your children, of being judged by all of those around you, and finally, of knowing that your life will be devoid of the presence of your children forever (Carolan et al, 2010: 183).

When we assemble a picture of the multiple consequences that birth parents face following child removal, a clearer picture is gained of the full gamut of challenges that stand in the way of parent rehabilitation. A preliminary typology is devised that

captures informal and formal consequences along five inter-connected dimensions: (i) grief responses to child removal; (ii) social stigma; (iii) third party ripple effects; (iv) legal stigmatization; and (v) reductions in welfare entitlements. Our observations build on the work of a number of leading theorists, but by offering a more comprehensive, multi-dimensional framework the *additive* burden of child removal is more fully described. In addition, we chart new ground in describing formal collateral consequences. Given that parents who come to the attention of the family court have typically experienced childhoods of great adversity, it is vital that we develop a better understanding of the way in which collateral consequences compound histories of trauma, poverty, or victimization and undermine future life chances. While this framework is informed by our own previous published research, together with a reading of the relevant literature, further systematic research is required to examine how this preliminary framework aligns with parents' own first-person accounts of their experiences beyond child removal.

In the interim, this preliminary framework is of immediate practical relevance to frontline practitioners positioned to both anticipate and respond to the collateral consequences we have outlined. Regarding grief responses, there is clearly an imperative to establish the mental health of birth parents as a substantive field of service delivery. In England alone, our work has identified that during a 7-year period (2007–2014) more than 43,000 women appeared as respondents in family court proceedings in England (Broadhurst et al, 2015a). The scale of this issue underscores the importance of building an evidence base and professional expertise such that this population of parents can benefit from effective mental health intervention, which addresses the complex psycho-social consequences of child removal (Zamostny et al, 2003).

This preliminary framework also raises awareness of tangible avenues for practical assistance to moderate loss of housing and reduction in income, which will otherwise compound parents' distress and disadvantage. Other practical efforts can be directed at improving support to birth parents and extended family networks where children are placed within kin. Recognizing that court ordered child removal sets parents apart also underscores the importance of creating therapeutic opportunities that enable parents in this position to share their experiences and develop mechanisms for mutual support. Seizing practical opportunities, wherever possible, to lessen the collateral consequences of child removal, must surely make a significant difference in helping parents salvage productive lives beyond child removal.

A number of institutional actors are very well placed to assist parents following the conclusion of legal proceedings, notably those at arms length to the public body responsible for child removal. However, an active role for the courts is clearly suggested from our analysis, by way of a formal mandate that would require professionals to help parents to access treatment in accordance with recommendations made during court proceedings. Expert debate is urgently needed to establish the precise architecture of such a mandate tailored to respective jurisdictions. Would this take the form of court directions or a formal post-proceedings protocol shared across agencies? Time-limited services, confined to the duration of proceedings, are out of sync with what we know of the likely timescales for durable recovery from problems of mental health and substance misuse that typify the lives of these parents.

Recovery from co-occurring difficulties is often slow and subject to relapse (Laudet and White, 2008; Quimette and Brown, 2014). In addition, rehabilitation will be jeopardized where parents suffer further hardships of homelessness and loss of income supports. The preliminary framework that we outline underscores the urgency of a more *comprehensive* family justice response beyond the finding of facts and child permanency decisions, otherwise we assign this group of parents to a stigmatized caste, whose life chances will be severely blighted.

## VI. CONCLUSION

Looking ahead, a fair system of family justice must pay proper attention to the range of interests that are at stake in family court decisions. A narrow utilitarian approach to justice that seeks simply swift disposal of cases will have very limited impact on the conditions that are causal in parents' appearances and *repeat* appearances before the family court. In addition, children will suffer in the longer-term, where their wider networks face the collateral consequences of child removal, unaided. Current family court practices in Australia, the US and England appear to assume a process of 'natural recovery' beyond final case determination, yet empirical evidence is that this is not the case for many women whose problems are repeated rather than resolved (Broadhurst et al, 2015b). We must design a family justice system that maximizes benefits for children, families, and societies and minimizes harm. In England, we are currently witnessing some excellent examples of innovation, albeit based on skeletal funding. The Family Drug and Alcohol Court (FDAC, 2016) seeks to extend its involvement to parents, beyond care proceedings, whether a child is retained in their care or not. The PAUSE (PAUSE, 2016) initiative is taking root across England and provides intensive woman-centred support to birth mothers following child removal. However, national policy and legislative change is required to sustain novel statutory and practice concepts, otherwise they may wither.

## NOTE

1. EWCA Civ 489 (3 May 2013).

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